

# **Reviving the global debt movement: the search for a common agenda**

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# CONTENTS

Preface by Teppo Eskelinen 5

## **1 Arbitration/Odious debt**

Keeping debt arbitration on the agenda by Charles Mutasa 9

Comment by Natalia Ablova 23

Comment by Patrick Bond 25

## **2 Cancellation and Conditionality**

The third world debt cancellation – an imperative need of the hour by Sushovan Dhar 28

Comment by Joseph Hanlon 43

## **3 Repudiation as a strategy?**

To repudiate or not, is that the question? by Beverly Keene 44

## **4 The future of lending**

Proposals for future lending practices – a Southern proposal by former Jubilee-Zambia co-ordinator 56

Comment by Gail Hurley 68

Comment by Oscar Ugarteche 71



# Preface

By Teppo Eskelinen

This publication is the outcome of the second phase of the NIGD/Attac dialogue project on the global debt movement. The first phase was completed in 2007, with the publication "the global debt campaign – what are the next steps?".

When we started the project in 2006, the grounding idea was that there is need for an analysis of the direction of the movement. While there had been lots of discussions about suitable ways for solving the debt problem and competing political models, there had been little debate on the future of the movement itself. Yet, from its peak in the turn of the millennium, the movement had lost some of its power. It had become smaller and more fragmented. This is a reason for alarm in itself, as the history of debt relief shows that every improvement in creditor policies has been preceded by a strong push from the civil society. It is not the best theoretical models, but the strongest demands, which is the key to civil society's success. Starting from this analysis, we launched a discussion about the movement. Methodologically, the discussion was yet on how to solve the debt crisis. By making the suggested solutions explicit, also disagreements would surface, and could be overcome. It was our belief that there is no reason why the global debt movement could not reinvent itself as a movement with uniform demands.

What, then, has been the problem of the debt movement? Perhaps the major issue, at least in the global North, has been the rhetorical triumph of the key creditors. After the G8 Gleneagles deal and the World Bank's general tendency to move from "adjustment" to "poverty reduction" rhetoric, parts of the movement have come to conclude that the problem is, if not solved, at least on the track of being solved. While it is questionable, if these recent developments have changed anything significant, several campaigners have been inclined to see them at least as "moves to the right direction". This highlights a fundamental split within the movement. Others are quite happy with debt reduction figures and their adding up to sums used for poverty reduction, as poverty has always been the problem for them. Others have always thought to be dealing with a political problem, and therefore call for policy space for the indebted countries - which presently shows no signs of expanding. To be more accurate, these campaigners argue that policy space, rather than ODA funds, is the key for overcoming poverty.

Apart from this dichotomy, there are several disagreements within the movement. Two years ago, we first mapped these major disagreements. These were, first, relief vs cancellation, second, how to deal with conditionalities, and third, disagreements on what to call for – meaning for example repudiation vs arbitration. The first means, where to set the goal – is only 100 per cent debt cancellation for the entire global South enough? The second is a practical disagreement arising from the current World Bank policies, in which there are political conditionalities attached to debt reduction. While political and economic conditionalities are opposed by practically everyone, some activists argue that

conditionalities related to poverty reduction or good governance can be useful in very poor and corrupt countries. Others, perhaps the mainstream of the movement, oppose also these conditionalities in the name of policy space and illegitimacy of the political power of the Bank. Thirdly, as mentioned, the practical solutions for the debt problem have always been a matter of debate. Should third world countries repudiate on their debts? Should we campaign for an international debt arbitration mechanism?

These debates have and have not changed in two years. The key disagreements and positions remain. Yet the turns of world politics seem really fast these days, and there have been significant changes in the wider picture in the past two years. First, the reactions to the debt problem have become more proactive. Apart from increased discussions on responsible lending, these discussions have also been institutionalised by the Bank of South. While there are doubts about this institution, at least it is a very serious attempt to start a development finance institution with better lending practices, and make the Latin American countries less dependent on the traditional creditors. Simultaneously, there has been the rise of new creditors, especially China, the role of which is under debate within the movement. Some see China as just another irresponsible lender, others see an alternative source of finance as generally positive. All in all, the world of development finance and lending has become more complex and more difficult to control politically, simultaneously with ever larger economic differences within the global South.

Simultaneously, the "donor community" is putting an ever greater focus on coherence. This means not only coherence of trade and development finance, but also coherence within development finance and calls for transparency and good governance. While coherence is in many respects a very positive thing indeed, any negative changes are pushed by a ever more coherent donor community, and this is likely to also affect the debtor countries' policy space.

But there are new developments also within the debt movement. First, the perennial problem of global movements, namely the North-South divide, in which the South has been keen to speak about justice, somewhat irritated by the North's tendency to overrule Southern voices with "moderate" demands and expert jargon, seems to be bringing itself a little. There have been regular North-South meetings within the movement, accompanied with discussions in the World Social Forum, etc. The new campaign form of citizens' debt auditions have helped bring the voice of the affected to the forefront, instead of merely technical finance-speak.

Recently, also other major crises have shaken the agenda. The food crisis is on everyone's lips now. Acting on climate change is ever more urgent. Global finance mechanisms seem to be facing an impasse, with no-one really knowing what will the financial architecture of the future look like. As a result, the debt movement cannot identify itself as a political movement, without recognising the fragile state of the political order of the day. The debt movement must also be able to reflect and react to questions not directly related to debt. Yet arguing that debt is off the urgent agenda would be hasty, not least because the key

emphasis of (parts of) the movement, policy space, is also the key to food sovereignty and stable finance.

In this publication, it has been our aim to continue the dialogue started with our publication last year, while thinking it in relevant context of the day. Further, we wanted to make the dialogue methodological and incorporated in the very structure of this publication. Thus, each chapter is followed by two commentary texts on the article. Thus disagreement is made visible – but so is agreement. It is our hope that this publication makes it easier for the movement to think about itself while staying in motion.

Charles Mutasa argues, that there should be an international debt arbitration mechanism. This call is justified by not only the poverty caused by the debt problem, but the political nature of the problem and the arbitrary logic of debt reductions. Generally, arbitration would make it possible to discuss odious debts, an internationally accepted doctrine which has been only a few times applied to sovereign debt. While these notions have penetrated the NGO discourse, they ought to be pushed to the official agenda.

Sushovan Dhar looks through the history of debt, and argues it to be ideological, or economic colonialism in disguise. The debt of the South is illegitimate for so many reasons, that it ought to be simply cancelled. Dhar contrasts this demand with the present practices, in which conditionalities are attached to debt reductions. While some activists are willing to accept some "positive" conditionalities, Dhar sees the matter differently. According to him, conditionalities do not call for a "good vs bad conditionality" -debate, but rather a debate on political sovereignty. Dhar sums this argument up: "However tempting positive conditionalities may appear, such positive conditionalities raise the unavoidable question, who has the right to impose them."

Beverly Keene discusses the issue on quite the same way, but from the viewpoint of repudiation of debt. This puts even more emphasis on the democratic processes of the South. Repudiation is a decision within the countries of the South, not even a demand on the North. Essentially, Keene argues, we are discussing power relations when we discuss debt, and the task for the South is to reclaim its economic power. Yet repudiation always leads to the question of "realism": is the strategy feasible, in the face of economic and political retaliation from the North and decreased financing. Keene defends her position by pointing out cases of successful repudiation. Also, she notes, co-ordinated action by the countries of the South would make the action more efficient. Thus the difficulties of co-ordination might be the real challenge for the plausibility of repudiation.

Former Jubilee-Zambia co-ordinator, who wishes to remain anonymous in this publication, discusses principles of responsible lending. The viewpoint is quite different from Keene, stressing that poor countries need access to finance – loans and grants. The key point made in this text is that loans should always be demand-driven, practically meaning that lending countries should have clear national development plans, in which all borrowing should be accommodated. Indeed, one of the main structural reasons behind the present debt crisis

is the supply-driven approach to lending. In other words, loans are contracted primarily because the creditors have too much money they need to lend out, not because the debtor would really need it.

These texts are followed by short commentary chapters, which aim to show more points of disagreement. All the commentators are long-time activists and researchers in the movement. Sometimes the commentary chapters merely elaborate the points made in the main article, sometimes they call for a different approach.

Yet, all in all, one thing which seems to be common to all the chapters, is the notion of illegitimacy, ie the demand that debts ought to be discussed from the viewpoint, if they are justified in the first place. This consensus is widely seen also in the debt movement. While all the relevant institutions from the IFIs to the UN to the G8 and Paris Club accept the demand for more relief, civil society keeps calling for investigation on creditor responsibility. Quite simply: if a debt is illegitimate, it ought not be paid. Discussions on repudiation, cancellation, arbitration mechanisms and responsible lending are all variations of this theme. This is the common message of the civil society, voiced vocally also in this publication.

# KEEPING DEBT ARBITRATION ON THE AGENDA

By Charles Mutasa

## Introduction and Context

The emergency of new lenders such as China, India and others in the global arena necessitates the need for the international community to develop an international framework through which the debt question and the power imbalances between the creditor and debtor countries can be resolved. Debts incurred in the past, present and in the future still need a fair and transparent framework through which they can be identified, tracked and resolved. Relying on G8 pronouncements and other donor pronouncements such as the disguised heavily indebted poor countries (HIPC) initiative and the multilateral debt relief initiative (MDRI) is not adequate. The need to find a lasting solution for the debt problem should remain high on the international agenda for reasons of international justice, human rights, stability and development needs. The current decision making process, in which creditors still play the role of plaintiff, judge and jury, needs urgent revision.

The debt of many developing countries is partly a legacy of colonization and aims to perpetuate the domination of the South by the North. Debt is first and foremost a *political* and *social* issue, not just an *economic* and *financial* issue, as the mainstream discourse tends to present it. In reality, by its origins, uses and impact, the external debt of the South is odious, illegitimate and immoral. Thus, in resolving the Southern debt problem it is useful not just to ensure that poor countries have their debts cancelled or relieved, a real justice-based approach that addresses the unjust overall structures, relations, terms and conditions in the past is required. There is still need to revisit the rationale behind establishing a fair and transparent arbitration mechanism within the United Nations so as to have a permanent solution to the question of odious and illegitimate debts that continues to be a stumbling bloc to all efforts to pull Third World countries from the quagmire of poverty and underdevelopment.

## Why Arbitration at this juncture?

Indeed, despite the MDRI, almost half the population of Sub-Saharan Africa still lives on incomes of less than one dollar per day (a shorthand for extreme poverty), and three quarters of the population live on less than two dollars per day<sup>2</sup>. The question is then what is still the problem? There seems to be a smaller literature on the ethical issues embodied in sovereign debt and its crises, and what a “just” workout mechanism might look like. As Herman (2007) noted the question still remains; Will the total amount of relief add up to what the debtor country economy needs in order to have a fighting chance to grow, create jobs, service its remaining debt normally, and move toward eradicating poverty? The central issue is poverty; the focus on debt needs to be complemented with

strong attention paid to trade and foreign aid policy under such broad banners as “Make Poverty History.” The external sovereign debt of those countries holds back their ability to overcome poverty.

While the Bretton woods/G8 has usually assumed the role of international arbitrator of how much relief, new financing and policy reform a country needs to overcome its debt crisis, they have been widely accused of systematically underestimating the amount of relief needed. Thus, during the 2005 G8 meeting in Scotland, civil society concluded, ‘the people have roared and the G8 has whispered.’ This reflected disappointment and an underestimation of what was supposed to be done by the G8 to end poverty in poor countries. Such optimistic bias, is usually shaped by poor advice from bureaucrats sitting in the North and ignorant of the South and by the mere absence of a neutral mechanism to assess the debt problems. To make matters worse there is always the fallacy – international financial institutions (IFIs) advising governments in the South on how to avoid debt crises and how to maintain debt “sustainability”, albeit without a consensus on what the indicators of sustainability should be. What thus seems to be missing in the financial architecture on sovereign debt is some effective coordinating mechanism- a global debt-workout mechanism- to bring all the relevant parties together and reach an agreement in a timely way, but also that the workout was just.

Kunibert Raffer, a lawyer and economist, charges that Southern governments that entered into debt crises after 1970 have borne a higher and disproportionate share of the cost of default than have their creditors compared to the experience of debtor governments over the previous century. He blames these results on the great disparity in economic power between the developing country debtors and their different international creditors which can be resolved by a fair and transparent arbitration mechanism. The problem with IFIs is they want to be repaid for pushing wrong policy advice which led poor countries to the debt crisis itself. Thus acknowledgement and recognition of lender responsibility as well as the need for arbitration is not only important for making international financial relations fairer, but it leads to better initiatives and sustainable solutions to the debt crises.

## Emerging Lenders and FTA

The term BRICs describes the emerging and rapidly growing economies of Brazil, Russia, India and China, whom Goldman Sachs in a 2003 paper anticipated would dwarf the world’s current richest economies by 2050. Aid figures for BRICs are difficult to determine since the Organization for Economic Cooperation and Development does not compile figures for non-OECD countries. China’s involvement in Africa has perhaps garnered the most public attention. This is likely due to the size of investments (doubling current aid to the region by 2009, providing a further \$5 billion in preferential loans and export credits, establishing a \$5 billion China-Africa development fund to promote private investment and canceling all bi-lateral debt), the type of investments (infrastructure, large dams and resource extraction), the location of some of its investments (Sudan and Angola) and the

fact that China refuses to attach any of the conditions typically associated with World Bank loans to its initiatives.

While the Bank fears these investments may undermine Bank efforts in the region and may bring on a future debt crisis, some development experts have criticized China's practice of tying their aid to the purchase of Chinese goods and services, and environmentalists and human rights advocates have raised their own concerns. There are also questions about how actors like China will "fit" among other bilateral aid donors, in particular those that are part of the OECD Development Assistance Committee.

What is more worrying to debt activists is the way China secretly does its business in Africa and the fear of falling in the debt trap that the continent was in through the advice and influence of the World Bank and IMF. It will be important to have a fair and transparent arbitration mechanism to guard against reckless borrowing and irresponsible lending and more so between China and developing countries.

## Illegitimate and Odious Debts and FTA

Although the expression, "illegitimate debts" has gained some popularity among NGOs, it is not (yet) a term used in official/secular world. A fair and transparent arbitration mechanism should be able to help address the question of illegitimate debts.

In general the term "illegitimate" means "against the law, illegal or not authorized by law; improper" or "wrongly inferred" and to some extent "illogical". Defined thus illegitimate debts include odious debts, loans secured through corruption, usurious loans, and certain debts incurred under inappropriate structural adjustment conditions. Having this perception and understanding, it therefore becomes justifiable that the people of the impoverished South should not be obligated to pay debts acquired by governments where creditors knew the debts were illegitimate. Creditors who lent to the corrupt regimes of Mobutu Sese Seko of Zaire (Now Democratic Republic of the Congo), Suharto of Indonesia, Marcos of the Philippines (just to mention a few) should bear the risk attributable to their decision to finance the self-enrichment (at the expense of the country) of "their man" during the Cold War era/otherwise.

The term illegitimate debt does not exist in the legal fraternity except in the court cases given by Alexander Sacks who theorized the concept. Joseph Hanlon then referred to loans being illegitimate: "We consider loans to be illegitimate if: they are against the law or would be against national law; are unfair, improper or objectionable; or infringe upon public policy"<sup>3</sup>

Hanlon went on to develop four categories of illegitimate debt namely: unacceptable loans; unacceptable conditions; inappropriate loans; and inappropriate conditions<sup>4</sup>. Unacceptable loans or conditions are those that are prima facie void because the original

loan involved clear misconduct by the lender, violated the national law of the debtor, or was grossly unfair. This involves corruption, poor policy advice or environmentally damaging projects and capital flight. Inappropriate loans or conditions are those that the lender failed to apply prudence and due diligence and gave a loan that was inappropriate under the circumstances. This includes illegally (according to national law) lending money at excessively high interest and loans for consumption purposes.

## The Doctrine of Illegitimate Debt

The role and contribution of Alexander Sacks, the professor of law in Paris, in his 1920s codification of the Doctrine of Illegitimate Debt has been well recognized. According to Alexander Sacks who theorized the doctrine of illegitimate debt; “If a despotic power incurs debts not for the needs or in the interest of the state, but to strengthen its despotic regime, to repress the population that fights against it, or to colonize its [territories] with members of a dominant nationality, etc.... These debts are odious to the indigenous population. This debt is not an obligation for the nation, it is a regime’s debt, a personal debt of the power that has incurred it.” When this power falls, that debt “consequently ... falls with the fall of this power”<sup>5</sup>

The Latin American Parliament developed a legal foundation characterizing four causes of illegitimate foreign debt. These include: the origin of the debt (national criminal and civil laws need to justify whether there is forgery, fraud or irregularities involved); where the creditor increases interest rates unilaterally and in unlimited fashion; the Brady Plan Agreements which forced governments of debtor countries to renegotiate debts with implicit and forced recognition of illegitimate debts, charging interest on interest; and the co-opting of government negotiators who signed agreements then resigned to assume posts in benefiting private companies from the agreements.<sup>6</sup>

Illegitimate debts can thus simply be classified as debt incurred by illegitimate debtors and creditors acting illegitimately

- Odious debt or debt incurred not for the needs or interests of the state but to strengthen a despotic regime and repress the population that fights against it
- Loans which were stolen through corruption

Debts incurred for illegitimate uses:

- debts for projects which did not happen or did not benefit the people as they were intended
- debt for projects that were destructive to the community or its environment
- debt contracted for fraudulent purposes

Debts incurred through illegitimate terms:

- debt incurred with usurious interest rates
- debts that became unpayable as a result of external factors over which debtors had

no control (e.g. after Northern countries unilaterally raised interest rates, or following dramatic falls in commodity prices)

- private loans converted to public debt under duress, in order to bail out lenders

Defined thus, illegitimate debt includes odious debts, loans secured through corruption, usurious loans, and certain debts incurred under inappropriate structural adjustment conditions. Picking up where Alexander Sacks left off, McGill University legal scholars relying on international custom (precedents), international conventions (such as the 1983 Vienna Convention on Succession of States in Respect of State Property), the general principles of law (such as unjust enrichment, the abuse of rights and the obligations of agents), and judicial decisions, filled in legal, financial, and political analysis to the principles of the Doctrine of Odious Debts in the 21st century. They concluded that there are three necessary conditions for a debt to be considered odious: 1) the debt must not have received the consent of the nation; 2) the funds borrowed must have been contracted and spent in a manner that is contrary to the interests of the nation, and; 3) the creditor must be aware of these facts. <sup>7</sup>

The doctrine of odious debt imposes morality on the part of international financial institutions and makes them more responsible for the purpose to which their loans might be put. Many civil society groups believe by challenging illegitimate debt they will help eliminate the moral hazard that has dominated public borrowing for the past 50 years and that has so damaged the economic, political, and social fabric of the Third World. They also believe that this will shift the balance of power in debt negotiations in favour of citizens. Lenders would take greater care to lend to governments with real authority, and not just apparent authority, and to exercise due diligence to make sure that the money is used for legitimate governmental purposes. It would go far in securing the measures required for accountable public finance that citizens throughout the South have so thoughtfully articulated. Lenders would be forced to demand evidence that the borrowing public is aware of and consents to its government borrowing before extending credit.

Briefly put, all three widely spread dictionaries subsume two kinds of debts under “illegitimate”

a) Illegal debts, i.e. debts whose existence violates the law, basic legal principles or that are legally null and void. It would comprise debts incurred in violation of national laws, of international law, such as in breach of legal obligations or statutes of IFIs, and general universally accepted legal principles, especially debts, whose servicing violates human rights. What Jeffrey Winters (2004; see also Raffer 2004b, pp.64f) called “criminal debts” would also be illegal. These are debts from IFI disbursements to corrupt governments, such as Suharto’s, knowing that large parts of these loans would be embezzled.

b) Debts that might be legal by strictly formal standards, yet whose existence or servicing violates socially established norms. Often, servicing them can thus not be enforced or even expected - it would be somehow “illogical” to honour them, unless the debtor is

a Southern sovereign. Obviously, odious debts can be subsumed under “illegitimate”, although one might discuss whether under a) or b). The evolution of the doctrine of odious debts in international law and its recent acknowledgement and corroboration in the case of Iraq would suggest subsuming it under illegal debts.

## Lessons

The concept of illegitimate debt has been undisputedly put forward as having to do with authoritarian and extravagant regimes of the past rather than the present. There is no international consensus on the term “illegitimate debt” in regards to current or sitting governments of our day. It also true that there is no reference to such a term in the international arena - at the United Nations or in the International Financial institutions. The very word “odious” does not even exist on the Paris Club homepage. It seems it remains more restricted to the world of NGOs and to few governments (mostly as a means/for the love of politicking) rather to agreed pragmatic and technical application in our global village. A case in point has been the controversial issue of Iraq debts under Saddam Hussein.

Although the odious debt doctrine has received unexpected support from the US government in the case of Iraqi debts, the concept is not clearly defined (for details cf. the *locus classicus* Adams 1991). What appeals most to NGOs is the rather wide interpretation in the so-called Tinoco case, which - if generally accepted - would make this concept applicable to a substantial share of sovereign debts.

Among the cases that Sacks cited in formulating his doctrine was the case of the Royal Bank of Canada, a private commercial bank, which made a loan to the outgoing dictator of Costa Rica, President Tinoco. The new Costa Rican government challenged the debt before Chief Justice Taft of the U.S. Supreme Court who was asked to sit as arbitrator. In his 1923 ruling, Chief Justice Taft noted that the transactions in question were “full of irregularities.” They were also “made at a time when the popularity of the Tinoco Government had disappeared, and when the political and military movement aiming at the overthrow of that Government was gaining strength.”<sup>8</sup>

The payments, Justice Taft discovered, were made to cover either Frederico Tinoco’s expenses “in his approaching trip abroad,” or his brother’s salary and expenses in a diplomatic post to which Tinoco appointed him. The Royal Bank, Justice Taft ruled, cannot simply base its case for repayment on “the mere form of the transaction” but must prove its good faith in lending the money “for the real use of the Costa Rican Government under the Tinoco régime ... for its legitimate use.”

According to the evidence presented, Justice Taft stated that, “The bank knew that this money was to be used by the retiring president, F. Tinoco, for his personal support after he had taken refuge in a foreign country. It could not hold his own government for the

money paid to him for this purpose. The position was essentially the same in respect to the payments made to Tinoco's brother." In conclusion, Justice Taft ruled, "The Royal Bank of Canada cannot be deemed to have proved that the payments were made for legitimate governmental use. Its claim must fail."

The implication of this case on debts incurred by corrupt dictators is clear. This understanding of odiousness would also comprise criminal debts.

1. The concept of odious debts also illustrates **creditor domination cum arbitrariness**. The only exception is in the case of Norway's acceptance and taking responsibility in its Shipping Export Credit campaign of the 1970s. The US propagated it twice: to free Cuba from Spanish colonial debts, and when Iraq was invaded. In both cases US interest is evident. Conspicuously, this concept was neither discussed nor applied to dictators such as Somoza, Mobutu or the fascist military juntas in Chile and Argentina – all enjoying strong US support. In all these cases substantial claims of US creditors existed - unlike in colonial Cuba and Iraq.

2. The present discussion of odious debts and the rather thorny question of what constitutes such debts would largely have been avoided if the Rule of Law had not been waived in sovereign lending<sup>9</sup>.

3. It seems the world has **no recent agreed precedents of illegitimate debts cancelled**. The cancellation of Iraq debts by the US and the failure to extend such cancellation to other poor and needy countries has made of the concept of (illegitimate) odious debts remain contestable:

Basing a case on odiousness seems risky. Officially, Iraq's debts were not reduced because of odiousness. A CRS Report for Congress (Weiss 2005) available at an official US homepage (of the US Embassy in Italy) does not mention odiousness as the reason for US efforts to achieve debt relief for Iraq. It introduces odious debts in the following way: "Proponents of a doctrine of 'odious' debt assert that some of Iraq's debt's could potentially be classified as non-legitimate under international law since they were undertaken during the Hussein regime and that international law should be able to expunge these debts. The concept of 'odious' debt does not appear to be well established in international law." (*ibid*, p.6) It is conspicuous that the pertaining footnotes (omitted here) quote demands to apply "Iraqi Terms" to other debtors, e.g. S. Raghavan "African Advocates to U.S.: Reduce Our Debt Like Iraq's", in *The Miami Herald* of 20 February 2004. The initial opinion regarding odious debts of the US government goes completely unmentioned. What follows is thus to be expected:

"While such a commission could increase the legitimacy of a final debt restructuring plan, some believe that Iraq is not likely to seek an 'odious' debt claim. Moreover, the U.S. government has made clear its intention to restructure its Iraqi debt through the Paris Club process, and parallel negotiations with non-Paris Club countries in the Middle East and

Asia, and Iraq's private creditors."(ibid.)

This source states, though: "Under traditional Paris Club guidelines, Iraq's petroleum and gas reserves would render it ineligible for debt relief." (*Ibid*, p.4)

The "illegitimate debts" issue is well illustrated in a few specific undisputable countries and past regimes in the global South-The cases of Marcos in the Philippines, the case of DRC in Sub-Saharan Africa, the case of Argentina in Latin America are clear illegitimate cases cited.

The issue of illegitimacy is easily associated with

1. Irresponsible borrowing on the part of poor country(ies) and reckless lending on the creditor countries.
2. Borrowing and lending done to maintain relations between certain sitting governments and creditor governments/institutions.
3. Bad policy advised by the creditor institutions or countries leading to disastrous effect on the recipient country. Many severely indebted poor countries' debts, mostly owed to official sources, are largely creditor-determined, the result of creditors' decisions and monitoring. The going practice of forcing debtor countries to pay for all their creditors' failures is particularly unjustified in these cases
4. The stolen wealth (of Nigeria) cases which involve corrupt leaders convening with Western financial institutions to embezzle state coffers for personal gain seems also to fit into this category.

The absence of credible debt management units/ offices has made it a bit complicated to trace figures and trends in the affected poor countries. In many debtor countries debt records and statistics have not been properly kept to the extent that some do not know exactly how they owe. Creditors are the ones that normally tell some governments their amounts of debt and not the reverse. In such situations distinguish illegitimate and legitimate debts cannot be easy.

Many governments in developing countries have not added their voice to the campaign just as they have not spoken openly about bad governance of their predecessors or colleagues. Even, the Republic of South Africa (RSA) (with evidence that came from the Truth and Reconciliation Commission) had not been willing/keen to use the term "illegitimate or odious debts" or even reparations to claim compensation after apartheid. This could be an indicator that it might be very difficult for the RSA government to build a case on this concept. This does not mean, however, that campaigners should stop pointing out debts that can be defined as odious.

The concept seems to be more evident and easily applied when talking in historical terms rather in contemporary and future terms.

## Prospects

1. There is support and conviction for the campaign as recently demonstrated by the Norwegian government deliberations. (Among creditor governments support for fair legal processes is unfortunately still extremely limited). The Kruger Sovereign Debt Restructuring Mechanism proposal within the IMF was a clear and indeed remains a clear indication that there is recognition that there are some illegitimate debt issues to be handled out there. Other sources of encouragement include the resolution of Nigeria's House of Representatives calling on the President to repudiate her debt - which in the end resulted in an unprecedented Paris Club agreement - or Argentina's unilateral cancellation of a substantial part of some debts show that debtor states, too have meanwhile gained some manoeuvring space. NGOs need to team up with as well as put pressure on their governments to repudiate illegitimate debts.

2. The Helsinki process has an opportunity of bringing up this matter as a way of promoting /introducing the rule of law into North-South relations. The question of sovereign debts and chapter 9 on a fair and transparent arbitration process has been discussed at the Helsinki Process on Globalization and Democracy that touches a lot of global governance issues.

3. Parliamentarians Support: Parliamentarians in Latin America, Italy, Germany have not only supported the need to deal with illegitimate debt but also debt arbitration and similar initiatives to address the debt question especially issues associated with bankruptcy / insolvency of the debtor countries. The Italian Parliament (2000) passed a law on debt relief in the summer of 2000, Art. 7 under the title *International Regulations on Foreign Debt* that requested the setting up of consistent procedures from the International court of justice that will help in governing developing countries' foreign debt and the general framework of legal principles and human and people's rights.

During a Conference in Uruguay's Parliament the Montevideo Declaration calling for a mechanism to deal with Third Debt was formulated, and signed by Latin American Parliamentarians (available at <http://www.erlassjahr.de/content/montevideo/submit.php>). The 2000 ACP-EU Joint Parliamentary Assembly demanded "that consideration should be given to the creation of an International Debt Arbitration Panel to restructure or cancel (*illegitimate*) debts where debt service has reached such a level as to prevent the country providing necessary basic social services ." NGOs elsewhere especially in Africa and Asia can work towards ensuring that the Montevideo Declaration is signed by their members of parliament or serve as a blueprint for a declaration taking Africa's situation more specifically into account.

The commonwealth has already upon request set up the HIPC Ministerial Forum- a platform where the IMF, the World Bank, the Paris Club and the United Nations have an

opportunity to meet HIPC ministers of Finance and NGOs to discuss ways of relieving HIPCs of their debt burden. Such an opportunity and others of similar magnitude can be seized to address the illegitimate debts question.

As many African, Asian and Latin American countries are members of the Commonwealth, this is a potential platform to discuss illegitimate debts. The Commonwealth Secretariat could be approached to further the discussion on this issue. The question could also be brought up in the Commonwealth by a debtor government.

4. The UN Millennium Development Goal (MDGs) Campaign: Over decades the UN has advocated reforms of traditional debt management- if the MDGs campaign on goal 8 is centered on finding a lasting solution to the developing countries debt burden it should then be used as a starting point to demand cancellation of illegitimate debts. The UN Secretary General provided valuable inputs to the discussion, by his proposal to redefine sustainability as the level of debts allowing debtor countries to achieve the MDGs and reach 2015 without increases in their debt ratios, which he made in his Report *In Larger Freedom*.

5. The Financing for Development Process and the Multi-Stakeholder Meetings have moved discussion forward. At the concluding session in Geneva. The proposal to create a multi-stakeholder working group to explore additional mechanisms to improve debt workouts was widely supported and discussed at length. Participants agreed with the proposal that the working group examine such issues as a code of conduct for sovereign debtors and their creditors, operationalization of the doctrine of ‘illegitimate’/ ‘odious debt,’ and provision of arbitration or mediation services to facilitate dispute settlement.” (UN, FfD 2005, p.9). In this regard, an opportunity exists for the 2007 Review of the Financing for Development process to put the illegitimate debts issue on the international agenda through the UN.

6. The Multilateral Debt Relief Initiative (MDRI): Initiatives such as the MDRI may facilitate the campaign for the cancellation of illegitimate debts. CSOs may simply need to put more pressure on the G8 countries to go yet another set and simply cancel debts that are illegitimate and odious though not within the HIPC framework.

## Proposals

1. A coalition across the North-South divide must be built between governments in North and South willing to change the present discrimination of Southern debtors and their peoples, international organizations, parliamentarians, public servants, NGOs and the public at large, as well as private creditors interested in re-establishing the economic viability of debt distressed Southern debtors or concerned about the present plight of so many people.

2. There is need to encourage debtor governments to demand cancellation of illegitimate debts (that is rightly theirs) as they are in a very difficult position they need support and making sure that debtors who demand such are not immediately subjected to repressive reactions by official creditors. For understandable reasons the dependence of debtor governments on the goodwill (or arbitrariness) of their creditors may hinder many of them to speak up as loudly as they might wish to, and actually should. Not being debtors themselves, Organizations such as the African Union can be pressurized to take up the issue with both the United Nations and the G8 leaders.

3. Documentation and campaign: NGOs must take a lead in defining what constitutes an “illegitimate debt” as well as produce research evidence of such cases in the past and in the present. At the African Union’s Experts’ Preparatory Meeting in Dakar 2005, the President of the Republic of Senegal, Mr. Wade argued that *any lasting solution to Africa’s debt crisis must first and foremost be based on an audit - a “radioscopy “ - to “make known the amount to be repaid”* (AU May 2005, p.4), recognizing the principle that debt should be repaid. This is a clear call to tackle the problem of illegitimate debts and debts that would not exist in the case of debtors in the North where basic legal principles of debtor-creditor relations are respected. As the new Norwegian government declared that they would support arbitration on illegitimate debts, they might be approached whether they would be prepared to help by funding the modest costs of the documentation.

4. Establishment of a mechanism/agency to determine “illegitimate debt”. The new Norwegian government proposal that “the Government will support the work to set up an international debt settlement court that will hear matters concerning illegitimate debt”. The UN must be pressurized to establish criteria for what can be characterized as illegitimate debt, and such debt must be cancelled” must be fully supported by the establishment of a mechanism/agency to determine this could be established within the UN in form a arbitration tribunal/court comprising elected eminent representatives of debtors and creditors on both sides and served by the UN secretariat. This and the clear demand for canceling illegitimate debts make the Norwegian government’s intentions absolutely clear. Norway’s commendable readiness to introduce the Rule of Law into North-South relations is not the first case of a creditor government speaking in favour of debt arbitration or even FTAP in handling illegitimate debts. Switzerland in the 1990s tried discreetly to discuss this proposal internationally, but finally stopped these attempts as no other creditor government signalled any interest.

## Conclusion

The current domestic debt sustainability problems in the post-MDRI countries, the reckless and opaque borrowing from China by many African countries in the name of South-South cooperation, the vulture funds and the displeasure with current power imbalances between the North and the South exemplified in the Breton woods institutions justified the need for a Fair and transparent debt arbitration mechanism.

Currently the call and campaign for the cancellation of illegitimate debts may not make sense, but that's the way it should be! Campaigns by civil society have an impressive record of improving the way things are handled. Things once declared impossible and foolish, such as the abolition of slave trade campaign and the human rights movement call against discrimination of blacks in the US in the 20<sup>th</sup> century, to cite a few cases- have become reality. When Jubilee 2000 UK started its campaign, many doubted whether as complex an issue as international debts could be communicated to a public not really concerned about this issue. It was proved that people in creditor countries, once the sheer injustice of present structures is explained, object to present practices much more than their governments<sup>10</sup>. It is therefore justified, logical and human to conclude that NGOs have the right and power to make sense out of what appears to be insensible to the our governments today. It can only be public lobbying and pressure that can bring about a fair, humane and proper solution of sovereign debts. NGOs are not alone. There are parliamentarians, politicians, academics, and private creditors ready to support such demands.

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(Footnotes)

<sup>1</sup> Executive Director, African Forum & Network on Debt and Development (AFRODAD)

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# Comment on Charles Mutasa

By Natalia Ablova

Mutasa's main argument, namely that the current position of the creditors is highly problematic, is indeed correct. In the current structure of debt reduction procedures, conflicts of interest cannot be avoided. In any criminal or civil procedure legal provisions are aimed at excluding conflict of interest: a judge cannot be a party in a trial and a procurator cannot be a victim. Yet all multilateral financial institutions are comfortable with own compliance and review procedures and with a board of directors acting as final justice. And we all know that IFI boards of directors all those years have been approving tons of projects that we now consider as next to criminal acts against communities.

It may be true, as Mutasa emphasises, that developing country debt owes to the legacy of colonialism. Yet it is a wonder that with the same colonial legacies many IFIs arrived in the countries of Eastern Europe, Russia, Caucasus and Central Asia, some of which can be categorized as part of the global North. With inexplicable arrogance and audacity, these institutions have been applying policies that will not work, projects that are mostly destructive; brining the same faulty templates and designs that have failed elsewhere in the areas of IFI operations since 1960. Thus it is the institutional and policy problem rather than merely a (post)colonial structure which creates the problems.

Clearly, IFIs have to acknowledge their responsibility for the environmental and social consequences directly or indirectly caused by their projects. Dealing only with governments and excluding population, IFIs and corporate development partners must not forget that the blind, the deaf and the numb can be only losers in this so-called development business. Despite that the IFI claimed they were bringing a spectacular combination of expertise, technology and capital, the essential element of successful development – people - was excluded from all impressive project schemes.

Big powers and resourceful democracies should stop inventing various pretexts and excuses for financial support of dictatorships. We will never reach the so-called Millennium Development Goals, advertised with a lot of fanfares, if rich nations continue such practices. While civil groups desperately try to fix things, and to start real rethinking of development, corrupt rulers should not be rewarded by huge loans that are to be re-paid not by them but by the poor. Western governments often respond that they cannot control big business; on the contrary, they argue that massive investments can bring a lot of profits to poor countries, that liberalizing the trade and business activities will help to build the rule of law. This way of shaking off responsibility must be denounced. We have learned that doing business in corrupt countries is rewarding and safe only for the companies that ignore the rule of law completely and play in tune with lawless rulers.

The processes described in Mutasa's text is applicable to what is now witnessed in Kyrgyz Republic. Debt burden, corruption and poor governance led (in March 2005) to a painful

transition with the former Kyrgyz president becoming an exile. But new authorities are again courting the World Bank and other multilaterals and, at the same time, cursing the debt legacy of the previous regime as well as old stereotypes practiced by IFIs.

A group of NGOs in Kyrgyz Republic started in March 2008 a new initiative of documenting and presenting to the public a list of illegitimate debts. The list opened with a failed ADB project dealing with sanitation and water. After careful study of numerous project related documents, it became clear that there had been numerous violations of ADB rules and Kyrgyz Civil Code provisions. Kyrgyz NGOs will continue monitoring the project implementation and progress in all improvements suggested by the Bank while at the same time pursuing its primary objective – to define the relevant loans as illegitimate debt.

If an agency for determining “illegitimate debt” is created, it should not only determine “illegitimate debt” “proper but carefully study all related practices of using debt, debt relief schemes (HIPC cannot be seen as actual debt relief!) and access to leverage for imposing conditionalities.

Mutasa argues that there is a need for a Fair and transparent debt arbitration mechanism. But, according to what we now see in the world, any debt arbitration will not last long (if at all) if some “big bosses” (like UN, OECD, etc.) are allowed to take the lead. UN is no longer a body that can cope with restoration of justice. Look at its human rights treaty body system and wonder if most repressive governments are impressed by the UN sanctions. This is a terrible waste of human hopes and expectations.

# Comment on Charles Mutasa

By Patrick Bond

Charles Mutasa's review of debt arbitration especially in cases of Odious Debts is welcome. To make demands for writing off such debt may require, however, a much more forceful approach. Only a few governments have been willing to question Odious Debts inherited from dictators, of which apartheid foreign loans during the 1970s-80s are perhaps the best example.

This is why it is important to provide at least one example of civil society campaigning – reparations for apartheid interest and profits - in the face of an intransigent government, which in the process gives meaning to Mutasa's cheerful warning:

Currently the call and campaign for the cancellation of illegitimate debts may not make sense, but that's the way it should be! Campaigns by civil society have an impressive record of improving the way things are handled. Things once declared impossible and foolish, such as the abolition of slave trade campaign and the human rights movement call against discrimination of blacks in the US in the 20th century, to cite a few cases- have become reality.

The idea of advocating reparations for slavery, colonialism and apartheid was the result of a longstanding movement that found its voice at the 1993 Abuja Declaration of the Organisation of African Unity, and in civil society at the 2001 World Conference Against Racism (WCAR) in Durban. The latter event splintered over a demand from NGOs and some African governments that payment be made to compensate for centuries of colonial plunder, whose effects continue contributing to vastly imbalanced economies, societies and international power relations. The EU's chief negotiator, Belgian foreign minister Louis Michel, justified his own country's history in the Democratic Republic of the Congo at a press conference: "Colonialism could not be considered a crime against humanity, for at the time it was a sign of economical good health."

Ironically, even though Nigerian president Olusegun Obasanjo endorsed reparations along with other African official delegates, host president Thabo Mbeki and his foreign minister, Nkosazana Dlamini-Zuma, refused support, saying merely that more donor aid was needed. Notwithstanding a march of more than 15 000 local and international activists to the doors of Durban convention centre, reparations demands were absent from the final WCAR document, and moreover, also soon led to a rupture between the African National Congress government and progressive civil society.

Frustrated by the failure of the WCAR to advance their agenda, leaders of Jubilee South Africa, the Khulumani apartheid-victims group and other faith-based activists then turned to the US courts. Civil cases for \$400 billion in damages were filed on behalf of diverse groups of apartheid victims against three dozen major multinational corporations which

made profits from South African investments and loans prior to 1994 (by 2003, Anglo American, Gold Fields and Sasol were added to the corporate defendants list).

The Bush administration and corporate lobbies pleaded with US courts, initially unsuccessfully, to nullify an interpretation of the Alien Tort Claims Act (ATCA) that made apartheid-reparations suits possible. The ATCA says, simply, “The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” The law was passed in 1789 in part to get a legal handle on shipping theft, and in the process to persuade colonial powers it was safe to trade with the US. “Torts” (personal injuries such as piracy theft) against foreigners (“aliens”) could be served on the perpetrator within the US even if there was no other connection. In 1997, ATCA Holocaust Litigation cases against Swiss banks were settled out of court for \$1.25 billion. The law was affirmed in 2003, in the case of Presbyterian Church of Sudan, et al. v. Talisman Energy Inc. in the New York federal district court, which denied a Talisman motion to dismiss the case. The same year, Burmese villagers sued Unocal, and again the law withstood challenge by the Bush Administration.

Mbeki first reacted to the apartheid court applications with “neither support nor condemnation.” However, in April 2003, in the wake of Archbishop Desmond Tutu’s final Truth and Reconciliation Commission report which recommended a reparations payment by businesses which benefited from apartheid, Mbeki changed tack. Now, he said, it was “completely unacceptable that matters that are central to the future of our country should be adjudicated in foreign courts which bear no responsibility for the well-being of our country, and the observance of the perspective contained in our constitution of the promotion of national reconciliation.” He expressed “the desire to involve all South Africans, including corporate citizens, in a cooperative and voluntary partnership.” But Mbeki failed to reflect upon numerous such attempts by the Reparations Task Force and Cape Town’s Anglican Archbishop Njongonkulu Ndungane for some years prior to the lawsuits.

SA trade minister Alec Erwin joined Mbeki during an April 2003 parliamentary discussion. Pretoria was “opposed to, and contemptuous of the litigation,” Erwin said. Any findings against companies “would not be honoured” within South Africa, he added, and a wealth tax - as recommended by the TRC - would be “counterproductive.” In July 2003, Mbeki and justice minister Penuell Maduna went to even greater lengths to defend apartheid-era profits, arguing in a nine-page brief to a US court hearing a reparations case, that by “permitting the litigation”, the New York judge would discourage “much-needed foreign investment and delay the achievement of the government’s goals. Indeed, the litigation could have a destabilising effect on the South African economy as investment is not only a driver of growth, but also of unemployment.” As a friend of the court on behalf of the claimants (alongside Tutu), Nobel laureate Joseph Stiglitz replied that the comments by Mbeki and Maduna had “no basis,” because, “those who helped support that system, and who contributed to human rights abuses, should be held accountable... If anything, it

would contribute to South Africa's growth and development.”

But in November 2004, taking the most conservative approach possible, judge John Sprizzo of the Southern District of New York dismissed the apartheid-related lawsuits on grounds that Pretoria “indicated it did not support the lawsuits and that letting them proceed might injure the government’s ability to handle domestic matters and discourage investment in its economy.” Jubilee and Khulumani appealed and in October 2007, a US Appeals Court overturned the Sprizzo judgment, arguing the District Court did indeed have jurisdiction over such matters and allowing case to resume its trajectory. Desperate to put the case behind them, the companies requested a Supreme Court hearing instead of a return to the lower levels. In February 2008, the US’ highest court heard arguments from the Bush White House against the “unprecedented and sprawling” lawsuits. Bush was supported by the governments of Britain, Germany, Switzerland, and even South Africa. In May 2008, the Supreme Court found that sufficient of their members were in conflict of interest due to personal investments in the apartheid-tainted companies, that they could not rule on the case, and instructed Sprizzo to review his own judgement, which is scheduled to begin again in September 2008.

These skirmishes remind us of the crucial importance of the reparations movement, both to disincentivise future collaborations such as those with the Nazi or apartheid regimes, and to compensate victims and their communities. The benefits of doing business with apartheid, which gave multinational corporations the world’s highest profit rates during the 1960s, should not be locked in, so that future generations of South Africans remain behind, and often falling further, in international competition. Activists argue that, in contrast to vague corporate social responsibility commitments, only reparations protests and lawsuits have the proven capacity to guard against criminals keeping their ill-begotten loot. Once again it is a case of civil society needing international allies and networks, once the local state takes a position that favours the interests of corporations over civil rights and socio-economic justice.

In relation to Mutasa’s argument in favour of addressing Odious Debt, there is no question that weak African and other Third World governments need civil society campaigning. In the worst case, such governments will oppose their civil society critics’ attempt to get historical justice. At that stage, it’s likely that serious activists will have to transcend the alliance between multinational banks and Third World elites, and instead seek recourse in alternative strategic venues ranging from street protests, shareholder campaigns and the Alien Tort Claims Act, to the kinds of direct action that the Movement for the Emancipation of the Niger Delta and ethnic rights groups (e.g. Ken Saro-Wiwa’s Mossop) are taking, to finally get justice in a context of hostile global capitalism.

# The Third World debt cancellation – an imperative need of the hour

By Sushovan Dhar

On August 3, 2007 the Forbes magazine reported that strong equity markets combined with rising real estate values and commodity prices pushed up fortunes around the world. It pinned down a record 946 billionaires amidst which there were 178 newcomers, including 19 Russians, 14 Indians, 13 Chinese and 10 Spaniards, as well as the first billionaires from Cyprus, Oman, Romania and Serbia. It complemented ingenuity, not industry, as the common characteristic. According to the magazine these billionaires made money in everything from media and real estate to coffee, dumplings and ethanol. Two-thirds of last year's billionaires are richer. Only 17% are "poorer" (?), including 32 who fell below the billion-dollar mark. The billionaires' combined net worth climbed by US\$900 billion to US\$3.5 trillion. That equates to US\$3.6 billion each. It is worth recalling that the GDP (Gross Domestic Product) of the 41 Heavily Indebted Poor Countries (HIPC - 567 million people)<sup>1</sup> is less than the wealth of the world's seven richest people combined.

The 2007 Human Development Report (HDR) from the United Nations Development Program notes that, "There are still around 1 billion people living at the margins of survival on less than US\$1 a day, with 2.6 billion - 40 % of the world's population -living on less than US\$2 a day."<sup>2</sup> Taking into account the recent inflationary spell and spiralling of food prices around the world, the chances of human survival at US\$ 2 per day is a vulgar irony. Furthermore, fixing the level of absolute poverty at US\$1 a day for Sub-Saharan Africa and US\$2 a day for Latin America is highly questionable. To give a more authentic picture of poverty, one would have to double, or even triple, current indicators, which would give far higher results, reflecting the quotidian reality of the great majority of the world's population. Finally, one would need to incorporate non-monetary indicators such as access to education and healthcare, or life expectancy. The report also notes that "around 28 % of all children in developing countries are estimated to be underweight or stunted. The two regions that account for the bulk of the deficit are South Asia and sub-Saharan Africa". The report while lauding India's high economic growth comments that "that this has not been translated into accelerated progress in cutting under-nutrition. One-half rural children are underweight for their age - roughly the same proportion as in 1992." The report makes valid criticism of the progress in eliminating child mortality.

Given the increasing structural inequalities existing in most parts of the planet it is not surprising that more than 80 % of the world's population lives in countries where income differentials are widening and that the poorest 40 % of the world's population accounts for 5 % of global income while the richest 20 % accounts for three-quarters of world income.<sup>3</sup> As a matter of fact, in 1980, median income of the richest 10 % of countries was 77 times that of the poorest 10 %. By 2002, this gap had increased to 122 times. The number of poor people rose between 1987 and 1998, and any gains in poverty reduction

were ‘relatively small and geographically isolated’, with China accounting for the bulk of recent improvements. The era of neo-liberalism, emerging in the 1970s from the wreckage of post-war ‘Keynesianism’, has been one of massively increased inequalities and staggering levels of deprivation alongside equally huge flows of global capital and the transfer of enormous wealth to a tiny minority.

This global economy is policed by a combination of international bodies, comprising of the veterans like the World Bank group and the International Monetary Fund (IMF), and the newcomers like the World Trade Organisation (WTO), which work closely together to regulate and enforce the complex relationships between trade, investment, and economic growth. These have been increasingly drawn under a ‘neo-liberal agenda’, described by Robert Wade as ‘deregulation, privatisation, flexibilisation - although not the elimination of agricultural subsidies or the lifting of restrictions on the cross-border movements of labour’. The ‘Washington Consensus’, as this apparently inviolable set of policies became known, demanded strict fiscal policy (i.e. balanced budgets and low tax levels on the rich), and a thoroughgoing commitment to the free market from impoverished Southern economies. Often this was administered in the bluntest form through the now-notorious Structural Adjustment Programmes, imposed by the IMF on debt-ridden economies to meet the demands of Northern banks, eager to squeeze interest payments from the poorest people on earth.

## The historic evolution of the debt

The total debt of the developing countries at the end of 2006 was 2.86 trillion US\$.<sup>4</sup> Between 1980, the start of the recent crisis, and 2006, the external debt of the developing countries increased almost fivefold (from US\$600 billion, to US\$2.86 trillion). There are numerous sources of this huge spiralling debt, the principal sources being colonialism, odious debt and mismanaged spending and lending by the West in the 1960s and 1970s. It is important to note that the main capitalist powers in the late nineteenth and early twentieth centuries used foreign debt as a weapon of domination toward subordinate powers that could have themselves become central capitalist powers.

The period between 1961 and 1968, witnessed the doubling of the total external debt of the Third World from US\$21.5 billion to about US\$47.5 billion. Between 1968 and 1980, the Third World’s total external debt was multiplied by twelve in as many years—from US\$47.5 billion to more than US\$560 billion.<sup>5</sup> The severe indebtedness of the Third World countries were due the irresponsible actions of Northern governments and the northern banks aided and abetted by the IMF, World Bank and various other institutions like the Asian Development Bank, the African Development Bank among others. These bodies pursued a policy of low-interest or even negative interest, loans enabling the Third World to borrow, especially as export revenues were growing due to an increase in the prices of products exported from the South. The governments in the North encouraged debt in the South in order to provide an outlet for Northern products, and banks held a considerable volume of capital on deposit and were looking for investments, even high-risk ones. The

origins of the debt crisis can be attributed to the birth of the Eurodollar market, increase in World Bank loans, recycled petrodollars, etc. The northern banks cannot evade their responsibility in fermenting the crisis since they pursued increasingly audacious and risky loans to Third World governments and private companies.

Until the crisis hit in 1982, more than five hundred banks had made loans to Mexico, and more than eight hundred to Brazil. Additionally, during the global recession in 1974-75 the Northern governments implemented a kind of pump-priming measures that aimed boosting production through an increase in demand. This increased easy credits to third world and in addition, several countries in Central Europe and the Balkans (Yugoslavia, Poland, Hungary, Romania, and others) were brought into the orbit. This followed with attractive export credits for the South on condition that they purchased industrial goods and other products, including military hardware from the creditor countries. Because of this policy, between 1976 and 1980, the South's total debt grew at an annual rate of 20 %. The recent Norwegian decision in October 2006 to unilaterally cancel Norway's debts to some countries is a belated acknowledgement of this fact. Between 1976 and 1980, Norway had a policy of supporting the export of ships to developing countries (such as Ecuador, Peru, Jamaica, Egypt, Sierra Leone, Burma and Sudan). It exported these ships mainly to secure employment for its crisis ridden ship-building industry rather than any objective analysis of the development needs of the country purchasing the ships.<sup>6</sup>

A large share of the loan went to the personal coffers of the political leaders of the Third World holding offices – mostly despots with dictatorial powers. The list is endless: Ferdinand Marcos in Philippines, Mobutu in Zaire (now the Democratic Republic of the Congo), Habyarimana in Rwanda, Suharto in Indonesia, the Argentinean generals during the military rule (1976-83), Pinochet in Chile, the Uruguayan dictatorship, the Brazilian dictatorship, the debts of Nigeria, Togo, South Africa, etc. Marcos amassed a fortune of US\$ 10 billion dollars at the time he was overthrown in 1986, Mobutu accumulated a wealth of US\$8 billion dollars when he was toppled in 1997; a considerable share of money loaned by the North never reached the target countries, let alone the people of these countries. Apart from it, a large majority of the loans were used for projects aimed at increasing the prestige of the hated regimes. In the Ivory Coast, for example, Félix Houphouët-Boigny built a replica of Saint Peter's Basilica in the village where he was born. Mobutu had the Gbadolite palace built. These are a small evident part or aspect of largely hidden open facts. These debts are debt incurred by the regimes for purposes that do not serve the interest of the particular nations and should not be enforceable since the local population never derived any benefits out of it. These are odious debts.

As said earlier, the debt of the developing countries between 1980 and 2006 increased from US\$580 billion to US\$2.86 trillion. At the same time there was a repayment of more than US\$6.5 trillion.<sup>7</sup> The amount increases by 0.5 trillion if South Korea is included. Nonetheless, the data indicates that the developing countries till date have paid eleven times the amount owed in 1980 and in spite of that they find themselves five times more indebted. How is it possible? What powers on earth make it happen? A deeper look into

the issue reveals that this is due to the transfer mechanism set up by the Northern bankers with the able assistance of the Paris Club and the IMF/World Bank duo. In general, the interest rates applied to the repayment of capital borrowed by countries of the periphery are so high that the borrowers must systematically increase their indebtedness in order to meet the repayments. They contract new debts to pay off the old. This is a vicious cycle in which the countries of the peripheries are stuck. The ruling classes as well as the government's of the Third World play an active role in sustaining this situation.

If we look at the data provided by the World Bank for a period of four years between 2003 and 2006, we observe that the total disbursement of public and publicly guaranteed loans for the developing countries is US\$ 597.13 billion<sup>8</sup>. The same sources indicate that in the same period the total debt repayment in terms of principal repayments & interest payments amounts to US\$ 869.25 billions which means that there is a net transfer of around US\$ 272.111 billion. This is a slightly lower figure than the preceding years since it excludes South Korea which has been in the meantime classified as a developing country. The net transfers for a period of the previous five years (1998-2002) amount to US\$ 560 billions. It is no surprise that figures would increase substantially if we compare the figures for a period since the third world debt originated. This implies that in a period of nine years the developing countries remitted the net equivalent of more than ten Marshall Plans to their creditors.

This huge net transfer of wealth is kept systematically concealed. Even the World Bank in its report titled Global Development Finance in 2003 admit the fact that developing countries have become net capital exporters to the developed world, running a modest current-account surplus in most years since 1998. This implies that the “debtors” finance their creditors. It is shameful to observe that no major media of the Northern countries have sufficiently highlighted this grave failure of the Bank's fiscal measures for which multiple sacrifices are enforced upon the populations of developing countries whose precarious survival is well-known and is amply portrayed by the various reports brought out by governmental and non-governmental sources of the North and the South.

The above state of affairs reveals the existence of a systematic pilferage of much of the wealth produced by the populations of the developing countries via instruments that could be considered lethal Weapons of Mass Destruction. Debt repayment sucks up part of the social surplus produced by the workers of the South (whether salary earners, small individual or family producers, or workers in the informal sector) and directs this flow of wealth toward the holders of capital in the North, with the ruling classes of the South taking their commission. Thus, the latter grow rich, while the national economies they head stagnate or regress and the populations of the South grow poorer.

## The case for the debt cancellation

A large part of the movements in the South as well as in the North terms the external debt of the third world as illegitimate and calls for its abolition as they feel that the debts

should be cancelled because they are unjust in terms of their origin, and also because they degrade the material existence of a vast majority of the population of the planet who are otherwise oppressed in a number of other ways. They demand for a complete and irreversible cancellation of the illegitimate and the odious debts, i.e. debts on loans knowingly given to dictators, or those on unfair terms, or for failed projects based on lenders' advice. The cancellation needs to be immediate since these debts are unjust and harbours crisis the world over. The money saved by the countries of the periphery due to the cancellation of the debt can be utilised for socially useful projects to ameliorate their existing conditions and thereby increasing the access to dire necessities of life such as food, health, education, shelter, transport, sanitation, hygiene, etc. It is not a matter of debate that the vast majority of the masses in the countries of the periphery are excluded from these basic amenities of life.

They strongly insist that the cancellation of debt should not be conditioned to harmful conditions which are attached by the international financial institutions like the World Bank and IMF to debt relief. There should not be any conditionality attached to debt relief like the privatisation of basic services or cutting public expenses in the name of reducing fiscal deficit or discipline for receiving desperately needed debt relief. Human needs are fundamental and must take priority over debt relief. Furthermore, poor countries should be given more grants, rather than have their debt burden piled higher with yet more loans which can further exacerbate the current crisis and deteriorate living conditions further. There should as well be transparency of the transactions between the countries of the North, the International Financial organisations and the countries of the South.

The movements also demand that the indebted countries suspend the payments of their external debt and conduct debt audits to understand the nature of the debt, to identify criminal, illegitimate, irregular as well as undesirable social conditions to pin down the person/s responsible for such a situation and bring them up for prosecution and to seek reparation. There is also a demand for the establishment of a transparent international financial with definite and clear rules of lending in view of the severe crisis of debt.

The severe havoc wrought by the debt is also acknowledged by the International Financial Institutions and leading governmental bodies and the governments of the North. The IMF states that "In about half of the 80 poorest countries, unsustainably high external debt has also become a key constraint on development."<sup>9</sup> However, it has reservations for a 100 % debt cancellation even for the HIPCs and argues that "...total debt cancellation would require concerted action by all creditors, many of which continue to provide assistance, total cancellation would seriously jeopardize the overall flow of financial support for the poorest countries."<sup>10</sup> It adds that "...poor countries will rely on external financing for their development needs long into the future. A growing portion of this need is being met by bilateral and multilateral agencies on concessional terms. Total cancellation could imperil these funds. It would also undermine the confidence of existing and potential investors whose funds are vital for the long-term development of the low-income countries."<sup>11</sup> It argues that the economic impacts of debt annulment on the multilateral agencies, primarily

the multilateral development banks and the IMF would be harsh.

On the other hand, we witness that the Northern governments quickly come to the rescue the private banks whenever there is a crisis. The recent crisis that engulfed a large part of the international financial system following the US sub-prime crisis started in mid-2007. According to IMF, the potential cost of the current global financial crisis is precisely 945<sup>12</sup> billion dollars for the international financial system, of which 565 billion is directly linked to the system of risk-laden mortgage loans. The actions by the governments were very simple and usual, *viz.* nationalisation of banks, exchange of devalued and distressed debt securities for fresh cash, cash injection, rescue plans, decreased interest rates, etc. A question arises in consequence: why have the banks, which do not hesitate today to erase doubtful debts in billions of dollars, always refuse to annul developing countries' debts?

## The moral, political and juridical arguments

It must be acknowledged at the onset that the repayment of a loan contracted under regular and reasonable conditions is a moral obligation. However in the case of the present debt crisis of the South, the scenario is something else. This compulsion disappeared with the debt trap casting a gloom over the region in the early 1980s and annihilating all hopes of development. It is absolutely not a case of wriggling out of a legitimate obligation but a question of taking serious note of the mechanisms of domination, pillage and wretched poverty that these countries endure and to demand a measure of justice. This system of domination with debt as its nerve centre can't be endured further. Jubilee South is right to proclaim, "We owe nothing, we will pay nothing". However, simply putting the counters back to zero will not in itself modify the system which has led to this deadlock. Debt cancellation is a necessary but a pre-condition to a sustainable condition. Alternative mechanisms for funding must be established that does not result in debt-induced domination, and important complementary measures must be taken in numerous areas.

We have as well seen that the debt leads the Southern states, often endowed with human and natural wealth to a state of impoverishment due to organised looting and pillage since debt repayment is a fundamental obstacle in satisfying basic human needs. *A contrario*, the satisfaction of basic human needs must take priority over all other considerations - geopolitical or financial. Hence, from an ethical point of view, the rights of creditors, stock-holders or speculators are insignificant in comparison to the fundamental rights of five billion citizens and it is immoral to demand them to commit their meagre resources in repaying prosperous creditors (whether in the North or the South) rather than satisfying fundamental needs.

The debt is one of the main mechanisms whereby economic colonisation operates to the detriment of the people in the South. It is another milestone of historic abuses carried out by the rich countries in addition to slavery, pillage of raw materials, extermination of the native population, the colonial yoke, etc. The time is overdue to replace the logic of

domination by the logic of wealth redistribution. The IMF, the World Bank and the Paris Club impose their own truth, their own justice, where they make the rules.

The debt is also immoral since it was frequently contracted by undemocratic regimes, where money was not utilised in the interests of the population. Embezzlement on a massive scale, with the tacit or active agreement of the states and banks of the North, the World Bank and the IMF was not an exception. The creditors of the industrialised countries, who took advantage of the high interest rates in 1979 and the low prices of raw materials on the international market, by design lent money to corrupt regimes. They have no right to demand payment of such loans. Let them deal with the fallen dictators, or those still in place, and their accomplices! The struggle against this overweening domination and its human ravages must intensify to break the stranglehold. The North cannot expect that its relative well-being should be financed by poverty in the South. Demanding the total cancellation of the external public debt for the South is simply coming to the rescue of people in danger. It has to be total, for slavery cannot be amended, it has to be abolished!

The mechanisms of the debt cycle have subjected the South to the demands of Washington - the sites of IMF, the World Bank and the US Treasury, where they decide the economic policies of the South. Is there any valid reason for the IMF and the World Bank to interfere in every economic decision that any developing country makes? These actions only enable the creditors to exercise exorbitant power over the indebted countries. There is no alternative but to stop this modern form of slavery. The governments of the South under the yoke of debt and the stranglehold of the creditors have gradually been forced to abandon all policies for which people elected them.

For example in Guyana, the government had decided, in early 2000, to increase the salaries of the civil service by 3.5%, after the purchasing power fell by 30% in the preceding five years. The IMF immediately threatened to remove it from the list of HIPC owing to which the government had to back-track after a few months. In 2002, Brazil, with the most voluminous debt in the third world, was stunned by financial turbulence, due to the combined contagious effects of the Argentine crisis and the economic slow-down in the US and the European Union. President Cardoso's government negotiated an agreement with the IMF which granted them an unprecedented huge loan of: 30.4 billion dollars by the end of 2003, adding to the existing external debt of 238 billion dollars with a demand that a strict austerity budget should be adhered to until 2005. This loan, destined to calm down the markets, was also meant to bridle the future government. The IMF exacted an agreement in principle on this plan from the main presidential candidates before granting the loan. Magnanimously, it relented on its initial insistence on a written agreement. It is not difficult to conclude that the aspirations of sovereignty of the third world masses shall remain impossible as long as they stay under the bondage of the IMF and the World Bank, and more generally of all the creditors of the North.

After five centuries of pillage, slavery and colonisation and twenty five years of structural adjustment policies, the inhabitants of the South have a right to demand reparation for all

the ills they have suffered, caused by the mechanism set up by the creditors of the North with the support of the ruling classes of the South. Total cancellation of the debt should be the first act of reparation. Not many in the North understand these perverse mechanisms that compel the citizens of the South to leave their land and their loved ones and survive a sub-human existence in the North. Often, they have no alternative, since the wealth they produce is systematically sucked up by the North. Aid sent by the rich countries is far too meagre to even begin to compensate this transfer of wealth from the South. The grotesque rise of egotism, which can be commonly observed in Europe, with its attendant racism and xenophobia, is a consequence of the ignorance of some and the bad faith of others. There is a pressing need to unveil this and explain that it is in the common interests of the populations of North and South alike to unite in demanding the total cancellation of the external public debt, and an end to neoliberal policies that are responsible for this situation.

On one hand, the figures given prove that the debt has already been repaid several times over - every US\$1 owed in 1980, US\$ 9.5 has been repaid and the third-world still owe. The debt is no longer the cause of fair repayment of a loan obtained in regular conditions, but a very clever instrument of domination, dissimulating racketeering and pillage. On the other hand, the net transfers concerning the debt are strongly negative for the South. Since 1995, the governments of the different developing nations have “given” a total contribution of about 250 billion dollars to capital-holders in the North, resulting from the work of local salary-earners and producers. This financial haemorrhage due to the debt, which is bleeding the countries of the South and the East dry, has to be stopped. Instead, a cycle of ecologically sustainable and socially just development must be promoted. The iniquitous debt must be abolished, and mechanisms must be established for alternative funding of this development, and effective limitation of the tendency to borrow.

The economies of the South have everything to gain through the cancellation of their external debt. Examples of actual cancellations carried out in the past have proved particularly beneficial for the economies of the countries concerned. The economies of the South would not be forced, as they are today, to export at all costs to repay their debt.

There are several arguments in International Law that can be invoked as legal justification for unilateral cancellation of the external debt. Force Majeure, The State of Necessity and Odious Debts are the most important arguments.

Force majeure can be invoked when a government or public body finds itself, due to external circumstances beyond its control, unable to fulfil its international obligations, like the repayment of a debt. This is the juridical codification of the fact that none can be held to do the impossible, which is laid down by both international law and common sense. These external and unintentional circumstances may very well be the fall in the prices of raw materials or an action on the part of the creditors (who are recognized as being co-responsible in the mechanism of indebtedness by the law), or again the rise in interest rates in 1979. The countries contracted loans at reasonable rates in the 1970s, but

the actions of the rich countries aimed greatly at increasing interest rates and manoeuvring to lower the prices of raw materials on the world market have radically changed the nature of the deal. This is indeed a case of force majeure caused by the unilateral behaviour of the industrialized countries.

A state of necessity is a situation where the existence of the State is endangered, that is, its economic or political survival might be grave social upheaval or the impossibility of fulfilling the needs of the population (health, education, etc.). Here, it is not a matter of being absolutely prevented from fulfilling international obligations, but to do so would necessitate sacrifices on the part of the population which go beyond what is reasonable. The state of necessity must justify repudiating the debt, as it implies prioritising the different obligations of the State. The United Nations Human Rights Commission has adopted numerous resolutions on the issue of the debt and structural adjustment. One such resolution, adopted in 1999, asserts that “the exercise of the fundamental rights of the population of an indebted country to food, housing, clothing, work, education, healthcare services and a healthy environment, may not be subordinated to the application of structural adjustment policies or economic reforms generated by the debt”. The developing states are hardly able to fulfil the fundamental human needs of their populations. This inability throws into question the very existence of all these States, which must invoke “the state of necessity” for the unilateral cessation of their repayments.

International Law also recognises the need to take into account the nature of the regime that contracted the debts, and the use the funds thus raised were put to. This implies the direct responsibility of the creditors, such as private bodies or the IFIs. If a dictatorial regime is replaced by a legitimate regime, the latter can demand that the debts were not contracted in the interests of the nation, but for odious ends. In this case, they can be declared null and void, and the new government does not have to repay them. The creditors should pursue their case with the leaders of the dictatorship, on a personal basis. The IMF, the World Bank or any other creditor is legally obliged to check that the loans made are put to legitimate use, especially when they cannot help but know that they are dealing with an illegitimate regime.

Argentina, after the dictatorship that ended in 1984, was perfectly justified in taking such course. The Olmos judgement of July 13, 2000, pronounced before the Criminal and Correctional Court II, recognised that the policies carried out over seven years could be defined as legally-organised pillage, with the active participation of the IMF and the World Bank. But it was no good. Enormous pressure was put onto the Argentine government until they finally agreed to take on the debt to the very last peso, until 2001 when, after more than three years of recession, they were completely unable to pay, following the refusal of the IMF to grant a further loan.

This point could also have been used by many other governments succeeding illegitimate regimes, such as in Latin America after the fall of the military dictatorships (Uruguay, Brazil, Chile, etc.), the Philippines after the departure of Marcos in 1986, Rwanda after

the genocide in 1994, South Africa at the end of apartheid, Zaire after the overthrow of Mobutu in 1997 or Indonesia after the fall of Suharto in 1998. One can only deplore that the governments that replaced the dictatorships capitulated before the creditors in taking on previous debts, however odious, and found themselves prisoners of repayments they could have avoided. In doing this, they have unduly burdened their people with the weight of odious debts since they chose what was easiest for them. In exchange for their docility and their cowardice, the creditors have lent them more money. Governments do not repay out of their pockets; it is the population who have to sacrifice their meagre resources. Today all these governments can do is negotiate rescheduling or meagre reductions.

Yet the notion of odious debt has been invoked on occasion, as in Cuba in 1898, Costa Rica in 1922, Namibia in 1995 and Mozambique in 1999. When the notion is successfully invoked, the State debt becomes the personal debt of those responsible during the dictatorship, and cannot engage the financial resources of the State. These notions urgently need to be brought to the heart of public debate, to oblige the democratic governments to take such a course whenever it is possible.

Thus International Law is rich in doctrines which could provide grounds, and indeed have already provided grounds, for the cancellation or repudiation of debts. Social movements must insist that International Law, and especially the Universal Declaration of Human Rights and the Pact for Social, Cultural and Economic Rights must take precedence over the rights of creditors and usurers. These foundation texts can in no sense be compatible with the repayment of an immoral, and often odious, debt.

## The environmental case

The two main causes of the degradation of the natural environment are well known. At one pole of the planet, there is accumulation of the wealth produced with no regard for the balance of the ecosystems, to the point that certain resources are near exhaustion. At the other, the poverty is such that it condemns populations to surrender their resources to the highest bidder. On the one hand, in the rich countries, overproduction and overconsumption rule. Natural resources are exploited well beyond their capacity for renewal. Indeed, overall, we human beings consume 40% more resources than we can produce on a sustainable basis. All this with very harmful side effects: air and water pollution, the accumulation of highly toxic waste, the disappearance of green areas etc. When they can, the governments and multinationals of the North who are responsible for the degradation try to get the developing nations to bear the brunt of it. For example, US industrial waste containing heavy metals are sent to India to be processed. The vice-like grip of the debt obliges the developing nations to accept the highly pollutant industries of the North. The subjugation of the South through the debt mechanism contributes to its becoming the dustbin for the North.

In the developing nations, for several centuries, the resources have been exploited to the

exclusive profit of the ruling classes of the rich countries. One only has to think of the tons of precious metals which have been taken from Latin America to Europe since the XVIth Century or the ravages of colonisation in Africa and Asia. Brute force, needed at the time to seize all these riches, has now been replaced by structural adjustment plans. To obtain the hard currency needed to repay the debt or keep themselves in power, governments are ready to overexploit and sell off their natural resources (minerals, petroleum, fishing, etc.), putting biodiversity at risk (many species of animals and plants are becoming extinct), encouraging deforestation, soil-erosion, etc. In Africa, 65 % of arable land has been degraded over the last fifty years, i.e. 500 million hectares of land. Because of all the irreversible damage to the environment, mainly in the poor countries, we hold that an environmental debt has been mounting up over several decades, owed by the industrialised states to the populations of the developing nations. Substantial reparation must therefore be demanded.

## Cancellation and conditionality

The whole process of debt mechanisms are not mere economic means but, are arsenal for political domination as well. This has been argued earlier in the article and it is not surprising that the political motives are furthermore amply evident in cases of debt cancellation. The modalities of debt cancellation presented in “attractive packages” such as HIPC initiative or Multilateral Debt Relief Initiative (MDRI) are not only by themselves overtly political, but the process is as well where the main means of imposing “political ends” has been through conditionality. Debt cancellation continues to be subordinated to burdensome forms of conditionalities as countries are obliged to implement various conditions as part of the International Monetary Fund (IMF)/World Bank Heavily Indebted Poor Country (HIPC) Initiative.

While we acknowledge at the onset that reciprocated accountability and clarity should be critical elements of any debt cancellation agreement; current conditionalities goes miles beyond these basic fiduciary standards into micro-management of the economies of impoverished countries. In a number of countries, recent studies have pointed in particular to the impacts of requirements from the IMF for tight monetary policies that have eliminated or vastly reduced the amount of money freed up by debt relief for spending on social services. To gain any aid, loans or debt relief, northern public and private creditors insist that a country must have IMF and World Bank programmes. Most creditor countries withhold aid from countries which do not have agreed on IMF-WB programmes. According to Joseph Stiglitz<sup>13</sup>, ex-Vice President and Chief Economist of the World Bank, “international agencies typically insisted on a large list of ‘conditions’ in return for the provision of funds”. These conditions are based on what he calls “the Washington consensus of US economic officials, the IMF and World Bank” and are not primarily concerned about poverty and governance.<sup>14</sup> Instead they want to reinforce the “structural adjustments”.

The conditions often lay stress on trade liberalisation, privatisation and macroeconomic stability. Hence, the failure of these packages containing such heavy conditionalities is hardly unanticipated. The set of conditionalities, instead of resolving debt crises, aggravates them. They are covertly designed to keep the debt payment intact by curtailing spending on basic and elementary social sectors through macro-economic financial managements or curtailing budgets in the name of reducing fiscal deficit, etc. Another round of discussions that goes on in the official circles about resolving the debt crisis concealed under fashionable terms like “debt sustainability” or others are highly misleading. It makes a formal posture of working out the problems; however, the ideas are to maintain a regular reimbursement without interruptions, without sudden jerks or shockwaves to the system. It’s difficult to lose sight of the fact that debt is well-sustainable for creditors who have received their money several times back and continue doing so at the cost millions of undernourished children, sick without basic healthcare, unemployed, human beings without essential nutrition, proliferation of illiteracy and an unbearable living condition around the globe. Notions like “debt sustainability” are a crude joke on billions of poor and oppressed around the world. Indeed, these are mechanisms for “poverty sustainability” on a global scale.

Stiglitz further emphasises that conditionality undermines democratic processes. “Ultimately, if we believe in democratic processes, the countries must make the decisions for themselves .... Given the weaknesses in the checks on the international institutions ... it is all the more important that different voices be heard. To be sure, the different voices may give rise to a vigorous democratic debate, which may be uncomfortable to those wishing to ensure that their views prevail, but it is one of the ‘prices’ we pay for democracy.”<sup>15</sup>

The Cologne Debt Initiative -- named after the city which hosted the G7 summit in the year 1999 called for an expansion of the World Bank/International Monetary Fund (IMF) Heavily Indebted Poor Countries (HIPC) initiative and additional cancellation of bilateral debt owed by the poorest countries. However, in its declaration it clearly stated that “To gain the HIPC debt relief, countries agree to enter into a two-phase World Bank/IMF program in which they must implement economic reforms, then demonstrate that they will stick with them. Debt relief is an incentive for the country to complete the reform program.”<sup>16</sup> Hence, the accent is on “economic reforms” and debt relief comes as an motivation - or inducement (?) - for implementing the same. Pronouncing the debt cancellations, the G7 offered some additional debt cancellation paying lip service to poverty reduction and participation, but stressing strongly on “structural adjustment programmes”(SAP) which was a pre-condition for any cessation.

A textbook case of the conditionalities attached to the HIPC initiative was the African nation Tanzania. It was one of the first countries to qualify for debt relief, receiving pledges of three billion US dollars relief over 20 years. In order to qualify for the scheme, it had to satisfy 78 separate conditions, a few of which were disastrous. They included a break-up of the national electricity system, privatisation of many companies including the post office savings bank, the introduction of a Value Added Tax (VAT) at a higher level than in neighbouring countries, an end to directing credit to priority development projects, an end

to restrictions on imports and exports (and thus a ban on protecting new local industries) and the imposition of “tight monetary policies”.

Most observers agree that the structural adjustment policies (SAPs) implemented in Tanzania and many other low-income countries over the last two decades have not resulted in sustained economic growth or poverty reduction. Rather, these large loans that helped financial adjustment contributed to a rapid increase in external debt and deepening dependence on continued aid flows to maintain macro-economic stability. At the turn of the millennium, Poverty Reduction Strategies (PRSs) came to replace structural adjustment as the new global aid orthodoxy, linking debt relief to new aid and commitments by aid recipients to major ‘pro-poor’ social sector investments. But the core policy components of structural adjustment –fiscal austerity, market liberalisation, privatisation and an open trade regime– have been carried over intact from SAP to PRS.

The gains from macro-economic stabilisation, investment and growth have not been accompanied by significant reductions in the incidence of poverty, particularly for Tanzania’s rural majority. The Policy and Service Satisfaction Survey (PSSS) investigated public perceptions of the impact of government policies and trends in the availability and quality of social services. Undertaken by Research on Poverty Alleviation (REPOA), the survey covered 3,000 households in seven regions. Only ten percent of respondents thought that all Tanzanians have benefited more or less equally from the government’s economic reforms; 90 % thought only a minority have benefited, while for most people things are as bad as or worse than before.

Despite single digit inflation, the price of food and basic consumer goods is the biggest problem faced by Tanzanian households, followed by the cost of healthcare. The Afrobarometer Survey (2001) found that 60 % of respondents agreed with the statement: ‘the government’s economic policies have hurt most people and only benefited a few.’ Large majorities thought public policy performance was bad in ensuring food security, job creation, reducing poverty and the rich-poor gap. In another recent national survey, REPOA found nearly two-thirds of respondents agreeing that ‘the gap between rich and poor people has worsened over the last five years.’ Three out of five respondents spontaneously mentioned poverty as their ‘most important personal problem’.<sup>17</sup>

In response to the pressure to increase poverty measures, the World Bank and IMF introduced the Poverty Reduction Strategy Paper (PRSP) to replace the IMF’s previous Policy Framework Paper (PFP). To gain debt relief, countries in the past had to have IMF Enhanced Structural Adjustment Facility (ESAF) loans, which were later provided as part of the Poverty Reduction and Growth Facility (PRGF)<sup>18</sup>. Set up by the World Bank and the IMF in 1999, the PRSP was officially designed to fight poverty. In fact, it turns out to be an even more virulent version of the structural adjustment policies in disguise, to try and win the approval and legitimisation of the social participants. Joint World Bank/IMF papers on the PRSP<sup>19</sup> stressed “poverty reduction” and that the paper must be “country-driven with the broad participation of civil society”. But the IMF in its own papers

stressed that this is in addition to everything that was required in the past; none of the old “Washington consensus” policies have been removed. In a paper for a meeting of African finance ministers, 18-19 January 2000, to explain the new PRGF, the IMF stressed that it will demand of all countries “a more rapid privatisation process” and “a faster pace of trade liberalisation”. The IMF and World Bank are the all-powerful arbiters of debt relief conditions. No country can obtain debt relief without having an IMF Poverty Reduction and Growth Facility (PRGF, replacing ESAF) loan.

The MDRI was launched at the July 2005 G8 Summit in Gleneagles, Scotland, where G8 leaders pledged to cancel the debt of the world’s most indebted poor countries, most of which are located in Africa. Their proposal required full debt cancellation by the International Development Association (IDA), the International Monetary Fund (IMF) and the African Development Fund (AfDF) to countries that have completed the HIPC Initiative. However, debt relief as part of the MDRI is tied to conditionality and is contingent upon attainment of the HIPC completion point and therefore the associated HIPC conditionalities, some of which have adverse social impacts. It is really important to underline that these initiatives were not at all successful. Before bringing remaining eligible countries in HIPC and MDRI, it is necessary to review the process. Macroeconomic conditionalities should be abandoned. MDGs would be more appropriate. As Fathu Cheru<sup>20</sup> has said, PSRP is “a new form of structural adjustment “. According to him, “the broad macroeconomic objectives are inconsistent with the poverty reduction goals”. While it’s important to urgently bring remaining eligible countries through HIPC and MDRI, it must be equally emphasised that no economic policy conditionality should be attached to their participation. Any repayments made by countries prior to their decision points should be set aside and used in the future for development and poverty reduction.

## Conclusion

The considerable deficit in human development in the South on one hand, and the grave ecological consequences of the present system for the populations of the indebted countries on the other, and lastly, the legal, political and economic arguments mentioned above, clearly demonstrate that the present financial debt is odious and that the debt that the ruling classes of the North owe to the South is at once historical, human, cultural, social, moral and ecological.

Nevertheless, most of the governments of the South adopt a singular position. They embrace the neo-liberal logic which is at the origin of the iniquitous system of indebtedness, despite the fact that they are supposed to work for the good of their countries. It is on these grounds that we ask the governments of the South to repudiate the financial debt towards the North, but we consider that they too are accountable for having run up this multi-faceted debt. Consequently, the populations of the South have a right to demand immediate reparation from the ruling classes of both North and South.

Finally, it must as well be emphasised that debt cancellation has to be un-conditional and it can't be prefixed or suffixed with any sort of conditionality. The term "conditionality" designates the very strong constraints imposed on the developing nations by the IMF and the World Bank, by means of structural adjustment policies. If the system of domination created by the debt is to be ended, there has to be a definitive break with the logic of structural adjustment and its conditionalities. Certain bodies, through the NGOs, are now proposing to subject debt cancellation to positive conditionalities. Reductions could take place if a democratic process is instigated, if projects promoting human development are set up (schools, health centres), etc. However tempting they may appear, such positive conditionalities raise the unavoidable question of who has a right to impose them.

Certain institutions (IMF, World Bank, G8 and even some powerful NGOs of the North) believe themselves imbued with the mission of determining "Good or Bad". Depending on local conditions, one might choose an irrigation system or prefer to devote the money to solving other serious problems of human development like AIDS. It is for the populations concerned and their democratically elected representatives, and them alone, to decide. They must be the only ones to establish development priorities, to choose the projects they will embark upon, to control the use of the funds made available and to be responsible for keeping track of progress. They must have full control of the entire process from zero to end. Some decisions may be made after consulting an NGO or specialized institution, able to make a useful contribution at the planning level. Dialogue with movements of North and South may be fruitful, of course. But it is fundamental that decisions concerning the South be made by the South and for the South (unlike the present system where the decisions are made in the North to promote the interests of finance and the multinationals of the North).

It is therefore up to the populations of the developing nations to dictate conditions, and no-one else. To make sure that this principle of decision by the South and for the South is implemented with complete transparency, it is crucial that the debt should have been cancelled and solid safeguards set up. For populations to be able to influence the decision-making process on the use of the funds, they must be fully and actively involved. Any decisions on major borrowing must be decided by Parliament after a vast public debate. This participative democracy, conjoined with the cancellation of the debt and the renunciation of structural adjustment policies, is the only way to give back to the peoples of the developing nations the power of decision over their lives. The only acceptable conditionalities are those emanating from the populations of the South.

# Comment on Sushovan Dhar

By Joseph Hanlon

Debt cancellation is essential, but it is not sufficient. Countries which have had some debt cancellation are already building up large new debts – to the World Bank, China and other lenders. Development in the South, as well as resolving global warming and existing environmental damage, requires a fundamental change in the global economic system. That, in turn, requires fundamental shifts in wealth and power – both globally and locally.

The core problem is that there is no point in lending money to a poor person or poor country which will not be able to repay. The Universal Declaration of Human Rights guarantees everyone the right to an adequate standard of living, and the world is now wealthy enough to provide that. As Sushovan Dhar's article shows, wealth has been flowing in the wrong direction, from the poor to the rich – not just in debt repayment but also in unfair terms of trade and exploitation of the environment. Extracting wealth from the south and then lending it back to them will never solve the problem.

Development will only occur, and the human right to an adequate standard of living will only be satisfied, with an unconditional transfer of wealth from rich to poor – both between countries and within countries. This, in turn, requires a more equitable distribution of power. Dhar shows clearly that the powerful have used lending and the ongoing debt crises to maintain and increase their power – and will continue to do so. Cancelling present debt is only a temporary solution.

The debt crisis of the past 30 years has occurred in parallel with an important change in global power relations. The phenomenon of the south-in-the-north and north-in-the-south has become much more marked – with growing groups of poor and marginalised in the so-called rich and industrialised countries (the south in the north), at the same time that Southern elites have living standards and tastes of the northern elites. Indeed, the north in the south identifies much more with northern elites than with the majorities in their own countries. The result is a growing deal, exemplified by conditionalities for loan cancellations and aid, which keep the southern majorities poor and marginalised. This comprador group becomes wealthy by extracting a percentage – rents – from the resources that are transferred from south to north, and has no interest in changing the present arrangement.

Cancelling the debt does not cancel the shift in power that has also taken place. And transfers of money from rich countries to poor countries will not benefit the south if the transfers are simply to southern elites.

Therefore, the transfers of wealth also requires a transfer of power, both within and between countries, to ensure that the money is used in the interests of the majority. Debt cancellation is imperative, as Dhar argues, but it will not solve the problem.

# To repudiate or not, is that the real question?

By Beverly Keene

“Debt repudiation reinvigorates the thinking around power, the instruments of governance and how we relate to them.”

*-Wahu Kaara (Kenya Debt Relief Network), Nairobi, June 2006  
International Conference on Strategies Toward Debt Repudiation*

It was August of 1982 when Mexico announced the suspension of payments on its external debt, plunging global lenders into what rapidly became known as the “Debt Crisis of the ‘80s”. From the perspective of Southern country borrowers, however, the crisis had in fact begun much earlier. In both cases, it was a direct result of the unprecedented and unilateral rise in interest rates applied to the heavy lending undertaken in the ‘70s, together with the consequences of the very development model inherent to the loans offered. The advice, stimulus, and protection of the Bretton Woods Institutions were central to that period of profligate lending; a role they came to consolidate in the ensuing years as the brokers whose new cause célèbre was purportedly to resolve the crisis their own behavior had induced.

A quarter century of debt relief initiatives has since passed, ranging from stabilization lending and Structural Adjustment Programs to Naples and Paris Terms, the Highly Indebted Poor Country Initiative, and most recently, the Multilateral Debt Relief Initiative. Some external debt levels and/or debt service payments have been reduced, but most importantly, private commercial lenders have been bailed out, debt service flows assured, autonomous development strategies overturned, and the neoliberal package of “Washington Consensus” policies imposed nearly everywhere. The nature of results, however, is such to have pushed the United Nations’ Development Program to organize a recent Colloquium on “Avoiding the Debt Crisis of 2015”. Surely this is but one manifestation of an underlying reality: lender-based initiatives have been quite successful over recent years in converting the crisis of the so-called “creditors” into equity holdings, control over natural resources, and a new explosion of sovereign-backed debt claims; but they have not resolved the crises of the borrowers.

Indeed it could be argued that the continued accumulation of financial debt, both external and internal, together with the ever mounting levels of social and ecological debt, has laid the foundation for a kind of permanent crisis that is reflected in the persistence of poverty and glaring inequality and the gross and systematic violation of human, collective, and environmental rights throughout the South. The re-emergence of a global hunger crisis and the increasingly undeniable evidence of the energy and climate crises, are further manifestations of what lender-based approaches to resolving the debt problem have engendered.

Popular rebellion against the continuation of such disastrous policies has succeeded in

breaching their former shield of legitimacy, however, and numerous Southern governments have been forced to take distance from the most grievous lender-initiatives. This changed political conjuncture provides a favorable context in which to develop new initiatives for resolving the ongoing debt crisis premised on a radically different starting point: the assertion by the peoples and countries of the South of their power as creditors. Repudiation and non-payment of illegitimate financial debt claims, together with concerted action to achieve acknowledgement and restitution of the historical, social, financial, and ecological debt holdings of which South peoples are the creditors, must be among the lines of action pursued.

Such initiatives could help restore to the citizens and governments of borrowing countries their rightful responsibility as protagonists of their own futures, resituating their role in the still unfolding drama of debt domination, and freeing up much needed resources and policy space for the struggles for food sovereignty and climate justice, health and education for all, peace and participatory democracies. They derive their legitimacy as well as their urgency not only from the recognition of the illegitimacy and indeed illegality of much of the financial debt now claimed of the South but also from the obligations that each State has to protect, defend, and promote basic human and environmental rights as they affect their own populations as well as the entire global community<sup>1</sup>.

## Illegitimacy of the financial debt as grounds for non-payment

There can be little doubt that it is unjust to extract “debt” payments from the peoples and countries of the South when such payments provoke a debilitating and destructive impact on their lives, communities, economies, and the environment. Evidence of the unacceptable human and social costs of the debt burden is overwhelming: national budgets for health and education slashed to make room for skyrocketing interest payments; public patrimony sacrificed in order to meet the demands of usurious lenders; national development strategies overturned by the prescriptions of predator capitalists anxious to leave no stone unturned in their quest for profit maximization. There is no shortage of examples of the destruction resulting from the export-oriented monocropping and primary resource extraction that have been strengthened throughout the South in order to insure quick access to the hard currencies required to make debt service payments. Similarly, proof abounds of the ways in which corrupt and non-democratic practices have been instilled or reinforced in order to circumvent parliamentary and judicial obstacles to the impunity with which global lenders operate their collections bureaus.

It is important to note in this regard that centuries of moral and legal groundings in diverse cultural, religious, legal and political systems worldwide provide ample backing for the non-payment of debts when to do so places in jeopardy the livelihood or survival of whom or whatever is being held liable for that payment. The Judeo-Christian concept of Jubilee, for instance, is rooted in the recognition that there is a limit beyond which neither

the survival of the debtor nor that of the community or the environment will withstand the pressure to collect, and that the preservation of all the implicated actors requires not only that debt collection be stopped but also and most significantly, that what has been lost through debt bondage be reinstated. More contemporary legal principles such as the doctrines of “Forza Mayor” and “Rebus Sic Stantibus”, establish grounds for debtor-protection in the event of overbearing and/or changed circumstances<sup>2</sup>. Domestic law in most modern states also provides limits and protection in the face of unpayable debts<sup>3</sup>.

The call for repudiation, however, is based as well on the assertion that the debts being claimed are themselves illegitimate and should not be paid under any circumstance. This assertion of illegitimacy is made in recognition, first and foremost, of the global and historic context of unequal power relations that has given rise to present debt burdens. The long history of conquest and exploitation, of colonialism, neocolonialism, slavery and imperialist subjugation cannot be divorced from the current face of global affairs and its powerful impact in the accumulation of financial debt burdens. The fact that it is rather the North that owes the South, as a result of this historical legacy, means that external debts claimed by those very same actors can only be considered illegitimate expressions of what must rather be understood as part of a necessary process of restitution and reparations.

A case in point is that of the people of Haiti, who continue to reel from the effects of the independence debt imposed by France more than 200 years ago as compensation for the loss of slaves who had the audacity to free themselves and constitute their own nation-state. That debt, which consumed as much as 80% of the young nation’s early income from customs and tax revenues, was instrumental in conditioning Haiti’s insertion into the global political economy to the interests of its erstwhile creditors – first France and then the United States<sup>4</sup>. The ground was thus laid for the more recent accumulation of illegitimate debt during the oppressive 30-year reign of the Duvalier family, the conversion of the self-sustaining local economy into an ecologically devastated, dependent food-importing economy, occupied once again by foreign military and economic interests and still being forced to service the debts claimed by those same interests rather than comply with internationally acclaimed human and environmental rights obligations<sup>5</sup>.

Colonial debts, debt incurred through the exploitation of unequal development and adversely contrived terms of trade, war, and other forms of conquest, are further examples of the geopolitical context of inequality and power imbalances that turns the modern debt claimed of South countries into a mere continuum of the historic plundering of South peoples and resources. That pillage and its concentration in the hands of a tiny minority of countries, corporations and economic elites, is at the very heart of a system which today predicates myriad forms of indebtedness as a necessary response to the void and destruction left behind. Financial debt is thus used by the powerful as an instrument to institutionalize and reproduce the inequality constructed over centuries, perpetuating a perverse cycle of violence and resource extraction and holding entire countries ransom.

The debts claimed of South countries are also illegitimate and should not be repaid in as

much as they have more often than not been accrued for illegitimate purposes and uses. This is certainly the case of credits used for repression and to prop up a dictatorship. Loans to apartheid South Africa or to the Mobutu dictatorship in the Congo for instance, or credits to support Plan Colombia today, can be considered illegitimate or indeed odious by the populations of those countries who are and will be called upon to repay them. Debt for projects which did not happen or did not benefit the people as they were intended, debts that result from loans or projects stolen through corruption or fraud, are further example of illegitimate debt whose service can and should be refused.

But equally illegitimate are those debts that have resulted from loans and other operations that were contracted in order to serve the interests of the lenders, and debt from projects whose very design was destructive to the community or its environment, generating not only illegitimate financial debts but social and ecological debt with the affected populations. The irresponsible lending of the mid-70's for instance, when the big banks had huge concentrations of excess petrodollars that they needed to invest somewhere, or the debts that have resulted from large dams, petroleum extraction platforms or other megaprojects with a dramatic financial, social, and ecological cost for local South populations, are also cases in point of debts that those same populations must consider to be illegitimate, without possibility to recognize any compelling reason to repay debts that have only brought them harm and injustice.

Additional reasons for considering the debt illegitimate and its repayment non binding, are the ways in which it is used as an instrument of extortion, or as leverage in order to impose lender-designed conditionalities the real purpose of which is more serving of lender interests than of the wellbeing or development of those countries or communities from whom repayment is expected. The recent history of stabilization lending and Structural Adjustment Programs, PRSPs and PRGFs, for instance, is rife with examples ranging from loans tied to social spending cuts; debt tied to monetary policies aimed at combating inflation through high interest rates, leading to increased unemployment and credit scarcity for small and medium sized enterprises; debt that threaten the population's access to clean water or energy by way of tied compulsory privatizations of water and energy industries; to World Bank and International Monetary Fund use of financial leverage to impose governance conditions, to legislate and even alter constitutional structures, all in denial of the fundamental right of democratic self-determination.

Lending conditionality has also been used extensively over recent years to impose trade and investment liberalization, deregulation of procurement policies, the weakening of labor and environmental protection laws, judicial and tax reforms to the benefit of foreign interests, and other similar policies. The fact that such conditionalities have had a deleterious effect on the capacity of Southern countries to service the very loans to which they were tied is yet another motive for considering such debt illegitimate. "Borrower beware" is a much more appropriate image than that generally conjured up by the emphasis on borrowing country imprudence, corruption, or incapacity when it comes to debt servicing difficulties. Recognizing that it is generally the lending party that holds primary responsibility for the

nature of the lending undertaken is a vital step toward the repudiation of debts that should not be paid because they should never have been incurred.

Such is also the case with all forms of debt accumulated through improper processes and terms: “dictator debts” and loans made without reference to or respect for constitutional and democratic practice in the borrowing country; lenders acting irresponsibly, failing to comply even with their own standards and “best practices” as has been highlighted by the Norwegian government’s 2006 decision to suspend collection on some outstanding debt claims in recognition of their failed lending policies<sup>6</sup>. *Similarly illegitimate are the debts accrued as a result of illegitimate and often illegal practices and terms, such as the application of usurious interest rates, the conversion under duress of private loans into public debt, or debt that became unpayable as a result of external factors over which borrowers had no control (e.g. after Northern countries unilaterally raised interest rates, or following dramatic falls in commodity prices).*

The very fact that much of the debt has already been repaid is yet further grounds for considering present debt claims to be illegitimate. Judicial investigation of external debt claims in Argentina, for instance, established among other abnormalities that there were no records nor accounting for much of the debt accumulated during the 1976-1983 dictatorial period; duplicate titles are alleged to have been presented when Argentina converted outstanding commercial debt into Brady Bonds in the early ‘90s<sup>7</sup>. Floating interest rates and exchange rate mechanisms have also played a key role in consolidating usurious debt repayments: debt that has been paid in monetary terms but without full recognition of its value.

In sum, this cursory overview of the many and varied perspectives through which debt claims against Southern countries are considered illegitimate provides ample moral and political grounds on which to substantiate demands for and the action itself of repudiation and stopping payment on outstanding debt. The illegitimacy of those claims is rooted in the concrete experiences of peoples and of countries. It resonates with widely accepted and understood concepts and practices of fairness, justice and morality, in the framework of globalization. The illegitimacy of debt is often further reinforced by its outright illegality, but it is clearly important that the two concepts not be confused; legitimacy, and thus illegitimacy, has to do with a sense of “rightness” that is developed and accorded through popular consent. Acknowledging the illegitimacy of the debt claimed is therefore also a critical step in any strategy toward debt repudiation: to establish a compelling case for non-payment, the well-established compulsion toward “honoring one’s debts” must be challenged through a broad-based popular understanding of lender-culpability and indeed the “dishonorability” of the debts being claimed. It also means reinforcing a critical perspective that places social justice and respect for fundamental human and environmental rights at the heart of our economic, political, and legal systems globally, something that the present neoliberal capitalist system has failed to do. This would imply that even if the debts in question were understood to be legitimate, the call for repudiation would be both urgent and compelling if to continue to service those debts was held to

jeopardize the survival or well-being of those from whom collection is being enforced.

## Why should the debt be repudiated?

In the face of such overwhelming evidence as to the illegitimacy of the financial debts claimed of Southern peoples and countries, the call for debt repudiation must be understood as a call for governmental accountability and responsibility. It is an initiative that recognizes and builds on the legal obligation of all states to uphold their responsibilities to protect, defend and promote the human rights of their populations, including economic and social rights, civil and political rights, cultural, environmental and democratic rights. These rights have primacy over all other state obligations, and indeed form the core objectives of political organization in UN member states. They are not obligations solely entrusted to borrower states, but rather should be considered compelling also by lender states and international institutions<sup>8</sup>.

But the very accumulation of illegitimate debt is a clear manifestation of the gross and systematic violation by governments throughout the North as well as in the South, of these most basic obligations. Indeed, it is often argued that the right of lenders to be repaid – and to earn a handsome profit on their lending – supersedes the rights of peoples and entire countries to their own survival and development. The sovereignty of peoples and of nations is often subjugated in this manner to the pretended sovereignty of bonds and bondholders, too accustomed to the impunity experienced in a world where private property and finance capital appear to reign supreme. It is in this context that the call for debt repudiation must be seen as a question of confronting the domination exercised by and through the debt, by challenging and changing the very relations of power implicit in the lender-borrower relationship.

In the current global system most of the power is concentrated on the side of the lenders. And, unlike many national contexts, on the international level there are precious few checks on the capacity of the powerful to punish potential and actual defaulters. Debt repudiation is thus an assertion of power by the borrowers. It implies redressing existing power imbalances by taking the initiative and redefining what is commonly understood to be right and necessary. In so doing, nonetheless, it also builds on important principles and tradition of both legal and moral persuasion. Referring again to the Judeo-Christian tradition of Jubilee, “the principle of maintaining community far outweighs any legal obligation to service debts to the point where the obligation lies with the creditor (sic) to restore and give back what had been paid”<sup>9</sup>. The call for repudiation therefore becomes the appropriate moral and political response where justice is otherwise denied.

As such, making the call for debt repudiation moves the debate from the North to the South. It becomes a proactive approach in which the fate of peoples is not the product of charity or even tribunals, but of their own efforts. It signals that for once the South is ready to anchor the process and take the debate head on, recognizing that the perpetrators of debt

domination will not and cannot take the lead in freeing the victims of that domination. Decades now of failed debt-relief schemes are testimony to the need for turning on its head such perverse logic.

In that context, the call for debt repudiation also highlights the fact that the assessment and nonpayment of the illegitimate debt accumulated in Southern countries is fundamentally a sovereign national task. Nothing can bring into question the right of the people themselves to act upon the terms and instruments of their oppression. There is in fact a glaring need in international affairs, as there is often in developed countries, for mechanisms to preclude enforcement claims affecting fundamental public services. Such a mechanism must also be empowered to act upon not only claims of illegality but also of illegitimacy. Any such process or mechanism, however, is subsequent and subservient - not substitutive or preclusive - to the sovereign right and duty not to pay illegitimate debt. There can be no conditionality, however well intended, on the sovereign right of a people (and their democratically achieved government) to repudiate debt that is illegitimate and unsustainable.

The political demand that Southern governments repudiate illegitimate debts is a fundamental source of pressure that must be augmented and not undermined. In and of themselves, governments will not easily take up the illegitimacy element. Nor will they easily stake a claim to the historical, social, financial and ecological debts owed to the peoples and countries of the South as a result of centuries of conquest and expropriation. But the job of the global debt movement is precisely to turn the tables on this sort of morally unacceptable “realism or viability”. This is why we explain and defend the legitimacy approach whereby it becomes morally and historically unviable for governments and peoples, including civil society organizations in the North, NOT to defend the principle of repudiation, among other mechanisms including restitution and reparations, in that light.

## Why call for debt repudiation now?

Debt repudiation is a timely demand. It is a call from the South to the North and the International Financial Institutions to be accountable for their history of perverse lending, structural adjustment, and all forms of lender-driven conditionalities. It also is a call for those in the South to assume their real role as creditors, and be responsible for their own compliance with fundamental human rights ad obligations. The call for debt repudiation is thus a call to address issues of governance and political economy both for the North and the South.

The call for debt repudiation has become particularly opportune as a result of advances made in global campaigning for acknowledgement of illegitimate debt and the role of South peoples as the real creditors. It builds on the failure of debt relief schemes to resolve the real problems of debt for the borrowing countries, as well as the explosion of other crises, such as the food, energy, and climate crises, resulting from the ongoing

practices of debt-related domination. In the aftermath of the Gleneagles G8 Summit (June 2006), it became even clearer that rich Northern country governments had reached the limit of their capacity to grant concessions and don't have the will to end debt domination. The debt deal launched at that time, now known as the MDRI, involved the cancellation of only part of the debt of a very few number of countries who had already paid a heavy price of compliance with neoliberal conditionalities. These developments further reinforce the belief that South countries must act unilaterally to protect their people and end debt domination.

But it is also important in this respect to note while lender-initiatives have peaked and their weaknesses been driven home, recent events particularly in Latin America but also elsewhere in the South as in the North have contributed to a more favorable conjuncture both in economic and political terms. Discussion on illegitimate and odious debt has now been forced onto the mainstream agenda with UN agencies and even the World Bank having to address the issues. Momentum has been building among debt campaigners, spurred on by Jubilee South's resolute stance on illegitimacy and the South as creditors, with the adoption of specific stances on debt repudiation and Northern backing for such a call included in the 2005 Havana South-North Consultation as well as the International Campaign on Illegitimate Debt. Southern government proclivity toward the neoliberal policies of the Washington Consensus with its debt-driven agenda, is also at an all-time low with important strides made toward the constitution of alternatives. A Southern position of repudiation makes all the more sense in this context.

## Can the debt be repudiated?

History has indeed shown that debt repudiation is a possibility. Certainly collective repudiation is more important than individual acts, and solidarity between North and South is critical if such an initiative is to be successful. But it is worth remembering some of the many instances of debt repudiation that have stood as successful instances of asserting rights even against unfavorable odds. Indeed, contrary to most contemporary opinion, economist John Maynard Keynes was fond of pointing out that the nonpayment of debt claims by sovereign governments were so numerous as to make it easier to talk about those who have NOT paid than those that have paid. A sampling of cases where debt claims were repudiated or payment withheld on the grounds of debt illegitimacy would include, among others, the following:

-In Mexico, the president did not recognize the debt claimed by the French resulting from their occupation, arguing that the French government had used the money in order to further its own interests in Mexico.

-War debts contracted by Confederate States at the time of the United States' Civil War were not recognized or paid by the succeeding State governments.

-Cuba refused to pay debt that had been accumulate by the Spanish colonial regime in its efforts to prevent Cuban independence.

-Costa Rica successfully refused to pay the odious debts of the Tinoco dictatorship, after achieving a landmark arbitration decision from a U.S. judge in 1917.

-During the financial crisis of the early thirties, a number of South American nations suspended and eventually stopped further payment on sovereign debts arguing sheer impossibility, in most cases, while in the case of Brazil, an audit of outstanding debt claims led to the denunciation of several.

-More recently, Nigerian Parliament was pressured by civil society organizations to call for debt repudiation. Although the Executive did not finally acquiesce, the call had an impact on the course of renegotiations.

To build the case for debt repudiation today, it is important not only recall these historical examples but also to recognize that making a call for repudiation, whether or not it is successfully brought to fruition, can be a bold step in galvanizing both public and official opinion in a broad sense. Here we are not just talking about questioning payments on outstanding debt claims. Projecting a call for repudiation means intervening directly at the level of very fundamental power dynamics; forging a will to say no to an unreformable system and building the necessary leverage to overturn it. These are some of the possible results of calling for repudiation, even when such a call seems practically unthinkable.

## Is it realistic for countries to consider repudiation?

Many would dismiss the notion of repudiation as irresponsible because of its potentially harmful impacts. “Repudiation means a country will no longer get any aid, nor any access to future credit. Why would any country choose that?”

Certainly a coordinated repudiation initiative by many or all Southern countries would be potentially more viable than action by individual states. But the difficulties of building such collective action, and proactive efforts by lenders to divide and rule, would almost certainly be formidable obstacles. In that spirit, the importance of well-grounded unilateral action by individual countries and/ or in the fact of particularly grievous debts might be a potentially powerful strategy. Debts that are clearly understood to be illegitimate, epitomizing the role of lender responsibility, could probably be successfully challenged on a more limited scope than a decision to repudiate all the debt of a particular country. Such a course, by establishing new and deeper precedents, could have a great significance for building a broader case for debt repudiation. The importance of a participatory, public debt audit in the development of such cases, cannot be overemphasized.

Some would argue that the debt crisis of the 1980s provided a much better opportunity

for debt repudiation than the present context, as many more countries were in a much more dire position than today and the chances of building cooperative efforts among so-called debtor states seemed greater. But in fact that did not happen – in no small measure because of the active opposition of lender countries and entities – and it may well be that present efforts to advance alternatives of greater financial autonomy and sovereignty - including initiatives such as the creation of the Bank of the South or the ALBA Bank, or the present stockpiling of international reserves in Southern countries – could provide a more favorable context in which to nurture calls for debt repudiation.

Similarly, the reemergence of a global food and energy crisis, together with the worsening climate crisis and the extraordinary demand that the combination will pose to the use of available resources in the South may well give rise to a new global context in which calls for debt repudiation could again become political viable in many parts of the South. The force of those calls could be expected to be influenced by the use that governments are seen to make of debt reductions that may have been achieved, and even more important of the perceived ability of civil society to hold governments to account. Critical to any debt repudiation strategy is clearly the preparedness with which a country is ready to take on potential retaliation and the loss of access to international markets and/or determined capital flows. But cases such as Iraq, Afghanistan and Pakistan all go to show that it is political realities, more than economic and financial questions, that determine the potential response of erstwhile creditors to their lost earnings when faced with situations of nonpayment, whether from repudiation or not.

In a similar fashion, presentation and communication are seen to be vital to the success of any repudiation strategy, showing clearly that the call for repudiation responds to a clear development strategy and not a mere unwillingness to pay. Such a strategy would undoubtedly entail a broader commitment to moving away from a lender-borrower relationship and more focused attention to galvanizing and insuring domestic use of local resources. Clearly the high costs of not repudiating illegitimate debt, in particular, must also be factored into any calculations as to its feasibility and contributions to sovereign and democratic development planning.

## What are key strategies toward debt repudiation?

The *International Conference on Strategies toward Debt Repudiation* (Nairobi, June 2006) placed high priority on establishing the conditions both within South countries and at the regional and global levels, in order to convert the idea of debt repudiation into a viable option. Participants clearly recognized that the task at hand was and is indeed tremendous, but they were also prepared to affirm that “understanding that repudiation is a vital step to ending debt domination and controlling our destiny, we must confront the challenges and overcome them.” Among the strategies that were highlighted for building the case for and potential contribution of debt repudiation, the following could be cited:

-Develop and build strong movements in countries in the South capable of waging the struggle in many fronts – in policy debates, in parliamentary and judicial strategies, in international arenas, and most importantly in mobilizing an informed and empowered people in various forms of resistance and assertion of alternatives. Such action requires the generation and strengthening of social and political movements in South countries able to make demands to governments; expanding the bases of networks and alliances especially including labor, churches, womens' groups, and environmental networks; making use of international law and legal doctrine, and popularizing the issue among the public, invoking the historic context and reasoning for debt repudiation.

-Northern support for the struggle for debt repudiation is also essential, implying a need to strengthen solidarity and partnerships in our common struggles to transform the global economic order. Northern organizations need to develop their capacity to engage their own civil society and governments to support repudiation as well as organizing and mobilizing efforts in the South.

-Engage governments and politicians directly on this issue, in both South and North, making the repudiation agenda a central element of any government running for office. Make this part of political campaigns including electoral campaigns; talk to the Finance Ministry but also to Foreign Affairs; engage national parliaments as well as regional bodies such as the West African Parliament or the Latin American Parliament.

-Strengthen communication and structure amongst ourselves, as in the ongoing international South-North campaign against illegitimate debt, in order to maximize capacity for joint and/or complementary efforts.

-Effect changes in governance. Only truly democratic and independent governments in the South will be able to muster the political will to repudiate the debt and lead their countries on the path to equitable, sustainable, and self-reliant development. At the same time, the solidarity of governments in the North is crucial, and will be possible on the basis of their own democratization and respect for the rights and self-determination of all peoples.

-Build cross-border alliances and South-South cooperation not only in the call for debt repudiation but also in the development of alternative financial mechanisms and economic relations. Recent initiatives in Latin America and Caribbean, such as ALBA and Petrocaribe, offer a glimpse of existing potentials. We must begin to establish such alternatives even as we challenge the dominant neoliberal global order. This is vital in order to mitigate and counter potential retaliation from the financial markets and the so-called creditors of the South, which may be strengthened in the face of debt repudiation. In this regard a critical element of strategies toward debt repudiation is the creation and design of a complete new framework for economic growth and decision-making including policy alternatives to external financing.

-Support and strengthen all those processes, such as participatory, integral and multi-criterial audits of the debts, which promote and broaden the bases of support for the repudiation of financial debts and the claiming of the right to restitution and reparation of all that has been unjustly taken from the peoples of the South. In this regard, support for the current processes of Debt Audit in Ecuador, Brazil, and the Philippines, among other countries, is particularly important. It is also critical that we develop further the analytical framework and research base for our claims of debt illegitimacy. We need the evidence to sustain our calls for debt repudiation.

-Work together in calling for global solidarity with countries going through extraordinary crises and critical moments of struggle, even as we advance our own national and local campaigns. Such action is not only needed support for the people of those countries but also carries with it the understanding that their victories are ours too, that their gains contribute to the weakening of the global system of injustice and oppression and demonstrate to the world what can be achieved.

Debt repudiation is a call for justice and for redressing global and national power imbalances. It can be an instrument for confronting the ravages of debt domination on terms that are determined by the victims of such policies, rather than those who benefit from them. It is thus a powerful and necessary step toward restitution and reparation of the historical, social, financial and ecological debts that the North owes to the South, to be collected on terms of solidarity and full respect for the human and environmental rights that are critical to the survival of humanity and our planet earth.

# Proposals for Future Lending Practices: A Southern Perspective

By Former Jubilee-Zambia Coordinator

## Introduction

While it is crucial to cancel current debts, it is equally important to make sure that a similar debt crisis will not occur in the future. Indeed, the record-breaking Jubilee 2000 petition that collected over 24 million signatures had not one but two demands: to cancel the debt of the world's poorest countries, and to "take effective steps to prevent such high levels of debt from building up again".

## The need for Better Debt Financing Methods

While debt relief has marginally improved the debt portfolio of the 23 countries which have completed the Heavily Indebted Poor Countries (HIPC) Initiative and the Multilateral Debt Relief Initiative (MDRI) countries, the need for improved debt management in these countries is still daunting. Of greater essence is the creditors' approach towards lending which requires urgent refocusing. This can be ably summarised in a "responsible financing criteria" which both lenders and borrowers need to adhere to. The onus is more on the creditor community to exercise prudence in their lending practices as they seem to enjoy unlimited monopoly power and influence through the resources they provide to the borrower countries.

A challenging development is the increased volume of resources that borrowers are now accessing from non-traditional lenders such as Brazil, China, India, Venezuela etc and from the Organisation for Economic Cooperation and Development (OECD). While the emergence of non-OECD lenders is good for purposes of competition in the international credit markets and also as an alternative source of financing, their lending criteria has to be embedded in the new tenets of financing for development. This is to ensure that their loans are not supply-driven but demand-driven based solely on the legitimate needs of the borrowing countries. This is important to avoid a resurgence of bad loans and ill-lending which have often been based on 1) the level of resources held by the creditors rather than the needs of the borrowers; 2) the policy advice of lenders which has often been flawed rather than the advice of national institutions; 3) corrupt motives of both lending and borrowing institutions/governments; 4) and unlawful and undemocratic lending and borrowing practices on the part of both lending and borrowing institutions/ governments, etc.

It is also important to recognise that, in the past, there have been calls for fair resolution of existing debt burdens through mechanisms such as a fair and transparent arbitration process. These have been accompanied by calls for current and future financing to developing

nations to be extended in a manner which is transparent, accountable, and which serves the development needs and protects the peoples and environments of recipient nations. Certainly the last two decades have seen official lenders in particular come under constant pressure and scrutiny from Non Governmental Organisations (NGOs) to ensure that the finance they extend to sovereign borrowers respects fundamental human rights and at the same time protects local environments in recipient nations.

This paper is an attempt to offer from a Southern perspective, proposals on how “future lending” could be conducted and structured. It throws light on the need for reform of the current lending practices which should also be mirrored by the borrowing countries that have often been accused of mismanagement of resources.

## Background to the Debt Crisis and Attempts at Solving the Crisis

Global development debate has since the 1980s been characterised by a need for a solution to the debt problem facing most developing countries. While borrowing and lending has been a long standing way of financing, it was the unprecedented rise of developing countries’ external debt in the 1970s that gave way to the calls for an in-depth focus on public debt and creditor-debtor power relationships. Despite colossal sums and policy advice that have been given to low income countries (LICs) by the industrialised nations as well as the international financial institutions (IFIs) over the years, the LICs have generally experienced a sharp deterioration in the terms of trade thus exacerbating the need for increased borrowings to close fiscal gaps in the current accounts of the balance of payments accounts.

### **a. Origins of the Debt Crisis**

The loans acquired by developing countries during the last three decades were mainly driven by the increased revenues (petrol dollars) in oil rich countries, which spilled over to private banks which in turn offered loans to developing countries. Coincidentally, developing countries commodity exports such as copper and coffee faced declining international trade terms over the same period. Coupled with sluggish performance of economies, poor debt/loan contraction procedures and mismanagement in some cases, poor countries’ debts spiralled from around \$70.2 billion in 1970 to \$579.6 billion in 1980.

Developing country governments were generally wrongly advised by the IFIs regarding what the IFIs perceived as temporary shocks. The rise of international oil prices pushed the balance of payment deficits up. Countries borrowed with the view that these oil prices would stabilise but stabilisation was illusive in the long term. In this respect, these loans have been termed as supply-driven loans some of which were not necessarily needed by the borrowing countries and most of them were actually based on faulty assumptions and flawed advice. In 2005, Norway accepted creditor responsibility by cancelling some debts

owed by five countries based on the fact that its export credit loans were given with the view of profiting Norway than the borrowing countries.

With novelty in the development discourse, nascent states which had just been through colonisation, began to borrow to finance their various development needs. While it can be argued that many of these governments might have had genuine intentions for the loans, some of the governments were led by dictators (e.g. Marcos in the Philippines, Mobutu in Zaire now Democratic Republic of Congo, Saddam Hussein in Iraq) who used part of foreign loans to propel themselves into power and at the same time oppressed their own nationals rather than for development. It is important to note that in most of these cases, the lenders were fully aware of the dictatorial regimes and their propensity to misuse public resources including loans and yet they kept advancing them loans for phony projects.

In other cases loans were mainly given during the cold war era when geopolitical fears especially between the United States and the Communist regimes characterised support to various governments. The United States and its allies were afraid that whichever countries weren't made into friends would turn to the communists. The Soviets harboured reciprocal fears. In a rather long quotation, Noreena (2006) shows this point in succinct ways when she summarises the ideological differences between some creditor governments and their debtors but where loans were motivated purely by geopolitical reasons...

Clear geopolitical interest dictated lending policy throughout the Cold War. This meant that both tyrannical regimes and regimes that didn't even pay lip service to the lender's ideological beliefs were bankrolled by the West and the East to secure allegiance or to realise strategic goals. Zaire was lent money by the Americans although it never adopted a free market economy. Angola was lent money by the soviets despite its insincere play-acting at socialism. Saddam Hussein was lent money by the West and Arab states up until the 1991 Gulf War, despite the fact that his chemical gas bombing of the Kurdish city of Halabja in 1998 which killed 5, 000 of his own people and wounded 10,000 others, was by then common knowledge. The Argentinean military junta of the 1970s was lent money by the United States, despite the fact that it was known to be 'disappearing' tens of thousands of people during its reign.

In this respect, these loans have been described as mainly odious and falling into the category of illegitimate debts which should not have been given in the first place.

Thus, the emerging result of this debt crisis was the huge debt service payments that low income countries continued to make to wealthy and industrialised countries. For instance, between 1970 and 2002 Africa borrowed US\$248 billion and repaid US\$268 billion and still owed over US\$330 billion! Every year Africa has been paying an average of US\$15 billion in debt service—an amount that is four times higher than the combined expenditures on health and education. With the emergency of health pandemics like the HIV/AIDS and other catastrophes it is clear that impoverished countries can not continue to pay the debt at the expense of social services and development in general.

## **b. Responses to the Debt Crisis**

The debt crisis briefly described above led to international processes that sought to reduce the magnitude and impact of the debt problem. Most of the responses which have been implemented have mainly been designed and propelled by the International Financial Institutions (IFIs), bilateral and multilateral institutions. They have mainly aimed at dealing with the perceived structural weaknesses which were thought to have led not only to careless handling of public finances including debts but also to a poor public policy environment.

In the 1980s several debtor governments approached their bilateral lenders (Paris-club) for negotiations on rescheduling of their debt service obligations. The rescheduling of official bilateral debt in low income countries through the Paris Club produced little long- term relief and, in fact, led to a snowballing of debt because of the accumulation of interest on rescheduled claims. Lack of sufficient growth rates in the affected countries led to worsening debt profiles and thus debts became increasingly unsustainable. Similarly, in the case of commercial bank claims, the delay in accepting the need for a write down of such claims—a delay motivated, in part, by a fear of weakening the balance sheets of already fragile international banks with unknown implications for the international financial system—contributed to the poor performance of many emerging market countries, especially in Latin America, in the decade of the 1980s..

In the 1980s the IFIs introduced the much-reviled Structural Adjustment Programmes (SAPs). Broadly speaking, these programmes were identical from country to country and they sought to reduce the involvement of governments in market and business activities including the reduction of government support to social sectors. SAPs are largely responsible for leading to the constriction of national ownership of the development process, subordination of social service delivery, enforcing the superiority on macro-economic stability over human development. These reforms in their entirety have been accompanied by harsh conditionalities and the resultant creation of an asymmetrically flawed power balance where governments are more accountable to lenders and donors rather than their national constituencies.

In several countries where these reforms were centred on privatisation, deindustrialisation rather than development has been the result, job losses are rife and social service delivery has continued to be weak and marred with de-motivated public servants.

In a quantitative review study by Bull et al (2006), of 40 Poverty Reduction and Growth Facility, the authors show that privatisation is a condition in over half of the reviewed PRGFs. In fact, Molina and Pereira (2008) in their quantitative analysis of IMF conditionalities find that “the IMF has not decreased the number of structural conditions attached to their development lending rather the number of conditions has increased to an average of 13 conditions per loan.”

The number of countries in need of debt cancellation but still subjected to stringent privatisation policies is still a source of concern. For example, Haiti and until recently Liberia has to adhere to austere conditions before they can have debt cancellation. Liberia for instance, had to struggle for 18 months to satisfy IFI Conditionalities particularly with regard to Liberia merging the Bureau of the Budget into the Ministry of Finance. Even the United States itself keeps these two bodies separate (the office of Management and Budget, and the Treasury). Jubilee Debt Campaign estimates that there is still 80 percent of the debt eligible for debt cancellation to be written off. Additionally, poor countries are still shelling out more than \$100 million a day in debt payments; and for every \$1 they receive from rich countries in aid, the developing world still returns \$5 in debt service payments.

Another response to the debt problem was the introduction of the Heavily Indebted Poor Countries Initiative (HIPC) in 1996 which was peddled as a magic wand to the heavy indebtedness of LICs. The HIPC Initiative was designed as a policy tool to comprehensively deal with the debt problem. Soon after its design in 1996, the HIPC Initiative was enhanced in 1999 in order to provide deeper, faster and broader debt relief.

The 1996 country selection process for the HIPC has been widely criticized as being based on analytically imprecise and some political criteria. Civil society organizations argue that, in total, 62 countries need full debt cancellation. The HIPC Initiative covers only 38 of those, leaving many countries out—such as Kenya, Angola, Kyrgyzstan, Vietnam, and Haiti. These 62 countries owe a total of \$100 billion in debt service through 2015..

According to the Jubilee Debt Campaign, analysis carried out by the World Bank's Independent Evaluation Group in 2006 demonstrates that for 11 of the 13 countries that had gone through HIPC for which they had data, debt burdens had increased since completing HIPC. Eight of these had debt levels back above the level determined by HIPC to be 'sustainable'. The need of poor countries to have access to finance cannot be overemphasised. Access to finance, such as through debt cancellation and grants, is critical for tackling poverty and ultimately attaining sustainable development. Without this, these countries will have to borrow more and more, and at higher interest rates, thus risking a future debt crisis.

The fact that HIPC was not a silver bullet was made much more evident in 2005 when the G8 proposed a further debt reduction mechanism called the Multilateral Debt Relief Initiative (MDRI) for debts owed to Multilateral Institutions. Under the MDRI debt cancellation was expanded to cater for multilateral debt. The progressive movement from SAPs to HIPC and later to MDRI rings a bell that while creditors' responses to the debt problem do partially assist in resolving the debt problem, however they all have lacked a lasting solution to the debt problem. While the SAPs are well known for their lamentable failure, the HIPC and MDRI can be heralded for being pioneers in ensuring that debt cancellation becomes part of creditors' agenda for deeper and meaningful debt relief packages. The real challenge is to ensure that countries avoid the risk of a possible debt trap.

Without a refocus of the lending criteria and the whole financing architecture, debtor nations might continue to suffer. The imperative is to devise and urgently implement a different financing regime with binding standards for responsible lending, as outlined in the following part of this paper.

## Proposals for New Lending

Eurodad's Charter on Responsible Financing outlines the essential components of a responsible loan. These aim to ensure that terms and conditions are fair, that the loan contraction process is transparent, that human rights and environments of recipient nations are respected and repayment difficulties or disputes are resolved fairly and efficiently. Many of the provisions outlined in Eurodad's Charter are drawn from international treaties and conventions to which lender and borrower nations are signatories.

Our proposals should also be viewed in part as contribution to the fulfilment of the call made by the Monterrey Consensus of 2002 which states that "debtors and creditors must share the responsibility for preventing and resolving unsustainable debt situations." A statement by Commonwealth Finance Ministers shows political awareness on the need for designing a new financing framework. In April 2008, the "Ministers recognised that prudent borrowing and lending practices required concerted action on the part of borrowers, lenders and the international community at large. They emphasised the need for lenders to act responsibly taking into account the future debt repayment capacities of borrowers and also to adhere to lending ethics".

### **c. International Framework for Loans and Loan Administration**

Both borrower and lender nations need to agree on an internationally acceptable framework for lending and borrowing (Eurodad's Charter serves as one such novel idea) as a guide to borrowing and managing debt resources. Such a framework should provide for the interests of both borrower and creditor citizens in meeting their responsible financing criteria.

National parliaments and other legislative bodies can conduct national debate and legislation procedures which assist in ensuring that national debt legislation is in conformity to the international framework for Loans and loan administration.

### **d. Put in place National Development Plans**

The borrowing process or lending process should principally begin with borrowing countries outlining their development path in national documents which are designed in a participatory and open manner such as the Poverty Reduction Strategies, the National Development Plans, etc. These documents should clearly indicate the financing requirements and sources of revenue which should only factor-in aid pledges for which governments have assurance from the donors on the full disbursement of such resources.

When this resource envelope is determined, governments should also determine the particular programmes and projects which may not be financed by both domestic resources and grants. It is for such programmes that loans should be sought and creditors should not provide loans to governments which do not have such plans.

This will help avert the moral hazard problem where governments borrow without a clear needs assessment based on a national framework for loans and loan administration.

#### **e. Each Borrowing Country should Formulate National Debt Management Strategies**

There is a general debate about the lack of debt strategies in several countries which have contributed to the weak policy, legal and institutional framework for contracting and managing debt.

As a national response to the challenge of sovereignty and ownership of the loan, borrowing states should have national debt management strategies which should be the basis on which loans can be agreed with creditors.

Any particular loans contracted by each country should therefore be considered alongside the national framework for borrowing contained in the national Debt Management Strategies and Policies. Both borrowers and lenders should ensure that no borrowing is done in the absence of such a framework and debt management strategy.

#### **f. Borrowing to be Done with Clear Purposes for each Loan—Responsible Loan**

Both lenders and borrowers must be able to finance loans which have primarily been agreed by the constituent of the borrowing nations. Through the rightful and legal procedures, the lenders and borrowers could negotiate loan agreements which will finance programmes and projects that clearly state the purpose, amount and beneficiaries of the loan. It is important to have all loan agreements clearly state their purposes as this will assist in avoiding odious debts which some creditors finance by giving debts to undemocratic regimes, mostly dictators, who misuse or even abuse their citizens with the assistance of such loans.

Ensuring that all loans are given and acquired for the right purpose enhances the oversight on loans. This is to prevent loans which may be harmful to the environment, or socially and ecologically destabilizing. The ethical concern in such cases often outweigh the economic prospects but in many cases lenders have proceeded to finance projects which have adverse repercussions for the environment as well as the social and ecological fabric of a society.

The recent concerns surrounding loans from regional Banks such as the Inter-American

## **Campaign Concerns of the Rainforest Action Network against IDB Loans**

\* The IDB is financing the expansion of agrofuels --industrial biofuels-- and dirty energy projects all over Latin America in the name of renewable energy and development, even when it is proven that the mass production of agrofuels increases greenhouse gas emissions than fossil fuels because of land clearing and deforestation; the displacement of millions of small farmers and Indigenous people and increased hunger worldwide. The IDB should stop funding false solutions to the climate change crisis and fund true renewable energy projects like solar and wind.

\* The IDB is financing the Initiative for the Integration of South American Regional Infrastructure (IIRSA), an industrial infrastructure plan of mega-projects consisting of roads, pipelines, dams and waterways. One of the most controversial IIRSA projects is the Madeira dam complex in Brazil. The \$10 billion scheme, involving two dams, is officially predicted to displace 3,000 local people and substantially impact ecosystems. Deforestation is reported to have risen 600 percent in the region since the preliminary license for the two dams was granted in July 2007. The IDB should reconsider funding for the Madeira dam and waterway project.

\* The IDB continues to bankroll Peru's problematic Camisea gas project. Camisea is located in a highly-biodiverse and remote part of the Peruvian Amazon, home to numerous Indigenous communities including some of the last still living in isolation anywhere in the world. Impacts have included deforestation, erosion, gas spills and the loss of fish and game populations on which those communities depend. According to a recent economic study by a former Harvard professor, exporting Camisea's gas rather than using it to meet domestic energy needs, actually represents a drag rather than a boon to Peruvian development. Camisea has also helped spark an unsustainable and potentially devastating oil rush in the Peruvian Amazon; roughly 70 percent of the region, about twice the size of California, is now zoned into hydrocarbon concessions. Having agreed in January to a \$400 million loan to construct a liquefaction plant on the Peruvian coast to export the Camisea reserves, the IDB continues its involvement in what it regards as a flagship project, but which has now become a model of how not to carry out extractive projects in environmentally sensitive areas and near vulnerable Indigenous communities. The IDB should stop additional funding for the Camisea gas project and invest in the protection of Peru's Amazon.

\* The Camisea gas project is emblematic of the IDB's outdated and dismissive approach towards millions of Latin American citizens and their unique human rights enshrined in international legal documents such as ILO 169 and, from 2007, the UN's Declaration on the Rights of Indigenous Peoples. The IDB has an Indigenous Rights Policy. Please implement it!

The IDB needs to enforce social and environmental safeguards to the highest standards before approving a loan for a particular project.

Development Bank have come under criticism. The number of campaigns against socially, ecologically and environmentally destructive loans is becoming a common feature in anti debt campaigns. A campaign by Rainforest Action Network is specifically against “socially and environmentally destructive projects in Latin America.” As the table below shows, the campaigners are “concerned that instead of reducing poverty in Latin America, the IDB’s lending practices are exacerbating poverty, environmental destruction and global climate change”.

#### **g. Loans should be demand driven rather than supply driven**

The need for any particular loan should be determined by and through recipient country processes. This resonates well with the current major debate on ownership of not only debt resources but also wider public finance including aid. However this process is usually adversely affected by the ineffective and undemocratic tendencies of some governments as well as creditor institutions which press for loans irrespective of the country processes needed to determine the need for borrowing. For example, Bull et al (2006) observed that there is a general stronger sense of “ownership” of programs in poor countries, but this is reduced by weaknesses in participatory processes; extensive dependence on IFIs and foreign consultants in elaboration of policies; and lack of local input. There is also lack of meaningful “policy space” and analysis of policy alternatives; and also lack of a unified view within governments, frequently used by IFIs to promote their own cause.

Country ownership of development programmes should be understood as more than simply government ownership--the involvement of civil society stakeholders, including women’s organisations, in the formulation and delivery of policy and programmes should be seen as an integral part of ensuring real ownership (Actionaid in CSPR, 2008). Too often aid has undermined rather than supported country ownership. Donors have used aid as one means of imposing economic and other policies on poor countries; funded client regimes whilst turning a blind eye to human rights abuses; bypassed the state and local control by setting up their own projects and structures; subsidised their own industries and institutions with aid money and disbursed or withheld funds according to their own preferences or schedules).

It is generally recognised that local ownership is at its peak when donor-funded activities reflect local goals and priorities, preferably based on a genuinely consultative national consensus, where the identification of projects and programmes to be financed by donors rests primarily with the recipient government and where there is minimal resort by donors to policy conditionality as distinct from the standard stipulations concerning accounting and procurement procedures (Helleiner et al in CSPR 2008). None of these requirements should preclude extensive and early-stage consultation with donor agencies in order to arrive at outcomes which satisfy the objectives of both parties. Nevertheless, ownership must mean that the final decisions rest with the recipient government.

The 2006 Oslo Common Statement on Conditionality makes a strong observation that

the continuing secrecy of World Bank and IMF negotiations with borrowing country governments inhibits the development of genuine broad-based “ownership” and leaves reform programmes open to the accusation that they have been illegitimately forced on governments by the IFIs.

Without greater democratic participation of developing countries in the IMF and the World Bank, and without a reduction of these institutions’ current influence on policy choices available to developing country governments, donor “harmonisation” of policy prescriptions in their engagement with recipient governments only accentuates the absence of democratic accountability of these governments to their citizens (Reality Check, in CSPR 2008).

**h. Loans should be given on the basis of nationally agreed requirements as indicated by Ministry of Finance with guidance from parliaments or any other nationally recognised representative bodies**

Most developing country loan contraction processes do not involve all the necessary institutions which are required to perform their oversight role. These institutions are required to provide meaningful guidance to the executive which forms the basis on which loans can be acquired. Their influence is often limited due to the overbearing weight imposed by the international creditor institutions which use the resources they have as a source of strength to demand for allegiance to themselves. In this way, developing countries’ parliaments have been rendered irrelevant in so far as the loan contraction process and management is concerned.

A survey conducted by the United Nations Development Programme (UNDP) in 22 Eastern and Southern African countries shows that Parliamentary oversight of loans exists in only 7 countries, 5 of which have bi-partisan committees to scrutinize loans. In five countries there was completely no such role for Parliaments.

It should be a principle requirement in new funding arrangements that all the tenets of democracy are met before a loan is negotiated by creditors and lenders. Some creditor institutions have expressed worries on the capacity limitations that parliamentarians or the legislature may have to be able to comprehend and take an active role in debt management. While these fears may be true in certain cases, it is imperative to realise that parliaments everywhere in the world comprise of politicians from different professions with diverse skills. These skills can often be harnessed and sharpened in the necessary requirements of a basic debt management framework in order for them to perform their oversight roles effectively. In fact, parliamentarians are better placed to enforce accountability and transparency than the creditor institutions as long as the parliamentarians are provided with the capacity and space to do so.

**i. Terms and Conditions of every loan agreement should primarily be limited to only essential results oriented areas**

Conditionalities have always been designed by the creditor institutions with little or no influence from local institutions. While the IMF has always argued that their programmes particularly, the PRGF only draws the benchmarks from the Letter of Intents prepared by the countries' authorities, some benchmarks are often harmful and are in many ways a reflection of the IMF's desires and views.

Conditionalities should therefore be drawn only from what countries have expressed as part of their development agenda for any particular period, e.g. the Fifth National Development Programme for Zambia.

## **j. Dealing Comprehensively with Private Creditor Problem**

Private creditors have usually not conformed to the financing architecture and debt reduction mechanisms agreed upon by the mainstream creditors. In a way their financing has been propelled mainly by the profit orientation of their businesses than the development perspectives which are often thought to be accompanying loans from the traditional OECD lenders.

In the recent past, some private creditors have been involved in litigations against several LICs which have benefited from debt reduction mechanisms such as HIPC. For example, Zambia ended up paying US\$15 million to Donegal, a private company which bought off Zambia's loan from Romania. Even though Donegal bought this loan from Romania at slightly above US\$3 million, it made claims of over US\$55 million when it sued Zambia in a London court in 2005.

Although the claim of US\$55million was rebuffed by many institutions and governments including Gordon Brown then Chancellor of the British Exchequer who said "I deplore the activities of so-called 'vulture funds' that seek to profit from debts owed by the poorest countries in the world. I am determined to limit the damage done by such funds", the response to this problem has not yet been "preventative" but "curative" in nature.

Belgium has responded to this challenge by putting in place legislation which curtails the operations of such vulture funds, the US is considering the Jubilee Act which expands debt cancellation and seeks to prohibit the operations of vulture funds. It is imperative that other governments also come up with legislation to the effect of prohibiting litigation of vulture funds. Above all, the international community will need to agree not to sale debts on the secondary market to private creditors as so doing mixes the development agenda of sovereign debts with the profit interests of private creditors.

With regards to private creditors, the current crisis hitting the US sub-prime mortgage market has also focused international attention on the issue of 'predatory lending' by some banks and the need to enforce more responsible behaviour by lenders. Some commentators have suggested that the principles of a responsible financing charter be extended to the international lending arena.

## Conclusion

A better financing framework is needed not only to deal with the current high levels of indebtedness but mainly to prevent the resurgence of debilitating debt. While the need for an asymmetrically balanced power system in international financial systems is noted, there has been little meaningful change to this effect. It should be the major pre-occupation of this decade to ensure that both debtors and creditors synergise in the implementation of new financing criteria.

This paper has highlighted the major historical problems of the debt of developing countries as well as indicated the major changes which should be undertaken to ensure responsibility in financing. The major thrust has been that all loans should primarily commence with national development processes which should intrinsically respect national debt management strategies. It is hoped that all governments would develop debt management strategies as well as find ways of engaging all institutions needed to perform oversight roles such as parliaments.

At the international level, the paper strongly supports EURODAD's charter for responsible financing and consequently calls for an International Loans and Loan Administration Framework-a set of internationally agreed standards and norms on which debts can be, sought, offered and taken without compromising sovereignty. It would be upon such standards that a fair and transparent arbitration process can anchor its backbone.

# Comment on former Jubilee Zambia co-ordinator

By Gail Hurley

The G8 Summit of July 2005 was labelled the “100% Summit” by former British Prime Minister Tony Blair. He was referring of course to the decision to write-down a further US\$55 billion in debt owed by group of countries classified as heavily indebted and poor (HIPCs). This increased total multilateral debt cancellation to approximately US\$155 bn. But was Tony Blair correct to label the Summit as the 100% Summit? Most lenders certainly seem to think so because since then, international policy debates on developing country debt have shifted inexorably towards discussions over how to prevent the re-accumulation of new unpayable and irresponsible debts. Past debt has been portrayed as “done”.

The author rightly highlights the Heavily Indebted Poor Countries (HIPC) Initiative and writes that this has “marginally improved the debt portfolio” of 23 countries that have completed the debt reduction programme, most of them in Sub-Saharan Africa. It is also worth mentioning that the HIPC Initiative has always been restricted to a small set of 42 low-income countries, leaving other severely indebted low-income and lower-middle-income countries squarely excluded. In Africa, this means countries such as Kenya and Lesotho have not benefited from debt cancellation. In Asia, the Philippines and Indonesia for example. In Latin America, Ecuador and Peru. For countries such as these, debt cancellation remains as far away from policy-makers’ agendas as ever before.

The author also mentions the increased volume of financial resources that developing countries can now access from non-traditional lenders such as China, India, the Middle East, South Korea, Brazil and Venezuela. The importance of these new donors and lenders should not be underemphasised. Global Official Development Assistance (ODA) in 2007 stood at approximately US\$107bn. Conservative estimates of Chinese ODA amounted to US\$970mn to US\$ 1.5 bn in 2005. The Middle East and OPEC nations have in the recent past provided US\$2-3bn a year. Moreover, this finance is coupled with high growth rates of other forms of finance and investment, such as commercial bank loans, developing country sovereign bond issuances, increased volumes of foreign direct investment and portfolio equity flows. For example, foreign direct investment (FDI) to developing nations attained their highest absolute ever levels in 2006 reaching US\$379 billion.

FDI now represents the largest single source of external finance for all developing countries. Commercial bank lending is also on an upward trajectory in both middle and low-income countries and attained US\$113 billion in 2006. Sovereign bond issuances on international capital markets have also increased and in the last five years, ten developing country governments have entered the international bond market for the first time (Pakistan, Indonesia, Vietnam, Ecuador, Fiji, Seychelles, Ghana, Sri Lanka, Gabon and Georgia). This reflects the move away from traditional forms of official loan finance towards private sources of finance. The rise of private inflows makes it extremely likely that these financial

flows will soon become the main source of external vulnerability in developing countries and in particular low income countries.

This raises the question, how can policy makers and citizens ensure that new loans are taken-on responsibly in the future and that debt repayment difficulties and/or disputes are dealt with fairly and efficiently? The author points to a number of innovative ideas, such as the importance of compliance with national development plans, creation of internationally agreed standards and codes for responsible finance, improvement of debt management capacities in borrower nations and fair and transparent arbitration procedures. Many of these proposals aim to improve the quality of future loans. The author rightly points out that much of the current debt crisis is owed to the provision of poor quality loans, extended for geopolitical strategic (rather than development) purposes, and often accompanied by poor quality policy advice. These factors contributed to the build-up of the unsustainable and illegitimate debt, the consequences of which we are all too familiar.

The current debt crisis therefore owes itself not just to the quantity of debt poor countries took-on, but also the quality of that debt. Despite this, current policy proposals to deal with concerns over the re-accumulation of future unpayable debt – such as those proposed by the World Bank and OECD – have focused primarily on the former rather than the latter cause. For example, the much-touted World Bank/IMF debt sustainability framework simply proposes that the international financial institutions (IFI) conduct an economic assessment of the strength of the economy before a new loan is extended. Based on the IFIs' assessment, the lender is in more of a position to decide whether to extend a loan or not and on what financial terms and conditions. The OECD has also issued a text which informally binds OECD-member export credit agencies to take into account the debt sustainability analysis of the World Bank before they support a venture in low-income countries. The approach is therefore based on the quantities of debt a poor country is able to carry and service rather than an integrated approach which also looks at the quality of the finance on offer.

In this context, Eurodad has developed a Charter for Responsible Finance. The Charter aims to widen what is understood by the term a 'responsible loan'. A responsible loan is one which is extended not just prudently with the repayment capacities of the borrower in mind, but one whose terms and conditions are fair, procedures transparent, which respects human rights and the environments of recipient nations and deals with repayment difficulties or disputes fairly and efficiently. The Charter proposes a series of contractual changes to loan contracts issued to sovereign states and those backed by a sovereign guarantee. These measures aim to provide guidance, fairness and certainties to borrowers and lenders as well as protect the citizens and environments of developing nations. The proposal moves towards internationally recognised legal standards for responsible lending and borrowing.

The author summarises some of the main forums which currently deal with problems of unpayable debt. These include the Paris Club of 19 creditor nations which decide on a

case-by-case basis how much debt to write-down or reprofile for a particular borrower country, the London Club of commercial lenders which essentially behaves in the same way, and the HIPC Initiative which has cancelled some multilateral debts for some low-income countries provided they follow an extensive economic adjustment programme. The key feature of all these forums is that they are creditor designed and led. The borrower is simply a spectator to and recipient of the lenders' decisions. The Eurodad Charter argues that the international debt architecture cannot continue in this way, and instead proposes a clear set of ex ante and ex post rules of the road which should apply equally to lender and borrower.

Given international concerns over the re-accumulation of unsustainable and irresponsible debt, the political moment would seem ripe for policy-makers' to table and discuss issues such as the development of international standards for responsible finance and the fair and transparent arbitration of debts where problems do arise. However most seem content with a business as usual approach. It is therefore also up to borrower countries to speak out actively about this issue and to demand much more of their financiers given increased competition in the lender market place. One HIPC Finance Minister recently commented that "the time for creditor conditionalities has passed. Now is the time for borrower conditionalities". The author also raises the importance of increased parliamentary and citizen participation in the loan contraction process. This oversight will also be key to ensure that tomorrow's loans really do reflect the social and economic development priorities of the world's developing countries. This is crucial if we are to avoid the 2020 debt crisis.

# Comment on former Jubilee-Zambia co-ordinator

By Oscar Ugarteche

The first issue I would like to add to the paper presented is regarding domestic savings and the role of progressive tax policies. It is evident that over the 1970-2000 period practically no country in Africa nor Latin America has had a tax revenue much beyond the 12%-15% of GDP range. This essentially means that LDCs borrow not only to cover investment requirements but also current expenditure. This is not reasonable and the experience should not be repeated in the future given the prevalence of floating interest rates and repeated acts of lack of responsibility in the management of monetary policy in some G7 countries. Any sharp rise in international interest rates lead immediately to major balance of payments crisis if loans are taken for any end. This is not the case if the loans are properly only hired for productive investment, be it public or private. Health, education and security/defense are responsibilities of the citizens of every country and should be taken care for with domestic savings and taxation.

Secondly, the ease for hiring loans usually overturns the concept of restraint that should be a feature of LDCs. The increasing needs of better infrastructure and the supply of project loans, in some cases with turnkey clauses, makes it ideal for the LDC Government to go ahead and hire a loan without a second thought on the balance of payments costs of it down river. Models exist that should be used to project balance of payments with different levels of indebtedness, payment terms and interest rates. In that sense the point of loans being demand-driven rather than supply-driven is correct. However, as we have seen with the G7, when a recession hits home, foreign loans are used to sell obsolete technology as in the 1970s to practically all governments and equally, to generate employment at home when domestic demand is down. This is also the case for bilateral aid. Today, some Asian countries are having the same practice this time with political ends, also common in the 1970s.

IFIs where designed as multilateral organizations that held all UN member nations as their own members unless there was a veto on some particular UN member State to join the IFIs. The veto power was built in the constitution of the Washington based IFIs in the 1940s and for the longest period countries considered to be enemies of the United States could receive loans. To the extreme, the obvious example is Cuba not allowed to become a member. The form of the veto power is that any decision must be taken with 85% of the votes. The US has 17% and thus can veto any initiative by itself. This asymmetry is repeated at the World Bank and must not be repeated in new more independent multilateral financial institutions

Secondly, IFIs where designed to serve the interest of all member countries and be a space for policy debates between all. Since 1975 however, the creation of the Library Group at first, a.k.a the G3 (France, US and Great Britain); then expanded to the G5 plus (Germany and Japan) and to G7 (including Italy and Canada) and finally G8 (with post communist

Russia). This group serves to coordinate its economic policies among its member countries. The end result is that the relationship between the G7 and the other IMF member countries is a North-South relationship of domination but not of co-ordination. Double standards appear everywhere in regards to monetary and foreign exchange policy with the LDCs not having any influence on the events that eventually will shape the global economic outcome: i.e. their own future.

Third, development banks, be them regional or the World Bank, have a had a role of promoting first projects and then policies. When the evidence mounted that WB projects were failed, costly and cumbersome, the decision was made to shift in policy lending. This in turn has been an unprecedented exercise in sovereign Government interference. The weight given to the WB by the G7 is clear when a condition to restructure bilateral debts is to first undergo the reforms suggested by the WB. Thus citizens found themselves voting for candidates that said one thing and then did something else which had been conditioned by the WB/regional development banks. It eroded democracy but it also led to the reordering of the world economy.

The future of institutions seems to be geared around regional groupings such as the Asean+3, the EU, SADC, UNASUR, to name but a few. In this sense, new institutions are either being designed or evolving. The Asean+3 multilateral balance of payments agreement for up to 80 bn USD is one such case that replaces to a certain extent the IMF. It poses after the initial 20% disbursement IMF conditionality for reasons that are to be studied. The logic of this agreement is the need for fast response essential to prevent crisis contagion and that no one knows better what is happening inside an economy than its neighbor.

Another example is the Banco del Sur, a Quito declaration initiative of 2007, where a development bank and a stabilization fund were created, and a regional unit of account developed under the umbrella of UNASUR, the South American Union. The concept behind the Quito declaration is that the poverty gap must be closed in the South American region and that special projects related to the poorest areas in the region, that will take into account the environment and have gender balance, will bring forth a more sustainable and democratic type of economic development. It is a project based bank and not a policy based bank and it will have a structure of "one country, one vote" in order to prevent asymmetries from interfering with the democratic and transparent running of the institution. This is done in contrast with existing institutions.

Finally, if the best loan is the one not taken, the next best is the one taken with care by both the borrower and the lender. International variable change quickly as we have seen over the past twelve months. With them, the sharpest lender can turn into the most stupid. This was the pattern of the 1970s and of the 1920s. It is true that there might be corruption and collusion in some of these operations. It is also true that lenders lend when they have large surpluses. Worse, they lend when they need to. The issue with policy advice attached to loans, however, is not so much that it was wrong, as that it was taken under coercion, under duress. This is not the best way for a borrower

to choose because it cannot do so. The coercion was applied when needy Government went for debt restructurings in Paris with the G7 and they were sent to the IMF/WB for reform packages without which the Paris Club negotiations could not happen. Thus the new institutions not only need to be more democratic but also, will be unable to act under those conditions. Whatever conditionalities are attached, should not be linked with the concept of the economy but with its running.

In the end, then, it is not only a matter of new forms of lending, but of new institutions doing so.

