

Summary of AFRODAD compiled debt case claims to be submitted for arbitration Presented at an

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1 Introduction

- In 2005, AFRODAD started building up 10 good case claims that would be viable for arbitration by an international Debt Tribunal under the auspices of the United Nations.
- It is only through demonstrating by case evidence that the debts are illegitimate and odious and such cases can be addressed between creditors and debtors through arbitration.
- Five cases dealt with illegitimate and odious debts and five with the role of international financial institutions in the development processes, of the debtor countries.
- These claims will be deposited with the Secretary General of the United Nations and the African Union (in the case of Africa) calling for these case claims to be discussed at the beginning of the arbitration process.
- The 10 cases principally cover countries in Africa, Latin America, and Asia.

2 Summary of Case Claims

2.1 Role of the International Financial Institutions

- There are five case claims covering the role of the International Financial Institutions in the development processes of African countries resulting from pushed privatization/investment projects in Zambia, Cameroon, Tanzania and Malawi.
- These claims demonstrate that the International Financial institutions' insistence and experimentation with privatization did irreparable damage that still affects the country's ability to stand on its economic feet today-years after such programmes were abandoned.
- Poor families suffered from the reduction in subsidies and disconnection from services when they were unable to pay. To many it meant a denial of **basic** human rights and in most cases it carries irreversible life impacts. After years of inflicting pain and suffering on the poor and helpless masses, it is now clear to the advocates of privatization,

especially the World Bank and the International Monetary Fund that the state remains the dominant provider of health, education, water and electricity.

- The International Financial institutions are still responsible for the development set back and its consequences. Cancelling debts and mere policy shifts are not enough. Most of the public providers of utilities in these countries need substantially more financing, especially for investment in extending service provision. They are trapped in a vicious circle of deteriorated infrastructure, high system losses, high costs and low revenue.
- There is empirical evidence that poverty and poor standards of life in many third world countries are directly attributable to the interventions and policy advice from the multilateral aid agencies.
- Over the years the third and moral worlds are up in arms against the IFIs for the negative impact of the structural adjustment programmes and the conditionalities that are associated with them.
- The conclusions suggested by these case claims indicate clearly that countries such as Zambia have legitimate cases against the IMF and World Bank.

2.1.1 The Zambian case claim

- The case establishes that the overt and covert intervention of the IMF, and the World Bank in the Zambian privatisation project is responsible for the reversal of all the economic and social gains that Zambia had achieved since independence in 1964. The strong industrial base that had been created through the public sector was destroyed. At the same time, there was massive capital flight and disinvestments leading to loss of employment and poverty. The interference by the IMF, World Bank and donors in the management of the privatisation programme together with the fast-tracking of the programme had far reaching negative consequences on the economy of the country. The Zambian government was compelled to embark upon a radical privatisation programme when the conditions for privatisation were clearly absent.
- As a result of the poor privatisation, the programme failed to achieve its objectives. In addition the country lost revenues due to [deliberate] under pricing of public assets and enterprises; poverty rose sharply due to losses of employment and lack of markets for local agricultural and industrial products while the country lost technologies, acquired at high cost, due to liquidations of industrial and service sectors enterprises [e.g liquidation of Zambia Airways].
- As regards policy advice on education, the case highlights the fact that the reduction of subsidies to education at the same time that the country was attempting to meet the World Education for All targets resulted in a serious dilution in the quality of education at all levels. Attempts at increased enrolments without any infrastructural developments resulted in overcrowded classrooms without adequate teaching aids with demoralised and de-motivated staff due to low salaries when prices of goods and services, including

accommodation had been deregulated. The high costs in government schools forced poor parents to seek alternative facilities in community schools. Community schools provide only basic literacy lessons.

- After resuming relations with the international financial institutions in 1991, the Zambian government took out a series of loans from the World Bank for economic recovery, privatization, investment promotion, and social and economic adjustment, as part of an economic structural adjustment programme agreed with the World Bank in 1991.
- A study undertaken by the Institute for Development Studies (Sussex) in 1994 showed that poverty had increased in Zambia. The Report found that three aspects of the programme had actually harmed the poor:
 - the removal of price controls and transport subsidies for maize, which squeezed the incomes of poor maize farmers in remote areas, while the large margins of private traders raised maize prices for the poor urban consumers
 - The reduction of import taxes on rice, reduced the income of poor farmers who had previously benefited from tariff protection
 - Public expenditure of health and education decreased
- Structural adjustment IDA credits amounted to about US\$ 755 million between 1991 and 1994. In 2004 the government was expected to repay these loans at about US\$ 20 million given that Zambia had not yet reached the HIPC Completion Point and is therefore not eligible for a full HIPC debt relief.
- In view of the failure of the structural adjustment programmes to improve the welfare of the poorest households or to generate widespread economic returns and given the steady decline of international copper prices over the years robbing the government of its main source of foreign exchange, Zambian cannot be expected to repay this loan at the cost of public investments needed to achieve the MDGs. Zambians should therefore submit this loan for the Arbitration Court to rule for its repudiation.

2.1.2 In Tanzanian case claim

- The case reveals that, privatization was launched in 1993 as a policy conditionality from the IMF. The Executive Chairman of the Presidential Parastatal Sector Reform Commission reported that by 2001, over 300 parastatals had been privatized to local and foreign investors. By 2003, more than 380 of the 410 state owned companies had been privatized, including large enterprises, such as the port container terminal, part of the telecommunications company and the National Bank of Commerce. Furthermore, the agriculture and infrastructure sectors were increasingly coming under the private sector through privatisation, concessioning of assets for private operation and new entry.

- As is the case elsewhere, privatization in Africa including Tanzania has been intended to cut waste, improve economic efficiency, stimulate the private sector and mobilize more foreign and domestic investment. However, the process has been fraught with problems and controversy. The IMF and World Bank in particular pressurized Tanzania to privatize. Privatization was put as one of the conditions for a country to receive the HIPC debt relief. The pressure to privatize the Dar es Salaam Water and Sewerage Authority (DAWASA) in Tanzania provides one example of such pressure.
- The forms of privatization in Tanzania ranged from outright sale of government's entire stake, to partial sale to concessions, leases, and management contract, to hiring off and sale of non-core business activities, to the opening of previously restricted sectors to the new private entrants. Generally, in some cases however, stakeholder participation was limited and there was lack of credibility including poor treatment of retrenches in terms of their benefits, valuation of assets and lack of assistance to indigenous Tanzanians.
- However, benefits from the privatized utilities such as Dar es Salaam Water and Sewerage Authority (DAWASA) and the Tanzania Electricity Supply Company (TANESCO) are still minimum, as their performances are still way off below expectations. The cost from privatization and the associated cost-sharing for social services led to diminished access of vulnerable communities to basic health and education programmes.
- In Tanzania the amount of proceeds of privatization that was allocated to government is not known well. Furthermore, there was no special allocation from the privatization proceeds to social projects, schools, hospitals, and immunization programme.
- As noted in the AFRODAD research undertaken with Christian Aid, in the 1970s, the World Bank lent Tanzania US\$ 45 million to develop its cashew nut industry. In part the loan was to be used for building processing plants. But the Bank over estimated the market for cashew nut exports and the business never really took off. Few of the plants were ever fully operational and most now are completely dormant.
- Much of the equipment was bought from Japan. Tanzania owes Japan more than it owes any other government some US\$ 661 million. Italy ranks third in its list of government creditors at US\$ 203 million. Many of these debts are associated with the Cashew nut fiasco then.
- When World Bank officials in Tanzania were approached about this saga they made it clear that the cashew nut debacle is ancient history as far as they were concerned. They have admitted their mistake and want everyone to move on. Surely this is not ancient history for Tanzania.

- Now that Tanzania benefited from the Debt relief, this whole cashew- nut fiasco will be swept under the carpet and neither the World Bank nor the Japanese government will have learnt from it.
- If we are to have a sustainable end to the current Debt crisis, the obvious responsibility of the Creditors, like the World Bank in this case, should be made clear. In this regard, Tanzania should repudiate the cashew nut debt. Because Tanzania is weak as a nation, the people of Tanzania must express their right in a mechanism that will guarantee and agree to their right not to repay these loans. Thus Arbitration will be for repudiation of the loan and not for debt cancellation.

2.13 The Malawian Case

- The case examines the general performance of structural adjustment programs (SAPs) in Malawi. In particular, it considers the adverse impact that SAPs have had on citizens' basic human rights as well as on social service provision.
- After good economic performance between 1964 and 1979, characterized by a high average annual rate of economic growth and macroeconomic stability, the economy of Malawi suffered from internal and external financial imbalances and a lower rate of economic growth from 1980. The fundamental causes were the oil price crisis, adverse terms of trade and external debt burden. The immediate causes were drought and closure of short rail routes to the sea, which resulted in a sharp increase in the cost of external trade.
- The Malawian authorities approached the IMF for assistance for covering the balance of payments deficit, which they got through a series of stabilizations credits; and the World Bank for economic reforms since the problems were believed to be structural and hence long term in nature. Among other things, stabilization programs put ceilings on external and domestic borrowing, while emphasizing expenditure control and measures for increasing government revenue. Economic Reform Programs (ERPs) aimed at increasing economic efficiency and removing constraints to economic growth by improving price incentives, removing fertilizer subsidies, removing price controls, liberalizing production and marketing of crops, introducing or increasing user fees for education, health and other social services, and privatization of state owned enterprises, among other things.
- The case shows that Economic Reform Programme led to an increase in poverty and food insecurity, thus violating human rights. They have also affected the provision of social services, thus adversely affecting access to them by citizens whose human rights have thus been violated. This validates the illegitimacy of foreign debt.
- Between 1991 and 2002 Malawi received eleven structural adjustment loans totaling US\$ 661 million from International development Association (IDA) of the World Bank. While these loans helped reduce the immediate external financial imbalances, they failed to

reduce internal financial imbalances, the rates of inflation, failed to increase savings and investments as well as the rates of growth of GDP and employment as they had been claimed to be designed for.

- There were the problems of wrong policy sequencing demanded by the Bank and the Fund, incompatibility of policy objectives and lack of coordination among policies etc. all driven by the Fund and the Bank.
- Apart from the cases related to structural adjustment loans which failed to have the desired impact and must therefore not be repaid the ,most striking and informative case is where the people of a Debtor country are pushed into starvation and the Creditor institutions, namely the World Bank, the European Union and the IMF go free! This an unacceptable. This is the case in which the IMF and the World Bank are accused of having forced Malawi to sell off grain stocks in their silos to keep foreign exchange.
- The President of Malawi publicly said on BBC that he had been forced into selling the country's grain order to secure foreign exchange to repay the loans for food the previous year. After the harvest problems, a majority of the people of Malawi faced starvation due to lack of food in the country. When the IMF was confronted with this they said that it was the World Bank and the EU who were to blame. Either way, it is unacceptable that these institutions can play with people's lives and not pay for it. This is a case indeed that could be brought out for Arbitration for the IMF to pay the costs of the suffering of the Malawian people. Next time round, the IMF might have more respect for human life than they do now!
- They have not learnt because there has so far been no mechanism to reprimand them and make them pay for their mistakes. Just a call for the democratization of the IMF and the World Bank is not enough! The Arbitration process should be a way of kick starting the democratization of the IMF and the Fund!

2.1.4 Senegal Case Claim

- The Senegalese case deals with forced privatization in the context of HIPC triggers by the World Bank. In 2004 Senegalese peanut processing company was forced into privatisation. In the end this was classified as "a declaration of war against the interests of the Senegalese peasants".
- Surely these are cases that need to be taken to an Arbitration Court. It will be up to the Arbiters to judge whether people's lives and well being is better than economic policy espoused by the World Bank.

2.1.5 The Chad-Cameroon case

- The World Bank's Environmental Assessment Policy states that "A full Environmental Assessment is required if a project is likely to have significant adverse impacts that may

be sensitive, irreversible and diverse," yet irreversible impacts that include: desertification, soil salinization, pollution and adverse health affects from pesticides and fertilizers, groundwater depletion and pollution has been casued in many places without recourse to the hurt. In many cases well-documented policy violations call into question the Bank's commitment to compliance with its own "safeguard" policies.

- The construction of the Cameroon-Chad pipeline relied on debt financing provided by the World Bank Group through two of its agencies, the International Bank for Reconstruction and Development (IBRD) and the International Finance Corporation (IFC). Former president of the World Bank Group James D. Wolfensohn stated, "the Chad-Cameroon project reflects an unprecedented collaborative effort between the Bank Group, the consortium of private companies and the two governments."
- The case of Cameroon-Chad pipeline demonstrates that the World Bank is ill-suited to the democratic, locally based environmental management advocated by most developing countries and environmental groups. The bank's ill-informed and technically misplaced projects still affects and disadvantages families in Cameroon- the contamination of local water sources used for drinking, agriculture, and fishing. Cancellation of multilateral debt is not a panacea to the health and environmental concerns of poor families.

2.2 Illegitimate and odious case claims

- There are many examples of illegitimate debt that can be brought forward into the Arbitration process. Broadly, illegitimate debt is one which satisfies one of the following conditions:
 - against the law or constitution or not sanctioned by law
 - is unfair, improper or objectionable
 - infringes people's rights
 - undermines sovereignty
- The most important aspect of illegitimacy is that a Court can determine that a contract is void or unenforceable or can be repudiated for public interest reasons.
- There has not really been any recent calculation of total debt stock rise due to accumulated interest and re-capitalized interest and arrears as a result of debt rescheduling.
- These figures account for what is generally referred as the debt having been repaid over and over and is generally considered illegitimate in the wake of existing levels of poverty.
- Projects which have involved Creditors in design and have exaggerated the expected rates of return just to get the loans moving can be considered illegitimate especially if, finally they are abandoned and do not benefit the people. One such case is national Rural Development Programme (NRDP) in Malawi, which involved IFIs and development agencies.
- Then there are specific projects which have simply failed but governments have to

continue repaying loans. Many can be listed from the DRC, as well as from Nigeria where a loan of US\$ 150 million for the Iwopin Paper Mill resulted in the project being built, equipment installed but has only operated at 5% capacity. The Creditors were only interested in pushing the loan.

- This category of illegitimate and odious debt claims covers five countries. One deals with the case of Nigeria's stolen wealth deposited in Swiss banks during the reign of military rulers. The other four cases deal with the illegitimate debts in the Democratic Republic of Congo (DRC), Philippines, Argentina, Ecuador and Indonesia.
- These case claims have generally indicated the debts are "illegitimate" from various perspectives: *ethical, financial, legal and social*. The flagrant violation of human, economic, social and ecological rights caused by the debt makes it illegitimate, unjust, immoral and unrepayable. They contain overviews of the socio-economic situation in the selected countries and perspectives pertaining to illegitimacy of the countries' debts. From the economic point of view, these countries serve as examples of countries that Creditors, private or governmental, eager to obtain financial benefits for the development of their countries, readily issued credits to countries with low levels of development, without considering their actual ability to pay or the long term limitations they face.
- The illegitimacy framework provides a more encompassing range of arguments for debt cancellation and a solid basis for debt arbitration. This framework is not only based on a critical, holistic and rigorous understanding of historical and current realities around the debt issue, but it is also a perspective that strengthens Southern peoples' claims that they do not owe these debts and therefore do not have to pay them.

2.2.1 The Democratic Republic of Congo case claim

- DRC is a post-conflict society, experienced 33 years of Mobutu's rule that meant the absence of an institutionalized and structured way of handling its political and economic matters including loan contraction and debt management processes.
- Mobutu individualized state apparatus and consequently procured loans for selfish gains without been accountable to parliament. He also worked with western governments during the cold war era to bloc the advancement of socialism in the central African region, making it possible for him to indulge in irresponsible borrowing and putting up projects not necessarily required or suitable for his country.
- Such unfinished or elephant projects include the Inga dam, Cité de la voix du Zaïre (Radio and Television Tower), the Sozacom Tower among many others. Mobutu himself is said to have become three times richer than the country he was heading. He could give personal gifts out of state coffers to his western friends in Europe or America despite a background of massive poverty and hunger among his own people of the then Zaïre. The case claim shows that loans extended to the DRC by the international financial institutions (IFIs) and bilateral donors did not serve people's basic needs and reflect their development priorities.

2.2.2 The Nigerian case claim

- Nigeria has been on the spotlight in issues of official corruption especially prior to former president O.Obasanjo civil administration. Military rulers have not shown remorse in siphoning state assets for individual benefits. On the other hand the Western financial institutions have managed to keep it confidential and remain aloof when African leaders stole funds and bank them with their European banks.
- The case of Nigeria serves to show that a fair and transparent arbitration process to deal with issues of stolen wealth must be demanded now if developing nations are to liberate themselves from exploitation and deprivation of their rich resources. A call has been made by the civic body that international conventions and standards be agreed upon at UN level to arrest such illicit behavior. Anti-corruption treaties are the key to getting back monies stolen from African countries, embezzled by the likes of the military junta of Sanni Abacha in Nigeria

2.2.3 South African apartheid debts

- South African apartheid debts should not be paid.
- It is estimated that apartheid's foreign debt is estimated at some US\$ 25 billion. Although it is not clear how much of this still has to be repaid, there is a genuine case for it to be taken for arbitration on the grounds that apartheid policies violated most of the rights in the 1948 Universal Declaration of Human Rights and other covenants and that a people who suffered such policies cannot morally be expected to repay loans which helped oppress them.

2.2.4 The Philippine Case claim

- The people of the Philippines suffer decades of accumulated foreign debt and unremitting debt servicing. Billions of dollars are paid out every year to Northern creditors which add to well over a \$100 billion already paid out since the 1970s.
- It is already widely recognized by domestic and international social movements that a large part of the Philippine foreign debt is illegitimate. The loans went to support the outright dictatorship of the Marcos regime and its avarice are only the most brazen. Many have also been forced on the people by creditors collaborating with Philippine administrations other than the Marcos regime. Loans have also involved patently usurious terms or been made on the basis of fraudulent claims and representations. The worst of them are onerous as well as spent on projects blatantly harmful to the people whose social, economic, cultural, civil and political rights have been violated. They have grossly breached the spirit and, many times, the letter of the law and of genuine democratic processes. Yet they are debts that were and are still being paid.
- The majority of this debt is public debt which directly results in the single largest part of the national government budget perennially going just to debt servicing. These repayments are made

at the cost of vital education, health, housing and welfare services as well as at the expense of critical economic and public infrastructure and utilities. Yet social and economic services are already grossly inadequate from having suffered decades of accumulating neglect.

- In the end this means that the country is trapped in a situation where it pays billions of dollars for debt that has largely gone not towards improving the well-being of the people – who directly and indirectly pay for these loans – but rather towards the profits of corrupt regimes, bureaucrats and big transnational banks and corporations.
- Aside from the larger dimension of the Philippine debt problem it may be possible to identify specific points of attack on particular loans. The most pertinent aspects and the most productive to highlight are those which relate most closely to how debt is used as an instrument of exploitation and oppression. There are three particularly excessive or brazen aspects according to how they have been used to benefit dominant powers at the expense of the Filipino people; they are not mutually exclusive and indeed often co-exist or overlap in any particular instance of debt.
- The first is how there is Philippine debt knowingly given by creditors in gross disregard of the character of the debtor (particularly the state) and the likely misuse of the funds. These include odious debts or loans given to repressive regimes.
- These also include debts ostensibly for developmental projects but, because they were not implemented by a genuinely developmental state, instead went to projects evidently harmful to people or the environment.
- Second is Philippine debt that has been made into an unjustly profitable opportunity for a select few and whose costs are directly or indirectly borne by the people. These include debt on patently onerous terms and fraudulent debt. These also include debts contracted through transactions imbued with corruption.
- Third is Philippine debt used to impose economic policy conditions towards creating profitable opportunities for foreign and domestic elites at the expense of the country. This includes multilateral and bilateral loans with explicit policy conditionalities. But this also includes commercial and bondholder debt that, given the dynamics of economic policy-making in the context of the increasing financialization of the global economy, involves implicit conditionalities.
- Appreciating debt at this level and in this way makes the issue potentially more practicable. This practicability however varies given the unevenness in terms of actually existing legal and institutional options or avenues for each case. There are for instance relatively well-defined domestic laws on graft, corruption and fraud (even if many are inapplicable to international contracts). On the other hand there is no provision in Philippine law on the crucial issues of odious debts, destructive projects and the imposition of policy conditionalities; hence, they are not straightforwardly expressible in strict legal terms.
- The claim reveals that large part of the Philippine foreign debt is illegitimate. When Marcos assumed presidency in 1966, the foreign debt of the Philippines stood below \$1 billion. When he left in 1986 the country had a foreign debt of \$28 billion. The borrowing binge of Marcos set off the debt crisis that succeeding administrations and the Filipino people have had to pay at the cost of being denied the right to access basic social services. The Philippines never recovered from its fiscal woes ever since, in spite of

painful restructuring under the tutelage of the International Monetary Fund (IMF) in exchange for the moratorium and additional funding.

2.2.5 The Indonesia Case Claim

- Almost twenty percent of Indonesia's population is classified as poor, with the unemployment rate also around twenty percent.¹ Indonesia was devastated in 2004 by a tsunami and has a debt burden of \$132.2 billion in 2005 to foreign creditors including the World Bank, International Monetary Fund (IMF), Asian Development Bank, and those rich nations assembled in the Paris Club.² "Rescue packages" in the form of IMF loans after the 1997 Asian financial crisis increased the foreign debt by over \$40 billion. For a country that has suffered both the Asian financial crisis of 1997, and the 2004 tsunami, the debt is unsustainable. Further, much of the debt has illegitimate origins incurred under the 32- year-long Suharto regime. A growing number of Indonesian and global voices are calling for cancellation of Indonesia's debt.
- After a military coup in 1965, General Suharto assumed power. He was officially named President in 1967, and ruled Indonesia with an iron fist for the next 32 years. In 1967, with the onset of his official political career, Indonesia began borrowing from the World Bank. Though the Indonesian economy grew under his rule, it cannot be overlooked that he was stealing government funds. The World Bank lent \$30 billion to Indonesia under Suharto, and as much as \$10 billion of this went to Suharto's personal bank accounts.
- Unfortunately, monetary corruption was prevalent throughout the Indonesian government. In a leaked memorandum from World Bank Project Budgets, it was estimated that "20-30% of Indonesian government development funds are diverted through informal payments to government staff and politicians." This stemmed a bit after the cold war with the increase of international scrutiny.
- In 1997, Indonesia was hit hard by the Asian financial crisis, as its currency, the rupiah, collapsed. In turn, domestic resistance skyrocketed, the international financial institutions became even more critical of Suharto, and there was dissent within Suharto's own Golkar party. This dissent within his own party and the military proved to be the last straw, and Suharto stepped down under pressure in 1998.
- 1998-Present: Heavy World Bank lending continued after Suharto was overthrown. In 1998, the World Bank approved a \$300 million loan to Indonesia to support new structural adjustment policies. One outcome was the expansion of the water privatization process. A new water management bill was passed that granted private investors more access to Indonesia's water industry, including groundwater. As Indonesia's debt continued to increase, social spending suffered.
- In 2004, Indonesia spent 10 times more on debt service than it did on healthcare. To make matters worse, a tsunami claimed the lives of at least 128,000 Indonesians at the end of 2004. The cost of reconstruction is estimated at close to \$6 billion. In March 2005, the Paris Club announced its offer to delay Indonesia's debt service payment of \$2.6

billion for one year, though interest on this debt will still come due in 2006. Indonesia holds debt of \$48 billion to Paris Club countries as of 2005. Thus the moratorium falls well short of what is urgently needed. Servicing the total debt of \$132 billion including Paris Club and the international financial institution debts, is too heavy of a burden for Indonesia, especially in light of the illegitimate origins of the vast majority of that debt.

2.2.6 The Ecuador Case Claim

- Like other indebted countries in the third world, Ecuador is the victim of criminal over-indebtedness: while it is one of the countries in Latin America with the most natural wealth, its resources, mainly oil and bananas, have been systematically plundered by TNCs, creditors and landowners. A massive and criminal indebtedness has worked as the main mechanism through which resources are stolen.
- As a consequence, Ecuador is the Latin American country devoting the highest part of its budget to paying back its debt, which has an impact on public expenditure, notably health and education. In 1980, 40% of the budget went to health and education expenses and 15% to servicing the debt. In 2005 the situation was reversed: the government spent 40% of the budget on servicing the debt while health and education expenses amounted to no more than 15%! ¹ These figures clearly indicate the priorities of successive former governments when they distributed resources: those who had to be satisfied first were the creditors, no matter if it was detrimental to the most fundamental needs of the people. In the face of such an outrageous situation it is essential to take action.
- The work being carried out by the Special Investigation Committee on Ecuador's External Debt retraces the pernicious process that has led to the country's present indebtedness, a general outline of which follows².
- Starting in the 1970s, and with oil revenues soaring, Ecuador saw its external debt increase significantly. This situation was to become intolerable just a few years later. In 1978, a change in Ecuador's Constitution marked a real turning-point. From then on, Parliament had absolutely no say in the country's policy on debt, leaving the door wide open to corruption and clientelism.
- In the early 1980s, following successive devaluations of Ecuador's currency (the *sucre*), a serious financial crisis broke out in the private sector. To remedy this, the State launched an operation to rescue the banking sector, which held the debts of national companies. This rescue operation went by the name of "sucretization", a process that in fact consisted of converting the private debt into a public one, and which multiplied the debt by 6, increasing it from USD 1 650 million to USD 7 500 million.

¹ « Auditoría ciudadana de la deuda ecuatoriana », a lecture by Hugo Arias during the First International Symposium on Public Debt, Caracas, Venezuela, 22-23-24 September 2006.

² Excerpt from the article by Eurodad: « L'analyse de trente ans de debt extérieure de l'Ecuador » (An Analysis of Thirty Years of Ecuador's External Debt), www.cadtm.org/article.php3?id_article=2628

- A significant number of the legal reforms were pushed through under the influence of the international financial institutions to ensure repayment of the debt. Examples include the decree recognizing unrepayable debts and the issuing of State currency bonds designed to buy back some of the private debt.
- **Refinancing the public external debt ...**With the relaxing of the legal and constitutional framework, Ecuador's indebtedness continued to rise in the 1990s with the issuing of new State bonds, including the Brady bonds³. In 1993, the State issued bonds amounting to the total remaining external public debt – some USD 909 million. This was clearly an operation designed to finance the external debt which, in its turn, had served to finance the debt from 1983 to 1985. In 1994, a new decree authorized the issue of new bonds and agreements with foreign banks.

... and rescheduling it

After the financial crisis of 1999, a new rescue operation was launched. It consisted of exchanging "Brady" bonds for "global" bonds at interest rates from 10 to 12%. Two years later, a new law on accountability and fiscal transparency was brought in, ensuring the repayment of the public debt with oil revenues. Thus the debts contracted during the 1980s, many of them contracted for speculative purposes, were extended for a further term.

- **The proliferation of development project management departments** - In this context of deregulation and relaxing of the legal framework, promoted by the multilateral organizations, countless departments sprang up in Ecuador for the purpose of managing projects financed by external credits, but acting with little coordination amongst themselves and barely better coordinated with government. On the one hand, the poor management and malfunctioning of the system (which in the absence of an efficient planning and monitoring body, subordinated national standards to those of the IFI), and on the other hand the onerous conditions imposed on the country (not considered poor enough to benefit from more favourable terms) further increased Ecuador's debt burden.
- **The Illegitimacy of Debts and Payments in Ecuador - both from a political and economic viewpoint.** Numerous legal arguments sustain the claim that Ecuador's debts are illegitimate or odious. The flagrant violation of human, economic, social and ecological rights caused by the debt makes it illegitimate, unjust, immoral and unrepayable. Since refusal to repay is the only means of ensuring the population's basic needs, the "state of necessity" must be invoked. Another argument justifying repudiation of the debt is the violation of national sovereignty, since all external debt should comply with the country's laws and the national interest.

³ In 1989, the Brady Plan (named after the United States Secretary of the Treasury) offered an exchange of commercial bank claims for bonds guaranteed by the US Treasury, on condition that the creditor banks reduce the amount of claims and put the money back in circulation. The beneficiary countries, on their part, undertook to consolidate part of their debt and sign structural adjustment programmes with the IMF. In this way the problem was solved as far as the banks were concerned, and merely prolonged for the debtors. Brady bonds represent a little less than half of Ecuador's public debt.

- The debt is odious because of the "aggressive indebtedness" organized under military dictatorships which started this pernicious process. The debts contracted to pay for old odious debts must also be declared null and void. Contracts carrying excessively heavy interest rates also fall into the illegitimate category. Here one can invoke "*force majeure*", since the dramatic increase in interest rates decided unilaterally by the United States has modified the circumstances of the agreements made between Ecuador and its creditors. The UN International Law Commission defines it thus: "*The legal impossibility (...) is the situation in which an event, either unforeseen or beyond the control of the person who invokes it, makes this person absolutely unable to respect his obligation by virtue of the principle that no-one is bound by what is impossible*"⁴.
- The plethora of conditions for rescheduling and renegotiating debts, and the conditions attached to the granting of loans (the process of renegotiating Brady bonds as global bonds, the structural adjustment programmes imposed by the IMF and the WB, etc.) whose purpose is not to reduce the level of indebtedness but rather to perpetuate domination of the country via the debt – all these are grounds for cancelling Ecuador's debts.
- Further instances of illegitimacy are the repayments demanded for projects in Ecuador that have never seen the light of day or which have been only partially completed, with complete disregard for specifications. From an overall viewpoint, Ecuador's debt has already been largely repaid, making Ecuador a "creditor country" vis-à-vis the countries of the North. The countries of the South have in fact financed the social and ecological debt by which the North holds the South to ransom.

2.2.7 The Argentine Case Claim

- **The Argentine debt is illegitimate** because it has turned into the main obstacle for economic and social policies that intend to change the present and the future of the Argentine people, and because it responds to neoliberal policies imposed by the hegemonic powers.
- **Besides being illegitimate, it is odious**, for the loan contracts were made by a de facto military government which had usurped power between 1976 and 1983; this debt was refinanced and continues to be paid. The International Financial Institutions were not unaware of this fact, and supported it.
- From the beginning of the dictatorship, the IMF and the WB from their offices in the Central Bank of the Argentine Republic controlled the indebtedness process. These loans were not used for the people's benefit, but were used to finance the repression of all kinds of expressions of resistance and to support an economic plan that emptied the country and only benefited local and foreign speculative capitals, providing them with huge profits.

⁴ [http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes\(e\)/ILC_1978_v2_p1_e.pdf](http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes(e)/ILC_1978_v2_p1_e.pdf)

Document A/CN.4/315 « Force majeure » and « fortuitous event » as circumstances precluding wrongfulness : survey of State practice, international judicial decisions and doctrine ; p.61.

- **It is usurious**, not only because of the perverse mechanism of a unilateral increase of interest rates at the beginning of the '80's, from 6% to 22%, promoted by the USA (if the original interest rates had been respected, the debt would be already paid off), but also because it's a system guided by the usury logic.
- **The conditions this logic imposes** are such that the Argentine people will never stop being a debtor, e.g. Structural Adjustment Programs, Brady Plan, Convertibility, Mega Swap (Exchange), and others, getting us into a trap of dependence and more debt, and which cannot diminish the sums owed.
- As is evident by the total interests paid, the Argentine debt has been paid many times over. It is illegal and fraudulent because it affects and violates national sovereignty, overlooking the National Constitution Act and internal laws. Most of those funds were embezzled. The debt's fraud was consolidated, and it was increased by continuous renegotiations of the governments that succeeded each other since 1983.
- **The debt is immoral, unjust and illegal because it systematically violates human, social, economic and cultural rights**, depriving the most vulnerable popular sectors from enjoying these. The debt costs are paid by the poor through the reduction of their salaries and increasing unemployment. Debt payments strongly affect the national budget as the State is forced to destine part of it to debt services postponing investments in health, education, housing, etc. Moreover, the loans have been used to finance infrastructure projects which spoil the environment forever, generating ecological consequences that attempt against life.
- It is in this context that this case demonstrates that the Argentine debt is illegitimate. It also aims to prove the responsibility of the International Financial Institutions in the indebtedness process.
- On July 3rd of 2000, Judge Jorge Ballesterro pronounced sentence in the lawsuit known as the "Olmos3 Lawsuit" in which he irrefutably proves the case in the following terms: *"The course of the lawsuit proved the manifest arbitrariness with which the top political and economic officials of the nation conducted themselves... This was also the behaviour of directors and managers of some companies, and private and public bodies... Important companies and private banks indebted abroad, socializing costs, committed the public funds still further through the implementation of an exchange insurance regime... the existence of an explicit link between the external debt, incoming short term foreign capital and high interest rates in the internal market and the corresponding sacrifice of the national budget since 1976 couldn't go unnoticed by the authorities of the International Monetary Fund who supervised economic negotiations...1"*

3 Conclusions

- This is just to note that the main purpose of Arbitration is to secure that both the Creditors and the Debtors will take more responsibility for the use of financial resources. Debtors have an equal responsibility for the Debt crisis.
- AFRODAD studies have shown that internal mechanisms have also contributed to the debt crisis. Apart from a lack of management capacity and sheer theft and corruption, there is evidence of misuse of financial resources obtained through loans.
- What the Arbitration process will do is to secure that responsibility is taken as well by creditors; debtors already taking their responsibility for repayment of debts which they do not consider to illegitimate or which they have misused. In a way, the Arbitration process will hopefully create a level playing field and instill responsibility for both parties.
- This would be a good end to the crisis.

Reference: AFRODAD Publications

- 1 *Juxta-posing Debt Relief & Arbitration Policy paper No. 2/2007*
- 2 *The Case of Illegitimate Debt in Indonesia*
- 3 *The Impact of Economic Reform Programmes on Social Services – The Case of Malawi*
- 4 *Illegitimate Debt & Underdevelopment in the Philippines*
- 5 *Ecuador at the Crossroads: An Integral Audit of the Public Debt*
- 6 *The Case of Illegitimate Debt in Argentine*
- 7 *Tanzania's Experience with Privatization Policies*
- 8 *Nigeria: Foreign Debts, Stolen Wealth, IFIs and the West*
- 9 *An Analysis of the Socio-Economic and Environmental Impact – The Chad-Cameroon Oil Pipeline Project.*
- 10 *The Impact of Wrong Policy Advice on Zambia: A case study*