

The Norwegian Debt Audit from an International Perspective



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Foreword

In its political platform, the Norwegian government has committed to do an audit of all outstanding debts to Norway. A Norwegian debt audit will be the first creditor-initiated national audit of its kind and the international network of organisations working on debt and development believe there is a great responsibility connected with breaking new ground in this way.

The Norwegian coalition for debt cancellation (SLUG) has in this report asked international civil society organizations and academics to comment on the Norwegian debt audit and give suggestions on how this audit can become internationally relevant. While all the texts differ in choice of words there are three considerations that stand out as the most important to the contributors: the scope of the audit, the criteria for debt cancellation and various practical considerations. Taking these and other considerations into account will be vital if the Norwegian debt audit is to be structured and executed in such a way that it can easily serve not only as an inspiration, but also as a model audit for other creditor countries.

The contributions are written by SLUG's partners and allies, and the views expressed do not necessarily represent those of SLUG.

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1. Introduction

This report is a collection of short texts with comments and input on the up-coming Norwegian debt audit from various civil society organizations and academics working with debt and development. The initiative has been coordinated by SLUG, and organizations from Europe, Latin America, Africa and Asia have contributed in the report. The report has chosen to focus particularly on Europe due to its closeness to Norway and the current debt problems in the Euro zone. The report is funded by the Norwegian Ministry of Foreign Affairs, as part of their cooperation with civil society organizations in the new project, “Capital for Development”.

A short introduction to debt audits

While some countries have achieved debt cancelation through international debt relief initiatives like HIPC, many countries are not eligible for these programs. In addition, the existing debt relief initiatives do not take into consideration the legitimacy of the debts. In response to this, the idea of debt audits was launched by civil society as a means for indebted countries to investigate the legitimacy of their debts and refuse to repay those deemed dubious.

A national debt audit is a process in which a country reviews outstanding debts to or from this country in order to establish whether or not the loans from which the debts stem comply with a set of rules, regulations and standards. A debt audit should revise all loan contracts looking at specific elements, such as the context of the establishment of the contract, the loan conditions, the interest rates, who the responsible parties are, how democratic the loan process was and borrowing and lending policies in general.

A short history of debt audits

The first call for a government-initiated debt audit in modern time was launched in Brazil in 1988. While this did not result in a government-led audit, the possibility to perform such an audit was included in the constitution¹. The only country that has completed a government-initiated debt audit is Ecuador, which completed an audit in 2007-2008. The audit in Ecuador concluded that there were several irregularities and illegalities in loan contractions. This led the Ecuadorian government to announce that it would default on its global bonds 2012 and announced a moratorium on global bonds 2030. After negotiations with its bondholders, Ecuador ended up paying back about 30 percent of the original value of the bonds².

In Bolivia there has also been some interest in a debt audit on a parliamentary level, and on December 30th 2009 the lower house of the Bolivian parliament approved a resolution recommending that Bolivia perform a debt audit³. However, the Bolivian government has not yet started working on a debt audit.

¹ http://www.jubileesouth.org/index.php?option=com_content&task=view&id=219

² <http://www.eurodad.org/whatsnew/articles.aspx?id=4164>

³ <http://www.eurodad.org/whatsnew/articles.aspx?id=3974>

There have been calls for debt audits in other countries too, mainly from civil society organizations. An example of this is ZIMCODD's work on a debt audit in Zimbabwe⁴ and the call for a debt audit in Greece launched in March this year⁵. Other countries where civil society organizations have been working actively on, or at least have an interest in promoting official debt audits includes the Philippines, Argentina, several countries in Africa and on a state level India.

The Norwegian debt audit

Due to the financial crisis the calls for debt audits have echoed as far north as Europe, where Greece, Spain and Ireland are some of the possible candidates for debt audits according to some NGOs. The groups calling for debt audits in these countries see a debt audit as a means to get insight into how and why the debts were accumulated.

Norway however, is not as affected by the economical crisis as the rest of Europe, and will be performing a debt audit on completely different grounds. The idea behind the Norwegian debt audit is that Norway will be the first creditor country to perform a debt audit to investigate its own lending, and will focus on loans given to developing countries.

Civil society pressure for a Norwegian debt audit started with a campaign launched by SLUG, Norwegian Church Aid and Changemaker in the autumn of 2008, where a Norwegian debt audit was one of three demands. The campaign resulted in over 11.000 signatures from people supporting the demands. The Norwegian debt movement has continued lobbying the Norwegian government for a Norwegian debt audit ever since this campaign.

In June 2009, when commenting on White Paper no. 13 on climate, conflict and capital, the Norwegian parliament asked the government to consider doing a full review of all outstanding debts developing countries have to Norway⁶. In October 2009 the then newly re-elected Norwegian coalition government followed up by implementing a Norwegian debt audit in their joint political platform for the period 2009-2013⁷. The work on the debt audit has now started in the affected ministries and this report is meant as a contribution from international civil society to make sure the Norwegian debt audit will be internationally relevant, and hopefully inspire other major creditor countries to do the same.

⁴ http://www.zimcodd.org.zw/index.php?option=com_content&task=view&id=21&Itemid=26

⁵ <http://www.eurodad.org/whatsnew/articles.aspx?id=4413>

⁶ <http://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Innstillinger/Stortinget/2008-2009/inns-200809-269/2/#a13.6>

⁷ http://www.regjeringen.no/upload/SMK/Vedlegg/2009/Ny_politisk_plattform_2009-2013.pdf

2. The Euro crisis and the call for debt audits

Following the Euro crisis, debt issues have suddenly become much more relevant for many European countries. Some are now calling for debt audits in the European countries hit hardest by the financial crisis, in many cases also the most indebted ones, as a means to give their inhabitants the understanding of how and why the debts were accumulated.

Although not directly linked to the Norwegian debt audit, this new development is very interesting and we therefore included a text explaining the new European debt situation, through a specific case. The following text comments on debt situation in Ireland.

2.1 THE IRISH EU-IMF LOANS - A PERSPECTIVE FROM THE GLOBAL DEBT JUSTICE MOVEMENT IN IRELAND⁸

By Nessa Ní Chasaide⁹

“Sovereignty belongs, not to the State, or the government, but to the people. We have outsourced it for too long to an incompetent, amoral and self-serving elite. Now we face the starkest of choices: use it or lose it”.

Fintan O’ Toole, The Irish Times, 23rd November 2010

The Irish EU-IMF Loans

On 28th November 2010, the Irish government announced its acceptance of a loan package from the EU and IMF worth €85 billion. The funds are comprised of €67.5 billion of external finance and €17.5 billion from resources of the Irish State¹⁰. How did Ireland get into this situation?

By September 2008, Ireland had a high level of public debt. However, it is possible that the Irish government could have repaid these public debts without an EU-IMF intervention. When the instability of the Irish banking system became exposed, and some Irish banks verged on the point of default, the Irish government guaranteed the bank deposits and outstanding debt to bondholders of major Irish banks. By mid November 2010, it was reported that those banks had been given €46 billion by the government to stay afloat. International lenders stopped lending to Irish banks, making them dependent on loans from the European Central Bank, which stepped in to prevent them from defaulting. The ECB could not continue in this role and this led to the EU-IMF loans to the government.

⁸ Much of this article is drawn from on a longer paper Debt and Development Coalition Ireland ‘A Global Justice Perspective on the EU-IMF Loans: Lessons from the Wider World’, November 2010.

⁹ Debt and Development Coalition Ireland (DDCI) is a global justice network and currently does not have an organizational position on Ireland’s debt. This article is therefore a comment piece and doesn’t represent an organizational position.

¹⁰ Government Statement - Announcement of joint EU - IMF Programme for Ireland, http://www.taoiseach.gov.ie/eng/Government_Press_Office/Government_Press_Releases_2010/Government_Statement_Announcement_of_joint_EU_IMF_Programme_for_Ireland.html; EC & IMF statement: <http://europa.eu/rapid/pressReleasesAction>.

The Irish loan package

The €85 billion package is comprised of commitments from Ireland's own funds and from international lenders including: €12.5 billion of an Irish State contribution from the Irish National Pension Reserve Fund; €5 billion from cash reserves of the Irish State; €22.5 billion from European Financial Stability Mechanism (EFSM); €22.5 billion from the European Financial Stability Fund (EFSF) and bilateral loans from the UK, Sweden and Denmark and €22.5 billion from IMF. The estimated average interest rate on the loans is a staggering 5.83% per year based on market conditions. The duration of the policy programme is for 3 years while the average length of the loans is up to 7.5 years. The funding is to be released in quarterly tranches on the achievement of agreed quarterly fiscal targets and the national recovery plan is to be reviewed on an annual basis by government and the lenders. The funds are to be used as follows: €10 billion for recapitalisation of failing Irish banks, €25 billion for banking contingency funding and €50 billion for national budgetary requirements.

The EU loan Mechanism¹¹:

The external loans are drawn from 3 mechanisms made up of approximately € 750 billion which was established in the aftermath of the Greek crisis. The mechanisms include: €500 billion from European Stabilisation Mechanism made up of:

- €60 billion from the European Financial Stabilization Mechanism;
- €440 billion 'Special Purpose Vehicle' guaranteed by participating EU members states;
- Balance: from an informal commitment from the IMF to provide approximately 1/3 of any European rescue package.

Lack of Transparency in the Making the Deal

The lead up to the loan agreement was characterised by massive confusion among the general public in Ireland, especially over the figures relating to Ireland's banking debt. Before the loan announcement, Irish banking analyst, Peter Mathews, estimated a significantly higher requirement to recapitalise the banks (€91 billion) than was offered by the lenders.¹² Some analysts indicated that they believed the amount required may be even more, while still others accused them of overstating the problem.

The Loan Negotiations: Who called the Shots?

Because the loan agreements were negotiated behind closed doors, it is unknown what areas of agreement and disagreement existed between the loan negotiators. The then, opposition labour party

do?reference=MEMO/10/624&format=HTML&aged=0&language=EN&guiLanguage=en

¹¹ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/114324.pdf

¹² Interview on "Primetime", RTE 1, 18/11/2010

leader Eamon Gilmore MP, highlighted the parliamentary ignorance of what is going on in a speech in the Dáil (parliament),

*'[...] we still don't know what is the status of this [Government 4 year] plan. Is it a document that has been agreed between the EU and IMF which will form part of the loan agreement between Ireland and the international community? Is it to be part of the memorandum of understanding for that loan or is it a negotiating document that is subject to change and revision before the final deal is concluded? [...] We don't know who is negotiating on behalf of Ireland. The Irish public are more familiar now with the [negotiators] from the IMF and EU teams than they are with the Irish negotiators. Who exactly is negotiating for Ireland and what exactly are they negotiating? We don't know the size of the loan. We don't know how much of that loan will go straight into the banks. We don't know the rate of interest that will be charged.'*¹³

The (outgoing) Irish government published the 'National Recovery Plan 2011-14' which is understood to have been the initial basis for negotiations with the EU and IMF¹⁴. For example, the Government in the 4 Year Plan highlights that the proposed € 15 billion of expenditure cuts by 2014 has been acknowledged by the 'European Commission [...] that this is the appropriate target based on the growth projections we have set for the period of the Plan'¹⁵. Some elements of the government 4 year plan, most criticised by the social justice sector in Ireland include:

- Reduction to the minimum wage of €1 (introduced through emergency financial legislation after the loan package was agreed)
- Cuts to social welfare of € 2.8 billion
- Entry point to the tax based to be reduced by €3,000 by 2014 (from € 18,300 to € 15,300)
- Cuts of 24,750 jobs from the public service
- € 1.2 billion cuts to public service pay
- 5% reduction to university grants; increase of €400 to university fees
- Cuts to retired public servants pensions
- 1% VAT increase in 2013 / 1% increase in 2014

Responding to the 4 year plan, then opposition Labour Party leader Eamon Gilmore MP said, *'We don't know with any certainty the deal that will be done on the banks. We don't know what the cost of that deal will be, whether there will be burden sharing with bondholders, we don't even know what kind of banking sector Ireland will have next year.'*¹⁶ On the day the 4 year plan was published the European Commission met with Irish opposition politicians and, according to largest opposition party at the time, Fine Gael, indicated that the plan could be adjusted after the change in government in March 2011. However, the language from the EC also strongly referenced the need for certainty and clarity on the budget and clarity on how Ireland will cut €15 billion from national budgets by 2014.

¹³ Statement of Eamon Gilmore TD to the Dáil 25/11/2010

¹⁴ The Four Year Plan can be found at: http://www.taoiseach.gov.ie/eng/Government_Press_Office/Government_Press_Releases_2010/The_National_Recovery_Plan_2011-2014.html

¹⁵ *ibid*, pg. 5

¹⁶ Speech to the Dáil 25/11/2010

Words of warning were issued by several parliamentarians during the negotiations regarding the aggressive role of the EU. For example, on 24th November 2010, then opposition Fine Gael finance spokesperson said, *'I never thought I would say that we are being treated better by the IMF than by our friends in Europe'*¹⁷ – a reference to the EU negotiating high interest repayment rates and the approach of the EU negotiators to the policy conditions that come with loans.

The particularly controversial element of the negotiations related to the apparent unwillingness on the part of the EU to allow Ireland insists on discounts on bank bondholder debt. When asked by a journalist whether the European Central Bank *'vetoed the idea that senior bondholder debt would take a haircut'*, the Irish Prime Minister replied, *'there wasn't [...] political or institutional support within Europe for that idea because of the wider impact it would have in the euro area and in the European banking situation generally.'*

The right of the Irish government to negotiate with bank bondholders on discounts, along with criticism of the high interest rate of the loans, would prove to be the dominant concerns during the February 2011 general election campaign.

Post Elections: Where is the Debt Justice Debate Currently?

The EU-IMF deal essentially brought about a collapse in government, which brought the Irish people to the voting booths on 25th February 2011. The ruling party, Fianna Fáil, along with their junior government partners, the Green Party, were routed from government and are set to be replaced by a centre right political party, Fine Gael (ideologically similar to Fianna Fáil) which won the majority of votes, followed by the Irish Labour party. (Negotiations to form a new coalition government are underway at the time of writing). The public election debate crystallised the widespread agreement across political divides that people in Ireland are now paying the price for the recklessness of Irish bankers and the lack of oversight of the previous Irish government. This includes a widespread view across the political spectrum that:

- **The Irish banks** competed with each other to declare higher and higher profits, were dishonest about their balance sheets and awarded their senior staff huge bonuses at the same time.
- **The Irish government** failed to responsibly regulate the borrowing and lending of the Irish banks; issued a bank guarantee now widely viewed as highly questionable; and did not negotiate at all with the senior bank bondholders.

The Irish social justice sector has made further criticisms focusing on the fact that:

- **The Irish government** signed up to draconian economic policies in the EU-IMF loan agreement when plenty of fairer approaches could be adopted instead.¹⁸
- **The European banks** lent to Irish banks (the bondholders) in the knowledge that the Irish banks were not stable, yet continued to lend to them because they were making profits.
- **The European Central Bank (ECB)** allowed European banks to continue to lend to unstable Irish banks.

¹⁷“Primetime”, RTE 1, Michael Noonan TD, Spokesperson for Finance, Fine Gael

¹⁸ www.socialjusticeireland.org; www.communityplatform.org; www.unitetheunion.org; www.ictu.ie; www.olderandbolder.ie, among plenty of other groups.

- **The EU-IMF lenders** combined are supporting devastating economic policies through the policy proposals outlined in the loan agreement.¹⁹

Social justice commentators and groups are putting forward a range of proposals currently ranging from ‘burning the bondholders’²⁰, to partial write downs of the bondholder debt²¹; to debt for equity swaps in the banks,²² to support for default or repudiation.²³ Thus, despite the wider agreement that the people of Ireland are paying for the mistakes of others there is not yet consensus among the justice civil society groups on how responsibility for unjust debts should be judged.

An international call for a debt audit for Greece has now been issued, led by Greek civil society activists,²⁴ with support from some prominent Irish activists and academics. This initiative could potentially move up the agenda the notion of an Irish debt audit. Given the lack of information among the Irish public on the nature of Ireland’s current debt, and lack of clarity over the responsibility question, an audit may indeed be a valuable initiative. Key questions that an audit might consider could include: how much private debt (now socialised) has already been repaid, how much is remaining and to which lenders, in addition to implications of non-payment of debts to specific types of lenders. Additionally, monitoring how this new combination of powerful international lenders will operate in a Euro zone context, as compared to Southern country contexts, will be important from a global debt justice perspective.

Concerns have also been raised among civil society regarding how an audit process might be held in a speedy, independent manner, led by principles of justice. This concern is all the more important in light of the fact that Ireland has experienced many long and arduous tribunals relating to political and corporate corruption which have been hugely time consuming and costly over past decades. The concern for speediness and justice was brought to the fore by Dr Andy Storey who recently highlighted that a ‘€750 million repayment made by state-owned, Anglo Irish Bank in January this year to a creditor who was not covered by the bank guarantee but we do not know who that creditor was and why an unguaranteed debt had to be honoured. An Irish debt audit would allow us answer such questions’.²⁵ This indicates that a ‘people’s campaign’ for information and accountability, which makes its own judgements on the justice, or otherwise, and implications of Ireland’s private, now socialised debt, may be an important intervention that could operate alongside any independent audit process. A people’s led initiative of this type, combining the knowledge of ‘local’ and ‘global’ debt justice activists, may be effective in ensuring that Ireland’s newly elected parliamentarians act quickly for debt justice.

¹⁹ Afri, THE IMF AND IRELAND: WHAT WE CAN LEARN FROM THE GLOBAL SOUTH, December 2010

²⁰ <http://www.nodebt.ie/>

²¹ Michael Taft interview: http://www.youtube.com/watch?v=9_WtMi53_u4; <http://www.youtube.com/watch?v=jJ4w0rplGSA>

²² <http://www.sbpost.ie/post/pages/p/wholestory.aspx-qqqt=DAVID%20MACWILLIAMS-qqqs=commentandanalysis-qqqsectionid=3-qqqc=5.2.0.0-qqqn=1-qqqx=1.asp>.

²³ Dr Andy Storey interview: <http://www.youtube.com/watch?v=SA43bTibKuM>;

²⁴ <http://www.eurodad.org/whatsnew/articles.aspx?id=4413>

²⁵ <http://www.progressive-economy.ie/2011/03/guest-post-by-andy-storey-call-for-debt.html>

3. International input on the Norwegian debt audit

The following chapters contain comments from various internationally based contributors on the Norwegian debt audit. The texts are divided into four chapters based on the regions the authors represent. Some of the texts have been slightly edited, but only to make the report as coherent as possible, and the opinions of the authors have not been edited in any way.

3.1 EUROPE

3.1.1 DEBT AUDITS: A NECESSARY STEP FROM ILLEGITIMATE DEBT TO RESPONSIBLE FINANCE

By Iolanda Fresnillo

Context

In the history of the struggle for debt cancellation, civil society organizations with different backgrounds, academia, multilateral organisations and government representatives, have been discussing different strategies to address the issue of external debt. Within these discussions, civil society organisations and most academics came to the agreement that the need for debt cancellation is not only a matter of reducing the burden that debt poses over southern countries government budget, but it is also a matter of justice.

External debt is not only unjust because it threatens the development processes in the Global South, but also because it has been built up over the basis of unjust mechanisms, serving the interests of a few at the expense of the people's welfare and survival. For many of us, in the heart of this injustice lies the concept of **illegitimate debt**. External Debt has to be cancelled not only in the basis of the immorality of prioritising the fulfilment of a loan contract over human rights, but also on the basis of its (il)legitimacy. **Debt Audits** have been proved as a very useful tool to settle the level of legitimacy or illegitimacy of a loan or a debt stock section.

This text exposes the views of the Observatorio de la Deuda en la Globalización – ODG (Debt Observatory in Globalisation) regarding illegitimate debts and audits, and aims to feed the process of the very welcomed Debt Audit in Norway.

Illegitimate Debt

Looking for a definition of illegitimate debt

The existence of different, and sometimes differing, strategies among debt movements has often

reflected different points of view regarding the recognition of debt illegitimacy, or different definitions about what constitutes illegitimate or odious debt. Organizations and networks from both South and North eventually got together in Havana in September 2005 and in Quito in September 2008, in an attempt to draw up a joint position. At the end of those meetings an important consensus was achieved: the recognition of illegitimate debt as the core issue in addressing the problem of debt in impoverished countries and the need for debt audits to address illegitimacy²⁶.

One of the difficulties we have encountered while working with the issue of illegitimate debt, is that we usually work with broad definitions and often ambiguous ones. To overcome that problem we can refer to the definition used in the audit process in Ecuador, “illegitimate debts are those that involve injury to the State’s sovereignty, violation of human rights or overall negative impacts in the lives of people”. During the South-North meeting in Ecuador (2008) we also reached consensus in the following issues:

- Conditionalities imposed by the borrowers to their credit, including the condition to spend the credit on borrower-country firms (tied loans), are considered a sufficient basis for illegitimacy, not only by the impacts that may have these conditionalities, but because these conditionalities constitute an interference in the country’s sovereignty.
- Demonstrated existence of negative impacts on economic, social and environmental rights is also sufficient basis to argue the illegitimacy of debts, taking into account not only immediate effects but also those indirect.
- All claims of loans contracted by illegitimate regimes are illegitimate claims, and the people of one country alone can determine the legitimacy or otherwise of a regime.
- All debts to refinance illegitimate loans are considered illegitimate.

To add to those definitions, ODG worked out a definition that considers illegitimate debt as the debt accumulated from loans that, directly or indirectly, compromise the dignity of citizens or jeopardizes peaceful co-existence between peoples. Such debt is originated from financial agreements which violate human and civil rights standards recognized by nations worldwide, or otherwise ignore the rules of international law governing relations between states and between peoples. Some of the phenomena, mechanisms or behaviours that have occurred through illegitimate debts are the oppression of peoples, genocide, imperialist wars, corruption, unequal distribution of wealth, the generation of poverty, despotism, the intervention of sovereignty and ecological disasters²⁷.

Why illegitimate? Justice beyond legality

Much of the debate surrounding illegitimate debt has revolved around the legal basis of this concept, and in particular the existing jurisprudence in international law concerning the concept of odious debt²⁸. While a degree of recognition of the concept of “odious debt” exists in academia and by some institutions such as the Norwegian government or the UNCTAD, much greater reluctance surrounds the notion of “illegitimate debt”. Despite the importance of arguing the solid legal

²⁶ Declaration of Havana South-North Consultation on Resistance and Alternatives to Debt Domination (30th September 2005)

http://www.jubileesouth.org/index.php?option=com_content&task=view&id=18 On the International Study and Strategy Meeting on Illegitimate Debt (Quito, September 9 to 15th 2008) see the article produced by the ODG (in Spanish) http://www.odg.cat/documents/deutes/b61_Quito_IF_cast.pdf and the summary produced by Jubilee South http://www.jubileesouth.org/index.php?option=com_content&task=view&id=231

²⁷ On the basis of this definition, which we know to be broad and ambitious, we have categorized different forms of illegitimate debt as follows:

- Oppression debts: the result of specific loans for the financing of humiliating, aggressive or criminal activities against the population; for example, in order to maintain or reinforce repressive or dictatorial regimes, or for the purchase of weapons by which to put down popular protest movements, etc.

grounding on which to establish the concepts of odious debt and illegitimate debt, especially as regards their recognition at an institutional level, we believe that we cannot confine ourselves to the limitations of what is recognized by international jurisprudence, but rather we should debate and put forward our own definitions of what we regard as illegitimate debt.

“The right to vote for women or the right to an eight-hour working day are social landmarks that have been achieved thanks to the steadfast struggle against established norms, even when backed by law, claiming the legitimacy of certain demands in the face of the evident illegitimacy of situations such as discrimination against women or labour exploitation. These demands for rights were made in response to principles of justice, rationally argued and valid in all cases, and which enjoyed a high degree of social support”²⁹. (II) legitimacy is the stage prior to (i) legality, a phase in which social norms evolve, based on rational arguments and in line with society as it becomes aware of certain situations, behaviours or structures that must be changed because of their immoral, arbitrary, partial, abusive, undesirable, pernicious, unjustifiable or inconsistent nature; in short, because they are unjust. Illegitimacy therefore expresses the generalized consensus, backed up by rational arguments, that a particular reality is unjust.

When speaking of illegitimate debt, we should therefore not confine ourselves to the debts that may be regarded as against the law in terms of international legality. Although certain facts or conduct that lead to what we know as illegitimate debt may be regarded as legal, from the standpoint of civil society we can put forward rational, commonly agreed arguments to show that a particular situation is unjust, and that although it may be legal, it must at least be regarded as illegitimate. The definition of illegitimate debt cannot be contained within legality, since this definition must exceed what is currently laid down by law, including all those situations which society at large considers unjust or unacceptable. Our main reference must therefore be justice, not legality.

Debt Audit

Beyond what is written on paper: Debt Audit as a comprehensive analysis of the illegitimacy of debt.

One of the broadest points of consensus among the organizations and networks working for the cancellation of debt is the need to carry out **debt audits**. Regarded not so much as an end in itself, but rather as a means for revealing real cases of illegitimacy, illegality and lack of responsibility behind processes of debt accumulation, auditing enables us to make progress towards the recognition of debt illegitimacy. In recent years important progress has been made in this regard, culminating in the carrying out of the Integral Audit of Public Debt by the Government of Ecuador. But we have to consider also other experiences such as the parliamentary commissions created in Brazil or Argentina, or the Citizens audit processes in the Philippines.

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- War debts: debt arising from loans for the financing of warlike plans for the pursuance of imperialist or expansionist aims.
 - Corruption debts: when funds requested by States are channelled directly into the personal accounts of members of governments, bribery or used for “public caprices”.
 - Elite debts: the result of loans requested by the State for the exclusive benefit of a minority enjoying a privileged political or economic status. Such debt also includes loans granted to cover expenses that could otherwise be met by policies or measures ensuring an equitable distribution of the income enjoyed by privileged groups. This category includes those loans offered by lenders in order to promote their own commercial or economic interest, such as tied loans or export credit debt.
 - Development debts: debt arising from loans for carrying out “development” projects that failed, with unfortunate or unnecessary human and environmental consequences, but proved to be highly profitable for banks and foreign suppliers.
 - Rescue debts: debt generated by economic, financial or institutional restructuring ostensibly aimed at economic growth or stability, and consequently the reduction of poverty. Schemes imposed by experts belonging to multilateral organizations and having “unexpected” effects that lead to situations of increased poverty and economic instability.

²⁸ For a definition on odious debt see: <http://www.odg.cat/paginacas.php?id=494> (in Spanish)

²⁹ Laura Ramos. “Los crímenes de la Deuda”. Cap. 1, Pg. 19. Ed. Icaria - ODG. Barcelona, May 2006 (in Spanish)

For the ODG the main aim of a Debt Audit should be identifying illegitimate debts in order to request the unconditional and definitive nullity of the contracts (and therefore the Payment unenforceability). Adding to this, an audit would also aim to gather all the needed information on who were the real beneficiaries of the loans, as well as those responsible for the negative impacts, in order to request charges for civil or penal responsibilities, through the pertinent judicial institutions, both at the lender and the borrower sides.

A prerequisite for this process is that, while performing the audit, a moratorium on debt repayments and interest accumulation should be declared, in order not to continue accumulating debts that could later be considered illegitimate.

For the ODG any audit process should commit in carrying out a comprehensive analysis of the debt, including the evaluation of both contractual terms and the social, economic and environmental impact and consequences arising from the execution of the purpose of the loan (in the case of loans for projects), as well as the conditions imposed for the fulfilment of the payment. We do not believe that purely financial or formal audits (which analyse only the “formality” of such contracts) can assist us in determining whether or not a debt is illegitimate. Multi-disciplinary approaches, which include social, historical, political and environmental variables, would also be required, with the aim of achieving a holistic vision of the process of debt accumulation. To this effect, it will also be necessary to analyse the documentation involved in the concession of loans, in addition to carrying out in the field social, economic and environmental impact analyses, and of the impact deriving from the conditions upon the loan. We should also take into account variables that help us to determine the role played by each of the parties involved (including not only representatives of creditors and debtors, but also third parties such as contractors, and institutions and centres that have carried out impact studies or evaluated project viability, etc.) and the corresponding responsibility of each of such parties.

In relation to the behaviour of creditors we should be questioning, for example, if they are responsible for violations of human rights, economic, social, cultural or environmental international or local standards; if these violations of rights would have been possible without the resources from external creditors; if they have committed fraud or scam; if the loans have financed or required inadequate policies, beneficial to the lender’s own interests; if they took advantage of a position of strength; if they have fulfilled their fiduciary duty (if the funded projects have failed or had harmful impacts by not having had a proper feasibility study), etc.

Similarly, by making reference to the circumstances in which the loan was contracted, we should ask whether there was an unequal balance of power between the parties in the negotiations in which they agreed or rescheduled the debts contracts, and whether the creditor has abused its position to impose conditions.

This type of audit exceeds simple financial and formal auditing in complexity, and requires greater human and economic resources for its execution. Limitations of time and money frequently constitute a threat to the degree of completeness in the auditing process, but this should not divert us from our aim of identifying the debt that may prove to be illegitimate, based on a proper and comprehensive definition of what is in fact illegitimate.

This broad approach of the audit process also refers to which debts should be included in the analysis. We believe that only a comprehensive audit will serve the need for a thorough vision of the debt problem. Not only current debts should be included, but also those that have been restructured, repaid or cancelled. An illegitimate debt that has already been erased could have been at the origin of further indebtedness, and the new debt might seem legitimate if we do not analyse over which basis it was created. A comprehensive audit should look also at all types of debt. Not only bilateral (concessional and non concessional loans) and commercial (ECA guarantees) debt should be included in the audit, but also bonds issuing processes (and the participation of IFIs and northern governments in buying bonds or in imposing an emission of bonds within a restructuring process).

A participatory and legitimate audit commission

One of the key questions when setting up an audit process is to define who takes part in it. At the ODG we would advocate for the creation of a mixed commission for the Debt Audit, that would have the aims of determine the legitimacy or illegitimacy of all debt claims, identifying the true beneficiaries of the borrowed resources, and that would investigate the negative impacts on the population or the environment, to finally establish the identity of those responsible. When appropriate, the Commission would also have the right to initiate and take forward civil actions and/or criminal proceedings against those responsible for crimes and injuries identified. This point is especially important to ensure that the cancellation of illegitimate debt is carried out without any impunity.

In order to ensure the credibility of the work undertaken, its impartiality should be assured. We believe the commission should be plural, with the participation of civil society from North and South, academics, auditors, legal experts and public administration representatives. In this regard, the creation of the Commission will require a major educational effort when integrating the more players the better. All stakeholders should feel represented in this Commission. In order for the Debt Audit Commission to succeed in its purposes, it should also be completely independent (without political interference); it should have full access to the requested information and technical and financial support to carry out with its duties.

We understand such a comprehensive debt audit is complex and inevitably slow. However, we consider it necessary to end the illegitimate debts, and as a necessary step but not sufficient, for restoring justice among impoverished people.

Responsible Finance

Not just a question of the past: setting up the basis of a fair and responsible financing architecture for the future

One of the factors that must be taken into account when addressing the issue of illegitimacy is that irresponsible or illegitimate loans are not just a question of the past. At present, governments, international financial institutions and private banking firms continue to grant loans for projects with virtually no control, or under terms that have a negative impact on the well-being of populations.

This reality compels us not only to speak about illegitimate debt, but also about responsible financing. It is necessary not only to work towards uncovering illegitimate debts of the past and present, but at the same time construct a new international financial architecture in order to meet new principles and standards. The proposed debt audit would give us the grounds to build up a new financial architecture, by analysing what has been done wrong in the past and setting up the norms to be followed in the future so that illegitimate debt is not accumulated in the future.

While working towards the transformation of the global economy and financial system, it is important to develop and to promote new principles for the way North-South financial flows happen. The Sovereign, Democratic and Responsible Finance Platform³⁰, that started its work in a meeting in Collevecchio (Italy), in June 2009, set up a very good ground to start defining these new principles. However, we believe there's the need for further discussion, not only on standards and rules for the present and future financial flows, but also on what kind of finance for what development model do we want to have in the future.

3.1.2 NORWAY'S DEBT AUDIT - COMMENTS AND SUGGESTIONS

By Kunibert Raffert

Norway's highly commendable initiative intends to break new ground beyond the particular creditor country case by serving as a general model for creditor-sovereign-debtor relations. As it is the first creditor-initiated national audit it is mandatory that auditing is done in an exemplarily, correct and convincing way in order to achieve this aim. All arguments and findings must be based on stringent criteria and norms that – though presently not applied when it comes to Southern Countries – are generally accepted. It is important to underline this requirement because it was blatantly neglected by one government-appointed auditing commission in the past. Only logically, legally and technically high standards of argumentation can turn Norway's laudable exercise into a precedent. Therefore, the panel must include specialised lawyers and economists, and have the support of a "secretariat" of specialists. What is not sufficiently clear is whether auditing should only comprise

³⁰ See "Transforming the International Financial System: Sovereign, Democratic and Responsible Financing A South-North Platform" http://www.eurodad.org/uploaded-Files/Whats_New/News/FINAL_SDR_FINANCE_PLATFORM_with%20SIGN_150410.pdf

official claims (i.e. by the government in a very broad sense) or all claims by Norwegian creditors, private or public.

The main problem that must be avoided is too large and imprecise definitions as surfaced in the case of “illegitimate debts”, where some definitions threaten to cover virtually any sovereign Southern Country debt. If basically no lending were qualified as responsible, audits would be unnecessary. Criteria to establish which debts are considered to result from responsible lending and which are not must be clear and unassailable, as much as possible derived from norms usually applied in most or all municipal laws, generally accepted ethic principles, and developmental criteria. A stringent logical basis is needed why certain types of debts are classified as “not responsible” or some legal titles cannot be seen as (totally) valid. For this, municipal laws provide a useful starting point.

Clearly, creditor duties differ. Creditors also acting as advisers/consultants in the projects they are financing have more duties compared with creditors only lending. Official creditors would also be bound not to contravene their development plans or programs, statutes or, arguably, UN declarations. Naturally, bondholders buying government bonds are least burdened by creditor duties.

It is important to stress that shortcomings in lending logically have different consequences. Not everything automatically voids the whole claim. Not any lending that may not fully comply with responsibility criteria as defined by auditing leads automatically to a right to debt reduction, although creditor fault may reduce or totally cancel debt service. Auditing as such need not automatically lead to reduction – in fact, auditing differs from debt arbitration - but it would not be easy to demand full servicing of debts qualified as gravely tainted by auditors.

Criteria to be Applied

1) Responsible Lending must be in compliance with relevant national and international laws, general legal principles, human rights, international treaties and conventions (especially if ratified by the creditor country), internationally recognised/ratified social, labour and environmental standards.

In any jurisdiction debts whose existence violates the law, basic legal principles, especially debts, whose servicing violates human rights (a causal nexus would have to be shown), or that are legally null and void are not (fully) enforceable. Debts correctly entered into or recognized by freely elected parliaments cannot, of course, be qualified as irresponsible lending. There is no question that illegal debts must not be serviced and do not result from responsible lending. Demanding full debt service in the case of Southern sovereigns would not be tenable. No logical defence is possible against requesting the application of commonly recognized legal principles and the demand of equal treatment of people, whatever their passports might be. It is impossible to qualify debts as responsible lending if they violate laws, especially laws within creditor countries, including those jurisdictions that have usually been stipulated in waivers of immunity.

Any municipal law knows duties and liabilities of creditors, such as a duty of care. Lenders have to observe professional standards, or make checks, such as whether persons signing for legal entities have the authority to do so. Tortuous or illegal behaviour makes them liable to compensate for damages, and may void contracts. Generally, there is a co-responsibility of creditors, as asserted and brought to bear so far only by Norway in North-South relations in the case of ship exports. Irregularities such as found in the Olmos case need to be analysed in order to draw legal consequences. A global double standard between what is required from a Northern and a Southern debtor country is inadmissible.

Lending money to representatives of a juristic person (e.g., a state), creditors are required to check whether officials have the authority to bind this entity. Lending in spite of knowing that part of this money will disappear or going on to lend after it did must be treated exactly in the way creditors would be treated if they lent to executives of a corporation, knowing that these executives will embezzle this money. The principle of barring the claims of those with unclean hands (*ex turpi causa non oritur actio*) is generally accepted, except in North-South transactions. All legal systems contain norms protecting debtors against either too cavalier attitudes by creditors, against creditors carelessly financing illegal activities, embezzlement, fraud, or against creditors knowingly harming their debtors.

Guaranteeing human rights enjoys preference over perfectly legal claims and might make them unenforceable, thus overruling *pacta sunt servanda*. Public interest protects, e.g., railway connections in the US. Subchapter IV of Chapter 11, Title 11 USC, section 1165 protects public interest “in addition to the interests of the debtor, creditors, and equity security holders.” Not causing human misery should be in the public interest too.

First and foremost, auditing must therefore check whether claims fulfil all formal requirements as well as whether lending has not violated any legal duties or principles. Their own domestic laws will, of course, be the cornerstone of any auditing done for/by national creditors.

2) *Equity, Ethical and Moral Considerations*

Less easy to argue, virtually all municipal laws know debts that might be legal by strictly formal standards, yet whose existence or servicing violates socially established norms. Often, servicing such debts cannot be enforced or even expected. In this case, too, national laws should be the yardstick of auditing, thus for responsible lending. The distinction between this type of debts and those clearly violating legal obligations is not always very clear. Equity considerations (particularly established in Anglo-Saxon legal systems) may render loan agreement unenforceable. The British Money Lenders Act of 1900, e.g., enabled courts to reopen any money-lending transaction when interest or charges were excessive; the transaction harsh and unconscionable or otherwise so unfair that courts of equity would give relief. Debtors needed not pay more than what the court thought to be fairly due. This Act was replaced by the Consumer Credit Act in 1974, which made

resistance to demands for debt repayment much more difficult, but may still make loan agreements unenforceable. Equity considerations are another yardstick for responsible lending.

3) *Developmental Criteria*

Responsible lending must not conflict with the country's development strategy and developmental exigencies, nor (in the case of official lenders) with the lender country's own action plan or declared development aims. The problem of fungibility must be taken into account appropriately, especially with official lenders. Clearly fungibility must not be abused. Knowledge or readiness of creditors to finance, making fungible use of money possible should be established or at least shown to be highly plausible.

4) *Creditor's Self-interest*

Dominating creditor interest, such as in supporting undemocratic governments or in influencing policy decisions must be exposed and should give rise to questioning the justification for servicing such debts in full. As auditing is not an arbitration procedure, final verdicts on to what extent such debts should be honoured are not absolutely necessary, though helpful. But the auditing process must clearly identify such claims and may but need not make suggestions whether and which parts of such debts should be paid.

Interest of the creditor country as such, however, can be no reason to qualify a credit as irresponsible lending or illegitimate. It is, indeed, the essence of a good deal that both parties benefit from it. A creditor country's interest in exporting is perfectly legitimate as long as the debtor benefits as well, or exports are at least not done with the knowledge that they will not benefit or harm the debtor (e.g. exporting capital goods knowing that they would not function). "Knowledge", of course, must both include *dolus* and (grave) negligence. If business interests overshadowed and dominated development policy considerations, as asserted in the case of Norway's Ship Export Campaign by Norway herself, one cannot speak of responsible lending. Tied credits/aid that was used to charge too high prices must give rise to appropriate compensation.

5) *Creditors-cum-Consultants*

If lenders also render advice, consultancy and monitoring services, sometimes indeed monitoring the whole project at all stages - as bi- and multilateral official lenders routinely do - the going duties and responsibility of consultants must be obeyed. If a financier cum project manager does project design and work negligently, generally valid damage compensation principles must be reflected in the debtor's repayment obligations. Damage unlawfully and negligently done by the lender must result in compensation payments, which may simply be deducted from repayment flows, thus reducing debt service. Liability ensures the right of victims to receive compensation contingent upon conditions stipulated in law, such as negligent actions creating unlawful damage. On a net basis this is equivalent to a reduction in total claims. Any such case must be qualified as not responsible lending. Official North-South co-operation must not be allowed to remain the last bastion of irresponsible lending.

6) *Risk cannot be excluded by Responsible Lending*

Risk is the hazard of losing money, even without any fault of the lender or debtor. It cannot be avoided and exists both with sovereigns and other debtors. External shocks, individual catastrophes, or unforeseeable events can change the debtor's circumstances drastically, resulting in losses or project failures in spite of every possible precaution, state-of-the-art analysis of creditworthiness, and *bona fides*. Even model creditors may lose money if external shocks, such as natural disasters, render model debtors insolvent. Without any fault of creditors, such shocks change the terms of the initial contract. On the other hand, wrong creditor decisions may increase risk. Economically, risk serves as an incentive to assess carefully debtors' ability to service debts. However, the risk of credit financed activities ultimately remains with the debtor, and the debtor has to shoulder these costs. A debt overhang caused by perfectly legal and legitimate lending must be corrected by an appropriate insolvency procedure, a solution usual with any other debtors but still denied to Southern Countries. The best solution is my proposal to adapt US Chapter 9 insolvency to sovereigns (Raffer Proposal), called FTAP by NGOs. Such debt overhang is not the result of irresponsible lending (although such debts may also be part of the debtor's total debts) but of objectively unpayable debts. Auditing would therefore have to confirm justification and legal titles of such claims. This does, of course, not preclude debt reductions *ex gratia*, for humanitarian and/or developmental reasons.

Which debts should be included?

Logically, all debts of one creditor should be included. What may be discussed is whether both official and private debts should be included. Already cancelled debts need not be included – they are gone, cancellation is likely to have covered creditor responsibilities, and they need not be audited – although looking at specific cases (e.g. concrete reasons for cancellation) may occasionally be useful to elaborate and refine criteria of responsible lending and consequences of lending that does not meet these criteria in the future.

Who should perform the audit?

Although the government itself may do so – and one may well assume that a government prepared to do an audit would do it properly, especially in the case of Norway I have no reservations - the fact that Norway's own claims are audited would suggest a panel that is not government-led. This is in particular important if only the government's claims are to be audited. One possibility would be to ask Stortinget to nominate the auditors. This perfectly correct solution may, nevertheless, still not deflect all criticism of allegedly lacking arms-length distance. There is no international company specialised on auditing creditor debts, although law firms or chartered accountants may be able to do it as far as the legal side is concerned.

Arguably the best proposal would be to establish a panel of independent experts. These should be nominated by Stortinget or the government, CSOs and debtor countries (e.g., each nominating one third) – also by private creditors if the private sector is included. In the case of CSOs and debtors a practical problem emerges. Which CSOs and debtors should nominate? Also, the procedure will necessarily be more cumbersome than in the case of the (=one) official creditor. Considering the

need to fend off any criticism – whether justified or not – a less simple procedure seems, however, advisable.

Re. CSOs: fortunately considerable CSO-expertise exists, although regrettably not in the case of all CSOs. Clearly Norwegian and international CSOs with a record and reputation in debt issues should be nominating experts in a ballot. CSOs could also be chosen from the list of participants in UNCTAD's Expert Group Meeting on Responsible Sovereign Lending and Borrowing or from CSOs working with DMFAS. For obvious reasons, the voting group should not be too big. Southern NGOs must be appropriately represented in the group.

Re. debtors several possibilities exists. All debtor countries, whose debts are to be audited, could be asked to vote in the nomination process. Alternatively, a comprehensive group of debtors already organised could be approached. One might think of practitioners, i.e. debt administrators. In this case, Southern debtor countries in the DMFAS programme might be an appropriate, already organised group, within which nominations could be organised relatively easily. This would be particularly easy if done during one of the regular inter-regional conferences on debt management, where people are physically present in one place.

If not only government claims but also private claims by nationals were to be audited, one might think of a 1-1-1 nomination process (Stortinget, CSOs, debtor countries, and private sector). Bondholders clearly pose a problem. But they could be asked via the media to send in proposals and to exercise their vote.

3.2 AFRICA

3.2.1 THE NORWEGIAN DEBT AUDIT FROM AN INTERNATIONAL PERSPECTIVE

By Mr. Tirivangani Mutazu and Dr. Fanwell Kenala Bokosi

Introduction

An official creditor initiated debt claims audit is a welcome development among many southern debt campaigners. Over the past decades there has been less political will on the part of the rich creditor nations to take steps that holistically address developing countries debts. Piece –meal initiatives such as HIPC 1, HIPC 2, and MDRI are dangled to few arbitrarily selected debtor countries. The intentions and purposes of the intended audit, we want to believe will go a long way in contributing to a lasting solution to the debt crises in the south.

Since 2006, we have been following Norway's progressive attempts to address developing country debts. In October 2006, Norway announced the cancellation of US\$80 million in debts owed by

five countries: Egypt, Ecuador, Peru, Jamaica and Sierra Leone. The Norwegian government took co-responsibility for what it calls failure of a development policy. This cancellation was historic because it was unilateral, and was not counted as Official Development Aid (ODA). Norway was praised for taking this unprecedented decision and urged to take further the issue with its like-minded creditor governments in the Paris Club and World Bank and International Monetary Fund. AFRODAD also commends the Norwegian government's efforts to push for reforms in the International Financial Institutions like the World Bank (WB) and International Monetary Fund (IMF).

The main intention and purpose of any proposed debt audit whether debtor or creditor initiated should be to secure responsible borrowing and lending, that guarantees sustainable development. Both the Creditor, Norway in this case, and the Debtor governments will have to take more responsibility for the use of financial resources (past, present and future). The Debt Audit should be able to audit Norway's bilateral debt claims, multilateral debt claims within the International Financial Institutions like the WB and IMF, and commercial debt claims, especially its Export Credit Agency (ECA).

A comprehensive debt audit should address important aspects, in terms of its origins, nature, and impact. It should also question the legitimacy and legality of the claims source, specific amounts borrowed; the terms of the loans; separation of legitimate debts from odious debts; the roles and responsibility in the growth of the debt; and the social and economic effects of debt on specific vulnerable groups.

Who should perform the audit?

An official debt audit that is credible is important. An ideal and independent audit team composed of government, financial experts and civil society representatives ensures credibility. Consultations with debtor countries at various levels of the audit process should be encouraged to verify the claims.

Norway should learn from the composition of the Ecuadorian Special External Debt Audit Commission. The Commission was created under presidential decree in 2006. To carry out this task, the Commission had the support of academics and social organizations. Public financial entities charged with the control and surveillance of the state finances (Parliament, Comptrollership, Controller's Office of Banks and Companies, and the Ministry of Economy and Finance) should play a key role in the audit.

The audit should interview people who are experts in debt issues from the legal, financial, economic, social and institutional fields, and social groups that have carried out studies yielding negative impacts of foreign loans on education, agriculture, hydroelectric, mining and oil projects, water works, water privatisation, in all countries Norway has debt claims. The following challenges that were encountered by the Ecuadorian Commission should be overcome:

- The audit should be given enough time.
- It should have power to bring legal actions in case of discovering evidence of liability
- There should be logistic support from the Central Banks
- It should be offered technical co-operation by those institutions dealing with debt information: Central Bank, Ministry of Economy and Finance (MEF), Comptrollership, Ministry of Foreign Affairs
- Access to information
- Adequate financial resources.
- Criteria and types of debts to be audited

Criteria and types of debts to be audited

Odious debts: This is debt assumed by one regime and which cannot be passed on to the other for objectionable reasons. There is no doubt many cases of odious debt that could be elaborated on. Norway's past and present lending and development policies with development partners need to be examined. If regimes such as the one recently removed in Egypt, are deemed to be dictatorial, should any new Egyptian administration honour Norway's debt claims?

The classical exposition on odious debts is that formulated by Alexander Sacks where he explained that "*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*". In other words, the doctrine provides an exception to the international law concept of state succession in terms whereof a succeeding government incurs the obligations of its predecessor. The debt "*consequently...falls with the fall of this power*". The main features of an odious debt therefore pertain to the nature of government which contracted them, how it came into being and its manner of governance. Essentially, these debts are contracted by despotic and undemocratic governments lacking the mandate of the people to govern.

Norway should analyze its development cooperation policies with indebted developing countries to determine whether any of its debts fall in this category.

Illegitimate Debts: 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; and undermines sovereignty.

Illegitimate debts have been aptly noted in many developing countries including, but not limited to, Nigeria, Indonesia, Philippines, Democratic Republic of Congo, Zambia, and Argentina. From these countries it can be seen that the debts incurred were not only marred by illegality but plunged the borrowing state in a financial quagmire without any prospects of release. These debts mounted to astronomical levels. In essence the debt becomes illegitimate because of its socio-political-

economic repercussions on the debtor state insofar as the loan cannot be serviced without depriving the debtor state the means to advance the development needs of its population and mortgaging the country for an indeterminate period in an indeterminate amount at usurious rates of interest. They are illegitimate because the debtor country does not have the capacity to finance its debts. In other words its revenue is far exceeded by its obligations.

Total debt stock rise due to accumulated interest and re-capitalized interest and arrears as a result of debt rescheduling. This is what is generally referred to as the debt having been repaid over and over and is generally considered illegitimate in the wake of existing levels of poverty. This category includes the debt stock that has arisen from devaluations and privatization policies.

The audit should look into projects which have involved Norway 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. Then there are specific projects which have simply failed but debtor governments have to continue repaying loans.

Wrong policy advice cases: There are numerous cases of wrong policy advice by the bilateral and multilateral donors. Norway quite often replenished the International Development Association (IDA) of the World Bank which gives loans to poor countries. While these loans helped reduce the immediate external financial imbalances, of debtor countries 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 the most striking and informative case is where the people of a Debtor country are pushed into poverty and the Creditor institutions, go free! IFI donors like Norway should proportionally shoulder the blame for such disastrous impacts.

The Conditionality: A Conference convened by the Norwegian government in November of 2006 advanced the issue of conditionality from a creditor's perspective. The conference brought together government officials from Sweden, Denmark, Finland, the UK, Canada, Germany and the Netherlands to discuss more appropriate and effective development finance conditionality for the future. The proposed Norwegian Debt claims audit should pursue the issue further. Norway commissioned the research on impact of privatization reforms; any debts incurred as a result should be documented.

Export Credit Agencies: Many advanced country governments, including Norway, keep Export Credit Agencies (ECAs). These are departments and agencies in governments charged with the responsibility of providing support to own country firms to be able to increase their exports and investments abroad. Export Credit Agencies provide direct credit to domestic corporations for

exports or overseas investments using public finances. In addition, they also provide purchasing/consuming (mostly developing) countries with credit to help them pay for the goods being exported to their countries by ECA-supported firms. In other words, both the supplier and final consumer are supported with credit. Export credit agencies also guarantee credits given by private banks and other lending institutions to exporters and country-own firms to be able to export. In effect, loans and credit provided by ECAs are tied loans. When such credit is provided to a buyer-country, such country is, by the terms of the contract, 'forced' to buy the goods originating from the firm/country giving the credit, even when there are lower-cost suppliers. Several countries in Africa have over 50% of their debts wholly dominated by ECAs. This makes the Export Credit Agencies the single largest group creditor to African countries. Most countries borrowed small from ECAs but had to pay back big on account of the accumulation of arrears and penalties arising from the initial borrowings.

Vulture funds: The debt audit should investigate 'Vulture fund' operations in Norway's cancellation processes. These companies seek to make profit by buying up debt in default on the secondary market for pennies on the dollar, then trying to recover up to ten times the purchase price, often by suing impoverished countries in U.S. or European courts. They target sovereign debts of impoverished countries. The most prominent vulture fund case is that of Donegal International vs. the government of Zambia. Vulture fund activity has resulted in a large and growing number of lawsuits against HIPCs. When an impoverished country has outstanding debt owed to a government or a commercial creditor that has not been cancelled or restructured according to HIPC or MDRI terms there is a chance that a private financial organization will attempt to buy that debt at a steep discount and take legal action to seek repayment of the original amount and more.

Norwegian debt swaps: The Audit should look into the cancellation of Norway's external debt in exchange for the debtor government's commitment to mobilize domestic resources for an agreed purpose. This is commonly called debt 'conversion', 'exchange', or 'swap'.

Due to their popularity in mobilizing additional resources, a number of governments and NGOs became actively involved in debt for development swaps under different names, such as debt for education, debt for health, and debt for child survival. Debt swaps are classified into two main models: bilateral swaps and triangular swaps. The major difference between these two models usually, although not always, depends upon the type of debt being swapped (private debt or public debt).

In a typical bilateral swap the creditor government agrees to reduce a developing country's ODA debt in exchange for debtor government investment in development. The creditor and debtor governments directly negotiate the terms of the debt reduction and the debtor government's commitment to set aside funds for development. A typical triangular swap is an agreement made between at least three parties: the Creditor (usually a foreign bank), Debtor country government and Not-for-profit investor (an international development organization, which can be an NGO or a UN

agency). A fourth party that may be involved is a developed country government or international organization providing funds.

Ecological Debt: The concept of ecological debt has roots in both national and international laws. There are some states that recognize intra- and intergenerational equity and the principle of common but differentiated responsibilities.

The Rio Declaration refers to each of these. In Principle 7, it states that: *States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.*

And in Principle 13, it mentions compensation for environmental damage: *States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.*

The Norwegian Debt Claims Audit should quantify Norway's Ecological debt in monetary terms. It should take into account mitigation and adaptation costs such as that of population displacements, environmental rehabilitation, and the loss in revenue in royalties.

Conclusions

In conclusion, the proposed debt claims audit is a welcome development. AFRODAD supports Norway's unilateralism when it comes to issues of sovereign debts. It did set an unprecedented unilateral action in 2006 when it cancelled US\$80 million owed by five countries acknowledging "shared responsibility". That unilateral action had helped to facilitate discussions on the issue of creditor co-responsibility among governments, officials and civil society organizations.

The Norwegian government, together with debtor governments and civil society should jointly appoint an independent audit team to examine all debt claims and credit according to mutually agreed indicators. In this context, southern CSOs will bring concrete cases to the attention of the audit team, for more in-depth examination.

The administration acknowledges incidences of wrong lending in the past, issues of past illegitimate debt and future responsible lending. In order to ensure responsible lending and borrowing behaviour in the future, it is essential to learn the lessons of the past as well as be seen to "put your house in order".

3.3 ASIA

3.3.1 THE NORWEGIAN AUDIT – HOW TO ENHANCE ITS INTERNATIONAL RELEVANCE

By Lidy Nacpil

Precedent-Setting

The planned Norwegian Creditor's Audit is of immediate relevance internationally because it will be precedent-setting. Though there have been and still are initiatives calling for Creditor's Audits by debt campaigners in other countries such as the UK and Spain, no audit processes have pushed through yet in northern countries nor are in verge of being started.

Like the Norwegian Debt Cancellation policy of 2006, the Creditor's Audit will serve as a vital precedent that can add leverage to calls for similar processes in other countries. Further, the Audit will be a source of important lessons for debt campaigns globally, both for creditor audits as well as debt audits conducted in borrower countries.

Which debts should be included?

This question is directly tied to the purpose of the Audit. The most immediate purpose of the Audit would be to determine which debts should be cancelled. To serve this purpose, there may be different approaches to the conduct of the audit.

One approach is for the Audit to examine **all loans extended by the Norwegian Government process still outstanding**, and at the end of the process make recommendations, among others, regarding which debts are to be cancelled. The loans will include bilateral loans, loans of Export Credit Agencies (as para-governmental entities), and loans extended by international institutions using Norwegian Government funds (i.e. disbursements of the WB Trust Funds financed by the Norwegian government).

Another approach may be that the Audit, at least at this stage, will seek to examine selected loans that are emblematic of major issues – with the purpose of developing and substantiating a government framework and policy for debt cancellation. This framework and policy can then be used for future, more comprehensive audit of the rest of the loans. In this case, the choices of loans to be examined may not only be limited to outstanding loans but even past loans which are important sources of lessons for policy formulation. It may also include not only loans extended by the Norwegian Government but also by the Norwegian private sector, if any, to developing countries for purposes of developing policy on regulation of private sector lending.

The advantage of the latter approach, which can be treated as a first stage in a longer process of comprehensive audits, is that because it has the expressed purpose of developing policy for wider, longer and regular application, rather than what may be treated as one-off cancelation of debts. This will also enhance the international relevance of the audit.

Both approaches should definitely include Norwegian lending involving bonds and similar instruments, especially as the bonds and markets instruments component of debts of South countries are fast increasing as a proportion of the total. It is also the explicit and implicit policy of international financial institutions to push South countries into more borrowings from the financial markets.

Either type of Audits would of course be examining the loans very closely -- the amounts, terms, conditionalities and impacts.

Examining Lending Policies, Structures and Processes - Additional Purpose of the Audit

The Audit should also aim to examine policies, structures and processes concerning LENDING and ODA so that policy outcomes will not only be concerned about cancelation of debts already extended but future lending and – as a directly related issue – ODA flows. All relevant laws, rules and regulations should be scrutinized, as well as the practice and performance of concerned government agencies. The coverage should definitely include the use of financial market instruments, involvement in multilateral lending both in co-financing arrangements as well as channelling of Norwegian ODA through the World Bank and other international financial institutions. Outcomes should be aimed at addressing and correcting the flaws and weaknesses in these structures, policies, processes and practices.

Again, this is another way that the Audit's international relevance can be further reinforced. The results can be used for developing critique and recommendations for practices and policies of other lenders – bilateral as well as multilateral.

Criteria for Auditing Loans

There are two distinct but related concepts that have wide acceptance as the basis for debt cancelation and therefore can be used to further substantiation of criteria for “responsible lending” – the issue of sustainability and the question of illegitimacy.

Debt Sustainability

Lenders – bilateral and multilateral – have already acknowledged that sustainability of debt is a major consideration for lending, borrowing and debt cancelation policies. There is an official “Debt Sustainability Framework (DSF)” policy developed and adopted by the IMF and the World Bank, and used also by United Nations and many governments as a major reference. Many debt campaigns have already released their critique of the flaws and limitations of this “DSF.”

An alternative framework to debt sustainability is being asserted by debt campaigns and has in fact found support in some UN agencies and many international development institutions. This alternative debt sustainability framework is anchored on the respect and promotion of human rights -civil, political, economic and socio-cultural – and the principle and right to sustainable and equitable development.

This alternative framework argues that debt is unsustainable if it leads to the violation of the human rights. More concretely, if debt payments are already preventing a government from ensuring and fulfilling the rights of its citizens to health, education and other basic needs, then it is unsustainable. If the debt poses a major obstacle to development, then it is unsustainable.

The impact of debt and debt payments on human development & human rights is a very vital aspect of the debt problem. However, debt sustainability - though redefined in a progressive pro-people way – is still essentially based on the notion of affordability and concerned primarily with amounts and quantitative indicators.

Illegitimacy of Debt

The other concept, which raises the question of illegitimacy, complements the progressive/ alternative debt sustainability concept and is in fact a more overarching, encompassing concept which includes sustainability.

We are aware that the Norwegian Government may not be too comfortable or accepting of the term “illegitimate” because of what it may imply in terms of illegality. Illegitimacy may be replaced by other terms such as “responsible lending” – what is important is to glean the substance of the discourse of what is illegitimate debt, and integrate it into the discourse of “responsible lending.”

The issues being raised within the rubric of illegitimate debt will in fact be more useful to the Audit process than simply looking at debt sustainability, especially so if the Audit will closely examine individual loans.

The notion of illegitimacy includes the history of accumulation of debt including the broader political and economic context starting with the story of colonization. But illegitimacy of debt can and should also be established in clear specific ways.

The following definition of what constitutes illegitimate debt – or what can be translated into what is not responsible lending – was part of my presentation to a UN Consultation on Debt in 2008. This may be useful in defining the criteria for the Norwegian Audit.

“A close examination of specific and immediate circumstances, nature and consequences of the debts claimed from the South would reveal that many of these debts are illegitimate based on the following grounds:

- *The debts involve the gross violation of basic assumptions of debt contracts, as well as widely accepted ethical, social, political, economic, environmental values, standards and principles.*
- *The debts cause harm to the well being of the people and communities in whose name the debts were incurred and who are the ones paying for these debts.*

Violation of basic assumptions of debt contracts

Many debts violate the following basic assumptions of debt contracts:

1. *The contracting parties are clearly authorized and clearly have the mandate to act on behalf of the constituency in whose name they are contracting the agreement.*
2. *The contracting parties have the common obligation of being transparent and accountable to the constituencies in whose name they are contracting the agreement, and that the agreements must respect this obligation.*
3. *The agreement being contracted is for the benefit of the constituencies in whose names they are contracting the agreement.*
4. *The agreement, and the attendant terms and obligations, should be fair and mutually beneficial. It should not be grossly disadvantageous or harmful to one party.*

Violation of widely held ethical, social, political, economic, environmental values & principles

People and societies have a collective or community sense of justice & fairness, a sense of what is right, what is for the common good. Many debts violate widely held common values and principles which include, among others:

- *Basic Human Rights*
- *Sovereignty and Self-Determination of Peoples and Nation-States*
- *The Obligation of States and public officials to act in the interest of their constituency*
- *Democratic Process, Democratic Governance, which includes transparency and accountability*
- *Sustainable use of ecological and environmental resources; Environmental Justice*
- *Relations based on Parity, Mutual Respect, Mutual Benefit, Fairness, Transparency, Mutual Accountability and Responsibility; Non-interference and non-aggression*

Many of these values and principles are not just assumed or asserted — There are established laws, customs and codes, treaties and in fact United Nations covenants and agreements as evidences of wide acceptance, and as declaration of commitment and obligation to uphold these values and principles.

Harm to people, economies and environment

Many debts have clearly caused harm to people, economies and environment, including:

- 1. the massive dislocation of communities, the erosion of community control and access to natural resources*
- 2. the loss of livelihoods, the diminishing of essential services*
- 3. the destruction of forests and rivers and the exacerbation of climate change*
- 4. the net outflow of wealth South economies to the North, the greater vulnerability of Southern economies*

Conditions that lead to Illegitimacy

The specific conditions that lead to illegitimacy are found in the following

- Circumstances surrounding the contraction of the debt (can be immediate, can also include broader, historical context)*
- The nature of the contracting parties – if they have the legitimate authority and mandate to contract loans on behalf of their people, if they are despotic, dictatorial regimes; this is where the issue of successor state becomes relevant, and the question of who determines the legitimacy of regimes and how these are determined*
- The relationship between the contracting parties and the relations of power which shapes the financial transactions and relationship*
- The terms and obligations of the contracts*
- The use of debts and access to credit as leverage to impose conditionalities; The impact and implications of conditionalities*
- How the funds were used and the impact of policies and projects financed by debts*
- The impacts and implications of huge debt servicing*
- The impact and implications of “dependence” on borrowing”*

Participatory, Independent and Transparent Audit

A government audit can take many forms in terms of who should perform the Audit. It can be a Commission that involves members of parliament and officials from the Executive branch of government. What is important is that the body/structure and its functions should ensure and Audit that is:

- **Participatory** – The structure should include representatives from civil society; more importantly the process of the Audit should provide for clear spaces for input from civil society such as presentation of testimonies and feedback on proposed outcomes. The in-puts from organizations and affected constituencies from the SOUTH is a vital part of this.
 - **Independent and Transparent** – The body doing the Audit should not be allowed to conduct their work in an independent manner, without censorship and undue restrictions from government. There should be no restrictions on transparency of conduct, substance and outcomes. In fact, there should be a policy to ensure transparency.
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3.4 LATIN AMERICA

3.4.1 DEBT AUDIT IN NORWAY

By Maria Lucia Fattorelli

This text presents some contributions from social movements – Citizen Deb Audit Brazil - in response to the invitation from the Norwegian Coalition for Debt Cancellation (SLUG) to comment on the Norwegian debt audit initiative and give suggestions on how this audit can become internationally relevant.

First of all, it's very relevant that a country has the initiative to show transparency on its own public debt, as creditors, through a debt audit, because historically this theme has been treated behind closed doors, on a very secretly manner.

This way, the Norwegian initiative is an important step towards respect of the citizens who are – in fact – the debt payers in every country.

The Norwegian initiative is even more important because Norway recently acknowledged its responsibility in the illegitimate indebtedness of five countries - Ecuador, Egypt, Jamaica, Peru, Sierra Leone - and decided to unilaterally cancel part of its claims on these countries (amounting to 62 million euro). This behaviour points out that a complete audit of Norwegian credits can teach many other nations, ethical steps that are so much necessary in the financial relations between the nations.

Secondly, in all economic sectors – government, private companies, and non-governmental organizations – **auditing is a required tool**, a basic tool to explain clearly the real financial situation of any entity. Considering the importance of the public debt and its influence in the economy of each country, **it is fundamental to improve the mechanism of debt auditing.**

The adoption of the instrument of auditing the debt by Norway – even if it's initial proposal is to audit only it's bilateral credits - can improve the adoption of the mechanism of auditing the debt, that is a tool that can help many countries to face the recent financial crises.

It's clearly evident that during the recent global crisis, the absence of deep and correct auditing allowed the continuous and temerarious behaviour of the financial sector, which generated new huge amount of “public” debt to several nations, in order to allow a rescue of private banks, without quite an explanation about the behaviour of these banks. It's important to register that many of these saved banks were presenting a momentary bad financial situation for issuing series of derivatives without any background or correspondence, which was called “toxic” assets by the

market. These toxic papers that loaded the stock markets created an artificial bobble, because they didn't have a real correspondence. It's interesting to remember that by issuing those derivatives without any correspondence (and also, without almost any cost), those same private banks accumulated immense power and great profits, built the most luxurious and ostentatious buildings, financed political campaigns, paid for the most expensive advertisements in all the big press media companies - TV, newspapers, radio, outdoors - and had many other expenditures. Exactly at the same time as the market couldn't take hold of the "bubble" anymore, came the financial crisis and several nations got huge debts to save these banks.

The situation is so dramatic that many worldwide important authorities talked about the creation of "Bad Banks". In <http://baselinescenario.com/2009/01/21/bad-bank-aggregator-bank-beginners/> there is an interesting article that starts asking: *What is a bad bank? . . . No, I don't mean that kind of bad bank, with which we are all much too familiar. I mean the kind of "bad bank" that is being discussed as a possible solution to the problems in our banking sector. In this sense, a bad bank is a bank that holds bad or "toxic" assets, allowing some other bank to get rid of these assets and thereby become a "good bank."*

It's fundamental to precede an audit on the public debt of each nation and separate the different kind of debts, investigate its origin, and give the appropriate treatment for each kind of debt. It's totally unacceptable that the losses of trillions of dollars of this new "public" debt (accumulated for saving banks) will be charged into nations and people without any transparency.

The auditing of public debts could assure the fundamental rights of citizens, to know what they are paying for.

Besides that, from what I've learned with all debt auditing experiences – as a member of CAIC³¹ in Ecuador (2007/2008), assessor of the parliamentary commission of investigation on the public debt in Brazil (2009/2010), and in the last ten years at Citizen Debt Audit - the increasing of external debts in many southern countries started in the 70s, when dictatorships accepted tons of loans from the **international private banks**, the same that lead the illegal and unilateral increasing of the international interests rates from 5 to 20,5%. This not only turned the external debts colossal, but also began a process of conversion of private debts into public debts, followed by other conversions of external debt into internal debt. Many illegal steps have been identified during the auditing and investigations in for example Ecuador and Brazil.

Since the 70s, the largest part of the public debts is made from **private banks** to nations, using mechanisms that provide no benefits to the nations, but only advantages to the banks themselves, and guarantee the payment of previous debt.

We have been watching this process that sacrifice nations in order to serve banks here in South America for the last 40 years. Now we can see the same happening in Europe, and the "public

³¹ CAIC is the short name for the Commission created by the President of Ecuador, Rafael Correa, by Decree n° 472/2007, to audit the public debt of Ecuador

debt” is being the instrument for this process. It’s very important that countries take complete acknowledge of this and stop borrowing hundreds of billion dollars every year only to pay previous illegitimate debts.

We believe that auditing the previous debt of every country is a step of responsibility that might help bring the loans back to their purpose, that is, a mechanism of financing; not a permanent mechanism of transference of public resources to **private banks**.

After this necessary introduction, considering the urgency of the economic situation in the financial world, we follow the comments to the important Norwegian initiative, as the first creditor-initiated national audit of its kind.

According to our experience, the audit should be performed by a commission, similar to the one in Ecuador, where there was an important participation of citizens, members of civil society organizations and representatives from the academy, both from Ecuador and abroad, that had been dedicated to the theme of public debt.

It’s very important to establish a commission responsible for the orientation of the procedures, organization of the specific groups that should at a certain point in time deliver a conclusive report. In this work it is important to include debt audit experts, but also teachers and professors from universities, economists, lawyers, and other members that can represent different sectors of civil society. This commission can start with the preparatory work of auditing.

The following resume is an example of some of the main aspects that should be considered in a debt audit:

1 - General Aspects

Evolution of the Rules and Regulations of the Monetary Authority; Evolution of the Debt Stock; Financial Flows of Resources (loans received compared to interests and amortizations paid); Main Creditors; Main Intermediary Agents; Main Final Debtors; List of the Creditors

2 - Legal Analysis

Approval Procedures; General Conditions of contracts; Special Conditions of contracts; Clauses and conditions under the law and international principles

3 - Analysis of the Facts

Destination Resources; Characteristics of the Project; Objectives; Value of Investment; Funding Sources; Time of execution; Return rate; Priority Project; Technical opinions; Beneficiary Sectors; Origin of Funds; Verification of the necessity; Adequacy of loan to its application - the origin, the general conditions (cost and time).

4 - Methodological Aspects

Audit Period (that must start from the origin of each type of debt), Scope of the debt to be analyzed; Human Resources; Information Sources; Absence of Banking Secrecy; Regular Periodical Reports; Publicity; **Transparency**.

In Ecuador, the organization and methodological aspects of the CAIC was compiled by one of the members - Piedad Mancero. Piedad Mancero focused on the importance of the internal rules of the commission, as well as the definition of the audit plan, as follows:

I. General Auditing Plan

The General Plan must have the following clearly defined: the fundamental reason for the audit, its general objectives, its scope established within the legal framework and the expressed powers, the components to be audited, the processes and activities, the schedule and human, financial and material resources that are required.

An outline of what this plan entails includes:

Fundamental Purpose

The political motive and social aspirations sought to be satisfied by the comprehensive audit should be stated as a message, in a manner perceivable to all the public and available in summary. Specifically, the opportunities to offer certain and conclusive responses to the serious problem of debt, to establish responsibilities and prevent mistakes, and to restore the sovereignty of the people are particularly stressed here.

Main Objectives

A wide spectrum of objectives, to take effect throughout the auditing process and in periodic assessments, must be determined in order to direct the investigation and analysis in tranche and specific credits. These would include:

Verifying the existence (or inexistence) of transparency, quality, efficiency, effectiveness, respect and care toward ecological factors during the different phases of the borrowing process; the constraints, interventions and contractual impositions, both visible and concealed, that act against the lives and dignity of the citizens and/or place at risk the peaceful coexistence of the people; equity in agreements and contracts and respect for the sovereignty of the country, as arguments for the qualification of the legitimacy or non-legitimacy of the debts.

- *Determining the magnitude of the macroeconomic, social, environmental and cultural effects, from a perspective of human rights, circumscribed to conglomerate country or population groups, according to the case in question.*

- *Delivering sufficient and convincing evidence to national authorities and civil society to allow the adoption of corrective and restorative actions for damage caused by the debt.*
- *Determining the responsibility and co-responsibility of external and internal actors and creditor institutions and local entities that take part in the debt process.*

The Extent of the Audit

The legal document that sets out the actualization of the audit has to establish the scope of intervention, institutional coverage, the period to be assessed, the fundamental concepts and contents of the comprehensive audit that would differentiate it from a conventional audit (see conceptual approaches to integrality), and any other components that require a court order.

In addition, the universe of credits classified by source and purpose, selection criteria and the investigation's priorities must be determined in the function of the main objectives.

Basic Lines of Action

It is essential to establish a base scenario that enables the actors participating in the auditing process to carry out their functions. This can be achieved through:

- *Identifying sources of information, especially institutions that have participated in the lending process, and their specific responsibilities*
- *Prior review of archives, reports, research and exams conducted.*
- *Building the capacities of technical teams in the orientation of illegitimacy doctrines, legal principals in national and international law related to debt processes, the rights of the people to seek their development unimpeded by internal and external interferences arising from debt, particularly those that are induced; and the application of investigative procedures that are consistent with the objectives pursued.*

Activities

- *Determine the legal and institutional framework in force during the period being audited, within which the credits obtained are agreed and used, or negotiations, re-negotiations or restructuring of the debt take place.*
 - *Identify the tools and institutions in force in international law, derived from conventions, pacts, agreements, protocols and declarations celebrated and signed between States and that, after being ratified individually, have acquired a compulsory status.*
 - *Creation of a database of all loans, with its basic components (data on the lender, borrower, beneficiary or executor, purpose, instalments, interest rates, total sums, contractual amounts paid out, repayments, interest and commission paid and balances to pay).*
-

Personnel Requirements

The planning of the work should establish the need for human resources and the individual professional profiles of the investigating auditors and other specializations that are going to make up the technical teams, along with other operative units belonging to the entity.

A matrix of personnel requirements, synthesizes the terms of reference, enabling both professional and logistical support staff to be selected. Also, it facilitates the process of the corresponding contracting, whether part-time or for the full period of the audit. It contains the following elements and responsibilities designated to each case, similar to that used by the CAIC:

- *Profession*
- *Professional requirements (specialization, experience, others)*
- *Position to enact*
- *Duration of the job*
- *Remuneration*
- *Activities to be performed*
- *Expected results*

Due to the comprehensive nature of the audit and its impacts, a multidisciplinary formation of the teams is convenient, particularly for the cross-sectional analysis group, such as that studying impact.

Audit Schedule

In order to achieve the proposed goals, it is important to take into account the length of time and allocate the activities accordingly when organizing and planning the work. The distribution of activities must be consistent with the priorities that have been established, with any limitations and obstacles – sometimes unforeseen - that may present themselves.

It is essential to develop a general schedule and other specifics for tranches of pre-determined debt and the cross-sectional groups.

The schedule must include periodic reports of advances and appropriate versions to disseminate to the public in order to take into consideration the expectations of the authorities and citizenship.

Budget and financing

Carrying out the audit requires human resources, materials, transport and further items and services that translate into financial costs. The different concepts of remuneration, expenses per session, consultancy and professional service contracts (fees), transportation (tickets and travel allowances), operational hiring costs and hiring costs for events, the purchase of equipment and materials and miscellaneous must be estimated. This must be done in accordance with the fiscal nomenclature imposed in each jurisdiction.

The financing of the budget for the audit generally emerges from the political commitment assumed by authorities or from regulations established in laws that support the execution of audits. This enables audits to be carried out totally or partially through fiscal appointment. Other contributions may arise as a result of cooperation from world organizations that work towards transparency, equity and justice in mobilizing North-South capital flows. However, the origin of the funds and services must be accurate in order to ensure the audits and its results.

4. Summary/conclusions

The texts in this report are gathered from various continents and contributors. While all the texts differ in shape and choice of words there are some general points that can be found throughout the texts. These points can be divided into three:

4.1 Scope of the audit – what debts to be included

The authors highlight two suggested approaches as to the scope of the audit. The first one is a very wide audit that includes all debts to Norway including bi- and multilateral debts, commercial debts – including debt through the Norwegian export credit agency, Norwegian debt swaps, vulture funds operations connected to Norwegian debt cancellations and ecological debts. This approach will lead to a thorough insight into outstanding debts to Norway. If this approach is taken, the authors highlight the importance of looking into the origin, processes and the likes of each individual loan, and to treat each loan differently so as not to generalize.

The second suggested approach is to select some specific debts that are thought to represent some main issues and challenges – with the purpose of developing a framework and policy for debt cancellation for the Norwegian government. When such a framework is in place, norms to be followed in the future should naturally follow.

Whichever approach is selected the contributors to this report clearly feel that for the Norwegian debt audit to be internationally relevant it should include Norwegian lending practices and result in some form of framework for responsible lending. The prevention of accumulation of illegitimate debts in the future is (almost) as important as the cancellation of possible current dubious debts to Norway.

4.2 Criteria for debt cancellation

Several of the contributors feel that the Norwegian debt audit can, and should be part of a wider campaign for global debt justice. While the word illegitimate debt is not generally accepted in most government forums and the definition of illegitimate debt even less so, the contributors still want the Norwegian debt audit to look beyond formal requirements. While law, both national and international, contractual terms and other formal requirements, are a natural and important part of an audit, the contributors feel that the social, economic and environmental consequences of the debts should also be considered.

4.3 Practical considerations

In addition to the scope and the criteria for the audit there are some practical considerations that should be taken into account to make the Norwegian debt audit as internationally relevant as possible. There are some key points that are consistently repeated by many of the contributors: participation, independence and transparency. The contributors seem to agree that the best solution as to who should perform the audit is to use a panel of experts. They highlight the importance of participation both from the South and the North, both from lender and creditor in the panel. Furthermore the panel should draw on people with different expertise. Experts within law, economics, development, and of course debt, are some of the contributors' favourites to be included in the panel. A wide panel like this, consisting of multiple persons, should secure a great degree of independence from the Norwegian government. This would of course be further strengthened by CSO participation in the panel. A high degree of transparency would also contribute to this, and at the same time make it easy for national and international actors to get insight into the process of the audit.

Other possible difficulties to overcome which have been mentioned by the contributors are limitations of time and/or resources. The audit should also be given access to necessary information, be given logistic support from the Central Banks, and it should be offered technical co-operation by those institutions dealing with debt information: Central Banks, Ministry of Economy and Finance (MEF), Comptrollership and the Ministry of Foreign Affairs.

All the points made in the report are meant as positive advice, to ensure that the Norwegian debt audit will be as internationally relevant as possible. All the contributors are very positive to the Norwegian audit and feel that if the right considerations are made, Norway will again break new ground as they did by taking creditor responsibility when cancelling the debts from the Norwegian ship export campaign.

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