



From illegitimacy to responsibility: transforming development finance

Eurodad annual conference

In collaboration with Erlassjahr.de

29th – 31st October 2006, Berlin, Germany

About this report

This is a full report of the Eurodad annual conference. All of the speakers in plenary have also provided their presentations, which can be seen in full on the website at:
www.eurodad.org/articles/default.aspx?id=713

You can also see photos of the conference at:
www.flickr.com/photos/eurodad/sets/72157594367608525/

We welcome feedback on the report, and of course further suggestions about how we can work together on the issues.

Thanks are definitely due to all the presenters at the conference, and all those who facilitated, reported on and organised the event.

Sunday 29th October

Focus on the creditor

Joseph Hanlon began by highlighting how the Jubilee 2000 campaign of the late 1990's had been incredibly successful in making "an arcane issue accessible and public". The creditors however responded with debt "relief" not cancellation and neo-liberal conditionality was attached to this "relief". What went wrong, he asked? We focused on the debtor's inability to pay, he argued. Debtor countries "deserved" to have their debt cancelled because they were poor. The focus of the Northern campaign was on charity, he said. But this only made concession to northern myths about the South in order to build up support in the North for debt cancellation. It was more difficult to argue that we are rich and they are poor and heavily indebted because we are stealing their money. The corruption question also loomed large: will "our" money be wasted? These factors contributed to the dominant charity paradigm.

But it was extremely unbalanced to put the whole focus on the debtor, said Hanlon. Lending is a two way transaction. In the 1970's there were huge numbers of loan pushers. In the 1980's there was a sudden jump in interest rates. There was also irresponsible Cold War lending.

More recently, the concept of "odious debt" has re-emerged which has shifted focus onto the lender. A debt is odious if a regime takes the loan to suppress its own people and the lender was aware that the people would not benefit. The growth of the concept of odious debt has been supported by some key developments:

- South Africa: in 1990 Nelson Mandela was released from prison. International banks gave him bill for US\$21bn for "apartheid debts". US pressure stopped Mandela and the ANC from refusing to pay this sum. This led to the apartheid debt campaign.
- Argentina: in 2000 domestic court cases ruled debts contracted under the military dictatorship of 1976-84 illegitimate.
- UK: in 1998 the UK House of Commons International Development Committee said loans to Rwanda were "odious".

But many organisations in the South are making an even broader argument, said Dr. Hanlon. Loans should also not be repaid where they are linked to failed projects like dams. The Philippines Bataan nuclear power station built on earthquake fault, he said. The project was totally corrupt and never used. But the Philippines will pay US \$1mn a week until 2018.

It is also crucial to look at domestic law, he argued. In domestic law, you cannot enforce an unfair contract. Lenders must show good faith and prudence. For example, you cannot lend to gambler and expect to collect. The UK Consumer Credit Act of 1974 defines a new concept of "extortionate debt" which a court can cancel if the lender requires grossly exorbitant repayments which "contravene ordinary principles of fair dealing". A lender is not allowed to force a borrower to take on onerous terms in order to roll over a loan and the lender must assess the credit worthiness of the borrower. This reverses burden of proof, said Hanlon. This is key. It does not matter whether the borrower "deserves" debt relief. We do not care if the people of the Congo will "waste" the money. Instead, the question is: does the lender have a right to collect? Or was loan so corrupt, foolish and incompetent that the lender did not show good faith and prudence?

These principles are important if we are to prevent future bad lending. Lenders are only concerned about repayment. They will only change these habits if they are not repaid. So to avoid moral hazard, we must punish lenders now for past illegitimate loans, argued Hanlon. So where are we now, he asked? In the Iraq and Nigeria debt cancellations of 2004 and 2005 illegitimacy was raised. It was not formally included, but clearly accepted by lenders. This represents a partial victory. Argentina also refused to pay citing a broader claim of illegitimacy. More recently in October 2006, Norway accepted shared responsibility and cancelled debt. This was a victory for campaigners.

This shows that victories are possible. 15 years ago, we were told we were crazy to call for debt cancellation. We have also been told that illegitimacy arguments are impossible but we have seen the Norway decision. This is a campaign we can win, he ended.

Monday 30th October

INTRODUCTORY PLENARY

Alex Wilks, Coordinator of EURODAD

Berlin is a city where infamous political lines have been drawn. Many African borders were decided here at a conference in the late 19th Century. Then the Berlin Wall went up nearly fifty years ago. But the aim of this conference is to break down barriers between NGOs and to consider lines of action for progress on shared goals. We must aim for new actions to increase the effectiveness of campaigning.

The key focus will be on illegitimate debt and responsible financing. Issues including transparency, financial accountability, political and civil rights, corruption and governance are of political concern to both the North and South, from the Congo to Belgium. It is not possible or appropriate for the North to preach to the South.

Illegitimate debts of the past and responsible North-South financing today and tomorrow are linked issues. For example Liberia's government and citizens have had to take on debt from dubious previous regimes. Global creditors are attempting to launder the previous debts with aid. Future illegitimacy is also an issue, for example with Congo Brazzaville citizens facing the risk that debt cancellation would help a regime in which public money goes astray and the rights of citizens are not respected.

We need clear standards and procedures to enable citizens to challenge governments and IFIs and require creditors to accept financial and moral responsibility for their mistakes. They have frequently legitimised bad projects, policies and governments.

The World Bank currently has nothing to say about illegitimate debt – they failed to provide a speaker for a meeting proposed by Eurodad, INFID and others in Singapore. The role of the Bank there, under pressure from civil society groups to boycott its whole meeting, was complex. Finally the Bank challenged the Singaporean government directly on governance and citizens rights issues. But at the same time TV screens showed a rolling banner “Singapore in top ten of World governance: World Bank study”.

Everyone at the conference is by definition against odious debts and for responsible financing. Citizens have long worked to expose and challenge problems of a lack of media freedom, freedom of assembly, opaque budgeting and reporting, a lack of external audits, absent or weak campaign finance regulations. Just because the World Bank is now talking about some of these issues does not mean we should complain or get confused about what we stand for.

There has been overuse of the term ‘conditionality’. We should seek to address creditors with terms such as obligations, international norms and rights. In certain circumstances national civil society groups want to appeal to organisations such as the World Bank to apply pressure from above. Northern NGOs should be wary of occupying the political space of Southern organisations. We should also define more sharply what we want from aid (i.e. how much to flow as budget support), and monitor it more closely. Where governments cannot be trusted to fulfil requirements or respect rights it is sometimes better to provide funding to NGOs or the private sector. Competition from South/South lending introduces a new dynamic. We should expose corruption in the North, for example by seeking more information and audits on export credit agencies.

We should seek a unifying agenda, across past illegitimacy and future responsibility. While respecting diverse tactics, we can increase definitional clarity and enhance collaboration on our shared goals. This conference will draw new lines in the sand between us and our political opponents and new lines we can walk together forward on.

PLENARY ONE

Illegitimate debt: clarifying the concept, making political progress

Jürgen Kaiser, Erlassjahr.de, Chair

This session is to consider different legal definitions of illegitimate debt, how robust they are and what actions can be taken on this issue.

Ashfaq Khalfan, CISDL, Canada

Odious Debt: Definition, Application and Context

Businessman Nasir Ali wanted to establish a duty-free shopping centre at Nairobi's international airport. Then-president Moi asked him to bring US \$2 million in cash to a meeting where the project was agreed. Eventually, however, relations soured, and the Kenyan government took back control of the shopping complex. Mr. Ali brought a claim against the Kenyan government before the International Centre for the Settlement of Investment Disputes (ICSID), an arbitration mechanism established at the World Bank. The new Kenyan government contested Mr. Ali's claim. In a recent judgement the ICSID tribunal refused to give Mr. Ali any redress as his contract was procured contrary to international public policy and Kenyan law, through bribery. The tribunal distinguished between acts by the Kenyan President and those of the Republic of Kenya. The tribunal further stated that international law aims to protect the public, in this case the tax-payers and citizens of one of the poorest countries in the world.

1. Definition of the doctrine of Odious Debts

The odious debt doctrine was first formulated by Alexander Sack, and has been added to by other credible international law scholars. The definition is debts contracted against the interests of the population of a state, without its consent and with the full awareness of the creditor. Thus, these debts cannot be enforced against a debtor State.

With dictatorial regimes, the population's lack of consent is presumed, unless there is evidence indicating significant public support for a particular use of funds. With democratic governments, lack of consent needs to be proved. Absence of benefit means the purpose of the transaction was improper and the loan spending did not benefit the people. Creditor awareness means that the creditor must be aware of the absence of consent and benefit. It must either (i) have actually been aware of these facts (ii) have been intentionally blind to the use of the loans or (iii) have been wilfully and recklessly negligent in making the type of inquiries that any honest and reasonable lender would. It is common for tribunals to deal with criteria of this nature such as when determining compensation for damage caused by negligence or determining alimony payments.

Some grey areas remain. If odious debt is repaid, can the payments be recovered by the debtor? A successor government may be held to have acquiesced to the validity of the loan agreement. But for odious debt sold on to another party the secondary buyer might be able to sue the initial creditor.

2. Status in International Law

The odious debts doctrine is not an agreed aspect of international law but many international law scholars agree that the doctrine has a strong basis. International treaty law, including the recent UN Convention Against Corruption, provide a basis. International customary law provides significant support. Several states have credibly and successfully invoked the doctrine and thus repudiated odious debts. A number of international arbitrations have applied it, in particular *Costa Rica v. Great Britain*.

The underlying concept behind the doctrine has its basis in several general principles of law that are accepted at the national level. Under domestic law, a third party can be held liable for assisting an actor breach its obligations. If a bank knowingly assists a CEO to defraud a corporation, that bank can be held liable for the losses of the corporation. Citibank was held liable for its actions in the ENRON scandal. This domestic law analogy is probably the single most convincing argument in favour of odious debt.

There are several challenges to the doctrine. Firstly, it is argued that most cases in which the doctrine has been invoked has occurred in cases in which sovereignty over a country changed (state succession), rather than to mere changes in government. But there are several cases in which the odious debts doctrine was invoked in relation to changes of government. Critics also say most states repay debts even where these are odious. But actions carried out for reasons of expediency, such as to preserve good relationships with creditors, do not constitute customary law. Third, the difficulty of distinguishing between which loans were used for beneficial purposes is raised. Money is fungible, and loans given for a beneficial purpose may free up resources that a regime can then spend on irregular items. A tribunal addressing this issue, or a negotiation between states, would have to estimate the overall proportion of debts that were odious and share this among creditors who had given general funding to the regime in question.

3. Likely Application of the Doctrine

The most realistic routes to apply the doctrine are negotiations where a debtor state can emphasise the odious nature of the loan, using this as leverage to negotiate a substantial write-down in the debt owed. Almost all legal disputes relating to debts are resolved in negotiations rather than before a tribunal. For the doctrine to secure greater international acceptance the following routes will help:

1. More debtor states burdened by odious debts could forcefully raise the doctrine, with a credible threat of repudiation.
2. Action by some creditors (state, inter-governmental or private) to write-off debts explicitly based on the principle of odious debts.
3. Recognition of the odious debts doctrine in principle by states.

In practice, creditors may resist any explicit mention of the odious debts criterion as they would have to admit some culpability, and create a precedent. Most debtor states will be more concerned about securing write-downs than in making legal points. However, implicit application of the doctrine will put creditors on notice and make them more careful in future. Acceptance of the odious debt doctrine by a court or tribunal would provide further support for the doctrine. The International Court of Justice would potentially have little difficulty in recognising and applying it. Another potential avenue is UN human rights monitoring bodies, such as the UN Committee on Economic, Social and Cultural Rights.

4. Conclusion

There are many situations in which debts can be seen as illegitimate, but to which the odious debts doctrine would not apply. Three include:

- 1.) Where developing countries have to repay debt at the cost of realizing citizens' basic social and economic rights.
- 2.) Loans accompanied by bad policy advice or supporting projects whose failure should have been foreseeable, for example, for many mega-dam projects.
- 3.) Claims that Northern States owe Southern countries reparations for actions such as complicity in oppression by dictators, proxy wars or colonialism.

Any sensible lender should now know that the odious debts doctrine can cause them legal difficulties, particularly where loans go into personal coffers. For recipient governments to raise odious debts requires facts and guts! The main obstacle is political, involving the threat of financial retaliation or governments thinking that those in glass houses should not throw stones. Moving further on illegitimate debt will lead to debt write downs no longer being an issue of charity, but of justice.

David Ugolor, Executive Director ANEEJ, Nigeria and Coordinator, ECONADAD

A Southern view on illegitimate debt

We can use Nigeria as a case study for explaining odious debt and the concept of illegitimate lending. It is a resource rich country riddled with conflict, poverty, instability and with a poor infrastructure.

There is a strong issue of illegality. Since independence the country has been ruled by elected civilians for 17 years and by unelected military leaders for 28 years. Military leaders accumulated the highest amount of loans. These were not in the public interest. During military rule there was no national assembly and no parliament.

General Sonny Abacha did not borrow money internationally. But he also did not service previous loans, incurring huge penalties and fees. In a 1997 budget speech Abacha said 145 projects were financed by international capital worth US\$836 billion. However 18 projects (worth 836 billion) were never even completed. The ministry of finance has said that of all projects financed with foreign loans up to 1996 only 2% were successful, 25% are merely functional, 64% failed and 9% were completely fraudulent.

The illegality issue is important. We cannot just talk about debt sustainability and reaching the Millennium Development Goals. A lot of energy should be devoted to deal with this. If debts are determined to be illegitimate they must be unilaterally repudiated. This will discourage lenders from illegal and unethical practices. It is in line with the G8 anti-corruption stance and with World Bank calls for transparency and accountability.

CSOs and the international community campaigned for the debts to be defined as illegitimate. Nigeria has set a precedent in asset repatriation. Some money was returned from Switzerland and resources were allocated to CSOs to allow monitoring of the money's use.

For me the doctrine of odious debt is as follows: "If a despotic power incurs a debt not for the needs or interests of the state, but to strengthen its despotic regime, to repress the population that fights against it ... this debt is odious for the population of all the state". Focussing on the legal aspects of odiousness can be a double edged sword. We need to have a practical case to use the doctrine of odious debt, for example in a period of military dictatorship. Where a loan is used to provide services for citizenry benefit it may constitute a legally binding contract. We need CSOs to analyse and pick out cases of odious debt. "(We) need coherence in presenting it for the international campaign".

Other important points I want to raise for discussion are:

- Though Nigeria has escaped Paris Club debt it still suffered from parting with US\$12 billion which it had to repay to creditors. This money could have been used within Nigeria.
- Currently debt cancellation is considered as aid (Official Development Assistance).
- The new Nigerian Government is turning towards the Chinese Government for loans in order to meet Millennium Development Goals.
- Nigeria still has the London Club debt. We need more demand for cancellation and more campaigning on this issue.

Sabine Michalowski, Human Rights Centre University of Essex, UK

A critical appraisal of odious debt in international law

I am a legal academic, not an activist. I am sceptical about the doctrine of illegitimate debt. I have spent a lot of time in Argentina, where this is an important topic.

Weaknesses of classical odious debt doctrine

It is not a clearly recognised principle of international law. There are cases where debts are inherited from a previous regime, but evidence is usually a problem. The evidence mainly refers to state succession, not regime change.

The criteria are vague and problematic.

- How can we define whether citizens' consent was gained?
- How can we define if a debt is beneficial to citizens? It is hard to agree internationally on what is beneficial. Patricia Adams, for example, wrote that Saddam Hussein used international money for beneficial projects, freeing up his own money for repressive measures.
- Who should decide? Alexander Sack argued this should be entrusted to an international body to decide objectively. I have a political, not a legal, concern about this. If you let the New York courts decide what was beneficial I am not sure it is an appropriate forum to make this decision on behalf of the people.

There is also the difficulty of applying the doctrine to restructured or traded debt. How is it possible to apply the doctrine to the new holders of the debt?

Having studied this issue for some time I am doubtful about the legal arguments for the traditional odious debts doctrine. The political arguments are good and important. But I have been working on an alternative legal approach to odious debt. This would consider debt as odious if it violates core principles of international law.

It could be possible to apply imperative highest principles of international law – *ius cogens* – but these terms are very narrow and have predominantly been used to apply to humanitarian issues such as torture. If criteria could be defined and applied by national courts, they could be applied to the past. This would make it easier to apply to restructured and traded debt, as the original violation would persist.

It is difficult to agree on which principles and norms would apply. It is also hard to create a clear link between the loan and the violation of international law. Loans in themselves may be considered neutral – they just provide money. If someone lends money to Argentina's military regime, the loan contracts would not mention using the money to supply torture equipment. The link would only be the provision of finance to a regime which is violating its *ius cogens* obligations. It is not clear, however, when the violation of torture, crimes against humanity, violation of the right to self-determination, the use of force and aggression became *ius cogens* issues.

The criteria are easier to define. States are bound by these norms and national courts are bound to apply them. Claims can be brought in national courts and legal processes. In principle a national court could declare the contract invalid. This is better than using International law which is very weak, because of the power structures which block agreement.

This approach can be more easily applied to restructured debt. The contract would be void, whatever the successor government has done with the debt under pressure.

Take for example the case of Argentina. The debt of the military regime is argued to be unconstitutional. As argued in the Olmos case loan agreements are considered void,

unless properly ratified by a constitutional government. Valid ratification would require an audit of the debt. Before such an audit all operations with regard to this debt are unconstitutional and void. Paying the debt at all does not give the message that the loan is considered legal.

The problem is that the creditor comes with a contract, and we come with a hundred pages of legal arguments. But there are opportunities, especially in an approach grounded in *ius cogens* and national legal mechanisms.

- Presentations from this session available at: www.eurodad.org/articles/default.aspx?id=713

DEBATE

Jürgen Kaiser, Chair, encouraged participants to consider what the presentations bring for our strategising, bearing in mind that we are a political movement and that legal approaches are just one approach.

Ashfaq Khalfan said that to prove absence of benefit one suggestion has been auditing firms. But most odious debt disputes will be settled by negotiation, for example an acceptance that 60% is odious. It might be possible to shift, by agreement, the place where legal hearings are held – to move them away from New York or England. When people buy loans on the secondary market, they may have remedy against the first holder of the loan for misrepresentation. We should use the existing odious debts doctrine until we can improve it or find another.

Peter Lanzet, of EED said that the presentations gave him the impression that this is a minefield, a paradise for lawyers. He and others requested clarity on what is illegitimate and what is illegal. And is it possible to apply national law to the lender.

In response to a question by Peter Lanzet on whether it is possible to apply national law to the lender Ashfaq Khalfan said that in the case of a private bank national law could be applied, if it is litigated in the court of the lender. At the international level there is a strong overlap between illegality and odiousness. But at the national level you can have a loan that is both legal and odious. International fora will examine whether loans were legal under national law. The World Bank Group's ICSID tribunal did take note of the fact that the contract I mentioned earlier was illegal under Kenyan law.

Celine Tan, Third World Network, said that often legal analysis by a creditor is very limited, just examining whether contracts are signed by a person with the appropriate authority.

Soren Ambrose, SANA, said that both Ashfaq and Sabine's presentations made clear that international law is inseparable from politics. He appreciated Sabine's suggestions to work at the national level. We had a conference in Nairobi in June on repudiation. The threat of this has to be real for the negotiations to work.

David Ugolor explained that the national assembly of Nigeria was persuaded to make the repudiation demand because of the discrepancy between the amount being spent on social sectors and what was being spent on debt repayments. People have a constitutional right to services so the lack of spending here can be considered illegitimate.

On the Olmos case in Argentina Sabine Michalowski explained that it started as a criminal case against the ministry of finance relating to debt taken on under the military regime. There were no convictions because the statute of limitations but the judgement was a useful audit and showed up many irregularities in the contracting of the debt and harm to the country, also showing responsibility of the IMF. There was a political impact,

but not a legal one. The court did not rule on the constitutionality of the debt. Alberto Croce added that the former dictators are currently prisoners and action is being taken against the military for human rights abuses. The only known survivor has disappeared since the case. A month ago an Argentinean court announced \$20,000 million was required to pay off external debt. Many representatives of the Central Bank could be sentenced through the constitutional process.

A question was asked by M.P. Giyose, Jubilee South Africa about how citizens could follow up debts for unbeneficial operations that have already been repaid, such as in the case of South Africa. Sabine Michalowski responded that it is difficult to make a case for reparation or repayment, but there could be legal opportunities depending on the national law of the state in question. It might be possible to argue that the repayments were made without legal justification, so you could argue for restitution. Ashfaq Khalfan also said that recovery would be difficult, but not impossible. To repay the loan is to acquiesce in its legality; however a case could be made that creditors applied undue pressure.

Victor Nzuzi argued there is a problem when debts are restructured before a democratic government is in place, as happened in his country, the Democratic Republic of Congo. Sony Kapoor responded that in cases where restructuring or repayments occur we can challenge the lead financial institution which moves forward the restructuring. We could also bring up the concept of duress and lack of due diligence by the private banks.

Victor Nzuzi urged participants to be more optimistic. He said international laws “*are not the ten commandments; they did not fall from the sky*”. People make the laws and we have the ability to change them, clarify them, and elaborate on them. We cannot just accept them as they are. Sabine Michalowski agreed, saying Sack’s definition is not set in stone and we should look to challenge the validity of contracts on other grounds as well. In the discussion Ashfaq Khalfan argued that as the Sack doctrine exists now we should use it until we find an alternative.

Sony Kapoor encouraged civil society groups to remain focused on the political issues, using cases and mobilisation as an entry point. David Ugolor agreed that we should emphasise the political; and not the legal. Ashfaq Khalfan reinforced this, arguing that we should not wait for the resolution of legal issues. Advocates need to be more strategic and to pick the right examples, then “the legal issues will solve themselves”.

Moctar Coulibaly commented that in Mali they cannot have confidence in the World Bank and IMF, knowing what policies these institutions promote. They finance personal projects which bring nothing to the people and that violate the rights of communities. What about rights such as to housing and health? How are these recognised in international law?

Ashfaq Khalfan agreed that human rights represent a “gap in the fence”, where countries do have extra territorial obligations. We can push from this angle in cases where countries have so much debt that they cannot meet welfare obligations.

David Ugolor commented that it was CSOs who first brought up the debt issue, but they needed to persuade the government to take action. He urged all at the conference to engage governments.

Angela Keller-Herzog suggested using the United Nations Convention Against Corruption, where public money has been used for private gain and the convention recognises that this money should be repatriated. Much progress has been made in the criminalisation of corruption in the last 20 years. It is clear that it is not OK for banks to accept deposits of ill-gotten money. Can we argue that it is not OK for private banks to lend where there is a strong risk that the people of the recipient country will be defrauded?

PLENARY TWO:

Responsible financing: where we are now, proposals for action

Vitalice Meja, Policy Director, AFRODAD

Towards a responsible future for development finance

Despite the Monterrey Consensus, Gleneagles declaration and other commitments to raise total aid to developing countries, the gains have been only marginal. There has been a reduction in the quantity of official development assistance and concessional loans.

The structure of international financing is fast changing, placing Export Credit Agencies (ECAs) as major sources of funding for export, investment and other development projects in many developing countries. ECAs' loans have been used to facilitate violations, with credit being used for stalled projects, privatisation of state corporations and basic social services and to support the purchase of arms by dictatorial regimes. This raises the question discussed by Sabine of knowledge at the time of the loan and responsibilities on the lender. The ECAs operate in a clandestine manner.

ECAs are public agencies that provide guarantees, credits and insurance to private corporations from their home country in the West to do business abroad. Most industrialised nations have at least one ECA.

A large part of the external debt of many African countries is to ECAs: 58% in Lesotho, 55% in Gabon, 42% in Congo and 21% in South Africa. Do guarantees and insurance cover provided by ECAs facilitate trade for first world firms or development for third world host countries? The countries concerned have almost in all cases fallen into crushing debt, while the beneficiary firms have maximum profits if projects are successful and zero losses in the event of their failure.

Case of Nigeria

In 2004 the countries' debt was 153% of its original borrowing. Only 2% was spent on social infrastructure. This weak infrastructure has contributed to 'brain drain' with the most educated and skilled leaving the country in search of better opportunities. Other sectors which received ECA financing include consumer goods (28%), Energy and oil (14%), general services (19%) and manufacturing (14%).

Consumer goods were used by the elites for huge import bills to the country. They did not help the population. Money was also used to try to establish import substitution industries and for the oil industry. Most of the projects have become white elephants and were riddled with corruption. The telecommunication sector served only 500,000 people after two decades of operation, most of the hotels did not take off or ended up being sold off. Nigeria airways was sold off to Virgin airlines. The Ajoukuta steel plant despite having consumed US\$1.3 bn – including from ECAs - has failed to produce any steel. The main ECAs involved are from the UK and Germany.

CSOs and Parliament in development financing

Afrodad has been looking at what it takes to 'own' a loan as a country. Parliamentarians are responsible for legislating on how much a country can borrow. Parliamentarians should be empowered to approve loans, and to oversee government spending and debt management. This should be monitored by CSOs in order to make sure that parliaments fulfil their role and remain representative of its citizens. Afrodad have already done case studies in 10 African countries on how to improve parliamentary participation. In some countries the mandate for loan contraction is given to the minister of finance alone.

Conclusion

Our governments need help in terms of development finance and to develop pro-poor and pro-environmental laws and monitoring regimes. It is not OK for Northern institutions to champion anti-corruption measures when they are themselves not transparent. Civil society in the country must be empowered.

We should form a larger critical coalition and support base around the ECA issues. Creditor irresponsibility equates to illegitimacy of debts. More country cases need to be built in order to present clear evidence and facts and push for concrete action. Countries like DRC and Liberia should be given priority.

Angela Keller-Herzog, Head of Global Programmes, Transparency International

Aid and Corruption

Transparency international aims to “*fight corruption in all its forms*”. TI has 90 chapters worldwide, autonomous but following basic rules. Some have strong capacity, others are very small and voluntaristic.

The World Bank has said it will start to fight corruption, so TI thinks that is great. There is internal discussion in TI on the details, including on the issues raised so far by speakers at this conference. Different activists take different views.

The discussions about corruption and about aid and corruption have come out of the closet and are being actively discussed in the international arena. The entry into force of the United Nations Convention Against Corruption is also an acknowledgement at the highest level.

TI does not have an agreement on a cut and dried five point criteria or menu for calling for lending to stop or finance to shift. But we have five principles which guide our work.

A technocratic approach only takes us so far. We need to look politically, not only legally. The World Bank has been trying to take technical approaches but this only takes you so far. Unless the government is on board your anti-corruption prescriptions will not be too successful, especially in tackling grand corruption where economic and political powers are concentrated in the same people.

Auditing and bean-counting approaches are OK, but development loans should be scrutinised for who is supposed to be the intended beneficiaries and what are the intended outcomes. External audit and other input-oriented anti-corruption approaches can be useful, but we should not be distracted by them, rather focus on the outcomes.

Emphasis should be placed upon mutual accountability, not on cut and dried conditionality. Donors promise to behave in reasonable ways, not putting lots of conditions on, not demanding 15,000 quarterly reports and so on.

Poorer people need to have recourse. The recipient government has a commitment to use aid well and has accountability to intended beneficiaries, for example through parliament. Civil society watches. In practice there is often very weak accountability between the recipient government and its population. But the poor tend to be marginalised in their societies. The donors then have a responsibility to forge a much stronger link of accountability directly to the intended beneficiaries to make sure there is a link between intended and actual purposes and can provide evidence to donor country taxpayers. There have to be better recourse mechanisms to allow the accountability loops to function. Some donors have put in third party complaints mechanisms for projects in highly corrupt environments. Elsewhere there are complaints through auditor

generals' offices or other government mechanisms. Where the courts, police and other such institutions function well, then those are the mechanisms to make complaints if there are no benefits coming from a project or sector loan. Where such institutions do not function well it is the responsibility of the donors to ensure there are other ways that information can be obtained from the intended beneficiaries of aid.

Aid can contribute to the prevention of corruption. Some bilateral grant aid may be better to do that. Transparency International has the concept of a National Integrity System. A whole series of institutions must function well to ward off corruption. These are eleven in number, and include the legislature, executive, judiciary, ombudsman, the media, civil society and other watchdog agencies. Transparency International would argue that it is not just a question of one entry point for the World Bank or others to come in and impose conditions there to combat corruption. In different contexts our chapters have analysed the drivers of corruption and what needs to be done. It is not just one thing, but a combination.

Conclusion

Issues we will discuss further in TI at our upcoming members meeting is accountability for tracking money and results, linking to the MDG agenda. When loans are issued or projects are signed there should be a public declaration of who are the intended beneficiaries and what exactly is this supposed to achieve. That is the start of aid transparency. TI has an understanding that corruption is everywhere, including with Northern corporations. So looking at aid contractors bribing government officials, part of the problem is the companies willing to pay the bribes. Untying aid is positive. Aid going directly to lower levels of government can also be good. The World Bank has provided over \$1 billion in loans at the community level, in ways that are accountable at the sub-district level. People do have recourse if they suspect money is going astray.

There is a risk in trying to separate out conditions into substantive and procedural. The IMF's Article IV conditions are all for transparency, if only to the IMF. We must be careful to keep an eye on peoples' empowerment, rather than engage in a discussion on technical drivers. We need to occupy a middle ground – not ignoring gross abuses or large amounts of money being siphoned off. We cannot have a zero tolerance policy saying that we have evidence of one small case therefore will shut down lending to the whole country. Most people would understand that there were geopolitical drivers behind that. We need the ability to have graduated response, not ignoring corruption but being predictable. But we cannot put down technical criteria. We need to look at public transparency and accountability, which will look different in the political contexts of different countries.

Penny Davies, Policy Officer, Diakonia, Sweden

The Rise of China. New lenders - opportunities and challenges for responsible financing

China is reshaping the rules of the global economy and also of development finance. It is reshaping the world economy and changing the rules of the game, including through its policies of no conditionality. We need to address responsible financing in the context of this. We need to understand Chinese policies better for the work that we do. It is easy to see China as a threat but it is not a black and white issue.

China is also the new kid on the block of development finance. China is providing a mix of grants, export credits and different loans. The Chinese government has said it will provide US\$10 billion in concessional loans and preferential export credits to developing countries between 2005 – 2008. Other non-traditional lenders such as Venezuela, Brazil and Thailand are also providing significant finance. The OECD has said it is difficult to get

a clear picture of how genuinely concessional these different types of financial flows will be. It is clear that the new lenders are seen as a threat by existing creditors in three ways:

1. Benefiting from the space available after debt cancellation and perhaps pushing countries back into debt unsustainability (see Eurodad background paper).
2. It represents a threat to the monopoly status of existing creditors.
3. Also poses a threat to responsible financing standards?

China is seen by business magazines and others as a resource-hungry dragon hunting for energy across the globe. Its economic expansion is massive and this has prompted a huge search and competition for raw materials. Part of this is a so-called 'march into Africa' by China. This is just one part of a strategy they are pursuing. The lending is part of a package deal that China is offering to developing countries. We should not just focus on the lending part but the overall impact of China. The Chinese president has made two tours to Africa, signing 'win-win deals'. It is getting access to mining and trade concessions in return for providing industrial and infrastructure support. Oil is the key factor. One of China's biggest investments is in Sudan, which raises some eyebrows. Also agreed have been infrastructure development, free trade agreements, and setting up joint chambers of commerce with African countries.

Since 2004 China has become a net provider of aid. China has also provided African countries with debt cancellation

China portrays itself as an opportunity, not a threat. It stresses common experiences with other Southern countries. China has made itself distinct from Western lenders. In the words of official Chinese newspaper *The Peoples Daily* "it is known to all, Western powers, not China, colonised Africa and looted resources there".

There is an official policy document, adopted in January 2006, behind this march into Africa, which I recommend you to read. It has interesting language on human rights and other aspects. It has some guiding principles. These speak of:

- Sincerity, friendship and equality.
- Mutual benefit, reciprocity and common prosperity.
- Mutual support and close coordination.
- Learning from each other and seeking common development.

Strengthening the voice of developing countries and exchanging ideas are themes throughout. The language is different from what you find in Swedish official documents.

This week will be held the second Forum on China-Africa cooperation. At this the principles are to be formed into concrete policies. Many African leaders will be in Beijing to discuss further package deals. Do these constitute a bargain or a theft?

China's African Policy, January 2006, says that "In light of its own financial capacity and economic situation, China will do its best to provide and gradually increase assistance to African nations with no political strings attached" (emphasis added). Does this mean we have a donor saying what we have been campaigning for – no economic policy conditions? I went to China in June to talk to officials and civil society organisations. One official working on poverty reduction expressed concern about a one size fits all approach. He spoke of a Beijing Consensus, meaning gradual development starting from the needs of the country.

The war of words has begun. Last week World Bank president Wolfowitz hit out on China. He sharply criticised China and its banks for ignoring human rights and environmental standards when lending to developing countries in Africa. "They must not make the same mistake as France and the US did with Mobutu's Zaire", he said. He argued this although

many Northern institutions have not learned these lessons in practice – they are still struggling with the concept of illegitimate debt.

The Chinese Foreign Ministry responded that they could not accept the Wolfowitz accusations. Trade relations with Africa *“benefit the improvement of the living standards of African people and benefits Africa’s economic and social development”*.

The no strings attached policy brings various challenges and opportunities.

Challenges

- There is a fear that China will make Africa more corrupt, and reverse the progress made so far.
- Lack of transparency in deals. There are examples, such as Chinese investing in the forest sector.
- There is little NGO leverage on China.
- Tomorrow’s illegitimate debt could be accumulating.

Opportunities

- Chinese investment is very welcome and provides competition, as David Ugolor has pointed out.
- It fosters a genuine ownership of economic policies.
- More freedom of manoeuvre and benefit if choice, as Richard Manning from the OECD DAC has argued.
- New lenders can be used as leverage in discussions with traditional financiers.

The Chinese government argues that they have a legitimate claim to lift their population out of poverty and that Western interests have blocked a lot of space in access to natural resources. China is the factory of the world. A lot of resources imported into China go to manufacture goods for Western companies to sell to Western consumers. They are upholding our unsustainable consumption patterns.

Conclusions

- This is a complex, multi-faceted issue. We need to pay more attention to new lenders.
- We need to engage in a dialogue with Chinese officials and companies.
- We should forge partnerships with Chinese civil society organisations.
- We can use this as leverage in campaigning for no economic policy conditions.
- We should put this lending into the context of the Chinese economic expansion as a whole. We should adopt a triangular approach, including in the context of Chinese exports to the West. This does give us some leverage.

- Presentations from this session available at: www.eurodad.org/articles/default.aspx?id=713

DEBATE

Carlos Bedoya, Latindadd, said he appreciated the presentations but had the feeling that Latin America does not exist. He wondered who is really aiding whom? If we look at the net transfers, at what is leaving Latin America to go to Northern countries as debt service and profit repatriation for transnational companies there is a very big difference. There is also corruption in the Northern countries. We are in a campaign that the Northern countries should allow us to participate on an equal basis in international trade so we do not need so much aid.

Pete Hardstaff, World Development Movement, said we should see China as an opportunity. Its lending operations have worried the World Bank more than decades of NGO campaigning. We should use this as leverage on conditionality. Nobody said let’s

get rid of all conditionality, so what do the panellists think is acceptable conditionality in a system full of power relationships? Who should decide on that, what is the process, and who monitors? At what point should aid stop if processes are being abused in country?

Christopher Klyve, Development Fund, said countries are taking money from China because of the lack of financial commitments from existing donors. Next year the International Development Association will seek replenishment from all our governments. They may ask for more money to counter China. How do we as NGOs respond to that?

Issa Aboubacar, from Réseau Nationale Dette et Développement, Niger said that although in theory China has no conditionalities in practice China does have influence. Sometimes it has managed to install its own workforce, even for manual jobs. It employs very few local people. In Niger they have taken over textile and telecoms companies. People should also study the problems in countries like mine with very few resources. On the excellent presentation by Transparency International I have a question. What controls does TI have on its own chapters in different countries? How do you trust people who provide information from our countries.

Philip Herschel, from Blue 21, argued that the fundamental question is not how to give loans and grants, but when to do this. Not just commercial or unsustainable projects, but projects such as building schools and hospitals. Why should they be financed from abroad? If a large percentage is local labour and materials, why finance from abroad? We often get caught in a trap that if we provide less finance from the North then fewer schools will get built. What about providing money in local currencies?

Sony Kapoor, Tax Justice Network and Christian Aid: I appreciate the work of Transparency International, but the Corruption Perceptions Index is problematic. Images that come to your head are policemen in Lagos, not Citibank executives managing Suharto's wealth. TI should target places with banking secrecy. The CPI is not rigorous, it is based on surveys of business people. TI needs to redress the balance of what corruption is. The rules of what is legal have also been perverted.

Barry Herman, New School and Integrity Project: Greater public integrity requires transparency and good management processes to be built within countries. International donors are not going to do this. Aid is part of foreign policy. Every so often there is an attempt to clean it up. China is a threat to the donors. The issue should be how countries can decide what funds they want to let into the country.

Sophia Hoffmann announced that they have a new programme at Global Witness on private banks. She has done a survey of private bank lending regulations. Asset management by private banks is heavily regulated, especially since September 11th, but lending is not regulated. There is no concept that when banks make a large loan to sovereign governments that they have some responsibility for how the money is used. How can we develop a policy for making private banks responsible?

Caoimhe de Barra of Trocaire indicated that CIDSE had done a survey this summer of our partners that came out with similar principles to Angela's presentation. She agreed there is a problem with perceptions of corruption. We address this by drawing on examples of CSO challenges to poor governance, emphasising that accountability must be downwards to citizens. If governments abuse human rights where do we draw the line, what are the acceptable limits and who decides and monitors?

Fred Opio from Uganda Debt Network asked himself if he was in a government looking for lending what would he think about China offering money, apparently without strings. In 1994 he was hired by the World Bank to review Structural Adjustment 1 and 2 credits for Uganda. The Ugandan government could only justify 78% of the spending. Who is

perpetuating corruption? When it comes to conditionality, should we be telling developing countries to borrow from where there are no strings?

Joe Hanlon of Open University said we can use the fear of China to our advantage. For example to get more movement on getting loans approved by parliament. If China's loans require approval by parliament in Africa, then loans by IFIs will need to be approved too. Now the World Bank might want to admit that previous loans were illegitimate, to set precedents which would also cover China.

Penny Davies said we can use China to speed up progress on issues such as illegitimate debt and also the whole debt architecture, for example to get a fair and transparent arbitration mechanism. China has some conditionality. The only political one is to not recognise Taiwan. There is concern on how beneficial these deals would be. China also threatens the objective of diversifying production. Challenges and scrutiny must happen by Africans in Africa. She said it is not clear when to stop aid, except for cases like Burma. Helpful to think about the concept that development finance should do no harm and that there should be a commitment to gradual improvement.

Angela Keller-Herzog responded that the Corruption Perceptions Index but TI produces also the Bribe Payers Index in which China ranks among the bottom countries as Chinese companies are seen as among the most likely to bribe. The overall work of TI includes promoting the UN Convention. We should be able to make that link between the odious debts, the private gains, the money that is now in bank accounts that somebody knows where they are and are no longer allowed to keep secret, and repatriating that money. There should be transparency on how those monies are used.

On TI national chapters we have an accreditation review process every three years, on financial reporting, etc. But it is quite loose.

The Global Witness work is a huge piece of the puzzle. There are shifts in the composition of lending between different private and public institutions. The IFC sees itself as a progressive leader of the private banks on standards, even though some IFC standards are weaker than those of the other parts of the World Bank Group.

Vitalice Meja responded that there is no possibility of dialogue between the Chinese government and civil society. The groups consulted will be GONGOs – government-organised groups. As we get excited about China providing another opportunity we have to be aware that Chinese companies are coming in en masse. In the Southern part of Africa people are angry because in Chinese factories people are poorly paid and overworked. These are issues that civil society should look at. China does have conditionality, but refuses to operate within the World Bank and IMF framework. Chinese aid is embedded in the Ministry of Commerce. The Chinese government will react if the aid prevents or blocks trade. In Angola, for example, the Ministry of Finance apparently misdirected some Chinese funds. Officials intervened immediately. The World Bank and IMF are not transparent enough to tell Africans what to do. Conditionalities have largely contributed to disempowering the population. The government does not care too much if donors withdraw aid; they will rely more on domestic resources. We should not encourage using aid as a mechanism to address corruption. My approach would be a dialogue framework. We must re-empower the population so governance can be addressed and monitored from within.

Angela Keller-Herzog concluded saying she agreed with Meja on the need to tackle these issues from within countries. She urged looking separately at each aid transaction. In a country where there is known to be 30% leakage it is not reasonable to ask for on budget aid. You have to look at other financing approaches. Most of the people in that country would not want you to lend money to their corrupt central government. Let's look at the status of parliament, the opportunities for civil society scrutiny, etc.

WORKSHOPS

Workshop A: Where next on illegitimate debt? Political and Legal Strategies

Facilitator: Francesco Oddone

Presenters:
Kjetil Abildsnes, SLUG, Norway,
Iolanda Fresnillo, Observatori del Deute, Spain.

Resulting from civil society campaigns Norway has cancelled US\$80mn of old export credits and accepted co-responsibility. It has not yet executed the cancellation for Burma and Sudan. The challenge now is to take the principle to other countries beyond Norway and link it to the issue of illegitimacy.

There is a need for audits to be taken forward and strong legal cases to be built on the issue as it will set precedents.

Participants suggested that there is need to define illegitimate debt and increase dialogue between Northern and Southern CSOs on the issue. They also discussed the issue of capital flight and its links to debt.

The following actions were reported or suggested:

- To go further in the campaign on dictator debt.
- To target a few countries that are likely to support the issue. Governments are being approached by CSOs in respective countries such as UK, France and Italy to make them aware. Need to take on board citizens of member countries and parliamentarians in the campaign
- An international experts seminar on illegitimate debt is planned for Paris in Spring 2007. CSOs, lawyers and certain governments like the Norwegian will be invited to participate to raise international awareness.
- On the G7 it was proposed to target the finance ministers' meeting in February 2007 as well as the G8 forum - with demonstrations and a parallel conference. Heads of states from Africa representing continent at G8 should be sensitized and a strong case to be worked on for presentation at the time of the summit.
- Executive Directors at the World Bank should be pressured for a decision on the Norway report.
- In the European Union there is an opportunity to target the conference on harmonization of EU laws on consumer credit which will be held in September 2007.

Workshop B:

Minimum standards: essential obligations on lenders and borrowers

Facilitator: Alex Wilks

Speakers: Lidy Nacpil, Celine Tan

Lidy Nacpil said there are obligations that should apply to lenders and borrowers. These cover: principles and standards on the conduct and processes of financial transactions; content of financial agreements; circumstances in which these transactions take place. Important to distinguish between a.) Terms and mutual obligations of loan agreements (which might or might not be fair) and b.) conditionalities, which are policies and programmes not intrinsic to the financial transactions and are imposed on the borrowers by the creditors (either explicitly or implicitly). There are other strategies for promoting responsible financing which do not rely on conditionality. These include:

- promoting platforms for broad public consensus;
- advocating for governments to adapt set of principles;
- advocating for international agreements.

Celine Tan emphasized the distinction between a.) legally lending terms and conditions of financing b.) conditionalities (which are policy triggers for disbursement). Conditionalities are usually linked to the signed contract as an “attached programme” and so are not legally binding. Illegal contracts (such as through illegal process, unauthorized signatories (or illegal activities) can not be enforced. The lender has much discretion. The Bank and Fund continually reinterpret their provisions – but we should refer to their constitutional mandate. The Bank’s articles say it should not interfere in the political affairs of a member country. But sometimes it seems that civil society groups want the Bank to “interfere”, at least to establish processes such as involving parliaments in loan contraction decisions.

A participants in the discussion commented that involving parliaments not a panacea – for example in Brazil where parliament passes loan agreements, but only examines the financial clauses, not the related programme. Membership of the Commission for External Finance is limited to Ministries of Planning and Finance and the Central Bank. Another commented that we must not forget the big picture with its unequal power structures and processes. Others said that there is a very delicate balance between donors doing no harm (perhaps temporarily withholding funding while an issue is resolved) and unwarranted external intervention, which is both unacceptable and often can have harmful consequences. In criticizing conditionality, the process of how conditions are developed is very important. This will be considered in the upcoming Norwegian conditionality study. More qualitative research on this would be useful.

The following actions were reported or suggested:

- More qualitative research on the process of loan condition formulation;
- Continually push for more transparency;
- Channel our energy where we can be most effective – eg continually remind people of the problematic power situations in the IFIs, but also work towards smaller changes where we can.

Lidy Nacpil circulated a background note on obligations and conditions. Available on request from the Eurodad office.

Celine Tan’s paper [Responsible Financing or Unwarranted Obligations?](#) Is available on the Eurodad website.

Workshop C: Diverting funds or diverting attention? Understanding the new official anti-corruption agenda

Facilitator: Lucy Hayes
Speakers: Jeff Powell, Carlos Bedoya

Lucy opened the workshop saying that there are assumptions in the current official debate on corruption and development that need to be challenged.

Jeff Powell introduced the different forms of corruption and how the prevalence of different forms of corruption can change over time. While World Bank analysts such as Daniel Kaufman consider that corruption needs to be dealt with as a pre-condition for development, other analysts such as Mushtaq Khan consider that reducing corruption should be a goal of development, not a pre-condition. Khan has shown that there is no statistical relationship between corruption levels and economic growth outcomes. It can be expensive and distracting to try to set unachievable targets for getting institutions right first. Corruption rankings do not stimulate changes in countries that are at the bottom of the listings. We need to think how we can improve growth.

Carlos Bedoya said that in Peru the World Bank 1990 WB asked for the sale of public banks as a loan condition. During 1990s Peru implemented WB conditions including privatization, liberalization. Result was economic growth without human development. A congressional report found that corruption was involved in privatization of companies. Peru is a case of economic growth with increasing corruption. Civil society groups are investigating the origins of the public debt. The World Bank and others define corruption in such a way that neglects corruption in North and by Northern institutions

In the discussion people urged a distinction between good governance and anti-corruption measures and one participant requested a paper on the distinction. Good governance is a broad concept and used by donors to impose all sorts of policies. We should shift the discourse to accountable governance – not corruption. We should also talk about income redistribution, not just public financial management. We need to reclaim the debate: CSOs were involved in improving governance long before the World Bank and other donors. The solutions can only come from within countries themselves. Further capacity building for engagement in the south, for example on monitoring policy process & budgets, may be helpful.

The following actions were reported or suggested:

- CSOs need to use the media more strategically. Trocaire and others are developing speaking points on corruption, pointing also to role of banks in North, the role of tax havens, and so on.
- Bank Information Center and many others are monitoring and influencing the World Bank anti-corruption strategy,
- We need more countries to ratify the UN Convention Against Corruption and we need to monitor implementation and bring forward some cases.
- We should consider setting up fact finding missions of Southern activists to the North to examine implementation of UN convention on bribery.
- In Nigeria there is an example of the World Bank playing a positive role, in monitoring the spending of looted assets. ANEEJ will soon release a report on this.
- Christian Aid will launch a briefing on World corruption day in December.

Workshop D.

Debt Audits: recent experiences and next steps.

Facilitator: Gail Hurley

Speakers: Hugo Arias, Latindadd
Ezekiel Pajibo, CEDE
David Milway, Jubilee Scotland

There has been much civil society enthusiasm expressed for the idea of debt audits in order to reveal particular cases of illegitimate debt and call for their cancellation. But given the obstacles often encountered in trying to gain access to information and the reluctance of many Southern Governments to become involved in audit processes, how viable and promising are they?

The workshop began with a presentation of Ecuador's recent experience of a governmental audit commission. From the start, the audit commission set-up by the Ecuadorian Government and bringing together representatives from civil society organisations, the government, academics and other experts, had severe limitations. It was given only six months in order to complete its work, no legal powers to initiate judicial proceedings against suspected fraudsters, it lacked the cooperation of the Central Bank, Ministry of Finance and the international financial institutions and it was difficult to obtain information. Even the information that was available was in a disgraceful state. However the audit process did reveal that there are scandalous statistical discrepancies between the Finance Ministry, Ministry of the Exterior and the IFIs when it comes to Ecuador's debt. The audit revealed US\$5bn worth of fraud. Ecuadorian CSOs recommend that debt repayments are halted until these statistical discrepancies are investigated. The debt audit in Ecuador was successful in raising awareness about the debt issue among ordinary citizens.

Jubilee Scotland had been investigating five export credit contracts between the UK Government's Export Credit Guarantee Department (EGCD) and Malawi. Information was very difficult to come by and took months even though only £13mn was involved in this investigation. Commercial confidentiality legislation hindered their work. It was also difficult to gain information on the final use of funds. However they are encouraged and in 2007 have plans to investigate US\$300mn in questionable UK ECGD arms loans to Indonesia. They hope this will support national level campaigns in Indonesia.

The discussion then turned to Liberia. Could debt audits within this country be used to advance the doctrine of illegitimate debt? Currently, the Liberian Government's argument is that it cannot pay, however loans were extended to previous unelected military regimes for arms purchases and other unproductive uses. It was likely however that, give twenty-five years of protracted civil conflict in the country, documentation would be notoriously hard to come by and in some cases simply would not exist.

This has been the case with the Democratic Republic of Congo also, although some audits of individual loan contracts between extractives companies and the DRC is currently underway.

The workshop concluded that audits can offer strong support for the following objectives:

1. public education
2. Strengthen arguments for immediate cancellation
3. Help get concept of illegitimate debt accepted.

Workshop E:

Holding governments to account; experiences and strategies for southern and northern NGOs

Facilitator: Olivia McDonald
Speakers: Savior Mwambwa,
Emma Williams,
Tennyson Williams

Savior Mwambwa introduced the experience of his group Civil Society for Poverty Reduction. They have monitored government programmes, especially poverty reduction strategies, and carried out advocacy on these. Budget tracking is a core tool. Achievements have included civil society mobilization and some policy changes. Challenges include a lack of institutionalized space for participation, varying capacities among CSOs, etc. Lessons – local ownership is key. Donors and INGOs should support but not displace civil society. CS should document its asks in a clear and timely way.

Tennyson Williams commented on the activities of Action Aid Sierra Leone. A lesson they have learned is the need to build civil society capacity to monitor government, to break down secrecy between government and donors; Need to force strong advocacy partnerships between North & South NGOs (ex on technical assistance)

Emma Williams said that CAFOD is working with Christian Aid and Trocaire on a toolkit on policy monitoring. This will be available later in the year.

The PRSP process has had some positive effects for example increasing space for participation. However there are many challenges and lessons associated with it, including the ongoing dominance of the IMF, with its macroeconomic framework and conditionality. Furthermore we need to look beyond the PRS as governments don't align budgets with the PRS and are increasingly going back to national development plans which don't much emphasize poverty.

Some challenges were identified:

- Ongoing use of conditionality and secrecy between donors and governments in developing policy
- Unresponsive leadership at national level
- Civil society capacity
- Danger of international NGOs displacing national and local CSOs.

Opportunities and potential solutions:

- Activism and mobilization of civil society and civil society capacity building through programmes such as economic literacy
- Alternatives for advocacy – at local, national, regional and international levels
- Budget advocacy at local and national levels.

Suggestions:

- More collaborative N/S work on the IMF & PRGF
- Work together on conditionality, privatization
- Study the impact of the IMF on the MDGs.

Workshop F.
Towards a new campaign dynamic!
Debating and strategising around European IFI campaigning

Speakers: Daniela Setton,
Martin Gordon

European groups plan to intensify European coordination and common campaigning around international financial institutions because advocacy so far has not changed IMF/WB policies substantially. There is a growing appetite among CSOs to start a more popular broad and joint campaign to put pressure on European governments and bring IMF and World Bank back into the European public debate. The IMF and World Bank face legitimacy crises and other difficulties.

Christian Aid and others in the UK have campaigned in the UK, resulting in the March 2005 announcement that the government would no longer attach harmful economic conditions to bilateral aid and would use their influence at the IFIs to press for them to do the same. In response to CA's follow up campaign – cut funding / stop paying for poverty Hilary Benn announced in September that he would withhold £50m from the World Bank subject to satisfactory progress on the conditionality review.

There is an initial agreement on increased European CSO co-operation and campaigning on the IFIs. This will include more public campaigning, a more radical public stance, strong co-ordination with Southern campaigns such as Shrink or Sink. There also needs to be differentiation between the Bank and Fund and more discussion of alternative financing arrangements and institutions. Some participants indicated that they are looking at the European Development Fund among other potential alternative funding channels.

On the IMF participants agreed it is a good time to do more work but that there is limited understanding among CSOs. We need to gather more information on the different EU government positions, and we need to engage more in the institutional processes and mechanisms. The Norwegian government has commissioned case studies in Uganda, Mozambique, Zambia and Bangladesh.

There is much energy at the local and national level – focusing on stopping specific harmful IFI policies and projects, and on debt relief. There hasn't been lots of work addressing the institutions as such. The general call is for IFIs out of the South. Discussion on joint strategising has tended to focus on trying to build regional or international initiatives, by building on the local and national. The call for global action on the IFIs launched at the 2006 Annual Meetings has signed by 400 groups in 74 countries. It's 5 demands – cancellation of all multilateral debts, audit of the IFIs, an end to economic conditionality, an end to funding the privatisation of basic services, an end to the funding of environmentally sensitive projects. We also plan with others to pursue an audit of the WB or the IMF.

The 'IMF – Shrink it or Sink it' statement was left deliberately broad to include those who wanted to dismantle and those who wanted to reform. The common ground is to disempower the IMF. The demands towards the IMF focus on stop borrowing from / paying back the IMF. On alternatives – there is an urgency to discuss them. There have already been discussions in various quarters, including Batam and Singapore, and there is a major conference planned in Asia for summer 2007, 10 years after the Asia Crisis. There are 3 potential opportunities on the IMF i) governance review ii) PRGF replenishment process at some point in the not too distant future iii) the IMF may ask funders for more money for technical assistance. So we can focus on replenishment and use this to get across our demands. We could choose 2 or 3 issues to all focus on eg economic conditionality and climate / extractives.

In Belgium they are working on a parliamentary resolution, we can also use the interest of Louis Michel in this issue. Our messaging should include 'cut the power/power cut'.

Some key dates for further campaigning were shared.

1 December 2006	SCIMF meeting, Brussels
20-25 January 2007	WSF, Nairobi
February 2007	IDA replenishment discussions start
February 2007	G7 Finance Ministers meeting
March 2007	EuroIFInet meeting, Brussels
14-15 April 2007	IFI Spring Meetings, Washington
6-8 June 2007	G8 Summit, Germany
Summer 2007	Possible alternatives conference in Asia (10th anniversary of Asian Financial Crisis)
19-21 October 2007	IFI Annual meetings, Washington

A core group was formed to follow up on the workshop. It includes:

- Martin Gordon,
- Antonio Tricarico,
- Daniela Setton,
- Iolanda Fresnillo,
- Sebastien Godinot,
- Helene Hoggen,
- Nessa Ni Chasaide,
- Marta Ruiz,
- Jeff Powell,
- Tytti Nahi or Valia Vistuba, and
- Nuria Molina

Among other activities this group will produce a short statement of complaints and demands and pull together funding for a European campaign co-ordinator to be based in the Eurodad offices.

Longer notes of this meeting are available from the Eurodad office on request.

Workshop G:

European tax havens – facilitating illegitimate debt, causing corruption and facilitating capital flight.

Facilitator: Sony Kapoor

Speaker: Sony Kapoor

Capital flight swamps all other international financial flows by a very large margin and explains to a large extent why aid and other official assistance are so ineffective. One part is the movement of wealth belonging to Southern elites. This exceeds the debts of Southern countries. Even larger than this is the wealth transfer resulting from transfer pricing which allows companies to obtain goods and services cheaply and reduces tax and other revenues which should accrue to Southern governments for spending in their countries. Both forms of wealth extraction rely heavily on tax havens and banking secrecy. Since 9/11 mechanisms exist in anti-terror legislation to track these flows but it is not being done, for lack of political will. The Corruption Perceptions Index fails to pick up the involvement of tax havens and the countries and institutions which tolerate them.

Examples of Northern institutions helping capital flight include a Citibank employee who was secretly filmed offering to help an Argentinian businessman send cash abroad illegally. Also Riggs Bank, which held accounts for the Pinochet family. These were investigated for possible terrorist financing links and found to be legitimate.

A lot of capital flight is not actually illegal. Official statistics cannot capture transfer pricing. Trade liberalization has made all this easier and eroded southern governments' tax base, making them more dependent on aid. Transfer pricing via the Cayman Islands and other offshore centres hits Northern tax bases as well as southern ones as TNCs shift profits around the world to where they will be taxed least. We can campaign on how most people's tax burden is increased by transfer pricing both of TNCs and high earners who are also able to shift income to low-taxed havens.

We should focus on complicity of most OECD countries in this. Germany is the only large European economy which does not have a tax haven it controls (unlike UK and France). This gives a campaigning opportunity in the coming period, especially as Angela Merkel has said hedge funds should be on G8 agenda.

Participants encouraged greater use of the UN Convention against corruption which has provisions that signatory states should assist in tracing illicit money. We need to push to help get police time allocated to this. At present it is difficult to identify stolen money without a tip-off. Humberto Ortiz reported that in Peru a 0.001% tax has been put on international currency transactions. This has helped detect tax evaders.

Rudy de Meyer commented that the line between legality and corrupt practices is thin. Companies in Holland sit down and work out their tax rates with the government. The World Bank says it only works on this issue within individual countries, not systemically. Calls for a common international database on these issues have not been answered.

Official statistics don't capture capital flight. So even though official flows show net amount to North, it is actually worse.

The following actions were reported or suggested:

- A joint letter or statement will be circulated for sign-up on tax havens and loss of revenue, perhaps citing existing international agreements which such practices contravene.
- Sony will circulate talking points on corruption and will talk to Eurodad about working with Tax Justice Network on a strategy paper on how this issue be integrated with current debt and aid campaigns.

Tuesday 31st October

PLENARY TWO

Facilitator: Gail Hurley

Speakers: Kjetil Abildsnes, Humberto Ortiz, Antonio Tricarico

Kjetil Abildsnes introduced the recent decision by the Norwegian government to cancel debt on the basis of creditor co-responsibility. While the language of illegitimate debt was not used it is related and goes further towards this useful principle. We need to campaign more on issues of illegitimate debt, and the Norwegian case shows what is possible. We should select further cases to strengthen this.

Gail quoted some feedback from campaigners in different parts of the world applauding the Norwegian campaign and decision.

Humberto Ortiz of Latindadd argued for encouraging governments to initiate more official audit processes. We should demand transparent information to reveal the corruption that has taken place and establish those responsible whether they be private, public or multilateral. Results of debt audits must be used to initiate fair and transparent arbitration procedures, as well as used to promote adoption of an international financial code.

Finally, we must prevent new debts which can come about via the signing of free trade agreements which have recently been ratified in various Latin American congresses with the US and Europe. With respect to IDB contracts, for example in infrastructure, these carry competitiveness clauses which become a new form of conditionality

Antonio Tricarico, representing Campagna per la Riforma della Banca Mondiale, said that new actors and new lenders are definitely changing the international landscape. Conditionalities represent dilemmas for sovereignty. There is a challenge to provide economic policies that are closer to people and more focused upon social welfare.

FINAL PLENARY – Alex Wilks

We have had inspiring suggestions on alliances, proposals of strategies, suggestions on the use of language, and much more. There has been much expertise on display and some very good exchanges.

Some highlights include:

- Legal expertise from the first panel with questions from lawyers to us as to whether odious debt is an operational concept. International law is not set in stone; we have a useful concept and need to let it develop.
- The opportunities of a cascade effect from the Norwegian case through CSOs encouraging action, through the official systems and through deterrents against irresponsible lending
- Conditionalities are the cause of chaos and uncertainty in the centres of political power. There are suggestions that we are entering a new era of lending – that the citadel of conditionality may have fallen. There are also warnings of a new cold war style of lending.
- We need to be clear about our roles and the roles of official institutions. There is not one overarching policy approach that we should all follow but a number of principles which have been proposed. We need to be responsive to individual situations, especially in the South and avoid any one size fits all logic of our own.
- We look forward to working actively with all conference participants to make an even stronger South-North alliance on these important issues.
- Thanks to speakers, rapporteurs, co-organisers and the whole Eurodad team.