

The Responsible Lending and Borrowing Imperative

Addressing the Root Causes of Poverty

■■■ HEINRICH BÖLL STIFTUNG
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About Jubilee USA Network

Jubilee USA Network is an alliance of more than 75 religious denominations and faith communities, human rights, environmental, labor, and community groups working for the definitive cancellation of crushing debt to fight poverty and injustice in Asia, Africa, and Latin America.

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Summary

For over two decades, the international community has implemented a series of measures to address unsustainable debt burdens in low-income countries (LICs).ⁱ While milestone achievements in debt relief have been made, the ongoing impact of unsustainable debt burdens on LICs' development still demands redress. Debt relief and cancellation are necessary but not sufficient. There are serious implications that a lack of transparency, accountability, and respect for democratic processes and information sharing have in loan contractions and international financing. Holistic reflections on the interplay of political, economic, and institutional factors (domestic and external) that contributed to the creation of the debt crisis must be reanalyzed in order to develop long-lasting solutions to the root causes of structural and chronic poverty.

In the last several decades, a number of debt audits have been undertaken by both governmental and civil society organizations (CSOs) around the world. Conducted as a means of holding governments accountable to their citizens while increasing transparency and accountability of governments' financial transactions, these debt inquests help to assess current debt, decrease the amount of future debt accumulated, and identify means of ensuring that future loans are beneficial, repayable, contracted transparently, and are supported by the recipient nation's citizens.

This study synthesizes concrete principles of responsible lending and borrowing that the U.S. government can implement to promote democracy and pro-poor development. Responsible lending and borrowing will contribute to the achievement of the Millennium Development Goals (MDGs) for the world's poorest.ⁱⁱ As a means of demonstrating the need for more responsible lending and borrowing practices, this study integrates examples from around the world that illustrate the problems of the current system and the manner in which unsustainable debt could have been avoided had such principles been taken into account by creditors before approving or granting loans.

ⁱThroughout this paper, the term low-income countries (LICs) is used to refer to countries categorized by the United Nations system as "developing." The terms are used synonymously in political economic literature.

ⁱⁱThe Millennium Development Goals (MDGs) are eight development objectives created by the United Nations at the Millennium Summit in 2000. Member states have agreed to achieve these goals which address issues related to poverty, hunger, and disease affecting millions of people by 2015.

The U.S. government should implement the following reforms in responsible lending and borrowing:

1. Ensure that loan contraction complies with relevant national and international laws
2. Investigate LICs' debt portfolios to determine if portions should be declared illegitimate and odious
3. Assess the financial position of the borrowing country
4. Ensure the use of fair interest rates and penalties
5. Provide details of fees charged as part of transaction
6. End harmful economic conditionalities attached to loans
7. Regulate the sale of loans on secondary markets in an effort to make it illegal for vulture funds to profit from debt relief to poor countries
8. Recognize that there may be cases where a dramatic change in circumstances prohibits a borrower from meeting its financial obligations on the loans
9. Ensure that loan contraction procedures protect human rights
10. Ensure that loans comply with social, labor, and environmental standards
11. Promote orderly debt resolution processes that provide incentives for responsible lending and fair burden-sharing

I. Overview of the Debt Crisis

During the period of 1974-1979, international lending increased dramatically.¹ Developing countries invested in infrastructure, manufacturing, and the cultivation of profitable natural resources. Due to increased export-led growth and foreign direct investment, developing countries became increasingly integrated into the world economy with growth maintained by borrowed funds from the Global North. Private investment banks were eager to lend the Global South excess petrodollars and earn a hefty profit from future interest payments.

As the price of oil skyrocketed and a world recession ensued, developing countries began seeking additional funds. The combination of high interest rates and falling commodity prices made it ever more difficult for countries in the Global South to repay loans. International debt problems hit the headlines in 1982 when Mexico was forced to re-schedule its debts.² Mexico was swiftly followed by other countries around the world as LICs encountered a serious balance of payments crisis. The situation further deteriorated due to unscrupulous lending by international financial institutions (IFIs), bilateral lenders, and multilateral lenders, as well as the mismanagement of these loans by various borrowing governments. Between 1980

and 1990, the external debt stock of the LICs grew rapidly from US\$125 billion to US\$419 billion. Gross National Product (GNP), in contrast, increased only from US\$0.9 trillion (in 1980) to US\$1.3 trillion (in 1990).³ The debt-to-GNP ratio increased from less than 14% in 1980 to over 31% in 1990.

Even as the rescheduling terms of the Paris Club became increasingly concessional for LICs, most

Unscrupulous lending and the mismanagement of these loans increased the external debt stock of the LICs rapidly from US\$125 billion to US\$419 billion in 10 years.

poor countries continued to face severe debt servicing problems during the 1990s and into the early 2000s. In the case of Zambia, a former Highly Indebted Poor Country (HIPC), external debt served as a severe impediment to development. When Zambia's external debt rose from US\$623 million in 1974 to US\$6.4 billion in 1987, fiscal pressure led to a massive decline in public invest-

ments, from an average of 25% of its GNP between 1965–1980 to only 11% in 1987.⁴ Debt servicing in 1985 amounted to 86% of all export earnings, leaving only 14% to be shared among the mining, manufacturing, and farming sectors. Little was made available for spending in the social sectors of health, education, and child welfare. In 1995, total annual debt service peaked at US\$1.584 billion. Although Zambia’s debt was written off from US\$7.1 billion to US\$506 million through the HIPC Initiative in 2005 and the Multilateral Debt Relief Initiative (MDRI) in 2006, the external debt stock had already risen to over US\$4 billion in 2010.⁵

Zambia’s experience is similar to that of other former HIPC countries and many LICs that are not qualified for assistance under the HIPC Initiative. The substantial costs associated with debt servicing continue to threaten LICs’ ability to achieve the MDGs. Thus, it is important that the U.S. government pass legislation to implement responsible lending and borrowing principles. By working in collaboration with other bilateral and multilateral global efforts and in accordance with principles of responsible lending, the U.S. and other creditor countries would promote economic and social development in LICs and further the achievement of the MDGs by 2015.

II. Policy Recommendations for the U.S. Government

Jubilee USA Network recommends the following policy changes to reform the current system of international lending and borrowing:

1. Ensure that loan contraction complies with relevant national and international laws. The U.S. government, the IMF, the World Bank, and the countries to which they lend must ensure that loan contraction complies with national and international law for both the borrower and lender nations, otherwise later claims on those loans can be rendered invalid. Odious debt is an established legal

principle applied to situations in which the recipient government has used loans for personal benefit or to oppress citizens in direct opposition to national laws and/or established international norms, the recipient government did not have the support of the nation’s citizens, and the lender country was aware of these illegalities. A legal precedent set by the U.S. following the Spanish American War, this

norm came about following the U.S. declaration that loans owed to Spain by Cuba were null due to the fact that Spain had forced Cuba to accept loans only for the benefit of Spanish interests in Cuba. Odious debt was reaffirmed in 1923 in the case of *Great Britain v. Costa Rica* after findings declared that the lending institution knew full well that funds were being used for illegitimate purposes and thus, claims were void.

The legal and moral ramifications are still at play in today's world. Academics called for an elimination of Iraq's debt accumulated during Saddam Hussein's regime by arguing that the debt was odious.⁶ While lenders were aware of the tyranny of the regime, lending continued, providing support for continued human rights abuses, never-materializing development projects, and lining the pockets of the tyrant. Iraq is now a fledgling democratic regime, and it would have been illegal under international law and immoral to maintain that Hussein's debt be repaid by a new and struggling government. If lenders heed relevant national and international laws at the time of contraction, the likelihood that a loan would be considered odious or void decreases.

2. Investigate LICs' debt portfolios to determine which portions should be declared illegitimate and odious. The U.S. Secretary to the Treasury should investigate the U.S. and IFIs debt portfolios in order to determine if portions of a given LIC's loan portfolio should be declared illegitimate and odious. Odious or illegitimate debt stemming from situations in which corrupt regimes received loans from IFIs, bilateral lenders, and multilateral lenders in order to support the West's geopolitical objectives rather than satisfying the financial, social or economic needs of the citizens should be for-

given as they violate international law. Since representatives of borrowing governments will not be personally held responsible for paying back loans, they often engage in reckless borrowing. Similarly, creditors take advantage of systemic vulnerability and make inappropriate loan commitments.

Cancelling illegal debt would alleviate economic pressure on developing nations, allowing them to better fund social services and infrastructure, as well as service legitimate debt to responsible lenders.

Rather than unfairly burdening developing nations with debt that should never have existed in the first place, odious or illegitimate debt should, lawfully and morally, be nullified. Cancelling illegal debt would alleviate economic pressure on developing nations, allowing them to better fund social service programs and infrastructure projects as well as service legitimate debt to responsible lenders.

3. Assess the financial position of the borrowing country. The U.S. should conduct a debt sustainability analysis of countries that the U.S. lends to. This would help assess the financial position of the borrowing country and calculate how the borrower can reimburse the loan. Many nations have borrowed indiscriminately, never reflecting on how debt could affect development. It has been made apparent that excessive borrowing can lead to large amounts of debt which negatively impacts devel-

opment as increasingly larger portions of GDP are allocated to debt servicing rather than to projects that strengthen the recipient's economy and further development. Making loans to heavily indebted nations undermines the intended purpose of the loan and is a reckless investment. Additionally, the U.S. must be wary of flawed and sometimes intentionally false projections of borrowing governments' debt sustainability and ability to repay their loans.

4. Ensure the use of fair interest rates, penalties, and rules for allocation of payments to interest and principle. Fair interest rates and penalties policies should be applicable to both the

Beginning in 1983, Latin America was paying more in debt servicing than it received in loans. The majority of the debt was a result of rising loans' interest rather than principal.

U.S. government and its debtors. Loans contracted with variable interest rates are subject to swings in the financial market, and can often increase dramatically, making it difficult to finance repayment as the amount of debt servicing grows. Initially, the interest rates for sovereign lending in the mid-1970s were low, but variable, and increased to 12% in the early 1980s.⁷ This radical increase led to sharp spikes in the amount of interest debtor nations had to repay. Often, the debt servicing a country was paying negatively impacted develop-

ment as funds that could be used for infrastructure or social services were allocated to repayment of previous loans. Beginning in 1983, Latin America was paying more in debt servicing than it received in new loans. The majority of Latin America's debt post-1982 is a result of loans' rising interest rather than principal. This unfair and inequitable payment on debt servicing has robbed nations' citizens of sustainable economic changes and created a cycle of debt in which borrowing increases only to be used to repay outstanding loans. This cycle is neither efficient nor economical for either the creditors or the debtors.

5. Provide details of fees charged as part of transaction. Loans must give details of any fees charged as part of the transaction (purpose, amount, recipient). There should be details about host government agreements, production sharing agreements, power purchase agreements or other agreements to repay the loan in goods or services by the borrower. Additionally, charges should not be higher than the accepted international market price for any goods or services. By providing details, the contraction process is as transparent as possible and increases accountability.

6. End harmful economic conditionalities attached to loans. In many loan contractions, the creditor requires the debtor nation to adopt economic policy conditions that the creditor believes should be implemented. These conditionalities have often done more harm than good, generally carried out as a "one-size-fits-all policy," with little to no consideration given to how different nations may have different developmental needs. International creditors tout "fiscal balance" (low deficits) and "price stability" (low inflation) in developing nations as the means to economic success. Yet,

for the last thirty years, these economic principles have kept industry, infrastructure, and social services capacity at low growth rates and nations remain poor and underdeveloped.⁸ Furthermore, privatization is often a necessary requirement in order for a country to receive a loan, and services such as water have been kept from the poorest citizens of developing nations because of this requirement. Attaching economic conditions to lending has done little to help developing nations and has done even less to help the poorest of those nations' citizens. Instead, economic conditionalities have helped maintain the cyclical nature of debt in the Global South, keeping nations poor and in need of increasing amounts of aid.

7. Regulate the sale of loans on secondary markets in an effort to make it illegal for vulture funds to profit from debt relief to poor countries. When sovereign nations' debt repayment prospects appear dim, there are creditors on the secondary market who will gladly swoop in and buy the loans, usually at a deeply discounted price. While the initial creditor gets the chance to unload its loan, getting some portion of its value in return, the debtor nation now owes its debt to another creditor it had not entered into a contract with. Once the borrowing nation begins receiving debt relief, improving its debt repayment capacity, the creditor that purchased the loan sues for the full amount. The entities engaging in this behavior have been referred to as "vulture funds" due to the predatory nature of this process by which countries' development prospects are devastated. Many countries have fallen prey to this predatory investment practice.

Zambia fell prey to vulture funds in 2005 by Donegal International Limited. Donegal purchased a

1970s Zambian debt from the Republic of Romania for US\$3 million. This purchase took place right before Zambia was scheduled to benefit from debt relief programs that would have improved the prospects of repayment on the nation's outstanding debt. Once the debt repayment prospects improved, and in order to solicit compliance for the full amount of the loan, Donegal threatened the Zambian economy by promising to sue anyone who had dealings with the country until Zambia paid the company US\$55 million. Donegal won US\$15 million at a hearing held at the British High Court.

The British House of Lords passed a law banning vulture funds on April 8, 2010.⁹ This law sets a strong precedent that the U.S. government and other countries in the Global North should follow to stop the injustice perpetrated by vulture funds. Stopping vulture funds is not only a moral imperative, but will help developing nations that are eligible for debt relief truly benefit and will lower the need for increased lending.

8. Recognize that there may be cases where a dramatic change in circumstances prevents a borrower from meeting its financial obligations on loans. The U.S. should recognize that there may be cases where a dramatic change in circumstance beyond the will of either the U.S. or its debtor means that the borrower is no longer able to meet its financial obligations on the loan. Natural disasters or large-scale internal turmoil that lead to massive political, economic, and social implications within a debtor nation inherently alters the ability of repayment. The 2010 catastrophic Haiti earthquake and the July 9, 2011 division of Sudan into two sovereign states are situations in which debt relief and cancellation are necessary.

In Haiti, the destruction caused by the earthquake created a humanitarian disaster in the nation with basic infrastructure destroyed and no quick fix. Haitians who were already struggling were thrust into a crisis that deepened realities of extreme poverty and underdevelopment. The country of Haiti could not have been expected to service payments on outstanding loans rather than utilize its limited resources to help rebuild the nation.

In the case of the division of Sudan into two sovereign states, debt relief is necessary to allow each country to begin nation building. Having been racked by a civil war, the territory is struggling to begin anew, and neither Sudan nor South Sudan should be responsible for repaying the debt of a state that no longer exists.

In the event of changes that call for debt relief, repayment difficulties or possible disputes, loan documents should provide for independent and transparent arbitration procedures. By having a pre-established debt workout mechanism, the process of debt relief will be done in the most efficient and responsible manner.

9. Ensure that loan contraction procedures protect human rights. It is important that the loan contraction procedures ensure the protection of human rights. The debtor must provide detailed evidence of how loans will be used. Additionally, it is the responsibility of both the borrower and the creditor to jointly appoint someone to carry out an independent ex ante assessment of the project to ensure that it is being conducted properly and to its fullest extent. Documents associated with the loan and the project being funded should be made public and readily available to maximize trans-

parency. As the international community has conventions protecting the rights of individuals, any projects that violate such conventions should not be granted loans that violate international norms and standards. Furthermore, the U.S., on principle, should eschew lending money to regimes that carry out human rights violations. As a nation based on freedom, liberty, and justice, the U.S. has an obligation to ensure that it does not lend funds that would play any role in denying these fundamental virtues.

10. Ensure that loans comply with social, labor, and environmental standards. The U.S. must ensure that its loans comply with social, labor, and environmental standards as stipulated in international agreements it is party to or its recipient countries are party to. In this regard, the U.S. government must insist that the recipients of its loan resources follow clear democratic processes and provide for transparent and established public participation mechanisms in borrowing, management, and monitoring of borrowed resources.

11. Promote debt resolution processes that provide incentives for responsible lending and fair burden sharing. The lack of clear, predictable, comprehensive, and efficient processes for dealing with debt encouraged irresponsible lending and borrowing and had unruly consequences for assigning losses in debt default situations. The current debt crisis could have been avoided if such processes had existed. In order to help avoid a chaotic series of defaults, both creditors and debtors should have the opportunity to turn to an independent international mechanism to seek orderly debt workouts.

III. Benefits of Proposed Principles through Case Studies

The proposed principles of responsible lending and borrowing will ensure that transparency and accountability of both lenders and debtors are brought into the lending process. The following case studies are examples of just how serious a lack of these principles in the international realm is.

A. Citizen Participation and Parliamentary Approval of Loans

Zambia: To date, Zambia’s parliament does not have direct control over the extent to which the nation can be exposed to external debt. It has no power to adjust amounts allocated for debt service because these amounts are established by the Ministry of Finance in conjunction with creditors. Furthermore, while the Minister of Finance or his appointed agent are the sole individuals with the authority to borrow on behalf of the Republic, several debt commentators and researchers have found gross violations of this provision of the law (read more on page 10 in “Zambia: Unlawful Loan Contractions”). Some Ministry of Finance officials have described a number of cases in which the Ministry of Finance only became aware of loans when the creditors came to collect payments on debts accumulated by government agencies.

B. Protection of Human Rights

Democratic Republic of Congo (Zaire): In 1965, General Mobutu took power in the Congo, becoming

one of the world’s most corrupt dictators. In 1978, the IMF appointed a German official, Erwin Blumenthal, to a key post in the central bank of Zaire.¹⁰ He resigned in less than a year and left a notice that corruption was so serious that there was “no prospect for Zaire’s creditors to get their money back.” Ironically, a short time after that, the

An IMF official left a notice that corruption was so serious that there was “no prospect for Zaire’s creditors to get their money back.” Ironically, shortly after the IMF granted Zaire the largest loan they had ever given an African country.

IMF granted Zaire the largest loan they had ever given an African country; over the next decade it gave Mobutu US\$700 million.¹¹ Zaire had virtually stopped repaying its debts in 1982, yet in the next decade, the World Bank lent US\$2 billion

Zambia: Unlawful Loan Contractions

1. Nedbank and the Ministry of Works and Supply

In April 2000, the Zambian Ministry of Works and Supply, without authorization from the Zambian Minister of Finance, entered into a financing agreement amounting to US\$3 million for the supply of spare parts for road equipment by Prime Parts (Z) Ltd and Turn Pan (Z) Ltd. The road repairs were to be completed by April 2001. However, this was not done and the Ministry of Works and Supply did not claim liquidated damages from the company amounting to US\$500 per day as stipulated in the contract. The loan was to be repaid by the budgetary provisions of the Ministry of Works and Supply. As of November 2001, US\$3 million in principal and US\$200,000 in interest was payable to Nedbank.¹²

2. Illicit Agreements

In 2011, an anonymous Zambian government official interviewed in the course of this study indicated that of the 80.9 million Special Drawing Rights of loans contracted in 2004 by Zambia from multilateral institutions, two loans were signed for by the Zambian Ambassador to the U.S. without authority from the Minister of Finance.

more to Zaire. Western governments were the largest lenders, continuing to pour in new money.

When Blumenthal wrote his report, Zaire's debt totaled US\$4.6 billion. By the time Mobuto was overthrown and died in 1998, Zaire's debt was US\$12.9 billion. Not only did Mobuto ship millions of dollars to his private accounts overseas, he killed thousands of Congolese during his reign. Still, the IFIs and Western governments found him "credit worthy" and funded his corrupt activities in the Congo.

Argentina: In Argentina, loans were used to support the violation of human rights. During the military junta's reign from 1976 to 1983, about 30,000 people disappeared in what came to be known as Argentina's "Dirty War."¹³ The junta's violent activities were financed predominantly by U.S. and British banks as the military borrowed extensively, even violating Argentine law. During this time period, Argentina's foreign debt stock grew from US\$8 billion to US\$46 billion.¹⁴

According to researcher Alejandro Olmos, the British banks knew that the money never went to Argentina but remained in accounts in London.¹⁵ Based on such evidence, Olmos filed a criminal accusation, and in 2000, Federal Judge Dr. Jorge Ballesteros ruled that the debt contracted during the 1976-83 dictatorship was illegal and illegitimate, as the debt was taken by the regime, not the country, and that the IMF and World Bank acted imprudently. Lending institutions were aware that they were giving loans to a state which was officially committing a crime against humanity.

C. Due Diligence on Aid Effectiveness and Social Return of Development Loans

The Philippines: According to Philippine government sources and CSOs, the largest single source of debt for the Philippines was the Bataan nuclear power station.¹⁶ The plant, completed in 1984 at a cost of US\$2.3 billion, was never used because it was built on an earthquake fault at the foot of a volcano, thus rendering it too dangerous to operate. Speaking in 2006, the Philippines' national

treasurer, Leonor Briones, lamented, “Filipinos have not benefited from a single watt of electricity but they still pay US\$170,000 per day for the power station.” Joseph Hanlon notes that former President Ferdinand Marcos received bribes of at least US\$80 million and that much of the construction was done by companies with which Marcos was affiliated. International lenders were negligent because funds were used to violate human rights during Marcos’ reign and to support poor investment decisions. When Marcos was overthrown in 1986, he went into exile and had between US\$5 billion and US\$13 billion in foreign accounts. Marcos had embezzled one-third of the Philippines’ foreign loans.

Tanzania, Nigeria, and Kenya: A study conducted by the United Nations Institute for Training and Research found that many dam projects around the world, predominantly funded by the World Bank, have been unsuccessful. As of 2006, the Tanzania Coalition on Debt and Development confirmed that Tanzania owed the World Bank more than US\$575 million for 26 failed agricultural projects. According to a government commission in Nigeria, at least 61 development projects financed by more than US\$5 billion in foreign loans have either failed or never opened.¹⁷ The World Bank has given loans to finance the same agricultural policy reforms in Kenya five separate times.^{18,19} In all these cases, lenders share the blame for repeatedly financing unsuccessful projects and for supporting

governments that pursued policies that failed to benefit their citizens.

D. Creditors Interfering with Ownership of Development Process

India: In 1998, India’s water utility board, the Delhi Jal Board (DJB) applied for a US\$150 million loan from the World Bank to implement water sector reforms. With approximately 15% of Delhi’s population lacking access to clean water and sanitation, reforms were needed to increase efficiency and service.²⁰

However, in the bidding evaluation process for the Project Preparation Facility (PPF), the World Bank interfered with the free deliberations and decisions of the DJB. The Bank’s preferred bidder was Price Waterhouse Cooper (PWC). Despite the fact that PWC lost three times in the normal bidding process, the Bank blatantly manipulated the process and dictated that PWC receive the PPF contract. The World Bank overruled strong protests from the DJB and ignored the wishes of India’s elected representatives.

In arranging for PWC to receive the contract, the World Bank demonstrated its willingness to infringe upon the sovereignty of developing countries by violating democratic processes and ignoring international demands for enhanced transparency and democracy.

IV. The International Community and Multilateral Encouragement of Responsible Lending Principles

The international community has continuously encouraged the implementation of responsible lending and borrowing principles. Nations have indicated, often through multilateral forums, the necessity of promoting right practices and increasing transparency and accountability in the loan contraction process. Encouragement of good practices has come from both the Global North and the Global South with agreements calling for systemic changes in the international lending process.

In March 2002, governments from all nations of the world gathered in Monterrey, Mexico for the United Nations International Conference on Financing for Development, a Summit level meeting. What emerged from that conference was the Monterrey Consensus, a testament to the benefits of and need for international cooperation for development. The Monterrey Consensus reaffirmed the international community's desire to work toward the MDGs and the belief that international financial relationships are a vital part of that progress.²¹

The Monterrey Consensus identified six key areas of financing for development: mobilizing domestic financial resources, mobilizing international resources for development, international trade as an “engine” for development, increasing internation-

al financial cooperation, managing external debt, and systemic issues found in financial systems.²² By identifying these areas, the international community posited the idea that both the Global North and the Global South share responsibility for the world's poor and the development of LICs. Additionally, the Monterrey Consensus highlighted the idea of both internal systemic changes, such as good governance and democratic principles, and international systemic changes, such as enhancing coherence, governance, and consistency and encouraging reform of IFIs. While the Monterrey Consensus served to shed light on issues present in global financial interactions, it did little in terms of concrete outcomes.

Six years later in November/December of 2008, the Follow-up Conference on International Financing of Development to Review the Implementation of the Monterrey Consensus met in Doha, Qatar to explore how and to what extent the Monterrey Consensus had been carried out. The Doha Review found that, while progress had been made, measures to ensure financing for the development process of the Global South had a long way to go.²³ The Doha Review reiterated the need for IFI reform, private creditor reform, and an increased cohesion for sound macroeconomic principles in the international financial system. The Review also

reiterated the idea of a debt workout mechanism that would ensure a system already in place to aid in cases of sovereign debt default.

The United Nations Conference on Trade and Development (UNCTAD) continued the international community's push for identifying sound principles in loan contraction when it launched the Project to Promote Responsible Sovereign Lending and Borrowing in 2009.²⁴ This Project is an attempt to identify and codify internationally recognized standards of lending for the international financial and monetary systems. By assembling an expert working group, representing a broad range of interests, UNCTAD seeks to establish a multidisciplinary view towards principles of responsible borrowing and lending, and has identified maximizing transparency and accountability, responsible credit decisions, and sufficient impact assessments as vital to achieving best practices in lending and borrowing.²⁵ There is hope that the Project to Promote Responsible Sovereign Lending and Borrowing can translate into an international treaty that will present agreed upon foundations and practices to ensure that loans are contracted in the most responsible manner.

In December 2010, the United Nations emphasized the need for creditors and debtors to share responsibility in preventing unsustainable debt situations. It encouraged member states, the IMF, the World Bank, regional development banks, and other relevant multilateral financial institutions and stake-

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holders to pursue ongoing discussions within the framework of UNCTAD's initiative to promote responsible sovereign lending and borrowing. In addition to the work done by UNCTAD, the United Nations advised that concerned parties consider the work on this issue conducted by other organizations and forums.

V. Civil Society Organizations and Encouragement of Responsible Lending Principles

CSOs have consistently stressed that the accumulation of illegitimate debt will continue unless the global economic system is transformed. Such changes would foster more equitable and democratic relations between nations and within nations.

CSOs have been engaging with UNCTAD, the United Nations Special Rapporteur on Human Rights, IFIs, and U.S. legislators to insist on comprehensive approaches to eliminating the root causes of illegitimate debt and promoting responsible lending and borrowing. CSOs hope that the discussion could contribute to the momentum raised at official and international levels. This process could help illustrate links to other relevant issues such as illicit financial flows, the food and climate crisis, and issues related to debt and human rights.

The principles of responsible lending and borrowing espoused by UNCTAD, European Network on Debt and Development (EURODAD), African Forum and Network on Debt and Development (AFRODAD), and the Jubilee USA Network are

designed to build a consensus of internationally recognized principles that would help to avert a future debt overhang for the world's poorest. EURODAD's Charter on Responsible Lending released in 2008 lays out the principles that many CSOs believe should be the foundation for best practices in loan contractions.²⁶ The Charter calls for increased transparency and accountability through parliamentary and citizen participation in the contraction process, progress reports on projects financed by loans, loan evaluations that are made publicly available, and ex ante impact assessment of the loan. Further, the Charter proposes an independent sovereign debt workout mechanism.

Ultimately, such principles could set a global standard for contraction of sovereign debt and could be used as a means of assessing the quality of debt contracts and debt sustainability. The implementation of responsible lending and borrowing principles will help to protect countries against future unsustainable, illegitimate, and/or odious debts and help to foster sustainable development for the world's poorest countries.

VI. What should the U.S.'s Position on Responsible Lending Be?

As the world's single largest financier of the developing world and the largest contributor to the IMF and the World Bank, the U.S. has tremendous leverage in promoting responsible lending and borrowing practices. The U.S. government should lead by example, ensuring that future loans to LICs are beneficial, contracted transparently, are repayable, and are supported by the citizens of recipient countries. The U.S. could then use its influence to support right lending principles in loans contracted by IFIs.

Since Treasury Secretary Nicholas Brady announced support for debt reduction in March 1989, debt relief has played an important role in U.S. policy.²⁷ Debt relief through HIPC and MDRI has produced positive results for the thirty countries, as of July 2010, that have reached the completion point. For example, Burundi, with 80% of its population living on less than \$1 a day, was able to invest US\$50 million per year to recruit teachers and build schools after debt relief. Debt relief savings in 2002 and 2003 allowed Tanzania to build 31,825 classrooms, hire 28,000 new teachers, and increase poverty reduction funding by 130%.²⁸

While these achievements are commendable,

long-term solutions must be implemented in order to ensure that another debt crisis does not occur. Without changing the "rules of the game" which created the debt crisis, the threat of future debt crises looms. Under domestic law, loans can be considered void or forced to be restructured in certain circumstances. However, similar exceptions do not exist in the international realm, though there are situations that would suggest the need for the cancellation or restructuring of international loans.

The EURODAD Charter for Responsible Financing makes many proposals of best practices on responsible lending and borrowing, such as public disclosure of loan information, ex ante assessments, project evaluations, and parliamentary and public participation in the loan contraction process. Principles have been adopted by AFRODAD to encourage African countries to legislate debt contraction procedures. Additionally, the international community has time and time again lent support for implementing principles of responsible sovereign lending and borrowing. The U.S., as an influential member of the international community, has a responsibility to lead the way in executing right practices in lending, ensuring that loans are being utilized in efficient, economical, and people-benefitting ways.

Conclusion

The aforementioned case studies in Zambia, the Congo, Argentina, the Philippines, Tanzania, Nigeria, Kenya, and India demonstrate the need for adopting responsible lending and borrowing principles. In the past, loans have been used to fund projects of which citizens were unaware of and often did not benefit from, support corrupt dictators who committed human rights offenses and squandered funds into their private bank accounts, and to finance failed development projects. The cycle of irresponsible lending and borrowing that leads to LICs further indebtedness has been ongoing for decades and demands redress.

Had internationally recognized standards of lending and borrowing been implemented from the onset of the lending craze of the 1970s, situations of funding human rights violations, dead-end projects, and failed development initiatives may not have occurred. Thus, the perpetual cycle of debt that poor nations have continuously been in may have been lessened if channels of redress would have been established and violations of good lending and borrowing principles would have been penalized. In the interest of increasing transparency, accountability, respect for democratic processes, and information sharing in loan contraction and international financing, structural changes to international financing must occur. In addition to addressing the previously mentioned shortcomings of the current system, implementation of these principles would promote the right to self-determination of the poor, human rights for citizens of debtor and creditor nations, and help facilitate the democratization of the development process.

The U.S. has the ability to play a vital role in the implementation of responsible lending and borrowing practices in the international realm. The U.S. government, as one of the principal contributors to the IFIs' policies, must assume responsibility for the violations carried out by these institutions. Jubilee USA Network urges the U.S. government to serve as a leader in the enforcement of national and international legislation on responsible lending and borrowing.

Upon implementation of these reforms, the U.S. government should serve as an example, using the nation's influence within the international financial community to encourage similar changes within IFIs and other creditors. Internationally recognized standards of lending and borrowing would mitigate the creation of unsustainable debt for LICs, and aid in ensuring that all loan resources yield maximum results, are sustainable and repayable, and promote development in LICs.

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