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Towards Sovereign, Democratic, Responsible Lending and Borrowing: *A Civil Society Perspective*

by

Mr. Neil Watkins

Executive Director

Jubilee USA Network

The views expressed are those of the author and do not necessarily reflect the views of UNCTAD



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Neil Watkins, Executive Director, Jubilee USA Network

Civil Society Milestones

- **NGOs and debt campaigners have been working on illegitimate debt and responsible lending/borrowing for 2 decades. Key moments:**
 - **1999: Formation of Jubilee South**
 - **2000s: Audits of illegitimate debt won in Brazil, Philippines, Ecuador**
 - **2001-06: Norwegian debt campaign → decision by Norway to accept co-responsibility for failed development policy**
 - **2007: Eurodad Charter on Responsible Finance launched**

Why action now on Responsible Lending/Borrowing?

- **Teachable moment: Current crisis fueled by irresponsible lending and borrowing in US sub-prime market**
- **Original Third World debt crisis has origins similarly in irresponsible lending and borrowing**
- **Shocking cases against HIPCs by vulture funds shows need for ethics in lending/borrowing**
- **Ongoing concerns about quality of loans from so-called "old/traditional" and "new" lenders alike**

What's Needed?



- **Internationally recognized standards to apply to all public lending and borrowing**
- **Critical to address ex post and ex ante odious/illegitimate debt**

Towards Sovereign, Democratic and Responsible Lending and Borrowing: Global Civil Society Platform and Input

- **June 2009 meeting in Italy brought together groups from more than three dozen countries from Africa, Asia, Latin America, North America, Europe to develop a platform for responsible lending and borrowing**
- **Among the Participants/Signatories to date:**
 - **African Forum and Network on Debt and Development (AFRODAD); Africa Jubilee South**
 - **Jubilee South – Asia/Pacific Movement on Debt and Development (JS-APMDD)**
 - **Latin American Network on Debt and Development (LATINDADD)**
 - **Action Aid International**
 - **European Network on Debt and Development (EURODAD); Jubilee USA Network**

Civil Society Platform: “Responsible Lending/Borrowing” one piece of a broader need

- **Need to keep “Responsible Lending and Borrowing” in context of the need for broader, systemic transformation of the international financial architecture**
- **Need to acknowledge and redress the historically unjust and inequitable power relations between South and North**
- **Financial system serves the real economy, ensure peoples’ participation and promote environmental and economic justice**
- **Broader demands:**
 - **Audits, followed by cancellation and/or repudiation of illegitimate debts**
 - **Create new international financial institutions that embody equity and justice**

Responsibilities and Obligations of Public Lending Institutions

- **Northern governments, international financial institutions and banks bear major responsibility for the accumulation of illegitimate debt.**
- **To avoid creation of new illegitimate debt, lenders should:**
 - **Uphold core universally accepted standards on human rights and the environment. Lending must not support any venture that contravenes national laws and United Nations and other internationally recognized standards on social, labor and environmental protection.**
 - **Respect sovereignty, national ownership and policy space. Lending should not be used as leverage to impose conditions on borrowing governments that are extrinsic to financial and fiduciary terms and mutual obligations of the loan.**

Responsibilities and Obligations of Public Lending Institutions

- **Ensure Public Consent and Transparency. Presumption in favor of disclosure**
- **Adhere to integrity and anti-corruption pacts**
- **Ensure Proper Due Diligence: Feasibility Studies, Ex Ante Impacts Assessments; and Ongoing Project Monitoring.**

Responsibilities and Obligations of Borrowing Governments

- **Governments of the South also have responsibility and should be held accountable to their citizens:**
 - **Borrowing and debt payment policies should not run contrary to the responsibility of governments to defend basic civil, political, economic and environmental rights**
 - **Clear, comprehensive and coherent regulations and mechanisms on borrowing should be established, including:**
 - **limits on the purposes for the use of borrowed funds;**
 - **ensuring due diligence in the preparation for and reporting on borrowed funds;**
 - **ceilings on total debt payments;**
 - **limits and guidelines on counterpart fees and penalties;**
and
 - **clear regulations to avoid conflict of interest.**

Responsibilities and Obligations of Borrowing Governments

- **Accountable and democratic decision-making and appropriate checks and balances should be assured, including:**
 - **parliamentary approval and oversight for borrowing**
 - **regular debt audits with the participation of citizens groups**
- **Full information disclosure and transparency and democratic processes in every phase of the loan contraction and implementation process**
- **Regular internal evaluations; efficient and rigorous records and data management; and accountability mechanisms to hold officials and government bodies accountable for irregularities, including provision for redress by affected communities**

Joint Responsibilities of Lenders and Borrowers

**“Debtors and creditors must share responsibility for preventing and resolving unsustainable debt situations.”
-- Monterey Consensus, 2002**

It is the joint responsibility of lenders and borrowers to ensure appropriate compliance with technical, fiduciary, and legal terms and conditions, including:

- **Make clear statements of purpose, amount, interest rates, fees and charges, grace and maturity periods, and beneficiaries of loans.**
- **No confidential side-letters and any related host government agreements must be included in the loan documentation.**
- **Borrowers spend funds as stipulated; lenders deliver funds predictably as stipulated**
- **Loans in compliance with international and national law**

Joint Responsibilities of Lenders and Borrowers

- **The lender should obtain free and informed consent of the borrower before on-selling a debt, and this should not be sold to vulture creditors**
- **In the case of repayment difficulties or disputes, countries have a sovereign right to hold debt audits and take unilateral action to meet their human rights obligations.**
- **Borrowing countries should have access to an independent and transparent arbitration procedure in case of dispute.**

UNCTAD Initiative: The Time is Now

- UNCTAD initiative should lead to a binding global framework

“The current economic and financial crises afford the international community a unique opportunity to reassess the manner in which international economic policy decisions, including those relating to foreign debt, have been taken thus far.

“A new framework for economic governance that places human rights and people at the centre will not only make reforms of the international financial and economic system more sustainable and resilient to future crises, but will ensure that indebted countries are afforded the necessary space to make policy choices that serve the interests and needs of their people.”-- *Cephas Lumina, UN Independent Expert on Foreign Debt and Human Rights, August 12, 2009, Report to the UN General Assembly*