

Mercy Global Concern: Briefing paper 2- September 2007

UNCTAD and World Bank publish long-awaited papers on odious debt

UNCTAD and the World Bank have both published long-awaited research papers on the issue of odious debt. Both papers have been financed in part by the Government of Norway.

The publication of the papers follows much confusion, especially in relation to the World Bank paper. The Government of Norway had stated over 18 months ago that it had made funds available to both bodies to carry out this work. For some time however the World Bank strenuously denied that this research was underway and Executive Directors to the World Bank – including ironically from the Nordic-Baltic office – also claimed on several occasions that they knew nothing about this work at all. Meanwhile, a letter to UNCTAD offering to review the Terms of Reference for the study went unanswered. Despite clear civil society interest in these two papers, it is not clear how the researchers were finally selected or who defined any terms of reference for the two papers. A letter to the Norwegian Government expressing dissatisfaction with the secrecy surrounding the process also did not yield a satisfactory response. The Government of Norway merely pointed to the sensitivity of the topic. In this context, we look forward to their detailed comments to the two papers over the next couple of months.

In relation to content, both papers begin by reviewing a number of instances over the past century where the concept of odious debt has been invoked to declare a sovereign debt null and void or to support the repudiation of sovereign debt.

The main message to emerge from the **World Bank discussion paper** is that international law does not generally provide for the repudiation of debts on the grounds of their being odious, but this should not deter lenders and sovereign borrowers from acting in a variety of ways to ensure that loans are used for the benefit of the borrowing states and not to subjugate their populations or enrich the corrupt.

The **UNCTAD paper** is less dismissive of the doctrine of odious debt. Indeed it suggests that – although complex – there are often strong grounds to make the case that a debt is odious. Where such cases have been rejected, it is because the individual sovereign debt in question has not been considered odious rather than because international law does not recognise the concept of odious debt as such. The paper concludes however that there is no obvious legal forum for the adjudication or settlement of claims of odiousness but that such claims might appropriately be raised in bilateral or multilateral negotiations on debt relief, or they could be adjudicated in the context of arbitration or domestic litigation.

Both UNCTAD and the World Bank are inviting feedback on the papers. These should be sent to discussion@unctad.org and to vnehr@worldbank.org.

Eurodad, in partnership with colleagues, will issue more detailed comments on the two reports over the next few weeks. If anyone is interested in collaborating with us on a response please email Gail Hurley at ghurley@eurodad.org.

UNCTAD: The Concept of Odious Debt in Public International Law:
http://www.unctad.org/en/docs/osgdp185_en.pdf

World Bank: "Odious Debt: Some Considerations":
<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTDEBTDEPT/0,,menuPK:64166739~pagePK:64166681~piPK:64166725~theSitePK:469043,00.html>