



Debt Audit as a precedent for any action on debt

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CONFERENCE on
DEFAULT ON DEBT and EUROPEAN UNION: the impossible marriage?
**Ways out at international level: UN work for a multilateral debt
restructuring framework**

European Parliament - Brussels, 1st March 2016

SUMMARY

1. Applicability of the UN Principles for Debt Restructuring
2. Debt System
 - Operation of Debt System in Greece
 - Privileges of Debt System in Europe
 - Similarities of the Debt System in Ecuador and Brazil
3. Debt Audit as a precedent for any action on debt
4. Necessity of a New Financial Architecture
5. Challenges

UN Principles for Debt Restructuring Process

- 1. The sovereign right to start a restructuring process*
- 2. Good faith negotiations by debtor and creditor*
- 3. Transparency of the process and related data*
- 4. Impartiality of all institutions and actors involved*
- 5. Equitable treatment of creditors*
- 6. Sovereign immunity of states before foreign courts*
- 7. Legitimacy of the institutions involved*
- 8. Sustainability: speedy conclusion, and outcomes that promote growth and respect human rights*
- 9. Majority restructurings: minorities that respect decisions approved by the majority.*

Those principles are very important, but they would apply to a “Legitimate Debt Process”

UN Principles for Debt Restructuring Process

presuppose the existence of:

- An unquestionable previous debt
- Legitimate actors and institutions
- Independent Courts
- Compatibility between "debt sustainability" and "respect for human rights"

The UN principles would apply to a "Legitimate Debt Process" which is hardly found in reality

What we have found in Brazil, Ecuador, Greece and many other countries is a "Debt System"

"DEBT SYSTEM"

- Wrong use of the public debt, which functions as an instrument to transfer resources to the financial sector, instead of financing the economy of Nations

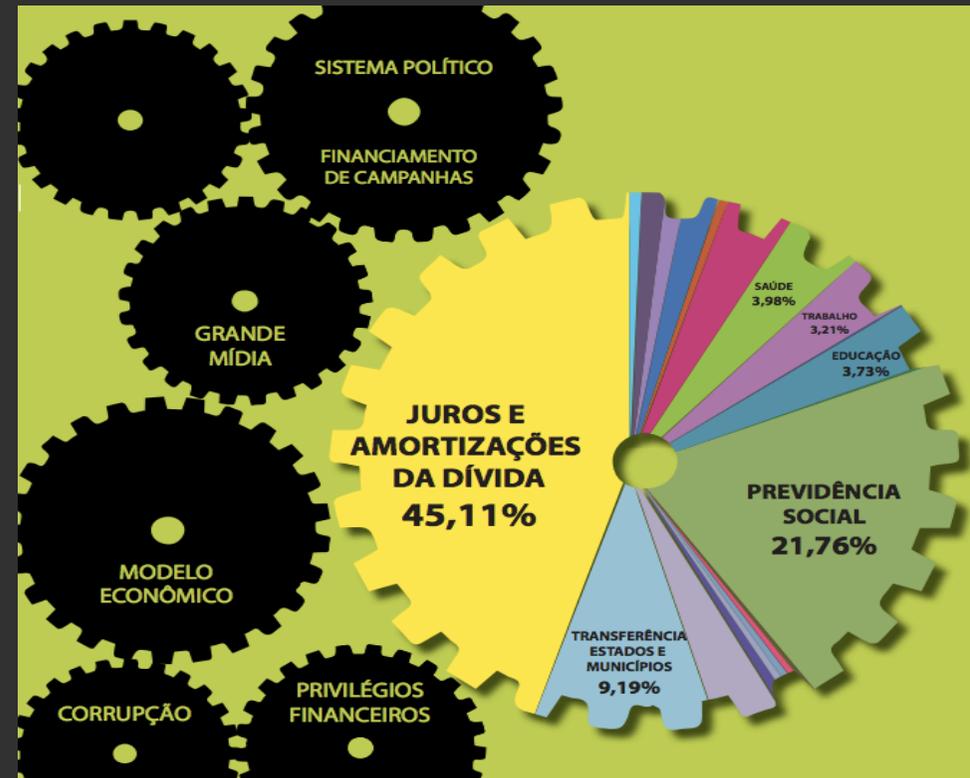
- Main characteristic of the "Debt System":
Public debts with no counterpart

- Main beneficiary of the "Debt System":
financial sector



How the "Debt System" operates?

- Financial mechanisms generate public debt with no counterpart for the country or the society
- IMF Interference
 - Economic plans (MoU)
 - Expertize for agreements
- Financial power influence
 - Bail-out banks as sacrificing the country and the society
- Privileges for 'creditors'
 - Legal
 - Political
 - Media
- Corruption



Financial domination as dismantling the economy and social rights

“Debt System” operation in Greece

Agreements implemented since May 2010

- Interference of IMF:
 - The agreements were not a Greek initiative. They were drawn under the IMF’s expertise with participation of the *Troika*
 - Evident attachment of each agreement to the Memorandum of Understanding (MoU) imposing a complete economic plan
- All amounts borrowed under agreements should be applied to accomplish the obligations imposed by the IMF, especially to “*provide support to banks as needed*”
- Lack of counterpart: Greece didn’t get any benefit from the agreements designed to privilege the banks
- Legal advisor for the agreement: Cleary, Gottlieb Steen & Hamilton.

“Debt System” operation in Greece

- Mechanisms generated public debt to Greece, for instance:
 1. *Goldman Sachs Swaps* were transformed into “public debt”.
 2. According to a third agreement hidden on an annex of the “Bilateral Agreement”, the funds of this agreement were transferred to the “committed lenders”, banks that hold any Greek security. This mechanism utilized an account opened in the ECB by the European Commission. Greece didn’t get any benefit.
 3. The EFSF loans destined to recapitalize banks and other benefit to financial institutions. This mechanism utilized a *company* created in Luxembourg, a “*société anonyme*” focused on the exchange of toxic assets mostly held by private banks into EFSF Loans. The German Debt Management Office and the European Investment Bank provide support to the EFSF. Greece didn’t get any benefit.
 4. Charge of all manner of abusive costs against Greece, generating more debt obligations.

How to apply the UN Principles to a debt generated like this?

Some Legal Privileges of “Debt System” in Europe

- The ECB implemented several “non-standard measures” and adopted the SMP Program, among others. The direct purchases of public debt securities by the ECB are illegal under Article 123 of the EU Treaty.
- The exchange of toxic assets from banks to a “company” through simple transference, without a proper buy/sell operation, would be illegal.

EUROSTAT changed the rules in order to allow “liquidity operations conducted through exchange of assets.”



- The EFSF was created as a “*société anonyme*” in Luxembourg, a breach to avoid being submitted under international law. EFSF received a collaboration from the IMF of EUR 250 billion.

Similarities to Debt System in Ecuador and Brazil

Negotiations in Luxembourg in the 90's: transformation of toxic prescribed external debt into new bonds under the "**Brady Plan**", with several illegalities:

- No regular registration of the new bonds. Use of an exception of SEC (*Securities and Exchange Commission*) rules not applicable for countries
- Traded privately in tax havens because the new bonds could not be commercialized in any regular stock market
- Arrangements to mask accountability and statistics rules, such as "complementary mechanism."
- New bonds exchange into state companies under the Privatization process
- Ecuador or Brazil didn't receive any benefit and still had to buy guarantees
- The Brady Plan represented a disaster for the Latin American countries
- Legal advisor: Cleary, Gottlieb Steen & Hamilton.

See <http://cadtm.org/Los-asesores-del-fraude-de-la>

Debt System in Brazil

Generation of “public debt” by use of monetary policies mechanisms oriented by the IMF:

- High interest rates of almost 17% a year
- Transformation of *swaps* losses into “public debt”
- Exchange of part of the monetary basis (exceeding 5% of GDP) in banks hands into public debt, paying very high interest rates to the banks whilst incentivizing even more elevation of interest rates

**Monetary policies
imposed and assessed by
the IMF and World Bank**

FINANCIAL SECTOR ASSESSMENT PROGRAM

BRAZIL

IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION

**DETAILED ASSESSMENT OF
IMPLEMENTATION**

JUNE 2013 (REVISED)¹

INTERNATIONAL MONETARY FUND
MONETARY AND CAPITAL MARKETS DEPARTMENT

THE WORLD BANK
FINANCIAL AND PRIVATE SECTOR DEVELOPMENT
VICE PRESIDENCY

DEBT AUDIT

Access to documents will answer

Where the debt comes from?

How much the country actually received?

How much have been paid?

How much do we really owe?

Who contracted these debts?

Where were the resources applied?

Who had benefited and profited from the debt?

How responsible are the creditors and international organizations in this process?

DEBT AUDIT

Technical instrument, but not only accounting

- Explains the mechanisms that generate “public” debt
- Clarifies the reasons of immensurable growth of the debt
- Unveils the juridical structure of the financial privileges
- Proves the political instrumentalization (dictatorship, technocracy) in benefit of financial sector
- Shows the relation between the “Debt System” and the deregulated Financial Architecture which intensifies speculation that benefits banks
- Evidence how the “Debt System” feeds the economic model that is producing unscrupulous damage to the Planet and People

COMPREHENSIVE AUDITINGS

DEBT AUDIT is an opportunity to move from speech against the debt to the search for evidence of the illegitimacy and illegality.

DEBT AUDIT is a tool that must precede any legal actions and policies to debt.

The audit report, based on documents and official data, is an instrument for concrete actions in several fields.

- COMPREHENSIVE OFFICIAL AUDITINGS of public internal and external debt, in all its aspects: economics, financial, social, ecological, as implemented in **Ecuador**
- CITIZEN AUDITINGS, allowing studies, social mobilization, closing the myth of debt, as we have been developing in **Brazil**

Challenges and Proposals

- **Debt Audit as a precedent for any action on debt**
- Before any restructuring, refinancing or negotiation, there must be a debt audit, in order to avoid negotiate any illegal, illegitimate, odious or null debt
- Debt audit with citizen participation as a routine. Inclusion of this obligation on each Country's legal order. Disseminate the experiences of Debt Audit in Ecuador, Brazil, Greece and encourage the implementation of new audits
- Necessity of a previous supervision of debts before its authorization. Identify in each country the process of generation of "public debt" by use of financial mechanisms and the increase of illegitimate debt due to governments borrowing to bail-out banks
- Complete transparency about the public debt to people who actually is paying this bill

Challenges and Proposals

- Deepening the understanding about:
 - ✓ The necessity of a regulated New Financial Architecture
 - ✓ How the “Debt System” feeds the economic model that is producing unscrupulous damage to the Planet and People



BHP Billiton, Vale and Samarco Crime in Mariana/Brazil <http://goo.gl/MH2pLT>

- Need to introduce a serious debate about debt audit in the UN and on this European Parliament. We can't keep sacrificing the people and the planet to pay illegal, illegitimate, odious or null debts. **Debt Audit must precede any action on debt**



Citizen Debt Audit is about Human Rights

Thank you

Maria Lucia Fattorelli

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