

# COUNCIL MONITOR

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Human Rights Monitor Series

## COUNCIL UPDATE – ITEM 3 HUMAN RIGHTS COUNCIL, 11<sup>TH</sup> SESSION 5 JUNE 2009

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### Overview

On 5 June 2009, the Human Rights Council (the Council) held an interactive dialogue with the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Mr Cephas Lumina. Among the issues addressed were the needs to consider foreign debt as a human rights issue, the concept of illegitimate debt, the issue of co-responsibility and the inflexibility of the International Monetary Fund's (IMF) loans conditions. States did not ask many questions, but rather welcomed the report or commented upon specific elements they did not agree with. Nevertheless, Mr Lumina responded that he did not have enough time to answer all questions in detail, but that he would provide written detailed answers to all questions raised.

### Item 3 - Independent expert on the effects of foreign debt

#### Presentation by the independent expert

In his presentation, Mr Lumina outlined three objectives within his mandate, namely raising awareness to consider foreign debt as a human rights issue and thus broaden States' support for his mandate, to undertake a study on human rights and foreign debt with the aim of identifying some conceptual issues, and finally to identify best practices concerning foreign debt and human rights through the development of draft general guidelines designed to ensure that compliance with commitments arising from debts do not undermine the capacity of States to fulfil their human rights obligations.

Mr Lumina informed the Council that he had participated in the *Doha Conference* and he regretted that the outcome was not very positive. While he tried to draw attention to the importance of human rights, he regretted that the outcome document reflected a lack of progress on debt relief and failed to take a 'holistic approach which places human rights at the centre.'

Mr Lumina then underlined States' responsibility under international law to ensure basic human rights and argued that 'governments should not be put in a situation where they are unable to do so because of excessive debt

burden.’ His explained that his report highlights the limitations of current debt relief and calls for a human rights-based approach to the debt crisis. His main argument was that the debt crisis should not only be viewed from an economic perspective but from an ethical, moral, social economic and political perspective.

Mr Lumina then referred to his mission to Norway and Ecuador and informed the Council that a detailed report will be presented next year. However, he commented upon the need to have an internationally accepted definition of **illegitimate debt**. He argued that an absence of such a definition was a major obstacle in the global efforts to address the debt crisis and welcomed Norway’s and Ecuador’s broad support to elucidate this concept at the multinational level. In this regard, he also noted Norway’s and Ecuador’s support for the establishment of a fair international transparent debt arbitration mechanism aimed at resolving debt issues fairly.

Mr Lumina argued that the current economic crisis underscored ‘the need for more concrete action.’ Before ending the presentation of his report, he highlighted the importance of co-responsibility, i.e. shared responsibilities of debtors and creditors, and referred to the *Monterey Consensus*, which underlines this principle.

At the end of his presentation, Mr Lumina outlined his future plans to continue working on the draft general guidelines’ on foreign debt and human rights with a view to presenting it to the Council next year. However, he regretted that due to financial constraints, he was not able to discuss the draft with different stakeholders and appealed to States to provide adequate resources to enable him to carry out regional consultations. Finally, Mr Lumina also announced he will continue to examine the links in between trade and debt, as well as the issues of **co-responsibility** and illegitimate debts.

His final remarks highlighted the fact that the sovereign debt of development countries ‘continue to receive *ad hoc* treatment and the poor people in these countries continue to bare the costs.’ To prevent future debt crisis, he insisted that the current financial system needed to be restructured.

### Interactive Dialogue

Ecuador, as a concerned State, took the floor and underscored that the current financial crisis has an impact on the servicing of debt and seriously affects the ability to ensure the right to development. It referred to its own national audit, which is a ‘pioneering action in this context’, carried out to assess the legitimacy of debts, and informed the Council that the results has been ‘quite alarming as we have seen injustices, inequities and abuses, something that has occurred throughout negotiations and re-negotiations of debts.’ Regarding this topic, an NGO, Europe Third World Centre, argued that it was ‘urgent’ to establish debt audits at the international level and considered the United Nations as the appropriate institution to establish monitoring of these audits.

Many States<sup>1</sup> agreed to consider foreign debt as a human rights issue. Unsurprisingly, these same States agreed with Mr Lumina that foreign debt does not only have an economic dimension but also an ethical, moral, social economic and political perspective. Generally, developing countries, including Pakistan (on behalf of the OIC), the Philippines, Zambia, Ghana and Bangladesh received Mr Lumina’s views favourably.

The United States, however, was not completely convinced by Mr Lumina’s presentation. It explained that debts are not ‘necessarily a negative thing.’ In this regard, while the delegate reminded the Council that the United States has been a leader in the field of programs for debt forgiveness, he argued that debts could sometimes ‘enhance development and human rights.’ Further, the United States was concerned that a human rights-based approach to foreign debt is a concept that in practice would be difficult to implement ‘effectively and fairly’, and that determining illegitimate debt would be ‘problematic.’ The United States encouraged developing countries to escape dependence in a single export commodity and diversify their exportation in order to be able to finance debt obligations.

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<sup>1</sup> Pakistan (on behalf of the OIC), Norway, the Philippines, Zambia, United Arab Emirates ( on behalf of the Arab group), Cuba, Ghana, Bangladesh, the Russian Federation, Brazil, Cameroon, China, Brazil and Egypt.

Other economically advanced countries, such as Norway, welcomed the report and claimed that Mr Lumina's goals were quite 'challenging' but 'interesting'. Although the focus on human rights approach for debt was considered as a 'challenge', Norway agreed that foreign debts did affect the full enjoyment of human rights in some countries. Further, Norway referred to international initiatives which have been a success, such as the *Highly Indebted Poor Countries Initiative* and the *Multilateral Debt Relief Initiative*. Finally, the delegate highlighted that Norway was looking forward to future work on the term illegitimate debt and the idea of co-responsibility, and asked the independent expert to indicate in more detail how to 'face this in the coming year.'

Pakistan and the Philippines criticized the fact that the debt problem was not taken more seriously. The G20, World Bank and the IMF were criticized for not addressing the 'global financial architecture'. Pakistan (on behalf of the OIC) stated that such institutions 'further limit the policy space for developing countries', and it requested the IMF to 'eliminate conditionality attached with loans.' The Philippines also referred to the 'unfair conditionality' of some international financial institutions' loans, where many developing countries had 'no other choice than to prioritise debt servicing in their national budget due to inflexible repayment arrangements.' Brazil also argued there was an urgent need to reform the IMF and the World Bank.

The Philippines, Zambia, Ghana and Bangladesh declared that many developing countries had to spend more on servicing debts than on ensuring basic needs of their people, such as education and health. In this regard, Bangladesh insisted that States should not be placed in a situation where they are unable to ensure basic human rights due to excessive debt burden. In the same context, China, the Russian Federation, Egypt and Pakistan (on behalf of the OIC) considered debt burden as the main obstacle for developing countries attaining the Millennium Development Goals.

Zambia, the United Arab Emirates stated that often debt relief efforts were diluted by other factors. The United Arab Emirates (on behalf of the Arab group) argued that some initiatives to alleviate the debt burden have improved situations of some countries, but these initiatives only have 'short term effects.' Mr Lumina agreed with the fact that some debt relief initiatives have delivered successes. However, the independent expert also questioned whether these could be seen as durable successes and whether these relief debt initiatives could really prevent future debt crisis.

Cuba and Cameroon requested more information on the concept of illegitimate debt. Cuba asked whether Mr Lumina could share an estimate of the total 'illegitimate debt' of developing countries and questioned whether there were any good practices available on how to handle illegitimate debt. In his responses, Mr Lumina explained that he does not have a precise figure on debts that could be considered as illegitimate but he declared it was not a 'negligible figure.' Further, Mr Lumina argued that 'we can not wait for the situation until which we will define a real definition for illegitimate debt'. However he suggested States should devise a 'voluntary basis by which they can treat debts which may be characterised as illegitimate.'

### Further information

For further information on the Human Rights Council, please consult the following resources:

- Web site of the International Service for Human Rights, providing up-to-date information before, during and after sessions of the Council: <http://www.ishr.ch/council>. During the session, ISHR will provide information about the Council's proceedings on a regular but not daily basis. You can subscribe to receive alerts of our publications by sending an email to [information@ishr.ch](mailto:information@ishr.ch).
- Oral statements made at the Council, as well as other informal documents and draft resolutions are available on the 'OHCHR extranet' at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: 'hrc extranet' Password: '1session'.
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 11<sup>th</sup> session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/11session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/11session/reports.htm>.

*NGOs and human rights defenders seeking more specific information or individual advice on the Council session, please contact the ISHR secretariat by email or phone at +41 (0) 22 919 71 00.*

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