

Pakistan 'deserves' \$53 billion foreign debt write-off

Thursday 19 August 2010, by [RIAZ Raja](#) (Date first published: 21 August 2010).

LAHORE: At a time when Pakistan faces challenges such as terrorism and devastating floods, international financial institutions and donor countries should step forward and write off the country's massive \$53 billion debt to guarantee the Pakistani people the 'right to life'.

International laws, the UN charter, ethics and morality all support Pakistan's case for getting a write-off.

Pakistan can refuse to pay its all external debts on the basis of international laws: 'the state of necessity' and 'the law of illegitimate borrowings', besides emphasising 'the right of providing basic necessities' to its population.

Various countries have invoked these laws at different times to get relief for their people from the international financial institutions and states.

The first principle that can be invoked for the purpose is the law of 'the state of necessity.'

The state of necessity defence is enshrined in Article 25 of the International Law Commission's Articles on State Responsibility. Under international law, this term is used to describe: "A situation in the presence of which a state is excused for not performing an international obligation. Such a situation is generally believed to be an actual threat or a prospective peril to a state's essential interests. From an operational point of view, a 'state of necessity' has the ability to change into a legitimate action a conduct that would otherwise be considered wrongful."

The focal person of the Committee for Abolition of Third World Debt (CADTM), Pakistan chapter, Khaliq Shah, has supported this argument. "Pakistan must refuse debt servicing on external loans. In view of the devastation caused by floods, Pakistan has a legal right to repudiate debt as there are several arguments in internal laws that can be invoked as legal justification to refuse external debt servicing. One of these justifications is called 'state of necessity'. By this we mean a situation that jeopardises the existence of a state or its economic/political survival," he said.

The provision of health, education, food, water and housing is the basic function of a state. The recent calamity in Pakistan has rendered hundreds of thousands of people homeless. International donor agencies waived off the loans of Haiti in January this year due to the same reason.

The IMF waived a debt of \$268 million given to Haiti. Following the decision of the IMF, the World Bank also eased the life of Haitians by deferring repayment of its debt for five years. The World Bank announced that "it, too, supports debt relief, and will waive payments on the \$38 million lent to Haiti for at least five years."

The IMF also sanctioned a fresh loan worth \$60 million to Haiti stating, "The new loan will not have any interest throughout 2011." The IMF and the World Bank had cancelled Haiti's \$1.2 billion debt in 2009 as well.

The international community pledged \$5.3 billion to fund the initial phase of Haiti's reconstruction over the next 18 months, including a contribution of \$479 million by the World Bank. This includes \$151 million in grants, \$39 million write-offs through cancelling Haiti's remaining debt to the World Bank and \$60 million in investments from the bank's private sector arm, the International Finance Corporation (IFC).

All these steps were taken citing the fact that the earthquake had ruined the infrastructure of the country, making the state unable to provide the basic necessities to its people.

The Haitian government reported to the international community that an estimated 230,000 people had died, 300,000 had been injured and one million made homeless. They also estimated that 250,000 and 30,000 had collapsed or were severely damaged. Amongst the widespread devastation and damage, vital necessary to respond to the disaster was severely damaged or destroyed. This included all hospitals in the capital; air, sea, and land transport facilities; and communication systems. Roads were blocked with or were broken.

The world community fully supported the government of Haiti in rescue operations: 20 countries sent military personnel to the country, with Canada, the United States and the Dominican Republic providing the largest contingents. They arrived with 600,000 emergency food rations, 100,000 ten-litre water containers, and an enhanced wing of 19 helicopters; 130,000 litres of were transferred to shore on the first day. The helicopter carrier sailed with three large and two survey/salvage vessels, to create a 'sea base' for the rescue effort. They were joined by the French vessel . The Canadians joined Colombian rescue workers, Chilean doctors, a French mobile clinic, and Sri Lankan relief workers who had already responded to calls for aid. The US Navy listed its in the area as "17 ships, 48 helicopters and 12 fixed-wing aircraft" in addition to 10,000 sailors and Marines. The navy conducted 336 air deliveries, delivered 32,400 gallons of water, 532,440 bottles of water, 111,082 meals and 4,100 kilogrammes of medical supplies.

Foreign countries raised funds for Haitians and the European Union promised \$474 million for emergency and long-term aid. Brazil announced \$210 million for long-term recovery aid, \$15 million of which were in immediate funds. The UK committed \$32.7 million in aid, while France promised \$14.4 million. The US government announced it would give \$100 million to the aid effort.

Now compare all this with the situation in Pakistan: the total number of people affected by the floods (20 million) exceeds the combined total in three recent mega disasters —the Haiti earthquake, the 2004 Indian Ocean tsunami and the 2005 Kashmir earthquake.

The unprecedented rains have triggered a massive humanitarian crisis that has threatened the lives of millions of people including women and children. These people do not belong to a specific age group, but include infants to 80-year-olds. The old women and very young children are most vulnerable. The death toll from the floods is close to 1,100 right now.

According to the flood data from the last 62 years, the country has suffered cumulative financial losses of more than Rs 385 billion (\$6 billion) on account of 15 major floods. However, the damage done by the 2010 floods is far more than that figure.

The communication infrastructure has been totally ruined, roads, bridges and railway tracks have been destroyed, while government buildings have collapsed.

Apart from the human toll, 111 bridges have been destroyed, and more than 3,700 houses have been swept away.

It is very difficult for the government to meet the basic requirements of its millions of displaced

people as the international response to Pakistan is far less than the Tsunami and Haiti disasters — the world community has only provided \$229 million to Pakistan so far. This translates into \$16.16 for each affected Pakistani person as compared to \$1,087 every affected person in Haiti and \$1,249 per affected person in the Indian Ocean tsunami.

The UN Human Rights Commission has adopted a number of resolutions on the issue of debt and structural adjustment. One such resolution, adopted in 1999, asserts that “The exercise of the basic rights of the people of the debtor countries to food, housing, clothing, employment, education, health services and a healthy environment cannot be subordinated to the implementation of the structural adjustment policies, growth programs and economic reforms”.

At the moment, the government of Pakistan is unable to fulfill these requirements, as it has to spend \$3 billion per year on debt servicing alone.

All these circumstances prove that Pakistan is passing through its worst times and the state has the just right to deny repaying its debts, owed to international financial institutions and donor countries under the ‘the state of necessity’ clause.

Odious Debt and Illegitimate Debt: The second defence for Pakistan for not paying back its debt is the ‘Odious Debt’ doctrine.

The doctrine was formalised in a 1927 treatise by legal theorist , based upon the 19th Century precedents such as ‘s repudiation of debts incurred by the regime, and the denial by the of liability for debts incurred by the .

According to Sack, “Odious debt is an established legal principle. Legally, odious debt is debt that resulted from loans to an illegitimate or dictatorial government that used the money to oppress the people or for personal purposes. Moreover, in cases where borrowed money was used in ways contrary to the people’s interest, with the knowledge of the creditors, the creditors may be said to have committed a hostile act against the people. They cannot legitimately expect repayment of such debts.”

He further states, “When a despotic regime contracts a debt, not for the needs or in the interests of the state, but rather to strengthen itself, to suppress a popular insurrection, etc, this debt is odious for the people of the entire state. This debt does not bind the nation; it is a debt of the regime, a personal debt contracted by the ruler, and consequently it falls with the demise of the regime. The reason why these odious debts cannot attach to the territory of the state is that they do not fulfill one of the conditions determining the lawfulness of state debts, namely that state debts must be incurred, and the proceeds used, for the needs and in the interests of the state. Odious debts, contracted and utilised for purposes, which, to the lenders’ knowledge, are contrary to the needs and the interests of the nation, are not binding on the nation – when it succeeds in overthrowing the government that contracted them – unless the debt is within the limits of real advantages that these debts might have afforded. The lenders have committed a hostile act against the people, they cannot expect a nation which has freed itself of a despotic regime to assume these odious debts, which are the personal debts of the ruler.”

The history of Pakistani debts reveals that the maximum loans were obtained during the dictatorial regimes—the martial law regimes of General Ayub Khan, General Yahya Khan and General Ziaul Haq.

The people of Pakistan did not benefit from the foreign loans provided to General Ziaul Haq and which were provided by Western countries only after the Soviet invasion of Afghanistan.

The loans were spent on building the 'infrastructure' for running the Afghan Jihad.

In Pakistan, the debt was spent against the wishes of the people and benefited only a specific segment of society. The study reveals that some corrupt generals were the biggest beneficiaries of the aid, whose sons are now billionaires.

This debt is not binding on the nation and government should refuse to pay back these loans.

'Illegitimate debt' is another valid reason that can strengthen Pakistan's case for refusing to pay back the loans. Such loans are got for development projects that are not beneficial for the masses at large.

The Norwegian government canceled "illegitimate debt" of five countries in 2006.

The Norwegian government proposed to cancel \$80 million in debt owed by five developing countries in acknowledgement that the debt was "extended irresponsibly and without due regard for the developmental needs of the recipient countries". The countries include Egypt, Ecuador, Peru, Jamaica and Sierra Leone.

Pakistan's arguments for getting its loans written off is more moral than legal: Pakistan has been in a constant state of war since 1979. It fought for more than ten years against the USSR directly or indirectly. Pakistan was the closest ally to America in all those years. This war directly affected the country not only within its boundaries but also at international forums.

Since 9/11, Pakistan is once again in turmoil and has now become the frontline state in the war against terrorism. We are now fighting a battle not only on our borders, but also within our territory. The Pakistan Army is fighting a deadly war not only in the Tribal Areas but also out on the streets and the forces have to keep the collateral damage to the minimum level.

The economy has faced major set backs as the exports and foreign investment both have decreased to the minimum level in the last five years.

The government is spending a lot of money on the war and faced internal migration of thousands of people.

Keeping this situation in mind, it is justified for the calamity-hit Pakistan to get all its loans written off not only by the international financial institutions, but also from the comity of nations.

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* From Daily Times, 21 August 2010:
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