



## **ODIOUS LENDING**

Debt relief as if morals mattered

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**nef** (the new economics foundation) is a registered charity founded in 1986 by the leaders of The Other Economic Summit (TOES), which forced issues such as international debt onto the agenda of the G7/G\* summit meetings. It has taken a lead in helping establish new coalitions and organisations such as the Jubilee 2000 debt campaign; the Ethical Trading Initiative; the UK Social Investment Forum; and new ways to measure social and economic well-being.

## The impact of odious lending on net resource flows and proposals for a solution



Many creditors have knowingly lent vast sums to oppressive and corrupt regimes. The proceeds of these loans were often stolen or wasted but successor governments are still expected to service them, while the creditors deny any responsibility. These are known as odious debts. **nef** (the new economics foundation) believes that the term 'odious lending' is a more accurate description.

Measuring the impact of these loans on the welfare of the citizens of the debtor countries would involve tracing the effect of servicing these loans through time. It would reveal that this impact continues to grow until the loans are cancelled and would highlight the urgency of setting up a mechanism to deal with the problem.

**nef** believes that a fair and transparent arbitration procedure is necessary to arrive at a resolution which would be just for creditor and debtor alike. Setting up an independent body to identify odious regimes and denying the right for creditors to pursue successor governments for payment would not only help to solve the problem of past odious loans but also create a powerful force in favour of democracy and justice for the future.

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# Summary

**nef** (the new economics foundation) believes that as the question of foreign debt incurred illegitimately – so called ‘odious debt’ – rises up the agenda once more, the time has come to use a better description. We believe these debts result from ‘odious lending’ and that more focus should now fall on the role of irresponsible lenders.<sup>1</sup>

The case for debt cancellation on the grounds that vast loans were made to odious regimes, and should not be enforceable under international law, is gaining momentum. But until now, less attention has been given to how the repercussions of odious debt reverberate for many decades after an oppressive and corrupt borrower regime may have left the scene. Not only are successor governments saddled with paying off the loans, but because the borrowed money was often not put to productive use, there are inadequate funds to repay interest and capital. The result is a vicious circle of debt in which new loans have to be taken out by successive governments to service the odious ones, effectively ‘laundering’ the original loans. This defensive lending can give a legitimate cloak to debts that were originally the result of odious lending.

This **nef** research paper demonstrates the impact of odious debt, and how the impact continues to grow until the loan is cancelled. We also outline a proposal to address the problem of the original odious lending.

Long after odious debts are technically off the books, subsequent generations are still effectively paying for them. This **nef** research paper examines 13 clear cases that present a picture of the extent and impact of odious lending. These include:

- Indonesia, where in the region of US\$151 billion relating to odious debts has already been ‘overpaid’ - twice the level of recorded debt. This means that Indonesia has made a cumulative net transfer to the North of US\$138 billion to date - or 90 per cent of Indonesia’s GDP.
- Argentina, where in the region of US\$77 billion relating to odious debts has already been ‘overpaid’ - 75 per cent of the country’s recorded debt.
- Nicaragua, where the odious debt is over five times the country’s total GDP.

The net loss to these countries economies’ often exceeds the total outstanding debt. This means that people in these – often desperately poor – countries end up paying three times for loans ostensibly taken out in their name: first they are oppressed by the regimes propped up and enriched by these loans; secondly they are impoverished by the cost of servicing the loans; and thirdly they are oppressed again by the penalties imposed if the odious regimes default.

Also, if debt cancellation only comes through the procedures of the Paris Club and the Heavily Indebted Poor Countries (HIPC) initiative, they pay a fourth time when IMF conditionality imposes the often disastrous policies of trade and capital account liberalisation, privatisation, and restrictions on social expenditure.

For the ten countries identified by **nef** as having 100 per cent odious debt, we believe that all debt servicing is inappropriate. This means that they have been ‘overpaying’ their debt service and are due not just the cancellation of all their debts but are, in fact, owed a substantial repayment *by the creditors*, currently amounting

to US\$383 billion. This is considerably more than their nominal debt that is still outstanding on paper.

**nef** is proposing a new process for dealing with the problem. We are calling for a new independent body that would assess the track record of regimes that incurred the debts and declare whether it was odious or legitimate. Loan contracts entered into by 'odious' regimes would then be deemed unenforceable.

With regard to the backlog of the past, debtor countries would be able to apply to an independent arbitration panel for a debt work-out. A moratorium would be declared on all debt service while the case was examined. Odious debts would be declared null and void before debt service could be considered on the rest. The key components of this system are:

- an internationally recognised independent body to decide on the odious nature, or otherwise of regimes
- on a country by country basis, arbitration panels consisting of representatives of: creditors to odious regimes (the 'odious lenders' of our title), legitimate creditors, present government and civil society with a mutually agreed chair to decide on debt work-out, designed to leave ANY country no worse off than they would have been if there were no odious loans.

As well as relieving legitimate governments of the burden imposed on them by undemocratic predecessors, this would make it much more difficult for future dictators and other corrupt regimes to raise loan finance, thus greatly strengthening the forces of democracy and justice.

We believe it is time for a new kind of debt relief for debts that have resulted from odious lending: debt relief as if morals mattered.

# Foreword

This research paper is intended as a step towards the development of an alternative blueprint for the international financial system, with widespread backing among global civil society.

It forms one of three components of an integrated proposal for mechanisms to deal with current and future debt crises. The three components are:

1. A fair and transparent international arbitration process (*Chapter 9/11? Resolving international debt crises: the Jubilee Framework for international insolvency*, [www.jubileeresearch.org](http://www.jubileeresearch.org)).
2. Criteria by which this process would assess the level to which debts should be reduced on the basis of human rights (*Debt relief as if people mattered: A rights based approach to debt sustainability*, [www.jubileeresearch.org](http://www.jubileeresearch.org)).
3. Processes and criteria by which debts would be judged to be odious, illegal or illegitimate and the impact of odious debt on the net resource flow to a country (this research paper).

Subsequent research will examine the means to avoid and resolve financial crises, and suggest mechanisms to ensure that developing countries are able to access sufficient external financing on the right terms and conditions for sustainable human development.

If these proposals are to receive the backing needed to give them a chance to be implemented, they must be fully informed by global opinion, particularly in the South. We therefore encourage everyone who receives this both to distribute it as widely as possible, and to send their comments on it to the author, Steve Mandel, at [stephen.mandel@neweconomics.org](mailto:stephen.mandel@neweconomics.org). Please indicate whether you are commenting in a personal capacity or on behalf of an organisation, and if so, please give the name of the organisation.

We would like to know your views on the following:

1. Do you have any comments on our approach to the definition of odious debt?
2. Is the general approach set out in the paper an appropriate way of assessing the extent of debt cancellation required related to odious debt? If not, what would be a better way of assessing this?
3. Do you have any comments on our proposals for institutions and processes for dealing with odious debt?

We would also appreciate your comments on the *Jubilee Framework* set out in *Chapter 9/11?* and on *Debt relief as if people mattered*

If you would like to receive future papers in this series and others produced by **nef's New Global Economy** programme, please contact Steve Mandel.

# Introduction

There are many cases where creditors have lent money to openly corrupt and oppressive regimes. These creditors nevertheless expect the unfortunate citizens of those regimes to service these debts despite the often minimal benefit they experience. In very selected cases the North recognises the concept of odious debt – that **nef** believes to be the result of ‘odious lending’.

It seems inherently unfair if a blatantly corrupt and dictatorial regime (such as that of Mobutu Sese Seko in Zaire, Ferdinand Marcos in the Philippines or General Galtieri in Argentina) can take out loans in the name of its country, but without the consent of the people, steal the proceeds and then leave the unfortunate inhabitants and their children to pay back the creditors, without the creditors taking any responsibility for knowingly lending to these odious regimes. Yet this is what is currently happening, not only in what is now the Democratic Republic of Congo, but in the Philippines, in Indonesia, in Argentina, in Chile and elsewhere, often long after the perpetrators have left the scene. Loans knowingly made to odious regimes are themselves odious.

In certain cases, it would appear that decision-makers in the North have no difficulty in recognising that some sovereign debt is odious. The most recent and obvious example is that of Iraq. For example, John Snow, US Treasury Secretary, said: “*The people of Iraq shouldn’t be saddled with those debts incurred through the regime of the dictator.*”<sup>2</sup> In introducing legislation in Congress for the relief of Iraqi debt, Representative Carolyn Maloney (D-NY) said: “*There is a powerful moral case for relieving the Iraqi people of the debts incurred by Saddam’s murderous regime.*”<sup>3</sup> Even President Bush is on record as saying: “*The future of the Iraqi people should not be mortgaged to the enormous burden of debt incurred to enrich Saddam Hussein’s regime. This debt endangers Iraq’s long-term prospects for political health and economic prosperity.*”<sup>4</sup> What they see as applying to Iraq could equally be said to apply to a good number of other countries. Such decision-makers, however, have been highly selective in applying their understanding of the concept. It has only been in those cases where the North is in some way inheriting the debts or when for other reasons it is politically advantageous, that they adopt this approach.

Campaigners and others are no longer content to leave the question to these self-serving and hypocritical interests. The genie of odious debt has finally been let out of the bottle by the Bush Administration’s call for special treatment for Iraq. It is time an objective review of all debts between South and North was undertaken and that lenders were called to account for their conscious lending to odious regimes.

## Role of this research paper

There are a good number of papers setting out the moral and legal grounds for the cancellation of odious debt<sup>5</sup> and the main issues on the question are set out in a recent discussion paper by Eurodad.<sup>6</sup> This **nef** research paper does not seek to duplicate these but rather to illustrate the magnitude of the impact of odious debt on the net flows between North and South and thus on the welfare of the latter, and in particular to make the point that the impact of such loans carry on not only during the life of the original loan but also long after it has been repaid. Because funds have been diverted from potentially useful spending within the country to service it, and especially when new loans have been taken

out to repay it, an odious loan will have a negative effect on the welfare of the recipient country until it has been cancelled and fair recompense made. We also present specific proposals for dealing with odious debts with the aim of promoting a discussion which could lead to a workable solution to the problem.

The paper forms the third part of a three-pronged approach to debt relief from Jubilee Research at **nef**. One more paper is planned in the series, which will pull the three strands together and take account of feedback received on the first three research papers.

The first was Jubilee Research's research paper *Chapter 9/11? Resolving international debt crises*, calling for the establishment of a Fair and Transparent Arbitration Procedure (FTAP) based on the concept enshrined in Chapter 9 of the US penal code for domestic government structures.<sup>7</sup> This report argues that a government entity should not be forced to default on its obligations to its citizens in order to pay its debts. In the event that it is unable to meet its debt servicing, an independent arbitration process should determine a debt work-out that takes into account the interests of all parties, including the citizens. An FTAP is needed to deal with odious debt, since an independent arbiter is essential if both parties (creditor and debtor) are to accept the process.

The second is the research paper on debt sustainability, *Debt relief as if people mattered*, published in June 2006, which proposed criteria for debt cancellation on the grounds that these debts are unpayable without seriously damaging people's rights to basic health, education and well-being.<sup>8</sup> Some of these debts are also odious. Both approaches are valid – logically all odious debt should be cancelled first, regardless of the resources available to repay them, followed by an assessment of the sustainability of any remaining debts. In practice, however, it may take longer to set up and implement a robust procedure for assessing the odiousness of each debt than to assess sustainability, so it is urgent that the latter be addressed without delay.

### Typology of illegitimate debt

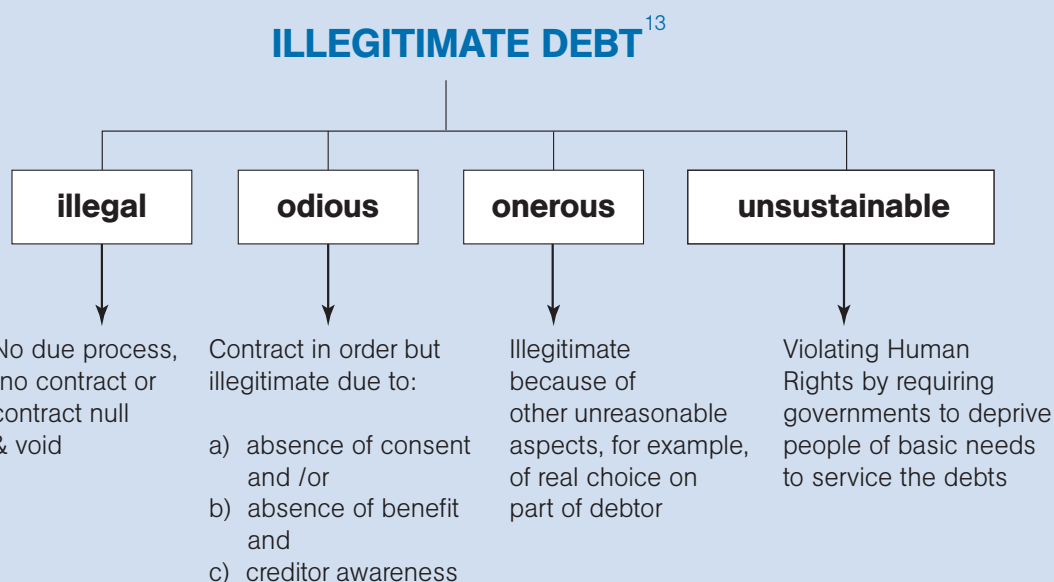
Before looking at odious debt in detail it is useful to put it in the context of a discussion of the more general term 'illegitimate debt'.<sup>9</sup> Many kinds of debt may be considered illegitimate. The term is used by different people to mean slightly different things and confusion can arise if care is not taken. We use the term odious debt in a precise manner as one form of illegitimate debt. It is therefore necessary to unpick the latter. (All debt considered illegitimate should be due for cancellation, but the reasoning and treatment may be different for different categories.) The typology is illustrated in Figure 1 and a brief discussion is set out below.

First there is **illegal debt**. This is where the legal procedures of the recipient country have not been followed. For example, the loan requires (but did not receive) authorisation by parliament or the executive, or the signatory was not authorised to sign.<sup>10</sup> Creditors have an obligation to make sure that such procedures are followed and should take some responsibility if they were not. Failure to follow legal procedures should render the contract null and void. Yet there are clear cases where loans were contracted in a manner that violated national law.<sup>11</sup>

Then there is the concept of **odious debt**, the main focus of this research paper, though as we explain it should more accurately be defined as odious lending. This concept is discussed in more detail in Annex 2. In essence it is where those taking out the loan do not have the right to impose the obligation of servicing the debt on the population of the country in whose name they ostensibly take on the loan, either because they have no proper right to be in power, or because they are seriously corrupt. This is not quite synonymous with **dictator debt**, since democratically elected leaders could equally be blatantly corrupt, but it does include all dictator debt. In all such cases, where the lender is in a position to know that this is so, the loan should be deemed odious and therefore uncollectible. For a discussion on the question of whether an odious leader, who has no proper right to be in power, could nevertheless contract a loan



Figure 1. A typology of illegitimate debt<sup>12</sup>



and spend it to the benefit of the people, and that therefore successor regimes should be liable for servicing the debt, see the section on fungibility below. According to Roman law, proper consent is a binding condition for a contract to be valid. It could therefore be argued that an illegitimate regime cannot contract debt legally. This would render all dictator debt illegal as well as odious.

Thirdly, there is the concept of **onerous debt**. In the UK, under the Consumer Credit Act 1974 (Section 138) debts are recognised as being unenforceable if their terms are unreasonable. This could be applicable to some sovereign debt, especially in cases where the borrower could be considered to have had no choice in their financial circumstances but to accept the terms of the loan, a situation specifically referred to by the Act.<sup>14</sup>

Fourthly, there is the concept of **unsustainable debt**. Where a debt may be legal and used for the benefit of the people and in isolation its terms are not overly onerous, it may nevertheless be unpayable because of the overall level of indebtedness of the country relative to its debt-servicing capacity. The concept of debt sustainability is at present defined very narrowly by the creditors and has focused almost entirely on a country's ability to pay in terms of its export earnings. National governments, however, have an obligation towards their citizens to provide their basic needs for clean water, health and education and at least not to frustrate their citizens' attempts to meet their needs for food, clothing and shelter. The freedom of the population to pursue the meeting of these needs is a fundamental human right. If a government can only meet its debt servicing by failing to provide basic health and education services and by taxing its citizens so that they cannot pay for enough food or shelter, this violates these human rights.<sup>15</sup> It is therefore essential that any concept of debt sustainability includes an assessment of a) what level of taxation is reasonable, and b) what minimum expenditure is required to enable a government to meet its obligations to its citizens. Only after this obligation is met can funds be set aside for debt servicing. Debts incompatible with human rights should be cancelled. This concept is explored in *Debt relief as if people mattered*.<sup>16</sup>

When reviewing resource flows between the North and the South, it is incumbent on analysts to take into account **moral debts**, of which there is a wide variety of sub-categories. By mentioning them only briefly, it is not our intention to belittle their importance in seeking justice in the world order. Indeed these debts owed by the North should also be taken into account in the overall balance between North and South once other categories have been settled, but should not delay more conventional debt work-outs based on the principles outlined in this paper and in *Debt relief as if people mattered*.

First there is **environmental debt**. In a recent book Andrew Simms, nef's policy director, argues that all citizens of the world have an equal right to the global commons of the world's resources of air and sea.<sup>17</sup> Those consuming more than their share – particularly of the atmosphere's capacity to absorb carbon dioxide without irreversible damage to the environment – owe a debt to the rest of the world. This is a debt owed by the rich, overwhelmingly living in financial creditor countries, to the poor who largely inhabit the so-called debtor countries. This massive unacknowledged debt puts the financial debts of the South into a very different perspective.

Secondly, many argue that the blatant exploitation of the colonial era, when vast resources of the South were taken by armed force or grossly unfair and exploitative trading, where large profits were made from the slave trade at the cost of immense human suffering, leave the North with a large unacknowledged debt against which the present financial debts of the South are insignificant. There is also a case to be made for rather more recent **historical debt** arising from the effect of the disastrous policies pushed by the Washington consensus and the negative effects on people's welfare of ill-considered structural adjustment policies forced upon the South by the Bretton Woods Institutions. Perhaps these should be regarded as reparations for past exploitation, rather than repayment of a debt; nevertheless, historical debt needs to be taken into account when looking at the broad picture of resource flows.

Another factor which needs to be taken into account in some instances is that of *force majeure*, when external circumstance, such as conflict, natural disaster or the application of sanctions against a neighbouring odious regime might radically reduce a country's capacity to service its loans.

### **Moral hazard and odious debt**

It is common amongst creditors to talk about the moral hazard involved in cancelling debt, i.e. if *debtors* know they can get debts cancelled they will borrow recklessly. This argument could equally be turned around. In reality, the absence of a working concept of odious debt, combined with the creditor-controlled debt work-out mechanisms currently in place, greatly reduces the financial penalties for unwise lending to sovereign governments compared with those that exist in the private loan market where a debtor can go bankrupt and the loan has to be written off. Commercial creditors, particularly in the 1970s and 1980s, were not effectively subject to the discipline of the market place and could expect the multilateral agencies to bail out otherwise bankrupt governments so that their own – the commercial creditors' – profits were secure. This applied in particular to export credit agencies (ECAs<sup>18</sup>), who could expect their own country's taxpayers to make good their losses, even if they were unable to enforce repayment by the Southern government (and hence the taxpayers of that country).<sup>19</sup> Bilateral (country to country) loans have never been subject to the discipline of the market place and have often been driven by geopolitical considerations. However, what little discipline that might have been provided by the possibility of non-repayment is absent when countries are not allowed to go bankrupt.

This creates a serious moral hazard for the *creditors* – they know that regardless of how recklessly they lend to oppressive, kleptocratic, corrupt and incompetent regimes they can still expect to have their loans repaid by successor governments, at the cost of the continuing impoverishment of the people in whose name (and ultimately at whose expense) these odious debts were ostensibly incurred. The population loses out at least twice: the first time from the oppression and corruption of the odious regimes supported by the loans, and a second time from having to service and pay back the loans used to oppress them and enrich their oppressors.

Despite the egregious errors of past loans and the emphasis placed by World Bank President, Paul Wolfowitz, on the problems of corruption (which is, however, highly selective in its application), the practice of lending to oppressive and corrupt regimes continues – as with the recent World Bank loans to Uzbekistan, a country where Human Rights Watch, a well-respected and

## Box 1: Typology of loans

**Commercial loans** – the creditor is a private financial institution, such as a bank.

**Official loans** – the creditor is a government or multilateral institution.

**Bilateral loans** – country to country.

**Multilateral loans** – between an international financing institution, such as the World Bank or Inter-American Bank and a country.

**Public loans** – the debtor is a government or a parastatal.

**Private loans** – the debtor is a private firm or individual. The loan may be publicly guaranteed as part of an export credit guarantee scheme, in which case default leads to the debt becoming official *and* public.

**Sovereign debt** – the debtor is a government.

independent NGO, concluded that torture was 'widespread' and its human rights record 'disastrous'<sup>20</sup>, and Laos, which features in the worst 18 countries in the world in Freedom House democracy ratings, and towards the bottom of Reporters Without Borders' freedom-of-the-press ratings, of which One World's Country Brief says "Basic freedoms, including the rights to freedom of expression, association and religion, remain severely restricted"<sup>21</sup>. Pakistan, which features in Transparency International's most corrupt countries list and whose ruler, Pervez Musharraf, took power in a military coup, has a current World Bank portfolio (fiscal 2006) of 17 projects under implementation with a net commitment of US\$1.1 billion, despite numerous human rights abuses, documented in, amongst other places, *Human Rights Watch* (December 2004, October 2003).

# The concept of odious debt as used in this research paper

An odious loan is one made to an odious regime, where the creditor should have been aware of this. The detrimental effect of this loan will last for ever until the loan is cancelled and just reparation made.

The concept of odious debt is again rising up the agenda, driven by events in Iraq, by frustration at the slow progress of official approaches to debt relief based on charity rather than justice, and a growing awareness of the injustice of the present economic order. Annex 2 sets out a brief review of the development of the doctrine in international practice and law.

## Basic concept

According to Alexander Sack (see Annex 2) a debt is odious if, at the time of the loan:

1. There is a lack of consent on the part of the people.
2. There is a lack of benefit.
3. The creditor was in a position to know the above.

We would argue that:

1. A lack of consent exists whenever there is no real democracy (either because power has been taken by force or because of serious electoral fraud but not necessarily because of a one-party state if the constitution was openly approved in a democratic manner).
2. There is a lack of benefit either because of severe corruption, or because the proceeds of the loan are being used to strengthen a despotic or corrupt regime or the project is grossly ill-conceived.
3. The creditor may claim not to be aware of the first two conditions but this is not sufficient defence if they were in a position to know that this was the case.

## Fungibility

Many writers on the doctrine consider the second point significant, arguing that odious regimes may nevertheless contract legitimate debt if the project directly funded by the loan is of benefit to the people (see Annex 2 for examples).

We argue, however, that even if the ostensible use of the funds was legitimate *and* corruption was kept within bounds, there is a *prima facie* case that, if the regime was odious, the granting of the loan will have eased the foreign exchange constraint, and released domestic funds for other, possibly nefarious purposes. Given that any strengthening of an odious regime can be regarded as entrenching it (thus prolonging the period of oppression), no loan to an odious regime can be considered wholly innocent. For example, the apartheid regime in South Africa quickly used the technique of floating bonds and loans for 'innocent' projects, such as investment in power supplies, even if foreign exchange was not needed to implement them, in order to ease the constraint that might otherwise have prevented them from buying arms for cash. We therefore conclude that for a debt to be odious, it is sufficient to show that those contracting the debt did not have the right to impose the burden of repayment on their successors (because of the absence of legitimacy or gross corruption) and that the creditor was in a position to know that this was the case. Certainly

the burden of proof should lie with the creditor (to prove benefit) in the case of an odious regime. Furthermore, it could be argued that the absence of proper consent will exist with any illegitimate regime, which should render the contract a contract with the *regime* and not with the *state*.

It could be argued that creditors should be given the opportunity to prove benefit from loans extended under odious regimes to the panel (described in our section below on proposals for dealing with the situation) when it reviews the extent of odious debt in detail. To the extent that they succeed, the figures in this report will be reduced.

### **Effect of odious debt through time**

It is also a common view that although a debt contracted under an odious regime might indeed be odious, once it has been repaid (usually by taking out a new loan) by a successor government, it is then off the books and a question of history. In effect, illegitimate debt is seen as being 'laundered' when it is repaid in this way.

We contest this view. Any payment of interest or repayment of principal on an odious debt will leave the country worse off than it would have been had the odious debt never been contracted, because this entails either the use of resources which could have been used productively or the accumulation of new debts. We argue that an undemocratic and illegitimate government has no right to impose costs on the country's population; and that a democratic successor government should not be worse off, in terms of its external indebtedness, than it would have been had no odious debt been incurred. This, the extent to which the country is worse off, is what we wish to measure and this effect will go on in perpetuity until the debt is cancelled.

# Methodology for measuring the impact of odious debt

we compare the net transfer of resources with and without the flow from the disbursement of odious loans

## Basic method

To measure the financial impact of odious debt, we compare the net transfer of resources from North to South with and without the flow from the disbursement of the odious loans. Throughout the life of the loan, interest is being incurred on the debt, which, if paid, means funds which could have been spent to the benefit of the country are transferred to the creditor, and if not paid, mount up as further debt. Repayment of the debt also prevents resources being used for the good of the people. Most frequently, new loans have to be taken out to repay the odious debt. These new loans may be incurred by a legitimate regime but they cannot be allowed to launder the odious debt.

If the odious debt had not existed the funds used to service it could have been put to good use. Furthermore, kleptocratic regimes often borrow more than their exchequers can pay and then default thus incurring penalties that rack up further debt. This way the people in these – often desperately poor – countries end up paying at least three times for the loans ostensibly taken out in their name: first they are oppressed by the regimes propped up and enriched by these loans, secondly they are impoverished by the cost of servicing the loans and thirdly they are oppressed again by the penalties imposed if the odious regimes defaulted. If debt cancellation only comes through Paris Club and HIPC procedures they pay a fourth time when IMF conditionality (without which a loan deal is currently not available) imposes often disastrous policies such as trade and capital account liberalisation, privatisation and restriction of social expenditure.

The loss does not even finish when some measure of debt relief is obtained. Unless the debt is cancelled precisely because it is odious, we argue that any debt relief should be assigned to legitimate loans first – if cancellation is achieved simply because of the level of debt, this should be assigned to legitimate debt which the state ought to be servicing, rather than letting dictators and odious creditors off the hook. Only when all the outstanding debt is odious do we treat cancellation as reducing the burden of odious debt. For an elaboration of the reasoning behind this see Box 3.

To measure the negative effect of odious debt, we therefore need to:

- Disregard the capital inflow of the odious debt.
- Capitalise all interest paid on odious debt.
- In the event that debt relief is granted reduce the accumulated total of odious debt only when 100 per cent of non-odious debt has been cancelled.

In principle, this provides a relatively straightforward way of estimating the extent of debt cancellation required to neutralise the effects of illegitimate debt. In practice, however, data and methodological problems (see Box 4) mean that the figures estimated below are approximate.

## Box 2: A debt glossary

<b>Amortisation</b>	Repayment of the principal of a loan.
<b>Bilateral loan</b>	A loan from one country to another.
<b>Capital or principal</b>	The initial amount of the loan.
<b>Capitalisation</b>	The incorporation of arrears of interest into the outstanding principal.
<b>Debt service</b>	Interest plus amortisation.
<b>Disbursement</b>	Payment of principal from creditor to debtor.
<b>Escrow account</b>	An account in which assets are held in trust by a neutral third party until the conditions are fulfilled for their release.
<b>Interest</b>	Payment from debtor to creditor as the price of the loan.
<b>Multilateral loan</b>	A loan from an international financial institution, such as the World Bank or the Inter-American Bank.
<b>Net capital flow</b>	Disbursement less amortisation.
<b>Net transfer</b>	Net capital flow less interest.
<b>Principal</b>	The initial amount of the loan.
<b>PPG debt</b>	Public and publicly guaranteed debt.
<b>Rescheduling</b>	Changing the terms of the loan, often to allow a longer repayment period.
<b>Special drawing rights</b>	Notional currency (valued by a basket of currencies) issued by the IMF see endnote 23.

## Box 3: The assignment of debt cancellation

When debt cancellation is granted simply because of the overall level of indebtedness there is a question as to how this should be assigned between odious and non-odious debt. This depends on the assumptions made about how debt is accumulated. If debt is accumulated for individual projects, some of which happen to be during odious regimes and some of which do not; and the level of debt depends on the number and size of projects deemed worthy of a loan, it might be argued that debt cancellation should be applied *pro rata* between odious and non-odious debt. If, on the other hand, countries tend to borrow up to the limit that creditors are prepared to lend to them at the time, then odious debt crowds out legitimate debt that could have brought benefit to the people of the country. In this case, debt cancellation should be applied to legitimate debt first to measure the true loss to the country. Furthermore, if the purpose of declaring debt odious is to ensure that creditors take responsibility for bad lending, cancellation of debt which may now have been laundered into (say) multilateral debt, but which originated as odious commercial debt is letting the original irresponsible creditor off the hook. Taking these factors into account, we adopt the view that cancellation should first be assigned to non-odious debt.

## Box 4: Problems with the data

There are many instances of changes between the stocks of debt in one year and the next which are not explained by disbursement of new loans and repayment of principal. The discrepancies can occur for a number of reasons.

**Currency fluctuations:** debts not designated in US dollars vary from year to year in their dollar valuation. These fluctuations can have a significant effect. All IMF loans are designated in Special Drawing Rights (SDRs) and all World Bank loans are designated in a basket of currencies reflecting those in which the Bank borrowed in order to provide the initial loan (to pass the currency risk on to the borrower), while bilateral and commercial loans are often designated in the currency of the lender. Until this was recorded explicitly (from 1989 onwards) these variations were not explained.

**Interest rescheduled (capitalised):** Paris Club and other debt negotiations often result in the capitalisation of interest arrears. This is not recorded as a flow of loan finance but results in an increase in debt stock; again this was not recorded explicitly in the data before 1989.

**Debt forgiveness or reduction:** when debts are cancelled, debt stock is reduced, but this was not recorded separately until 1989.

**Net change in interest arrears:** interest arrears are recorded as an increase in capital stock (unexplained before 1989) and a reduction in interest arrears is not recorded as a payment of interest. Unfortunately, even after 1989, only the net change is recorded in the GDF database, which means that if both occur in one year, we cannot differentiate.

For our purposes, distinct elements of this change need to be treated differently. Currency fluctuations can be assigned *pro rata* between odious and non-odious debt, since this is a simple change in value (but a loan-by-loan adjustment would be necessary for complete accuracy as odious loans might have a different currency mix to non-odious ones). This also applies to interest rescheduling, since interest is assigned *pro rata* when paid. Debt forgiveness, on the other hand, needs to be assigned to non-odious debt first, if there is any, as explained above. Reductions in interest arrears relating to odious debt reduce the net transfer but also increase the odious debt since this amounts to a payment of interest which should be capitalised. Reductions in interest arrears relating to non-odious debt do not need to be capitalised.

Unfortunately, the World Bank does not provide stock/flow reconciliation for any debt before 1989 and does not deal with PPG separately at all. (We are, however, given to understand – by personal communication from the World Bank Financial Data Team – that reconciliation figures relate to PPG debt and the residual figure covers non-PPG debt and any unexplained fluctuations in PPG debt). As a result, before 1989, where these differences cannot be distinguished, we have had to adjust the value of odious debt stock in proportion to unexplained changes in total debt stock. Inaccuracies arise when there are reductions in interest arrears (since this is a hidden interest payment) and when there is debt forgiveness which should be assigned to non-odious debt.

Since 1989, we have assigned changes in debt stocks resulting from currency fluctuations and interest rescheduling *pro rata*, while assigning debt forgiveness to non-odious debt where such exists, and have capitalised any reductions in interest arrears that can be ascribed to odious debt.

## Data

Our main source of data is the *Global Development Finance (GDF)* database of the World Bank. This provides (from 1970 to 2004) data on stocks and flows related to public and publicly guaranteed (PPG) debt. Data collected includes:

- New funds disbursed
- Capital repaid (amortised)
- Stock disbursed and outstanding
- Interest paid
- Principal arrears
- Interest arrears
- Cross-currency valuation (see Box 4)<sup>22</sup>



- Debt forgiveness
- Interest capitalised
- Net change in interest arrears
- Net flows on debt
- Residual stock-flow reconciliation

### Practical application of the concept of odious debt

We have considered all loans contracted during a period when a country was run by an odious regime as being odious, as explained earlier.<sup>23</sup> Difficulties can arise in assigning the epithet odious, for example when a dictator is overthrown by a coup, the leader of which has genuinely good intentions and succeeds in handing over to democratic rule (for example, Jerry Rawlings in Ghana in 1978) or, on the contrary, when democratically elected leaders go off the rails (for example, Hastings Banda in Malawi, Ferdinand Marcos in the Philippines or Robert Mugabe in Zimbabwe). There will, inevitably, be differences of opinion as to whether a regime should be described as odious. There will also be gradations of odiousness. The application in this paper is meant to be illustrative rather than definitive and the development of clear guidelines will be essential for the practical application of the concept by the bodies described below under the section *Proposal for dealing with odious debts*. In recognition of this and in order to allow readers to apply their own judgement, we have set up an Excel worksheet on the Jubilee Research website (<http://www.jubileeresearch.org/>) which enables users to alter the years which are labelled odious and to examine our calculation methodology in detail.

### Countries chosen

We have chosen a number of countries to illustrate the effect of this approach, giving a good geographical spread but concentrating on clear-cut cases. We have also restricted the definition of odious to those years in which the regime was clearly oppressive, anti-democratic, or kleptocratic. The countries and dates of odious regimes used are listed in Table 1. For each we have made a potted history, concentrating on items which point to the odiousness of the regimes. These are attached as Annex 1.

**Table 1: Countries and dates of odious regimes**

Africa		Latin America/Caribbean		Asia/Pacific	
Congo	1965–96	Argentina	1966–73 1976–83	Indonesia	1967–98
Ghana	1972–79 1981–92	Haiti	1957–85	Pakistan	1969–71, 1977–88 1999 to date
Malawi	1968–93	Nicaragua	Up to 1979	Philippines	1972–86
Nigeria	1966–79 1983–98	Peru	1968–80		
S. Africa	To April 1994				
Sudan	1969–85 1989 to date				

# Summary of results

Our results show that 10 of the 13 countries we examined have odious debt equivalent to all their outstanding debts. They have overpaid on their debt service and are owed a large amount by their so-called creditors.

## Main results

Table 2 summarises the results of this approach for the 13 countries.

Ten of the 13 countries are shown to have odious debt at least equal to all their current outstanding debts, as a result of outward net resource transfers since the return of democracy – the debt-service they have paid on the odious debts they inherited has been greater than their total new borrowing. The other three have between 72 per cent and 94 per cent – though it should be noted that all three of these require 100 per cent debt cancellation under the debt sustainability criteria outlined in *Debt relief as if people mattered*. The total of odious debt for these thirteen countries amounts to US\$726 billion, compared with a total recorded outstanding debt of 'only' US\$345 billion.

For the ten countries with 100 per cent odious debt, all debt servicing is inappropriate. Accordingly, they have been 'overpaying' their debt service and are due not just the cancellation of all their debts but in addition are owed a substantial repayment *by the creditors*, currently US\$383 billion, which is considerably more than the nominal debt they still have outstanding on paper. The case of Indonesia is particularly striking – the country has already paid US\$150.6 billion relating to odious debt, which is more than twice as much as its remaining outstanding debt.

In addition, ten of the 13 countries have a negative net transfer when these odious debts are taken into account – there has been a net transfer from South to North (from the poor to the rich) amounting to US\$292 billion and yet on paper they are recorded as owing the North a further US\$345 billion. (Again Indonesia stands out with a cumulative net transfer of US\$138 billion to the North.) Of the remaining three, Malawi has a net transfer of zero and Nicaragua is only positive because of an anomaly in the figures relating to transfers prior to 1989 for which reconciliation details are missing. The last country (Haiti) has a positive net transfer, but it amounts to only one-sixth of its outstanding debt.

Table 3 compares the odious debt accumulated by each country with its average income. Five of the 13 countries have odious debts exceeding their income. The worst case is that of Nicaragua, where odious debt is well over five times the national income, followed by the Congo, whose odious debt is close to three times its income. Only two countries have odious debt of less than half of their national incomes.

**Table 2: Summary of results of analysis for the period 1970 to 2004.**

Country	Total PPG debt (US\$ billion)	Proportion of odious debt	Total odious debt (US\$ billion)	Cumulative net transfer (CNT)	CNT taking odious debt into account	Over-payment
Indonesia	72.9	100.0%	223.5	6.0	-138.4	150.6
Argentina	103.9	100.0%	180.7	49.4	-33.3	76.8
Nigeria <sup>a</sup>	31.3	100.0%	94.8	12.0	-41.7	63.5
Philippines	35.6	100.0%	70.6	3.7	-31.1	35.0
Pakistan	31.0	100.0%	47.0	18.3	-17.7	16.0
Peru	23.5	100.0%	37.6	8.1	-12.9	14.1
Sudan	11.7	100.0%	17.5	10.8	-6.0	5.8
South Africa	9.8	100.0%	17.4	3.6	-4.7	7.7
Congo, Dem. Rep.	10.5	100.0%	17.0	10.6	-5.5	6.5
Nicaragua	4.1	100.0%	10.7	10.0	2.6 <sup>b</sup>	6.6
Ghana	5.9	93.7%	5.5	5.8	-0.2	0.0
Malawi	3.3	84.2%	2.8	2.8	0.0	0.0
Haiti	1.2	72.0%	0.9	1.1	0.2	0.0
<b>Totals</b>	<b>344.7</b>		<b>726.0</b>	<b>142.2</b>	<b>-288.7</b>	<b>382.6</b>

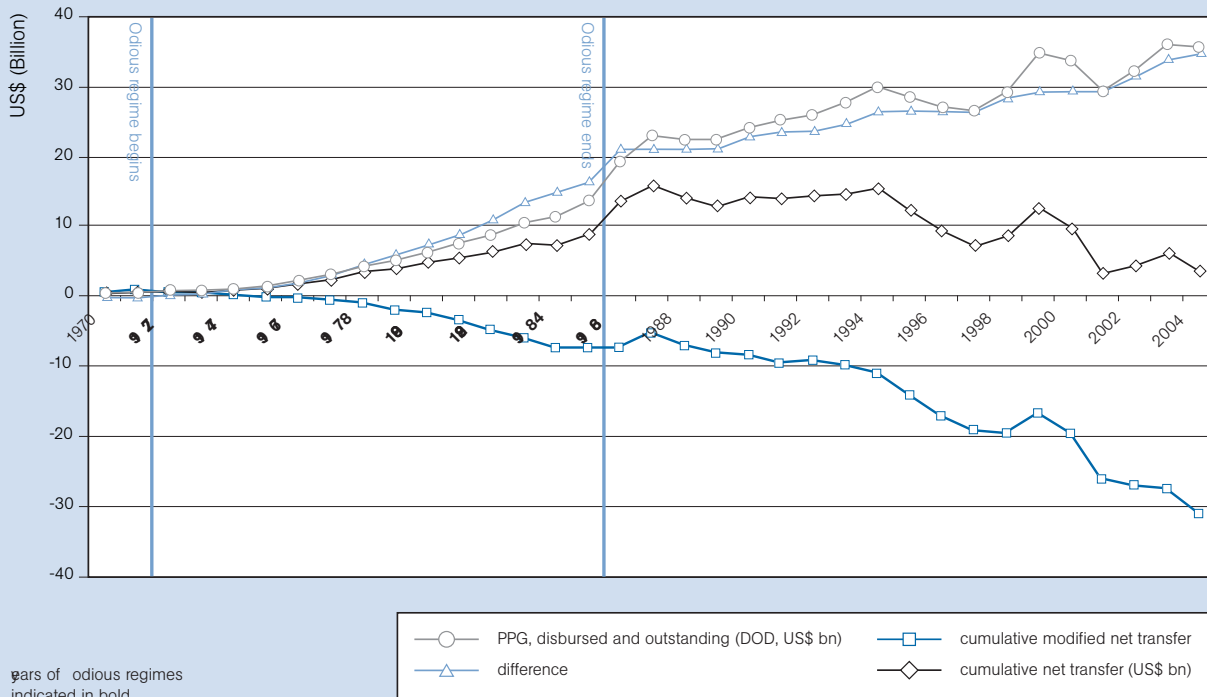
<sup>a</sup> The figures here are from before the 2005 deal with the Paris Club.

<sup>b</sup> This is anomalous and relates to unexplained increases in debt recorded as positive transfers prior to 1989.

**Table 3: Odious debt and income per person**

Country	Odious debt per capita (US\$)	Per capita income (Atlas method) 2004 (US\$)	Ratio of odious debt to income
Nicaragua	958	170	563.3%
Congo, Dem. Rep.	330	120	274.9%
Malawi	248	170	145.9%
Argentina	4,730	3,720	127.1%
Sudan	533	530	100.6%
Indonesia	1,027	1,140	90.1%
Nigeria	678	790	85.8%
Philippines	851	1,170	72.7%
Ghana	260	380	68.5%
Peru	1,369	2,360	58.0%
Pakistan	309	600	51.5%
Haiti	103	390	26.4%
South Africa	383	3,630	10.5%

**Figure 2. Philippines: Effect of odious debt on net transfers**



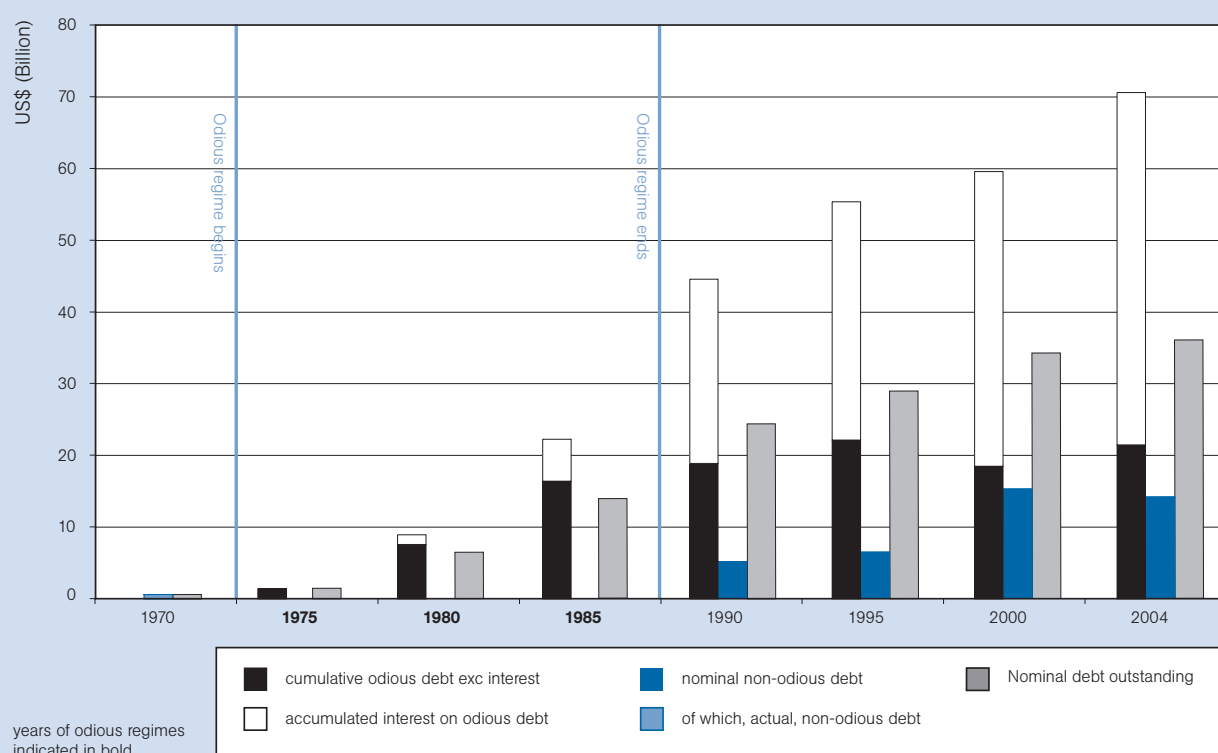
### Illustrative detailed results

Detailed results for eleven of the countries are presented in Annex 3. We present the results for the Philippines and Malawi as examples.

Figure 2 shows the results for the Philippines (years of odious regime are in bold). The figure shows nominal outstanding PPG debt as the series with circles (—○—). In 2004, this stood almost at its maximum ever, at US\$35.6 billion. The series —◇— shows the cumulative net transfer – the net flow of resources between the North and the Philippines, taking into account loan disbursements, capital repayments, any debt cancellation and interest paid. This demonstrates that the balance sheet was most in the Philippines favour in 1987, when it reached US\$16.0 billion; was roughly static between then and 1994 (US\$15.5 billion); but since then the flow has been shifting in favour of the North, although with brief reversals between 1997 and 1999 and again between 2001 and 2003. The overall situation in 2004, even in nominal terms, was that the net flow of resources to the Philippines was down to US\$3.7 billion – less than a quarter of its peak – and yet debt outstanding was ten times this. In other words, the country had paid US\$11.8 billion more to its creditors than it had received in loans since 1994, but still owed almost more than it had ever done.

The bottom line (—□—) shows the effect on the cumulative net transfer of taking odious debts into account. It demonstrates that in every year since 1975 the people of the Philippines have been worse off than if they had never received any loans. In 2004, this was at its worst during the period studied, at US\$31.1 billion, or US\$375 per person. Finally, the series —△— shows the difference between the net transfer with and without the concept of odious debt. Because interest was still being paid on odious debts this difference grew throughout the period studied, even when the regime was legitimate. This situation can mean that all outstanding debt has to be counted as odious many years after the regime has changed. In the case of the Philippines, it is striking that the effect of debt being odious – the difference between the net transfer with and without odious debt being taken into account – is much the same as the total debt.

**Figure 3. Philippines: Comparison of odious and nominal debt**

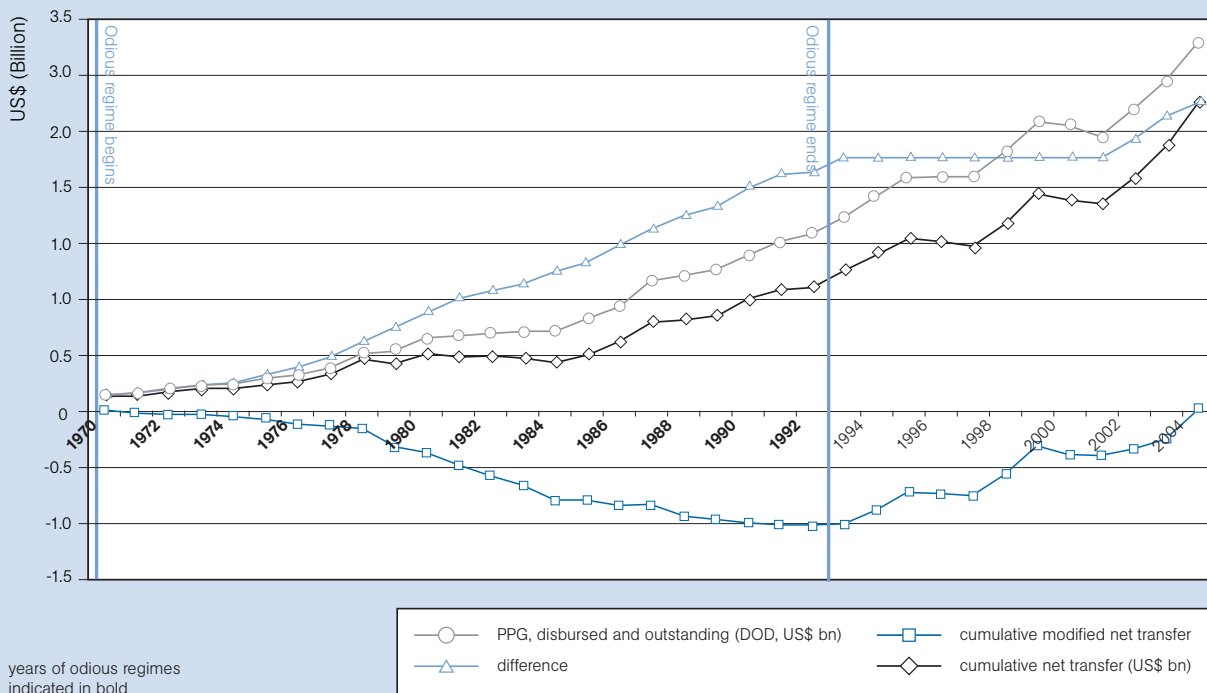


In Figure 3, we illustrate the evolution of the relationship between odious debt, interest on odious debt, nominal debt<sup>24</sup> and actual non-odious debt,<sup>25</sup> again with reference to the Philippines. In this case, accumulated interest on odious debt far outweighs odious debt and even total nominal debt outstanding. Odious debt is seen to fall between 1995 and 2000 with debt forgiveness that exceeds any non-odious debt, but never to the extent that prevents accumulated interest continuing to grow. Even if all outstanding debt were to be cancelled, there would still be a major balance owed *by the North*, since the overpayment on odious debt and interest thereon far exceed outstanding debt. The total odious debt amounts to US\$851 per person in a country where average income per person is US\$1,170.<sup>26</sup>

These results are similar for most of the countries surveyed. The case of Malawi, one of the three countries that do not have 100 per cent odious debt in 2004, is illustrated in the Figures 4 and 5 (years of odious regime are in bold).

Total PPG debt can be seen to grow almost throughout the period under review, with only the years 2000 and 2001 showing a decline – as the country reached Decision Point in the HIPC process and part of its debt was cancelled.<sup>27</sup> Cumulative net transfer – taking disbursements, repayments, cancellation and interest payments into account – is shown to grow fairly steadily, reaching a peak of US\$2.8 billion in 2004. Even with the case of Malawi, however, the cumulative modified net transfer (after taking into account the effect of odious debt) is negative in all years. (In 2004, however, the figure is close to zero, as a result of the transfers in the last three years.) Nevertheless, the difference between the net transfer and the modified net transfer is shown to grow throughout the period, as will happen so long as there is outstanding odious debt, rising to US\$2.8 billion in 2004. This is almost the same as the unmodified net transfer and 84 per cent of the total debt outstanding. If odious debt had not been incurred, the debt would have been reduced by US\$248 for every person in Malawi, a figure which is equal to 150 per cent of its per capita income.<sup>28</sup>

**Figure 4. Malawi: Effect of odious debt on net transfers**



**Figure 5. Malawi: Comparison of odious and nominal debt**

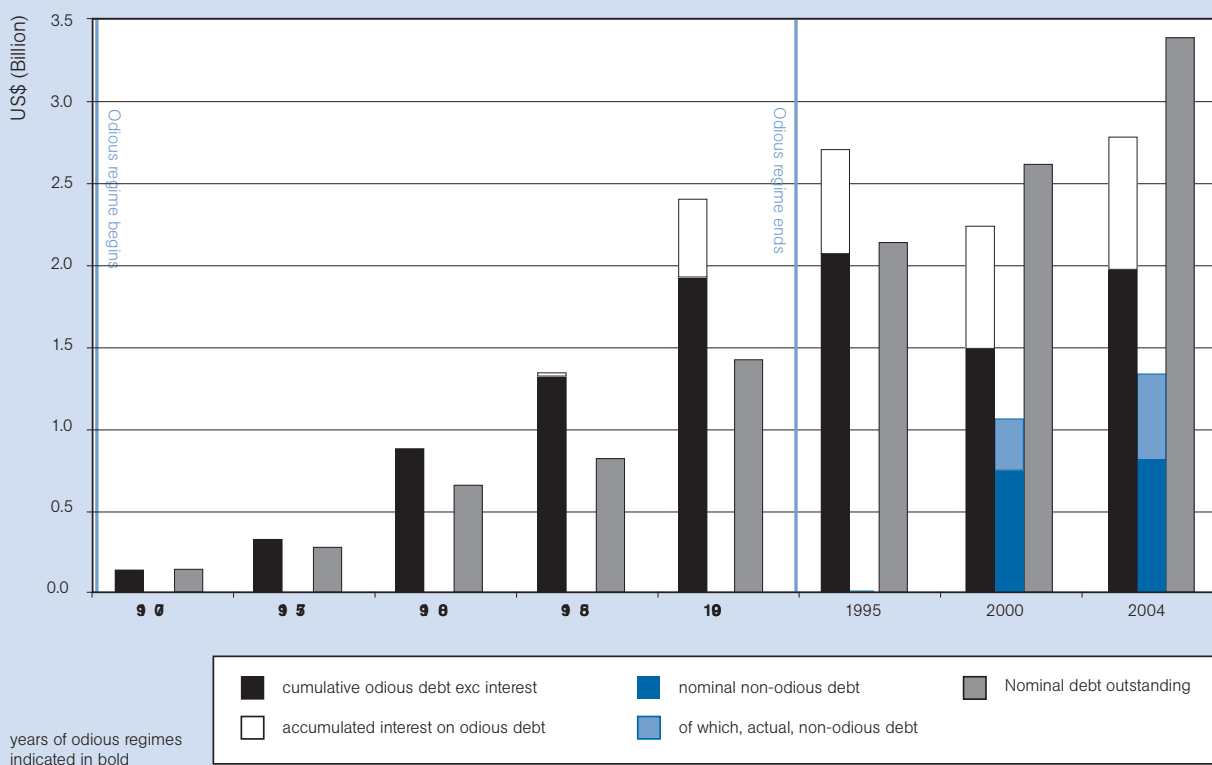


Figure 5 illustrates how in 2004 actual non-odious debt (US\$520 million) is a small proportion of total nominal debt (under 16 per cent) and only a little over one-third of debt incurred under democratic rule. Accumulated interest on odious debt is roughly 50 per cent more than non-odious debt and actual odious debt is roughly four times as much.

# Proposal for dealing with odious debts

We propose that any government declared legitimate by an independent international body should have the right to have part or all of its debts considered for cancellation on the grounds of borrowing by one or more past odious regimes.

We hope the following proposals will stimulate thought and active debate. They are by no means definitive or conclusive. Readers are encouraged to comment on their reactions to [stephen.mandel@neweconomics.org](mailto:stephen.mandel@neweconomics.org).

We propose four basic principles for dealing with odious debt:

1. Unrepresentative and undemocratic governments do not have the right to impose external debts on subsequent representative and democratic governments.
2. Creditors act irresponsibly in lending to such governments, thereby promoting their continuation in office, and therefore forfeiting the right either to profit from such loans or to recover the capital so provided.
3. Representative governments should be no worse off, in terms of external indebtedness as a result of such odious debts having been incurred by previous governments than they would have been had such debts not been incurred.
4. Arbitration over the extent and treatment of odious debts should be in the hands of an independent international body, which is neither a creditor in its own right, nor controlled by creditors, and which conducts its activities in a transparent fashion.

The following is proposed as a process for resolving odious debts within an international legal framework in accordance with these principles.

Dealing with odious debt requires two types of judgement: first, on whether a particular government is legitimate or odious; and second, on the extent of debt cancellation which should take place as a result of borrowing by odious governments. In principle, it would be possible for a single body to make judgements on both dimensions of the issue. We consider, however, that the very different nature of the two issues implies a need for two distinct processes – particularly as the former has a potential importance far beyond the issue of debt cancellation.

We therefore support Jayachandran and Kremer's 2005 proposal for an international body which would declare (in advance of any loans) that a certain regime is odious.<sup>29</sup> This would have the effect of giving fair notice that any loan contracted by the regime would not need to be honoured by a successor government, thereby also reducing the incentives for lending to odious governments. To avoid ambiguity, we would also propose that the same body should also declare representative and democratic governments to be legitimate when they take office.

It is important, however, that the process of declaring a regime odious (or legitimate) should be genuinely independent, and that the body charged with doing so act objectively on the basis of internationally agreed principles, to avoid governments being inappropriately declared legitimate (or odious) for commercial or political reasons. Such a quasi-judicial function could be undertaken under the auspices of an international judicial body, such as the International Court of Justice. Whatever body is entrusted with this task, it should be so constituted as to avoid the risk of succumbing to perverse incentives: either for the international community to bestow legitimacy on odious regimes for political reasons or for lenders to odious regimes to try to extend the life of the regime in order to increase the chances of their being repaid.

Should loans be made to a government thus declared odious, all loan contracts signed on the authority of that government should be automatically rendered unenforceable under international law, for example through an amendment to Article VIII.2(b) of the IMF's *Articles of Agreement*.<sup>30</sup> By removing the assurance that debt service would be paid even during the life of the odious government, this would strengthen the disincentive to lend even to relatively secure odious governments.

If an odious government were nonetheless successful in borrowing, a legitimate successor would have the right to invoke an arbitration process to secure cancellation of its odious debts, as outlined in our earlier paper *Chapter 9/11?* This proposes that an *ad hoc* arbitration panel be set up to conduct a fair and transparent debt work-out for each country finding itself unable to service its debts without compromising the human rights of its citizens. We now propose that this body should comprise one person appointed by the debtor, one person representing debtor civil society, and one appointed collectively by the creditors to the legitimate government, and one by the creditors to its illegitimate predecessor,<sup>31</sup> with an independent Chair chosen by mutual agreement.

Such a fair and transparent arbitration process (FTAP) is essential if justice is to be secured. The existing mechanisms for debt relief (the HIPC Initiative, the Paris Club and the London Club) are run entirely by the creditors, violating the most basic rules of impartiality and transparency.<sup>32</sup> They operate as prosecutor, judge and jury, often in an arbitrary manner, and impose conditions designed to benefit/advance the creditors' ideological, geopolitical and/or commercial interests.

The role of the arbitration panel would be to produce an inventory of the debts outstanding, and to determine which were legitimate and which were odious. Those debts deemed to be odious would then be cancelled, without compensation to the creditors concerned. The payment of all debt servicing into an escrow account<sup>33</sup> should be sufficient incentive to creditors to participate in the panel process. There may be a problem if a powerful sovereign creditor refuses to recognise the outcome of the arbitration process, using non-judicial means to put pressure on the debtor to pay. This is discussed further below.

The debt cancellation, once established, would be enforced through the application of IMF Article VIII.2(b), as amended. There should be a right of appeal by either party, at least on grounds of failing to follow due process – for example, to the international judicial body charged with judging the legitimacy of governments, or to another independent international body.

In principle, having established the extent of debt cancellation required on odious debt grounds, the panel should, if so requested by the debtor government, go on to consider whether further debt cancellation is required on sustainability grounds, according to the criteria outlined in our paper, *Debt relief as if people mattered*, and to establish a debt work-out process accordingly. (The members of the panel may need to change at this point since the interests of the creditors might be better represented by one from official creditors and one from commercial creditors, odious creditors no longer having an interest in the case.)

Although the determination of odious debt *logically* precedes that of unsustainable debt, the urgency of cancelling unsustainable debt from a humanitarian perspective, coupled with the delays inevitably entailed in the process of establishing odious debt cancellation, makes this sequencing potentially problematic.



We therefore propose that the panel make a *prima facie* estimate, based on available data, of the possible range of sustainable debt (based on the human rights approach), and the amount of legitimate debt.

- If the *maximum* estimate of sustainable debt indicates a need for **100 per cent cancellation**, sustainability should be considered first, as this would in any case result in the complete cancellation of odious (as well as legitimate) debts. All debt-service payments should cease pending the finalisation of the work-out.
- If the *minimum* estimate of sustainable debt indicates a need for **zero cancellation** on sustainability grounds, only odious debt need be considered.
- If neither of these conditions is fulfilled, odious debt should be considered first, but debt-service payments should be reduced (*pro rata* for all creditors) to a level consistent with the *maximum* estimate of sustainable debt, to be paid into an escrow account, pending adjudication.

As well as new odious governments coming to power in the future, however, it is also necessary to deal with the legacy of current odious governments when they are ultimately succeeded by future representative and democratic governments; and current representative and democratic governments which have inherited a higher level of indebtedness as a result of past odious regimes. These scenarios give rise to different issues.

The first case indicates a need for the international body charged with establishing the legitimacy of *future* governments to perform the same role with respect to *current* governments, so that lenders have a clear indication that any further loans to governments deemed odious will not be serviced. When a legitimate government succeeds an odious government, it would be entitled to establish an arbitration panel to consider the cancellation of odious debts, and the process would continue as above – *except* that illegitimate debts arising from *previous* odious governments could also be considered, as outlined below, at the same time.

If, for any reason, no pronouncement had been made on the legitimacy or otherwise of an outgoing government at the time of succession, a legitimate successor government should be entitled to divert debt-service payments on the debts it considers odious to an escrow account pending judgement by the arbitrating body. The arbitrating body should consider urgently whether there is a *prima facie* case for the debts to be deemed odious. If it finds that there is a *prima facie* case, debt-servicing should continue to be paid into an escrow account pending a definitive ruling.

The case of current legitimate successors to past odious governments is more complex, because much of the debt inherited from such governments will have been serviced in the mean-time. This will both launder the odious debt – as the legitimate government will usually have been borrowing from other creditors to repay it – and increase the amount – as interest will have been paid, possibly by incurring further debt.

We propose that any government declared legitimate by the international body described above should have the right to have part or all of its debts considered for cancellation on the grounds of borrowing by one or more past odious regimes. It would do so, in the first instance by seeking a judgement from the responsible body that one or more past regimes were odious. Debt-servicing on the contested debts should be paid into an escrow account pending this judgement, to ensure a fair burden sharing between creditors – to prevent a rush to the exit as some creditors seek to avoid losses and to give an incentive to creditors to participate in the debt work-out.

If the government were successful in this first stage, it would be entitled to request the establishment of a panel to consider debt cancellation. If it were unsuccessful, normal debt-service would be resumed.

In line with the basic principle that a legitimate government should be no worse off as a result of odious debt, we propose that a total amount of debt should be

cancelled equivalent to the value of the debt incurred by the odious government, plus the accumulated interest on those debts and on debts which have directly or indirectly been incurred in order to service them, calculated on a *pro rata* basis.

In the first instance, debts owed to creditors who lent to the odious government should be cancelled (*including* loans by those creditors to any legitimate successor government, which will effectively be laundered odious debt), up to the value of their original (odious) loans plus accumulated interest, calculated as above. Any remaining debt cancellation needed to compensate for odious debt should be shared among all remaining creditors *pro rata* with their remaining exposure. The latter (the non-odious creditors, that is) should, however, be entitled to reclaim the value of the cancelled debts, plus legal expenses, from the original lenders and from members of the odious regimes and their beneficiaries, through an international legal process, presumably under the auspices of the International Court of Justice. The original lenders should, in their turn, be entitled to pursue those liable in order to recoup their losses, though this should not be at the expense of successor governments pursuing compensation for stolen domestic assets. At present the only possibility for successor governments or creditors to recoup losses is through the national courts of the country where the funds (or their ostensible owner) are now to be found. This is not at all satisfactory – national courts are prone to be less than enthusiastic about pursuing creditors domiciled in their country and southern governments will have difficulty in enforcing judgement in their favour against creditor governments. Indeed, the prestige of international bodies will be essential to reduce the effectiveness with which powerful creditor governments might resist a ruling against them by the panel and to counter the non-judicial pressure on southern governments not to pursue their claims.

At present, as discussed earlier in this paper, there are a large number of countries which, *prima facie*, have legitimate governments that have inherited substantial odious debts; the aggregate amount is likely to represent a substantial proportion of the total external debts of developing countries. A process, such as that outlined here, would therefore have a considerable case-load at the outset. A similar situation applies in the case of unsustainable debt.

Consideration might therefore be given to the establishment of a standing body to support the process of dealing with odious debt (and, indeed, unsustainable debt) as an interim measure, until the backlog of cases was cleared. Such a body could, for example, provide facilities and technical and administrative support to arbitration panels. It would, however, be essential that such a body was both independent and transparent.

Once the backlog was cleared, cases of either odious or unsustainable debt should occur only occasionally, allowing each case to be dealt with by a free-standing panel.

As shown in Table 2, there has been very substantial overpayment by these debtor countries to their creditors as a result of odious debt. We argue that the panel needs to adjudicate on this overpayment as well as on the cancellation of outstanding loans. While this is important and involves very substantial sums, it will undoubtedly be controversial and complicated and so should not be pursued before cancellation of outstanding loans.

# Conclusions

## We can unequivocally state that a large amount of odious debt exists, and requires total cancellation

Many developing countries' debt burdens arise largely or wholly as a result of odious debts and the subsequent borrowing necessary to service them because of the absence of mechanisms for their cancellation. The figures above are illustrative of the orders of magnitude relating to 13 clear-cut cases. In the nature of things it is not possible to extrapolate these findings to other countries. Nevertheless it is clear that application of the concept to other countries would identify very substantial debt which should be cancelled as odious. Joe Hanlon<sup>34</sup> estimates that a total of US\$735 billion of debt can be attributed to dictators in 23 countries. His figure does not take into account our concept of overpayment, and is therefore more comparable to the US\$345 billion of outstanding debt for the 13 countries in this study.

We have set out a proposal for mechanisms to deal effectively with the continuing burden of odious debt, and with any future accumulation of such debts, through a fair and transparent arbitration process. While this may take some time to establish, given the vested interests at stake and the undemocratic nature of the global economic governance system, we argue that cancellation of the existing unsustainable debt should not be delayed.

A fair, transparent and independent arbitration procedure is urgently required to examine the debts of the South to determine which should be declared odious and cancelled forthwith. Not only will this relieve millions of people from the burden of the debts that were incurred without their consent and with little or no benefit to them, the process would also hasten the end of a number of regimes that are currently oppressing those unfortunate enough to live under them, since the creditors who are currently propping them up will suddenly find that they can no longer afford to ignore the crimes they are effectively bankrolling.

# Annex 1: Potted history of odious regimes

Country	Period	Notes	Conclusion
<b>Asia and Pacific</b>			
Indonesia	1949–67	Sukarno recognised as president by Dutch. Ousted by General Suharto	
	1967–98	Suharto takes country on swing to Pro-West, kills many as alleged communists.	Military dictatorship
	May 1998 to date	Flawed democracy	
Pakistan	1947	Independence	
	1969–71	Yahya Khan president, appointed by Ayub Khan, declared martial law. Held elections in 1970 but postponed calling National Assembly because Mujibur Rahman won by landslide in East. Civil war till Bangladesh independent at end of 1971	Military dictatorship
	1972–77 (July)	Yahya hands over to Zulfikar Ali Bhutto, winner of election in West.	democracy
	1977-88	Zia-ul-Haq president, having ousted Bhutto, hanging him in 1979. killed in plane crash Aug 88.	martial law
	Nov 1988–Oct 1999	Flawed civilian rule under Benazir Bhutto and Nawaz Sharif.	Flawed democracy
	1999 to date	Pervez Musharraf military ruler, promising elections for 2007	martial law
Philippines	1965–86	Marcos democratically elected in 1965 for Nacionalista Party. Reelected in 1969. Serious armed Marxist opposition starts 1969. Habeus Corpus suspended Aug 1971.	
	1972–86	Martial law declared Sept 1972. Constitution suspended. Officially dictator 1973. Election 1978, with his wife leading "New Society Movement" with 151 out of 161 seats. Martial law lifted 1981. In 1981 election, most opposition boycotted election. Aquino assassinated 1983. Snap election called in 1986. Disputed results. Military defected to Mrs Aquino in Feb 86. Marcos ousted. His reputed wealth amounts to anywhere between US\$3 and 35 bn. (Foreign debt at this point US\$28 bn)	Regard 1972 to 1986 as dictatorship
	1986 to date	In Feb Mrs Aquino took office. Ramos elected in 1992. Estrada in 98,	
<b>Africa</b>			
Congo DRC (formerly Zaire)	1965–96	Mobutu took over in a military coup. Declared himself head of state and a one-party state. Occasional elections but only one candidate. Great strife since 1994.	Military dictatorship
	1997 to date	Kabila ousted Mobutu and was assassinated in 2001. Succeeded by his son. Elections promised.	Fragile post conflict

<b>Country</b>	<b>Period</b>	<b>Notes</b>	<b>Conclusion</b>
Ghana	1957–64	Nkrumah Government.	Started out popular and democratic
	1964–66	One-party state under Nkrumah as President for life.	But then dictator
	1966–69	Coup (supported by the US) National Liberation Council Government	Military but heading to democracy
	1970–71	Kofi Busia Prime Minister	Elected but severe inflation and economic problems
	1972–79	Acheampong - military dictator, took over in bloodless coup. Ousted by Akuffo in 1978	Military dictatorship
	1979 (June) to Sept 1979	Jerry Rawlings took over in bloody coup – nevertheless popular. Held elections.	Military dictatorship
	Sept 1979 to Dec 1981	Hilla Limann elected President, but corrupt and unpopular.	Elected but flawed
	Dec 1981 to Dec 1992	Rawlings takes over in another coup against little opposition. Parties banned but consultations led to new constitution 1992	Military but relatively popular
	Jan 1993–99	Rawlings continues but as elected President	Democratic
	Jan 2000	John Kufuor, not Rawlings' choice, elected in free elections	Democratic
Malawi	1962–66	Banda as head of MCP, independence in 1964,	Democratic
	1966–68	One-party state declared	One-party state
	1968 to June 1993	President becomes President for life until after unrest. Referendum restores multi-party democracy.	Undemocratic
	May 1994 to date	Muluzi elected President in free election. Re-elected in 1999. Succeeded by Mutharika of same party. Now a coalition government.	democratic
Nigeria	1960	Independence	Legal
	1966–79	Two coups led to military dictatorship. In Jan 1966 Ibo coup; in July, largely Hausa military. Gowon, a Christian, was appointed by military. In June 1967 Biafra declared independence under Ojukwu. Surrendered in Jan 1970. In 1974, Gowon reneged on his promise to return to civilian rule. In 1975, Gowon was ousted in bloodless coup, bringing Murtala Mohammed to power. Popular. Mohamed was killed in 1976. Obasanjo took over.	Clearly illegal
	1979–83	1979 elections brought Shehu Shagari to power. He served until after the 1983 elections, which he claimed to have won, but some disputed this and by end of the year there was another coup. Buhari was initially popular because Shagari was seen as corrupt, if democratically elected in the first place.	Ostensibly democratic

Country	Period	Notes	Conclusion
Nigeria (cont'd)	1983–93	Buhari may have tried to root out corruption, but was far from democratic and inflation was rife. In 1986 and 1990 there were attempted coups that failed. In 1992 there was an election but this was annulled. Abiola won the follow-up election in June 1993, but again Babangida tried to annul it. This time unrest was widespread and by August Babangida resigned, appointing a civilian, who only lasted three months before Sani Abacha took over in November 1993.	Military dictatorship
	1994–98	In June 1994 Abiola was arrested for treason after he declared himself President, with much backing. In 1995 Ken Saro-Wiwa and eight others were hanged. In 1996 Abiola's wife was killed. In June 1998 Abacha died.	Military dictatorship
	1999 to date	Olesogun Obasanjo was elected in the first election for 16 years. He also won the 2003 election. However, it would be hard to say the Government was legitimate, being so corrupt. Efforts to reduce corruption appear to be having an effect.	Ostensibly democratic
South Africa	Up to 1990	Apartheid regime, condemned by numerous UN resolutions from 1973 onwards. In 1990 President De Klerk announced that he would dismantle apartheid.	Clearly odious
	1990 to Apr 1994	Transitional period. No universal suffrage but movement towards democracy.	?
	April 1994 to date	ANC government elected by universal suffrage.	Democratic
Sudan	1969–71	Nimeiry took over in military coup. Briefly ousted but elected President in 1971.	Military
	1971–85	Nimeiry President. Imposed Sharia law on the South in 1983, which reignited a civil war. Ousted in military coup.	Progressively more oppressive
	1985–89	Civil war with the South. Technically a democratic government.	Flawed democracy
	1989 to date	Omar el Bashir President. Civil war with the South officially over in 2005, but Darfur conflict vicious.	Military

### Latin America and Caribbean

Argentina	1943–45	Military government with Peron.	
	1945–55	Peron wins election. Was re-elected in 1952 but ousted in coup in 1955.	Elected
	1955–66	Series of short-lived governments, some elected, others military.	Mixed
	1966–73	Another coup. Series of military-appointed presidents.	Dictatorship
	March 1973 to March 1976	Election. Peronist, Campora, elected. Peron re-elected in new elections by October amidst considerable unrest and terror. Habeas corpus suspended. Peron died in 1976, succeeded by his wife but coup in March 1976.	Elected but autocratic
	1976 to Dec 1983	Series of military dictators. Dirty War ensued ending with elections in December judged fair.	Dictatorship

<b>Country</b>	<b>Period</b>	<b>Notes</b>	<b>Conclusion</b>
	1983–89	Alfonsin Government.	Elected
	1989–99	Menem elected, (Peronist) Alfonsin resigned six months early after defeat. Re-elected in 1995. Pursued privatisation agenda, often overruling Congress when consensus not reached.	Elected
	1999 to date	De La Rúa (UCA FrePaSo Alliance candidate) elected. Carried on Menem's neo-liberal agenda. Economic crisis in 2001. Major capital flight, devaluation. January 2002, after series of resignations, Duhalde, loser of 1999 election became President. Kirchner was elected in 2003. Considerably more hostile to Washington.	Elected
Haiti	1957–71	Duvalier regime. Initially elected but quickly became vicious dictator.	Dictator
	1971 to Feb 1986	Baby Doc regime.	Dictator
	Feb 1986 to Dec 1990	Series of provisional governments.	?
	Dec 1990 to Sept 1991	Aristide elected fairly but ousted in coup. Elite alarmed by radical policies.	Democracy
	Sept 1991–93	General Cedras in power.	Military rule
	Sept 1993 to June 1995	Transitional government.	Interim
	June 1995 to Jan 1999	Aristide party re-elected. Preval elected as President in Feb 1996 but Aristide broke with Preval by end of 1996. Tension increased until Preval started ruling by decree.	Democracy
	Jan 1999 to Feb 2004	Elections in May 2000 flawed, though Aristide's party won almost all seats. Aristide elected in November but on low turnout with opposition boycotting elections. Situation deteriorated badly. Aristide eventually left the country (resigned or kidnapped?)	Chaos
Nicaragua	Up to 1979	Somoza	Dictatorship
	1979–84	Sandinista Government after revolution.	Not democratic
	1984–90	Sandinistas elected. Some dispute over election ended when he lost the next election.	Flawed democracy
	1990 to date	Had four elections. Some corruption but generally OK.	Democracy
Peru	1948–56	Military dictatorship of Manuel Odria.	Dictatorship
	1956–63	Right wing military favoured but elected government (Ugarteche). Inconclusive election in 1962.	Elected but flawed
	1963–68	Belaunde Terry elected President.	
	1968–80	Military rule (Alvarado & Bermudez).	Dictatorship
	May 1980–85	Belaunde re-elected.	Elected but flawed

<b>Country</b>	<b>Period</b>	<b>Notes</b>	<b>Conclusion</b>
	July 1985–90	Alan Garcia takes over after election. Considered autocratic. Fighting Sendero Luminoso in relatively dirty war.	Elected but flawed
	1990–2000	Fujimori elected in 1990, tried to serve three terms but had to resign and flee in Nov 2000, with corruption charges hanging over him. Continuation of dirty war	Elected but flawed
	July 2001	After caretaker government, Toledo wins free election.	

Main source: Wikipedia



# Annex 2: The development of the concept of odious debt

## The development of the concept of odious debt in international practice

On 13<sup>th</sup> October 2005, the incoming Norwegian coalition government signed an agreement known as the *Soria Moria Declaration* after the Oslo hotel where it was signed. It says:

- "The UN must establish criteria for what can be characterised as illegitimate debt, and such debt must be cancelled."
- "The Government will support the work to set up an international debt settlement court that will hear matters concerning illegitimate debt."

This is the first formal recognition by a Northern government of the concept of illegitimate debt as a general principle despite the statements by US politicians quoted at the start of this paper.

It has, however, been invoked in practice, if not in name, on a good number of occasions. Perhaps the first instance is the fourteenth amendment to the US Constitution passed in 1868 after the Civil War, which declared the debts of the Confederation raised "in aid of insurrection or rebellion against the United States" to be null and void. This was, however, rather an internal matter, so rather it is the capture of Cuba by the US from Spain in 1898, which provides the first true instance in international practice. When Spain tried to get the US to honour debts owed by its colony, Cuba, it was rebuffed on the grounds that the debt had been "imposed on the people of Cuba without their consent and by force of arms". Similarly, in 1900, Britain refused to pay the debts of the Boer republics it had conquered on the grounds that the debts had been taken out to fight the war against Britain, while the Treaty of Versailles in 1919 specifically relieved Poland of the debts said to have been incurred by the Germans in their occupation of the country.<sup>35</sup> Equally the doctrine was behind the 50 per cent cancellation of Poland's debt in 1991 by the Paris Club, following the fall of the Iron Curtain, when the West was keen to boost the fortunes of countries emerging from communist rule, long before such terms were available to Southern governments. The most recent example is that of Iraq. It would appear that this line of argument was quietly dropped once the implications for other countries of what was being said was realised. Nevertheless, it formed the backdrop for the subsequent major (and unusually generous) cancellation of Iraqi debt by the Paris Club.<sup>36</sup>

Nevertheless, in most cases, creditors have argued strenuously against cancelling debts on these grounds, however extreme the case might be. Hanlon cites certain notorious cases (often involving countries the West wanted to keep on side during the Cold War), for example, the loans made by the IMF to Zaire, even after their own appointee seconded to the Central Bank wrote a memo which said that corruption was so serious that there was "*no (repeat no) prospect for Zaire's creditors to get their money back*".<sup>37</sup> Zaire's foreign debt grew from US\$4.6 billion to US\$12.9 billion after this, before Mobutu – who came to power in a coup in 1965 – was overthrown in 1997, and in spite of the fact that Zaire had practically stopped repaying its debts in 1982.

Another blatant case was that of Ferdinand Marcos of the Philippines who fled into exile with between US\$5 and US\$13 billion.<sup>38</sup> The corruption and oppressive nature of his rule were well known for many years. Although democratically elected he suspended *habeas corpus* in 1971 and declared martial law in 1972. Although martial law was lifted and elections held in 1981, the opposition decided to boycott the elections as unfair. In 1986 Benigno Aquino, a leading opposition politician, was assassinated. Marcos was finally ousted in a popular uprising in 1986.

Then again, long after the United Nations began in 1973 to describe the apartheid regime in South Africa as a crime against humanity, and explicitly argued that such actions supported and prolonged the existence of the odious regime, loans continued to flow to the Nationalist Government.<sup>39</sup> Such frequent declarations by the UN General Assembly comply with all the requirements of Jayachandran and Kremer (see below) for prior pronouncement of odiousness. These and plenty of other examples of clearly odious debt can be found. (An outline of the history of the countries in our study is given in Annex 1.)

As Joe Hanlon writes:

*“Loans for a nuclear power station on an earthquake fault bought by a corrupt dictator,<sup>40</sup> loans to a state which is officially committing a crime against humanity (South Africa), loans to an oppressive dictator who they knew would never repay (Zaire), and loans to a dictatorship with the money staying in London (Argentina under Galtieri) satisfy all the conditions for odious debts knowingly made. At this point, we argue that there is a prima facie case that, at the very minimum, some of these debts are odious and are the liability and responsibility of the lenders. This is the critical assertion. The IFIs and other lenders have fought very hard against this, because until now they have not had to take any responsibility for incompetent and corrupt lending.”*

The World Bank is as guilty as any of the major creditors of lending to corrupt regimes and for spurious or ill-prepared projects. Yet in its Articles of Agreement, it is bound to:

*“set some regulations that guarantee that each loan fund is solely used to achieve the objective in accordance to the objectives of the loan itself, by giving considerations over economic and efficiency issues and ignoring political or other non economic influences or considerations”.*<sup>41</sup>

The Bank claims this clause prevents it from discriminating against odious regimes, but again this has been selectively applied. For example, it supported Mobutu Sese Seko in Zaire primarily because major shareholders wanted to keep this person whom they saw as a bulwark against communism in power and on their side, but loans to left-wing regimes have been noticeably absent in the case of, for example, Sandinista Nicaragua or Allende's Chile.

### **Development of the doctrine of odious debt in international law**

The doctrine of odious debt has been discussed at length in a number of public places, most recently in the *Third World Quarterly*, in February 2006.<sup>42</sup> Here Joe Hanlon traced the history of the doctrine in international law, starting with the fourteenth amendment to the US Constitution of 1868 which repudiated the debts of the Confederate States as being raised in rebellion to the USA, through the examples already cited above and via the ruling by US Supreme Court Justice Taft in an arbitration ruling in 1923 in favour of Costa Rica's refusal to pay the Royal Bank of Canada for a loan made to a former dictator, to the formalisation of the concept of odious debt by Alexander Sack in 1927.<sup>43</sup> Generally, Sack maintained, the label can be applied where there was an absence of consent on the part of the people, where there was no significant benefit to them<sup>44</sup> and the creditor was aware or should have been aware of the situation.

In 1977, when acting as a special *rapporteur* to the International Law Commission when they drew up Draft Articles on the Obligations of Successor States, Mohammed Bedjaoui, now a judge of the International Court of Justice, argued:

- *From the standpoint of the Successor State, an odious debt can be taken to mean a State debt contracted by the predecessor State to serve purposes contrary to the major interests of either the successor State or the territory that is transferred to it.*
- *From the standpoint of the international community, an odious debt could be taken to mean any debt contracted for purposes that are not in conformity with contemporary international law and, in particular, the principles of international law embodied in the Charter of the United Nations.*

Following Bedjaoui, Charles Abrahams argued in 2000 that

*“International jurisprudence now imposes a duty on governments to uphold a core of fundamental rights or prohibitions. Pre-eminent amongst the prohibitions are acts of aggression, slavery, genocide and racial discrimination.”<sup>45</sup>*

*‘Consistent with the primacy given to this core of rights is the principle that upholding these rights takes precedence over commercial treaties between states or contractual business or financial obligations of any kind. Thus Article 103 of the Charter of the United Nations stipulates*

*‘:“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”*

As well as supporting the primacy of human rights over the financial interests of creditors, this opinion points to the responsibility of creditors to uphold fundamental human rights by not supporting regimes which are clearly violating those rights, such as the many examples listed in this paper.

The Centre for International Sustainable Development Law of Canada produced a working paper, *Advancing the odious debt doctrine*, for the Canadian Ecumenical Jubilee Initiative in March 2003 which examined in great detail the status of the concept in international law. Jeff King, one of its authors, concluded:

*“The analysis .. indicates that the doctrine of odious debt can be clearly defined, has a fair bit of support under the traditional categories of international law, and can be modified to withstand prima facie theoretical objections.... after examining the state practice, general principles of law and writings and judicial decisions, it seems that there is much more material available to make such an argument than one would initially think. If nothing else, I hope that this paper has succeeded in establishing that there are legally persuasive arguments in favour of the morally compelling doctrine of odious debt.”<sup>46</sup>*

In a paper published in April 2005, *Odious debt*, by Seema Jayachandran and Michael Kremer on the UCLA Department of Economics website, the two Harvard/UCLA economists update a paper they published on the IMF website (and elsewhere).<sup>47</sup> This argues for the setting up of a sufficiently well-respected international body to adjudicate on the odiousness of *current* regimes and to declare that *future* loans to these regimes would be odious and unenforceable, while leaving the question of past loans aside [author’s emphasis]. They argue that this form of sanction would be more effective than trade sanctions, which countries have an incentive to evade. The appearance of this paper on the IMF’s website suggests that the concept is gaining respectability, even in unlikely circles.

In his 2006 article, Hanlon concludes:

*“Certain debts are odious or illegitimate and fall with the regime and are not owed by successors.*

- *Loans taken to strengthen a despotic or oppressive regime are odious.*
- *A lender must act in good faith, and cannot collect on a loan it knew, or should have known, was being misused.*
- *Debts can be considered odious if they are used for personal rather than state purposes.*
- *The burden of proof is not on the successor state to prove odiousness, but for the lender to prove legitimacy”. [We would add “once the odious nature of a previous regime had been ascertained by an impartial international body”.]*

# Annex 3: Detailed results

## Argentina

Figure 6. Argentina: Effect of odious debt on net transfers

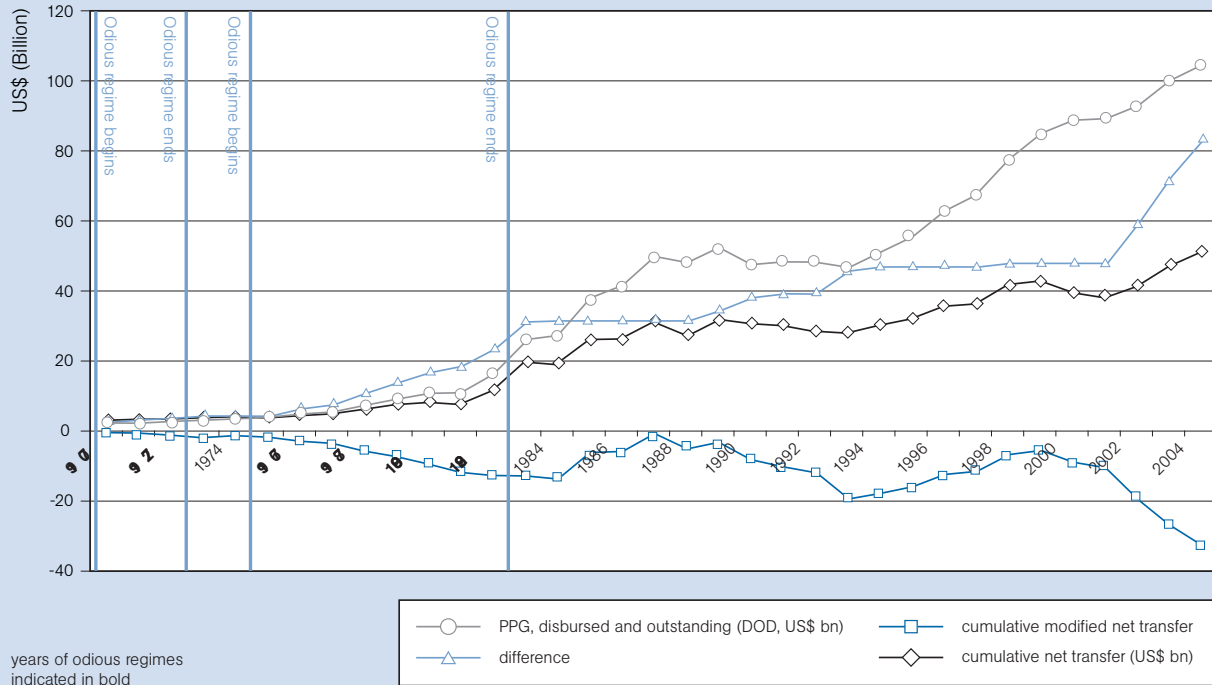
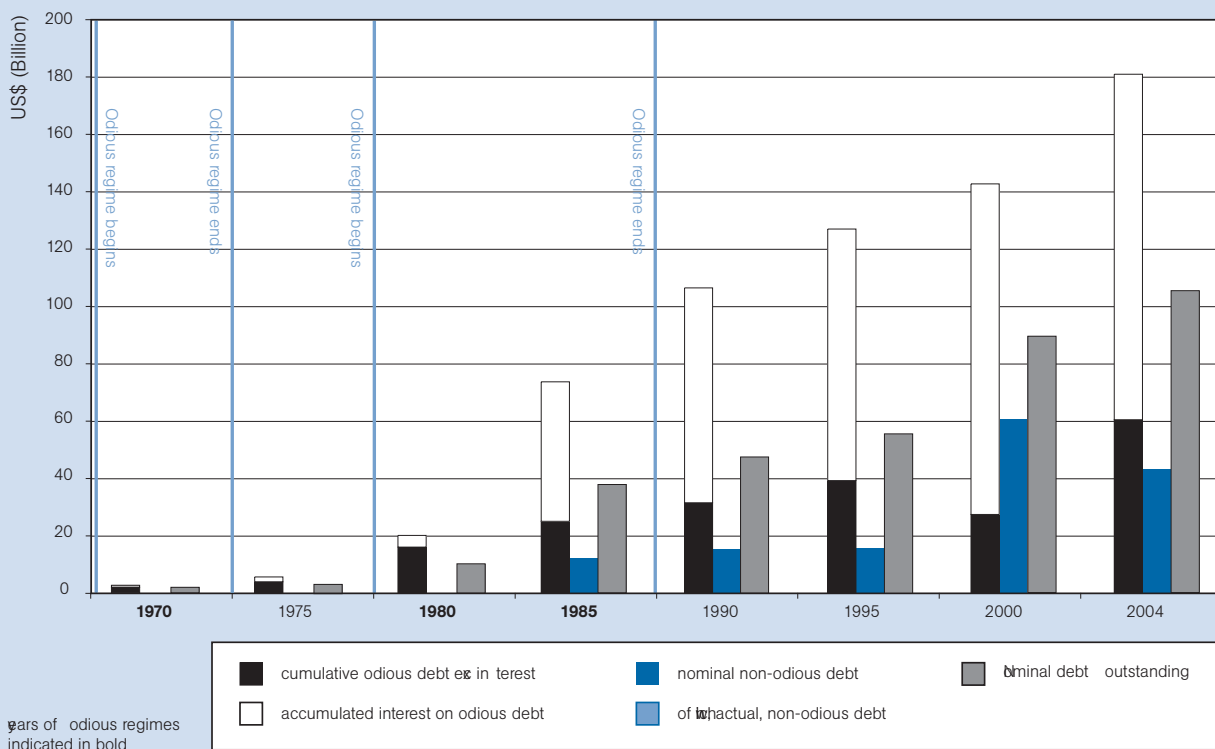
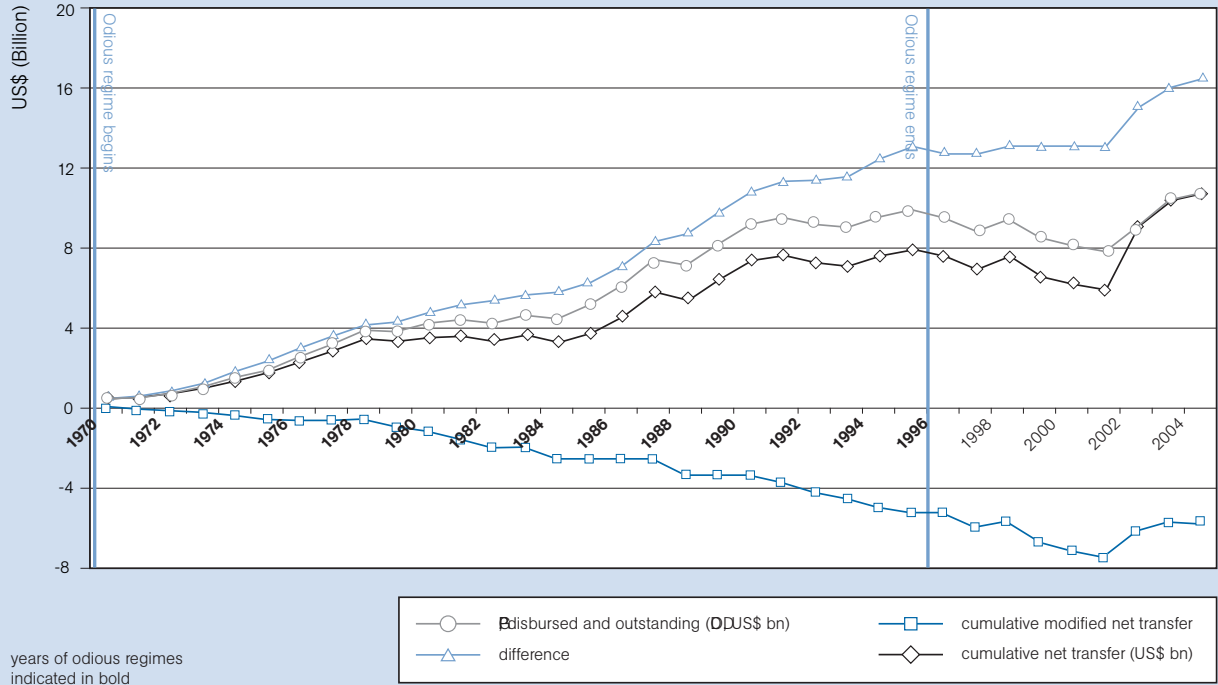


Figure 7. Argentina: Comparison of odious and non-odious debt

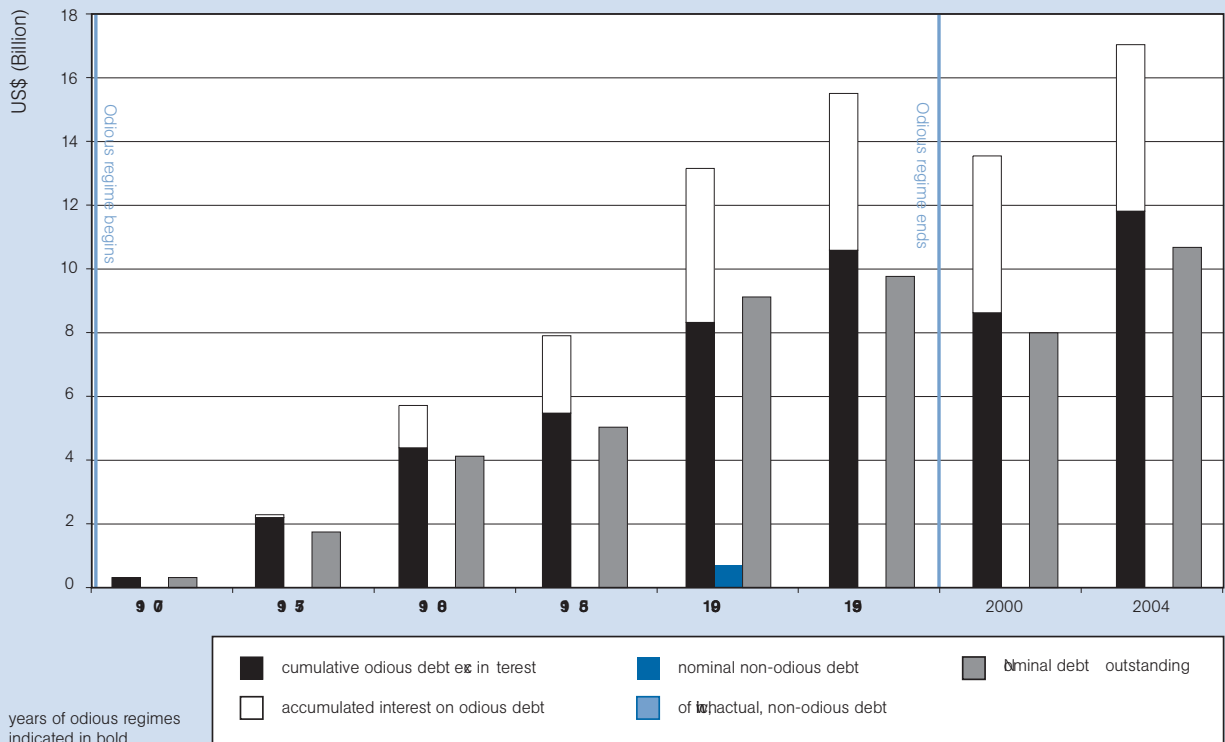


# Democratic Republic of Congo (formerly Zaire)

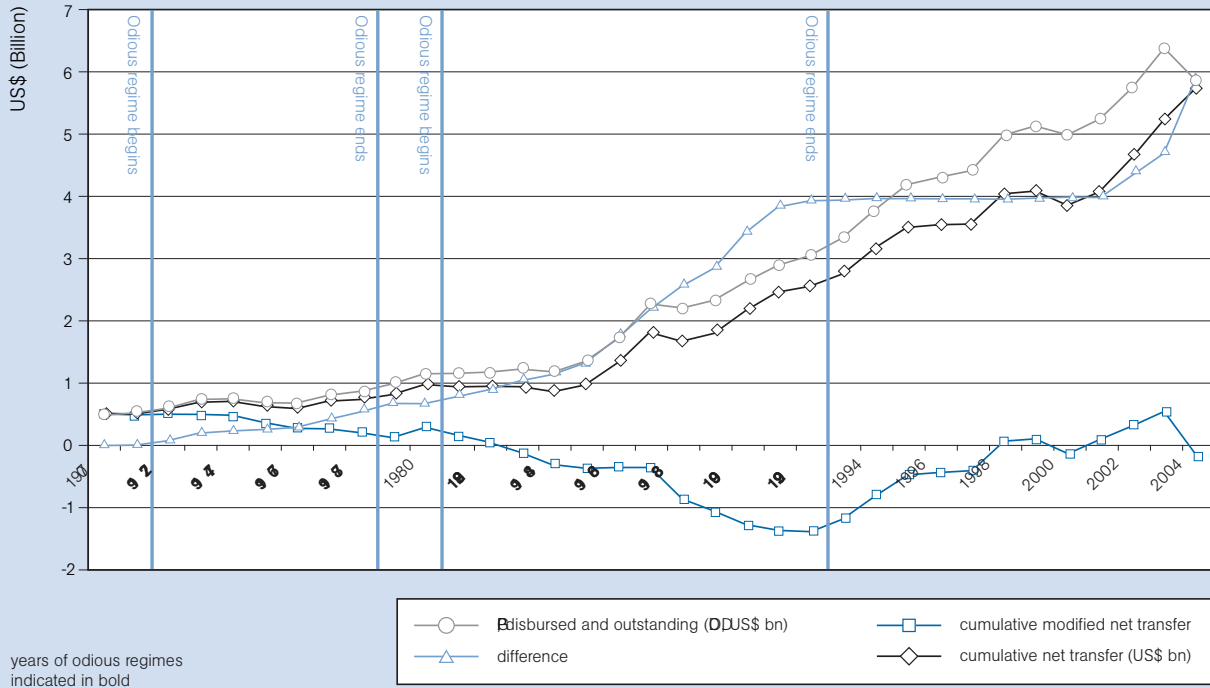
**Figure 8. Democratic Republic of Congo: Effect of odious debt on net transfers**



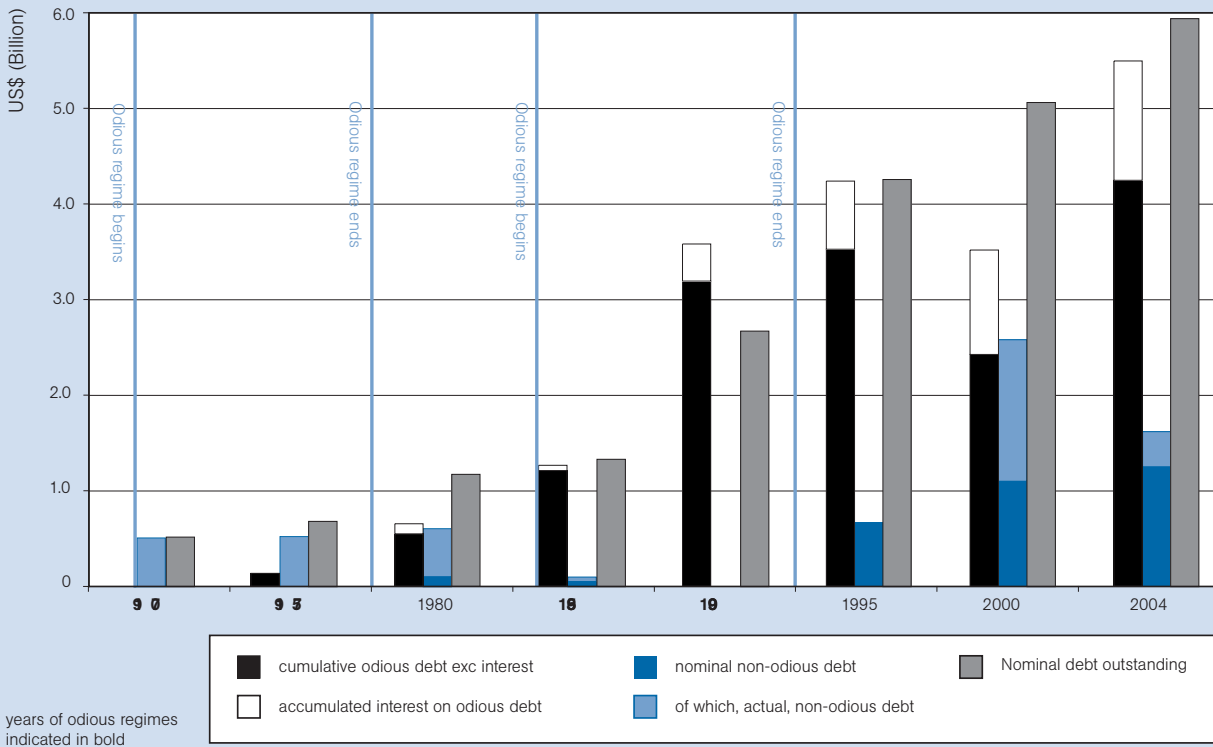
**Figure 9. Democratic Republic of Congo: Comparison of odious and non-odious debt**



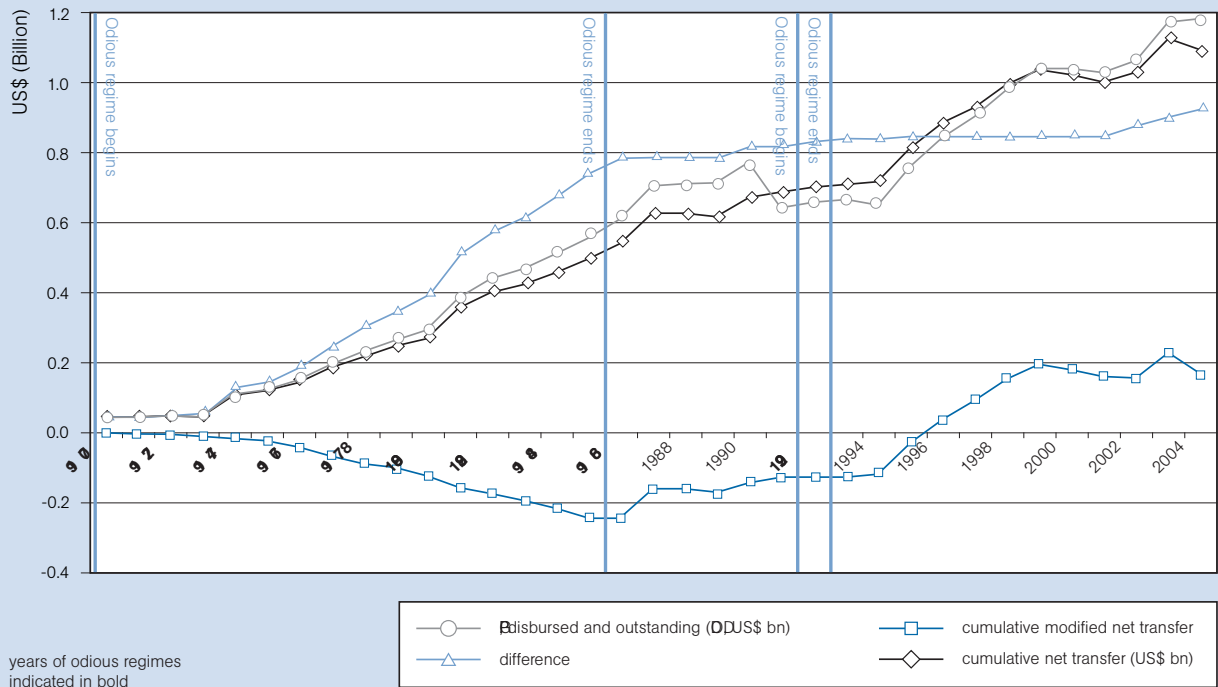
**Figure 10. Ghana: Effect of odious debt on net transfers**



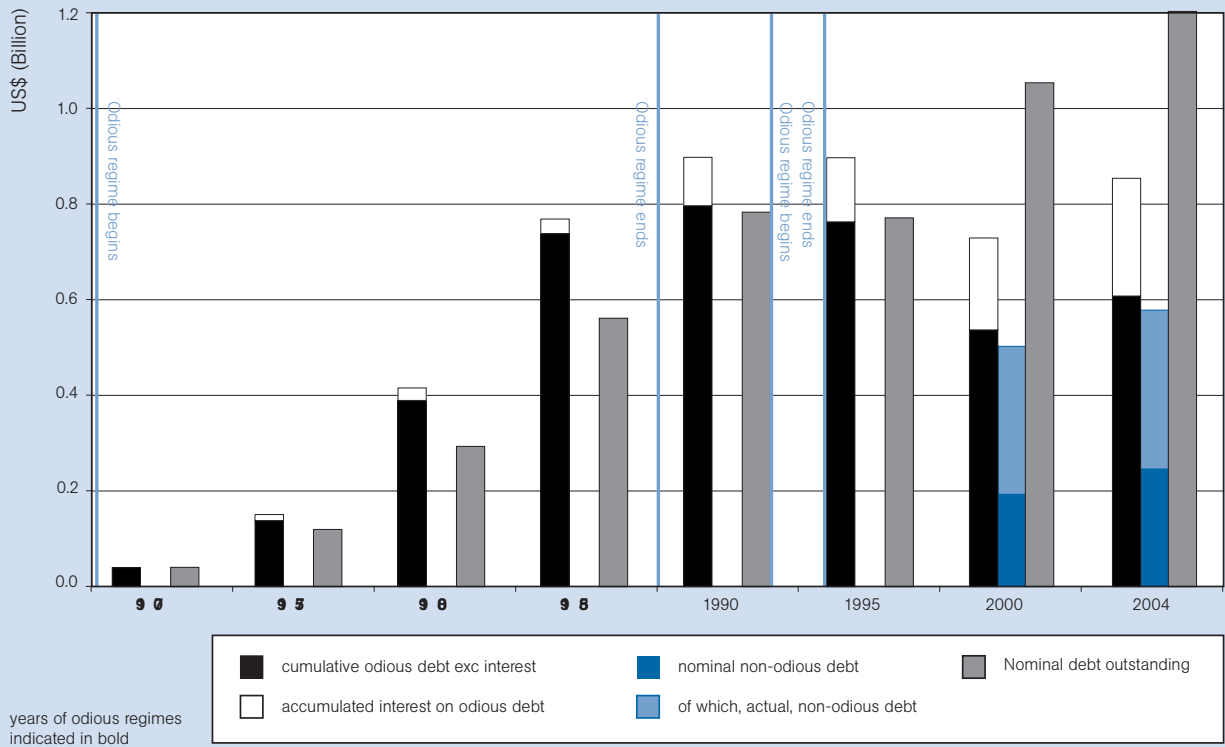
**Figure 11. Ghana: Comparison of odious and non-odious debt**



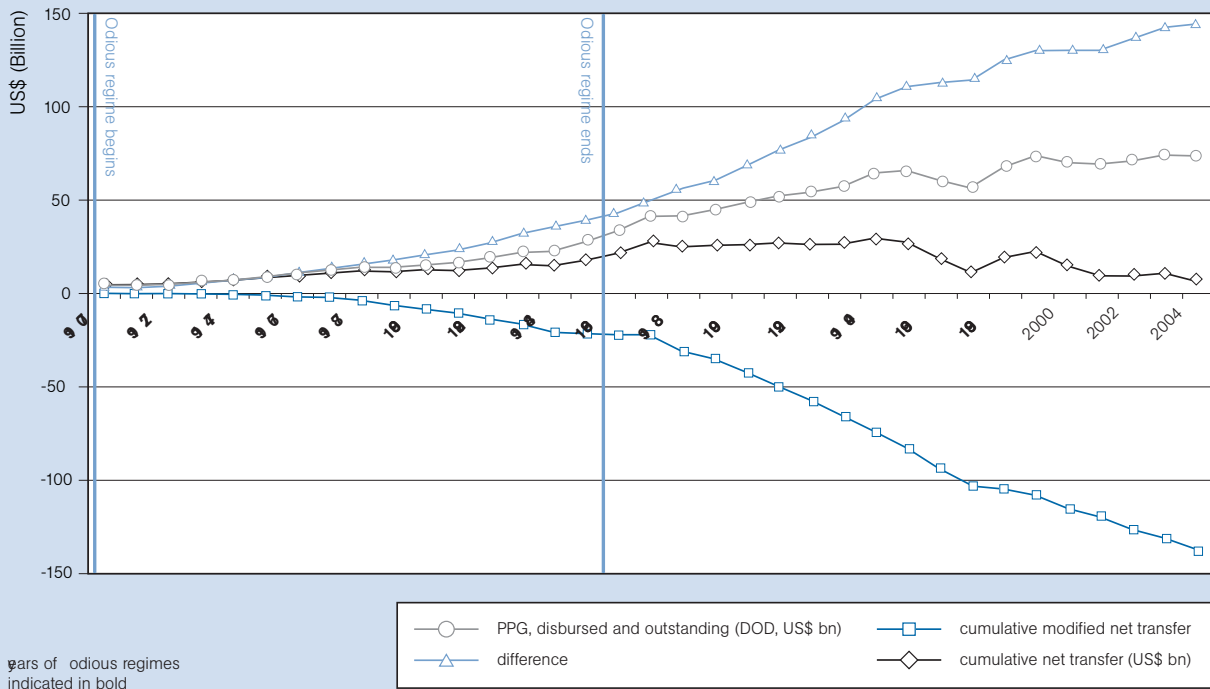
**Figure 12. Haiti: Effect of odious debt on net transfers**



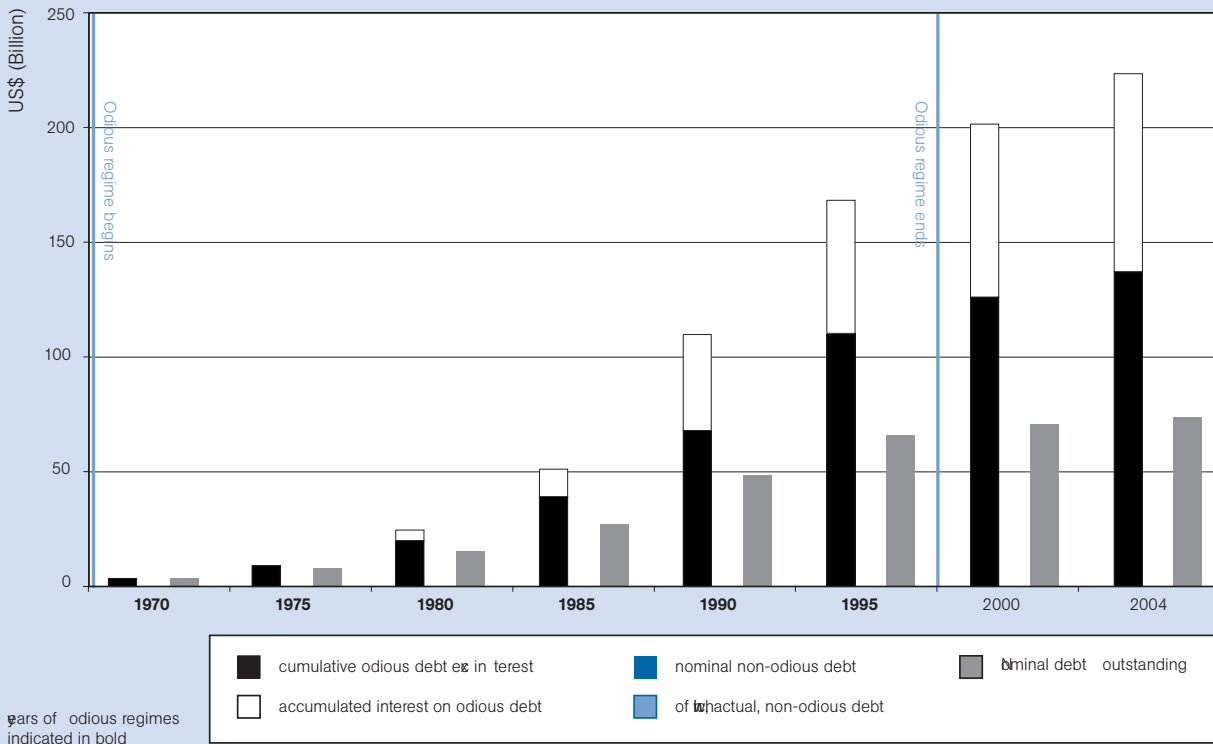
**Figure 13. Haiti: Comparison of odious and non-odious debt**



**Figure 14. Indonesia: Effect of odious debt on net transfers**

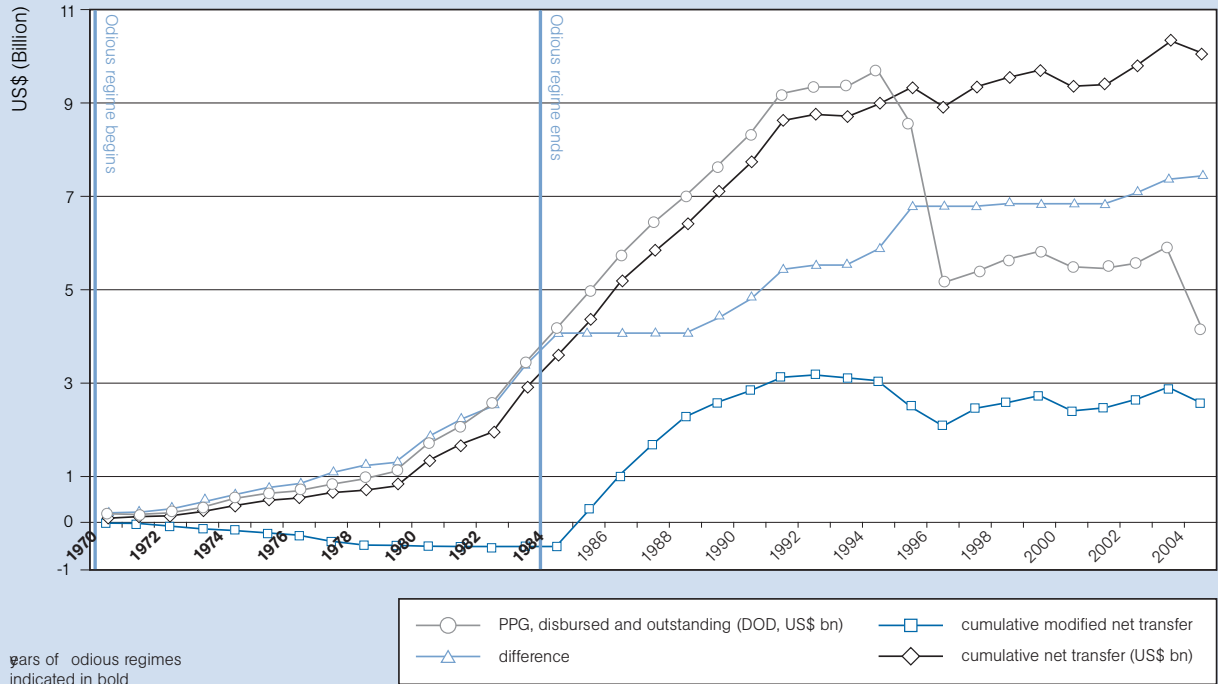


**Figure 15. Indonesia: Comparison of odious and non-odious debt**

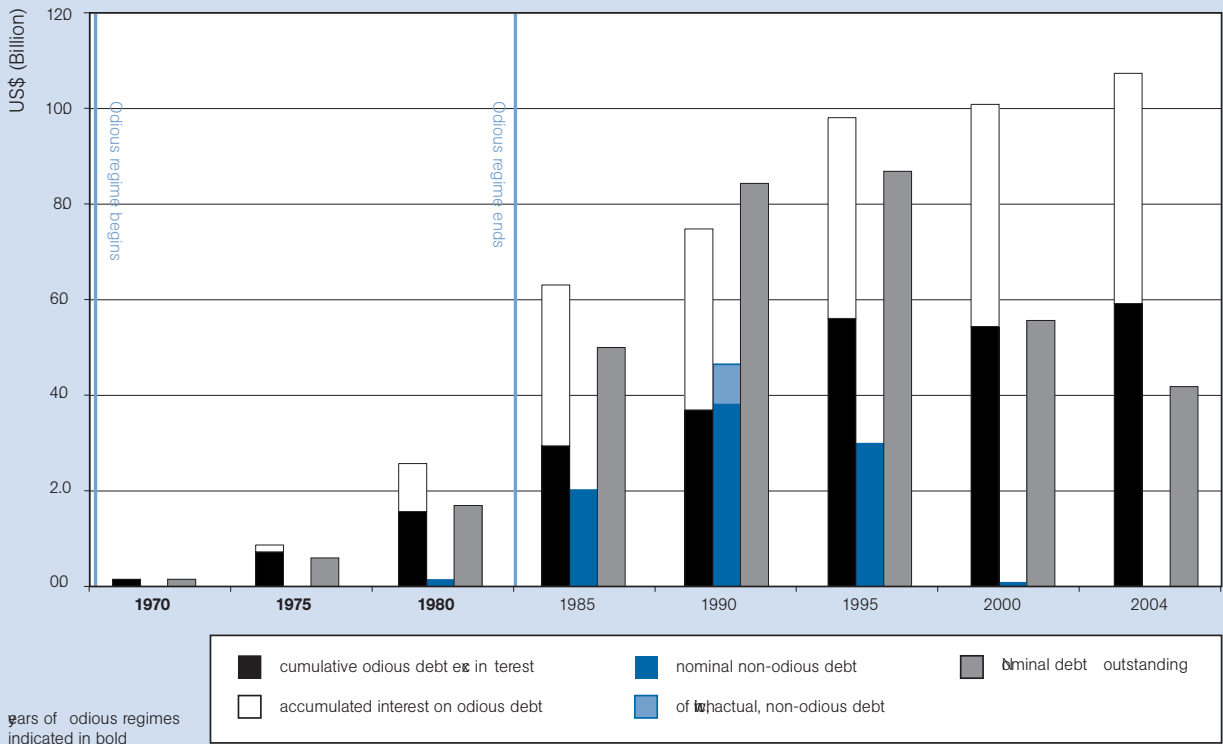




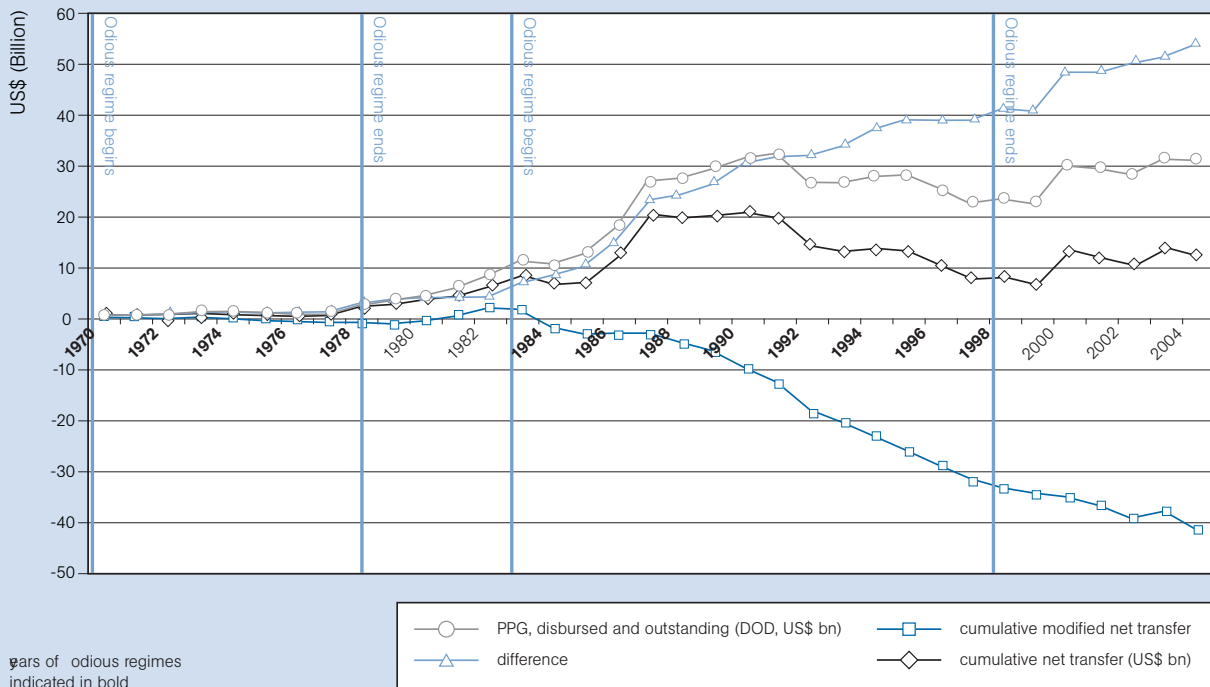
**Figure 16. Nicaragua: Effect of odious debt on net transfers**



**Figure 17. Nicaragua: Comparison of odious and non-odious debt**



**Figure 18. Nigeria: Effect of odious debt on net transfers**



**Figure 19. Nigeria: Comparison of odious and non-odious debt**

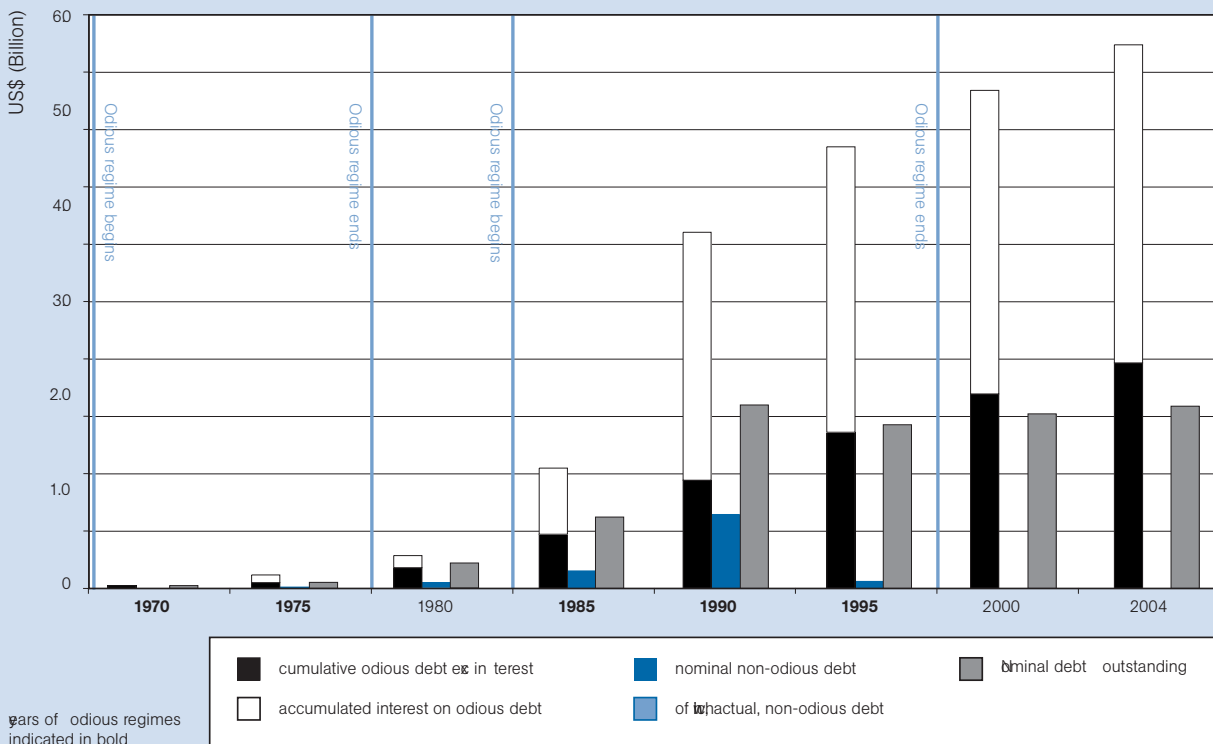


Figure 20. Pakistan: Effect of odious debt on net transfers

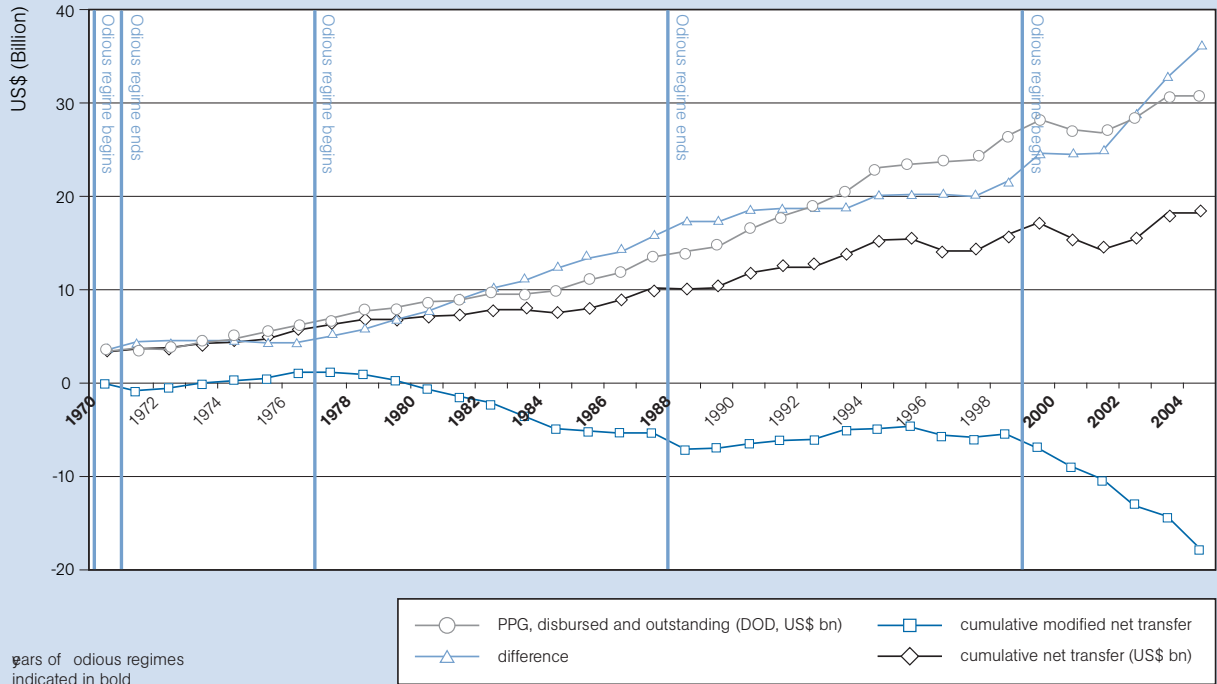
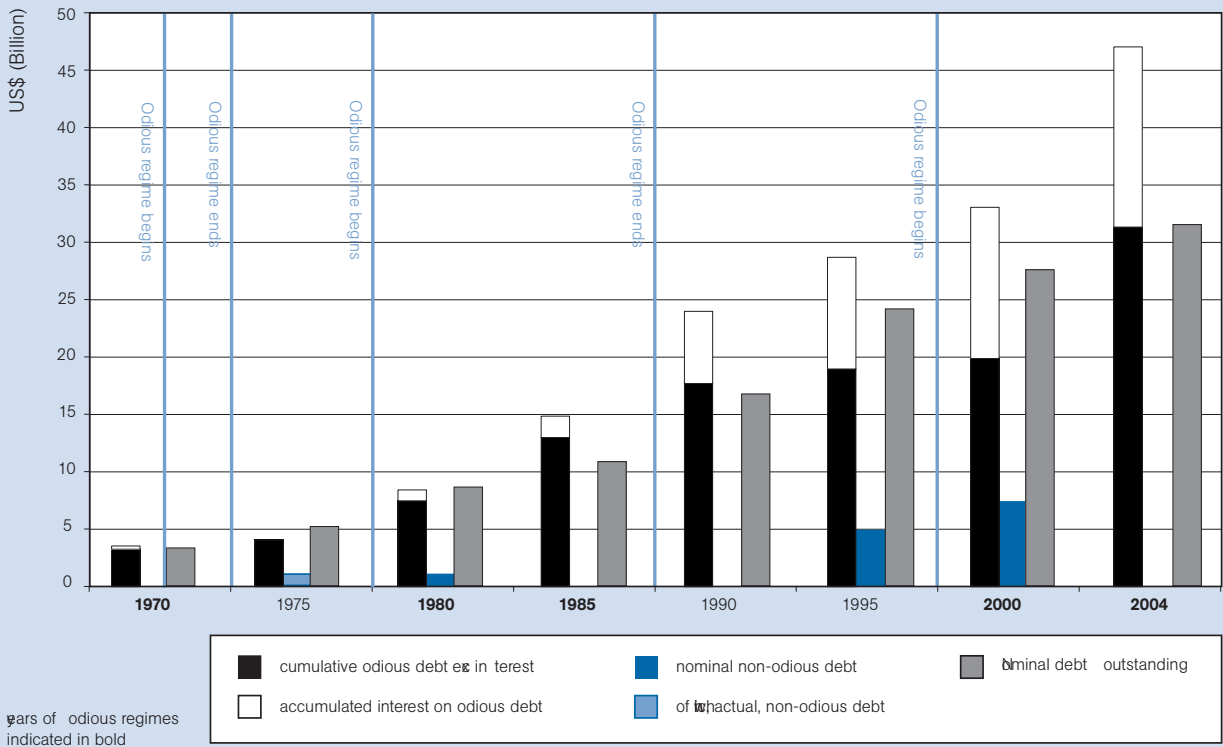
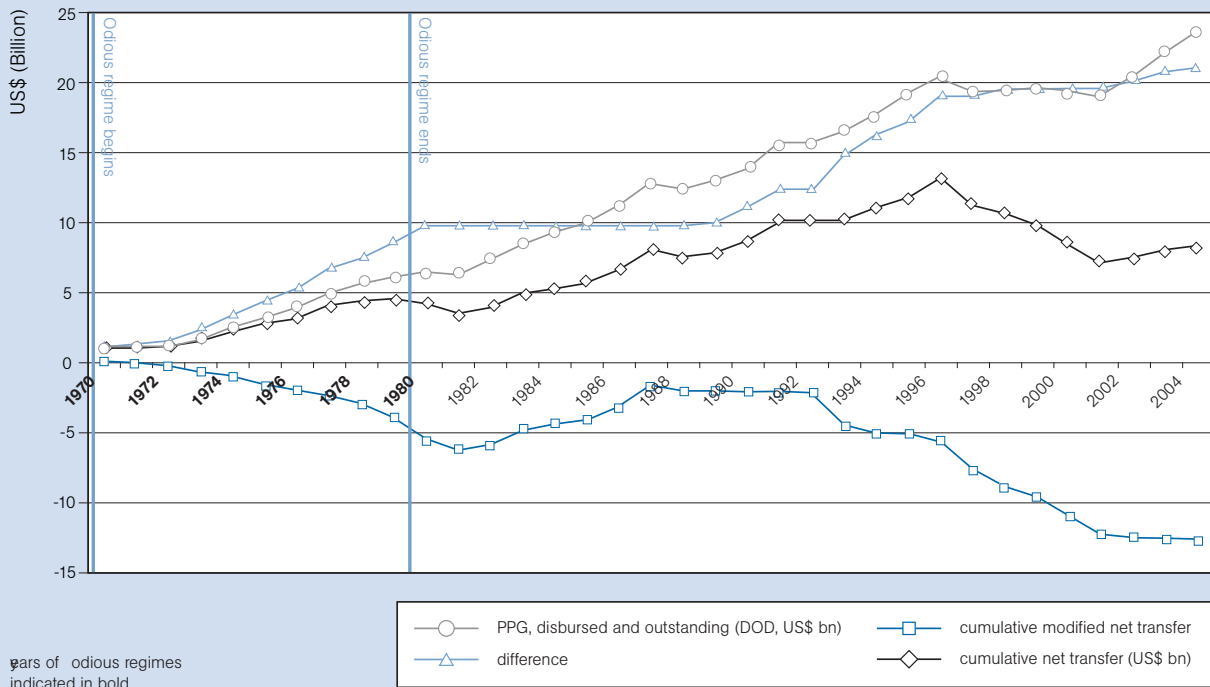


Figure 21. Pakistan: Comparison of odious and non-odious debt

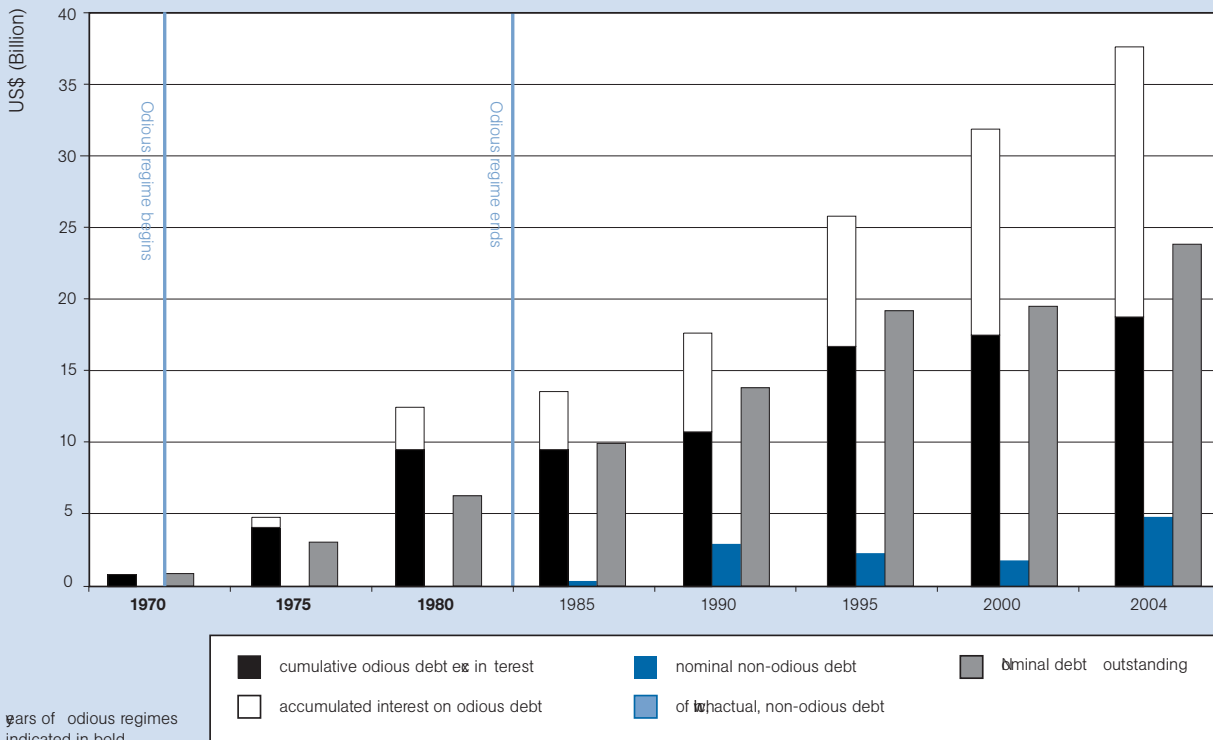


**Figure 22. Peru: Effect of odious debt on net transfers**



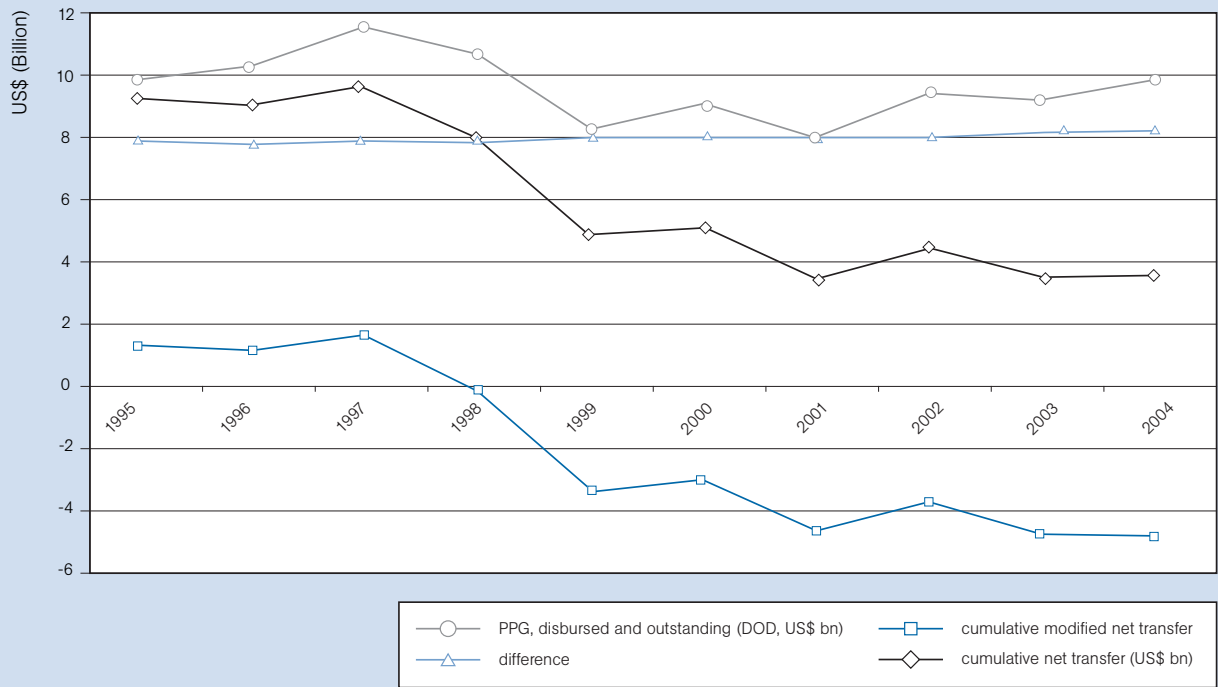
Years of odious regimes indicated in bold

**Figure 23. Peru: Comparison of odious and non-odious debt**

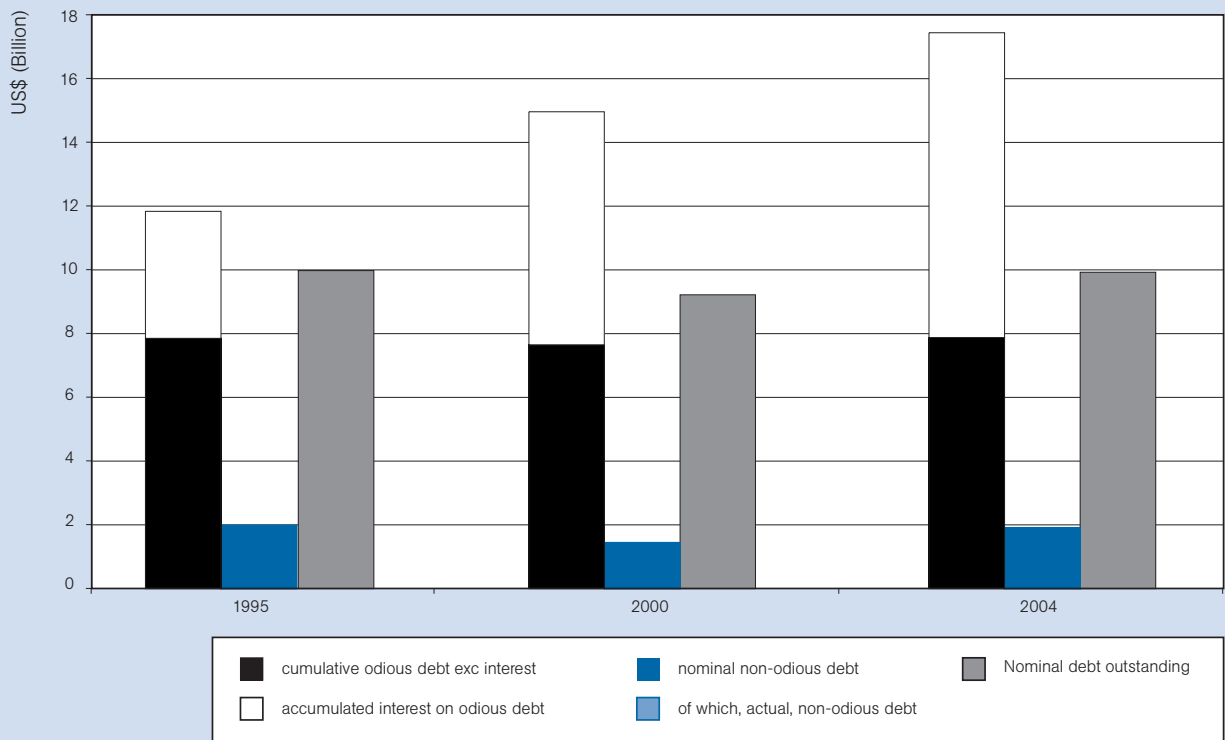


Years of odious regimes indicated in bold

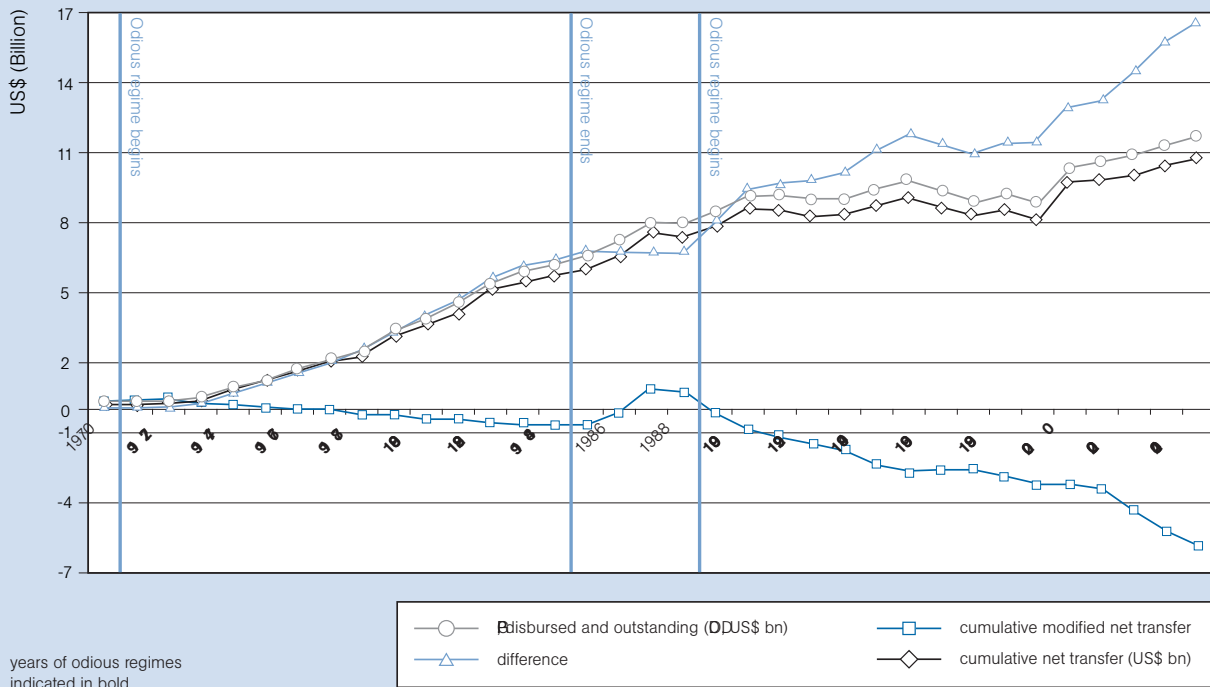
**Figure 24. South Africa: Effect of odious debt on net transfers**



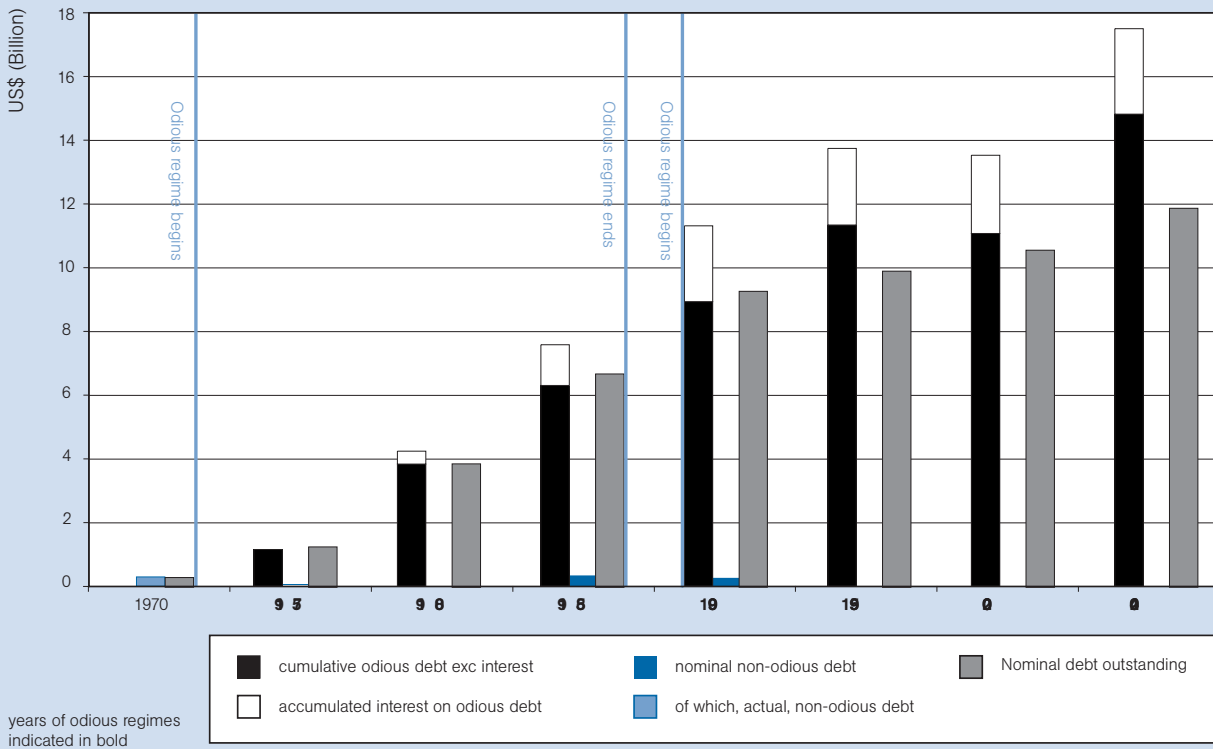
**Figure 25. South Africa: Comparison of odious and non-odious debt**



**Figure 26. Sudan: Effect of odious debt on net transfers**



**Figure 27. Sudan: Comparison of odious and non-odious debt**



# Endnotes

- 1 Odious debt arises from loans which should never have been extended in the first place because of the oppressive, tyrannous or corrupt nature of the regime to which they were granted. **nef** believes that such 'odious debts' would be better defined as 'odious lending'.
- 2 Interview on Fox News, 10 April 2003.
- 3 Speech in US Congress, 17 June, 2003.
- 4 Speech on the appointment of James Baker as special envoy on Iraq, 5 December 2003.
- 5 For example: Hanlon J (2006) 'Illegitimate' loans: lenders, not borrowers, are responsible, *Third World Quarterly*, **27**(2);, Sack AN (1927) *Les effets de transformations des Etats sur leur dettes publiques et autres obligations financiers*. (Paris: Recueil Sirey). Translated from French by Patricia Adams and quoted by her in *Odious Debts: Loose lending, corruption, and the Third World's environmental legacy* (London: Earthscan, 1991); Khalfan A, King J, Thomas B (2003) 'Advancing the Odious Debt Doctrine' CISDL, McGill University, March 2003.
- 6 Eurodad (2006) 'Illegitimate Debt: background and action proposals'. Draft discussion paper February 2006.
- 7 Pettifor A (2002) *Chapter 9/11? Resolving international debt crises – The Jubilee Framework for international insolvency* (**nef**: London).
- 8 Mandel S (2006) 'Debt relief as if people mattered' (**nef**: London). [http://www.jubileereasearch.org/news/debt\\_relief\\_final.pdf](http://www.jubileereasearch.org/news/debt_relief_final.pdf) [20 August 2006]
- 9 A useful discussion of the background and issues on illegitimate debt was produced by Eurodad in February 2006.
- 10 The recent case of Paraguay rejecting a loan repayment request by the successors to the Overland Trust Bank is one example, see <http://www.eurodad.org/articles/default.aspx?id=710>
- 11 For example, Alejandro Olmos filed a case in Argentina and obtained a federal court ruling in 2000 that the military junta (in power between 1976 and 1983) raised such illegal loans.
- 12 When looking at resource flows between the North and the South, it is also incumbent on analysts to take into account moral debts owed by the North to the South, notably environmental and historical debt. Another category of circumstance that might justify the cancellation of otherwise legitimate debt is *force majeure*.
- 13 I am grateful to Celine Tan for her presentation at the Eurodad Conference in February 2006 which informs this discussion.
- 14 For a further discussion of this see Hanlon 2006 op. cit.
- 15 It can also be argued that the rich countries have a moral obligation to provide resources to meet these basic needs.
- 16 Mandel 2006 op. cit. [http://www.jubileereasearch.org/news/debt\\_relief\\_final.pdf](http://www.jubileereasearch.org/news/debt_relief_final.pdf) [20 August 2006].
- 17 Simms A (2005) *Ecological debt: the health of the planet and the wealth of nations*. (Pluto Press: London).
- 18 Export Credit Agencies are set up as government agencies to promote exports from their own country and are not designed as development agencies. OECD rules have been gradually tightened up to reduce the effective subsidy provided by the low-cost insurance against default provided to exporters, but it only works in promoting exports to the extent that it undercuts the cost of commercial insurance. Some governments have increased the emphasis on ECAs' role in assessing the developmental value of the ventures they support but they have frequently, at least in the past, been used for covering such 'undevelopmental' deals as arms exports, for example.
- 19 ECAs provide insurance to private companies exporting to Southern governments and companies, but require Southern governments to guarantee the debts of private companies from their country. This was particularly prone to give rise to corrupt debt and was the source (for example) of much of the debt owed to UK by Nigeria. Private companies would default on obligations to private firms in the North, which would convert private, commercial debt into official, public debt.
- 20 Human Rights Watch (2004) 'Human Rights Overview: Uzbekistan' (Human Rights Watch: New York) at <http://hrw.org/english/docs/2006/01/18/uzbeki12288.htm>. Furthermore, IRIN news, put out by the UN Office for the Coordination of Humanitarian Affairs, reported as follows: Concern over the systematic use torture by the Uzbek government has again been raised by the UN Special Rapporteur on Torture, Manfred Nowak. "There is systematic torture and the general conditions in pre-trial detention facilities are worse than prison. There are even reports of electric shocks [administered in detention]," Nowak said from Vienna on Thursday. His comments came on the same day as Amnesty International (AI) published a statement criticising Uzbekistan's judicial system. "The flawed criminal justice systems in Uzbekistan and Belarus provide fertile ground for judicial error. Executions in Uzbekistan often follow credible allegations of unfair trials, torture and ill-treatment to extract confessions," the release said. IRIN 20 Apr 2006.
- 21 Human Rights Watch Laos Country page <http://uk.oneworld.net/guides/laos/development#Human%20Rights>
- 22 According to the IMF, the SDR is an international reserve asset, created by the IMF in 1969 to supplement the existing official reserves of member countries. The SDR also serves as the unit of account of the IMF and some other international organizations. Its value is based on a basket of key international currencies.
- 23 In 1970, debt stock accumulated in prior years was labelled according to the nature of the regime in 1970. This makes little difference to the overall figures as any debt prior to 1970 is in all cases dwarfed by subsequent borrowing.
- 24 The level of debt recorded as outstanding.
- 25 Debt recorded less total odious debt.
- 26 World Bank, World Development Indicators for 2004, current dollars, atlas method.
- 27 Reaching Completion Point and thus getting all HIPC and MDRI cancellation will change this but the country has been languishing between the two points since December 2000.
- 28 World Bank, World Development Indicators for 2004, US\$170 per capita in current dollars, atlas method.
- 29 Discussed further in Annex 2. Jayachandran S, Kremer M (2005) 'Odious debt' available at <http://www.econ.ucla.edu/people/papers/Jayachandran/Jayachandran298.pdf> [20 August 2006].

- 30 This Article states that “Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member.”
- 31 The interests of the two groups of creditors are in conflict.
- 32 The HIPC process is rather more transparent than the Paris Club, since the main terms for debt relief are on record, but the conditions imposed by the IMF are determined by IMF staff with little or no transparency.
- 33 See glossary in Box 2.
- 34 Hanlon 2006 op. cit.
- 35 Ibid.
- 36 The Paris Club consists of the main creditor countries with a secretariat in the French Foreign Ministry. The London Club is the equivalent of major commercial creditors.
- 37 Lissakers K (1992) *Banks, Borrowers and the Establishment* (Basic Books: New York). The bracketed phrase is in the original, quoted in Hanlon 2006, op. cit.
- 38 Hanlon op. cit., quotes World Bank officials who estimate that a third of all aid to the Philippines was stolen by Marcos.
- 39 The case for apartheid debt to be declared odious was elaborated in particular by Charles Abrahams, University of Leiden, thesis for LLM degree, 2000.
- 40 The Bataan nuclear power station in the Philippines was built on an earthquake fault at the foot of a volcano by US firm Westinghouse. It has never been commissioned but the loans made to build it (and to bribe Marcos to let the contract to the ‘right’ companies) are still being repaid.
- 41 Articles of Agreement, Article III Section 5 paragraph C,  
<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20049598~pagePK:43912~piPK:36602,00.html#16>
- 42 Hanlon 2006 op. cit.
- 43 Sack 1927 op. cit.
- 44 There is an argument to be made that in the presence of widespread corruption or oppression, the fact that the loan may have been used for beneficial purposes is irrelevant if this freed up domestic funds for other, illicit or oppressive purposes (the concept of fungibility).
- 45 Abrahams 2000 op. cit.
- 46 Khalfan *et al* 2003 op. cit.
- 47 <http://www.econ.ucla.edu/people/papers/Jayachandran/Jayachandran298.pdf>; the concept is further developed in Jayachandran S, Kremer M, Shafer, J (2006) ‘Applying the odious debts doctrine while preserving legitimate lending’ available at [http://www.stanford.edu/~jayachan/applying\\_odious\\_debt.pdf](http://www.stanford.edu/~jayachan/applying_odious_debt.pdf) [20 August 2006].



# One of the other things we do

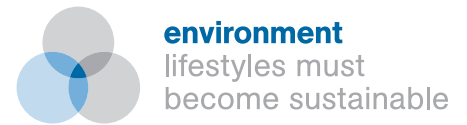


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