THE WORLD BANK GROUP
Headquarters: Washington, D.C. 20433 U.S.A.
Tel. No. (202) 473-1000 • Fax (202) 477-6391 • Telex No. RCA 248423

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TO: Ms. Jane Connors
Title: Chief, Special Procedures Branch
Organization: Office of the UN High Commissioner for Human Rights
City/Country: Geneva, Switzerland
FAX NO.: 41 22 917 9006

FROM:
Anne-Marie Leroy
Title: Senior Vice President and Group General Counsel
Dept/Div: Legal Vice Presidency
FAX NO.: 202 522-1589
Dept./Div. No.: LEGVP

and

Makhtar Diop
Title: Vice President
Dept/Div: Africa Region
Dept./Div. No.: AFRVP

SUBJECT: **Joint Allegation Letter AL Food (200-9) Debt (200-9) Oth 7/2012**

MESSAGE:

Attached is a response to the letter sent by Prof. de Schutter and Dr. Lumina to President Jim Yong Kim dated August 10, 2012.

Transmission authorized by: Anne-Marie Leroy, Senior Vice President and Group General Counsel

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The World Bank
INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

1818 H Street N.W.
Washington, D.C. 20433
U.S.A.

(202) 473-1000
Cable Address: INTBAFRAD
Cable Address: INDEVAS

October 9, 2012

Prof. Olivier de Schutter
Special Rapporteur on the Right to Food
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
CH-1211 Genève 10
Geneva, Switzerland

and

Dr. Cephas Lumina
Independent Expert on the Effects of Foreign Debt and
other International Financial Obligations of states
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
CH-1211 Genève 10
Geneva, Switzerland

Dear Prof. de Schutter and Dr. Lumina:

Thank you for your letter to the President of the World Bank dated August 10, 2012, in connection with the alleged human rights impacts of the privatization of Burundi's coffee industry and the role of the Bank in that process. On the President's behalf, we wish to assure you that we appreciate the importance of the issues you raised. We are pleased to respond in the spirit of cooperation between our two institutions.

Your letter suggests a link between the Bank's support for privatization in the coffee industry in Burundi and the alleged negative effects on access to food for the local population, which you characterize as a human rights violation. Your main concern appears to be captured in the statement that "*changes in wages and payments for coffee and coffee processing can have significant impacts on the ability of the population to purchase food and meet their food needs*" and that "*the privatization of the coffee industry is increasing this vulnerability*." As you are undoubtedly aware, the core determinant of the wages and payments farmers receive is the price of coffee in the international market, which is determined by an array of forces beyond the influence of the Government and the Bank. This price is in turn used in the formula for calculating payments eventually made to farmers. The Bank is not aware of information that suggests there has been a reduction in wages and payments to coffee farmers. Further, there is no evidence of a direct causal link between the Bank's support and the ability of such farmers to meet their food needs.

We are also troubled by the characterization of the Bank's support as somehow being contrary to the interests of the people and Government of Burundi. As with all Bank-financed operations, the Bank is providing support to the coffee sector reforms at the Government's own request. In addition to these comments, we would like to provide you with some factual information as below.

The Government's reform program aims at improving coffee productivity and efficiency, and to enhance farmers' livelihoods. Prior to the initiation of the Government's reform agenda, the coffee sector suffered from low and declining production, yield and quality. The sector was also characterized by high intermediary costs that resulted in coffee farmers receiving a lower share of the international market price than other countries in the region, weak participation of coffee farmers in decision-making, and neglect of industrial equipment and research facilities aggravated by a decade of civil conflict. The aim of the Government's reform program is to reverse these negative trends, increase farmers' revenues, and contribute to poverty alleviation in the rural areas.

Similar coffee sector reform experiences in the region have been positive. There is significant experience in the region which indicates that reforms to the coffee sector can yield substantial efficiency gains and enhance livelihoods of the farmers. Burundi is not unique in seeking to reform the sector, including through privatization. Throughout the East African Community, of which Burundi is a member, countries have encouraged diversified ownership of their coffee industries and private sector investors are actively involved. In the case of Rwanda, a 2006 study by USAID and Chemonics International found that household incomes doubled once the reforms took root, and significant increases in production and export value were reported. Experience in the region thus confirms that privatization programs of this kind, while difficult to implement, can have significant and positive direct and indirect impacts. In a country such as Burundi where the coffee sector accounts for a major share of national economic activity, these positive impacts can be significant.

Government-led reforms are being supported by the Bank through financing and technical assistance. The Bank is keenly aware of the central role that the coffee sector plays in terms of livelihoods and revenue generation and the various challenges facing the sector, having been engaged in supporting coffee industry development initiatives in Burundi over a 40 year period. The Bank's support to the Government, coffee farmers and other stakeholders in the coffee industry is aimed at maximizing the sector's overall contribution to the economy. Since 2006, the Bank's engagement in the coffee sector has been through a series of Development Policy Lending (DPL) operations known as the Economic Reform Support Grant (ESRG) whose objectives include improving agricultural productivity through restructuring the agricultural export sectors such as coffee and tea. A DPL is a financing instrument designed to provide direct budget support for policy and institutional reforms with the goal of achieving a set of specified development results. DPL operations are supportive of, and consistent with, the country's economic and sectoral policies and institutions aimed at accelerated sustainable growth and efficient resource allocation. Disbursement of DPL financing occurs after implementation of a set of "prior actions" agreed to between the Bank and the Government and set out in a Letter of Development Policy. The concerned Government drives the agenda and has responsibility for defining the scope of consultations and public participation in preparing, implementing, monitoring and evaluating the operation. Bank policy requires that the DPL Program Document detail the country's arrangements for consultations and participation relevant to the operation, and the outcomes of the participatory process adopted in formulating the country's development strategy. Our understanding is that the overall necessity for reforms to the coffee sector in Burundi was agreed to by "*all actors, including coffee growers*", as your letter notes.

The privatization process is at an early stage and the Government has been assessing each phase and incorporating lessons into the design of the next phase. As part of the restructuring of the coffee industry to improve efficiency and agricultural productivity, the Government has embarked on a program to privatize the coffee washing stations. The privatization process is at an early stage with 41 of 117 coffee washing stations privatized. The first phase of the privatization program was marked by limited interest from private investors owing to the difficult business climate and security concerns in the run up to the 2010 elections. As a result of this, only 13 coffee washing stations out of a total of 117 stations on offer were privatized during the first round. These were sold to Webcor Group Ltd—a commodities marketing and distribution corporation. The second round of privatization, which aimed at selling more coffee washing stations through an international bidding process, was undertaken in 2012. During this round, 28 publicly owned coffee washing stations were sold to domestic investors. Given this limited experience with the privatization of coffee washing stations, it is too early to accurately gauge the short-term or potential long-term effects of the coffee sector reforms underway. The Government is assessing each stage of the privatization process, and is incorporating the lessons learned in its design of the subsequent phase. The Bank is collaborating with the Government and has financed specific activities designed to address possible adverse impacts and enhance the beneficial outcomes in a sustainable manner as discussed below.

A link between coffee sector reforms and alleged negative food security outcomes has not been established. Thus far, there is no empirical evidence to suggest that privatization of the coffee sector has imperiled the food security situation of coffee farmers in Burundi. Up to the beginning of this year, only 13 out of 117 state-owned washing stations had been privatized. Webcor, the firm that purchased the 13 stations, only bought coffee for the first time in the 2010 harvest cycle and was not in the market in 2011. Furthermore, international coffee prices have been favorable between 210 and today, enabling both the publicly owned washing stations and those recently privatized to pay higher prices to the farmers than the year before. Farm gate prices may indeed go down in the future, but this depends on market forces and international price movements. The preliminary evidence available to the Bank also suggests that, due to the new pricing system introduced in March 2012, farmers are receiving higher incomes from coffee, with greater transparency in the related commercial transactions, built around stakeholder consensus with a floor price announced every two weeks.

Consistent with applicable Bank policies and procedures, the Bank has supported the Government in monitoring and evaluating the impacts of the coffee sector reform process. The Bank is conscious that an accurate measure of the coffee sector reform impacts on livelihoods is vitally important, particularly for resource-poor rural farmers. In connection with its financial support to the Government to undertake the reform program, a Poverty and Social Impact Analysis (PSIA) was carried out in 2006, as required under the relevant Bank policy. The objective of the PSIA was to study the possible distributional impacts of the specific country policies supported by the Bank, especially on poor and vulnerable groups. The results of the assessment were discussed in a workshop attended by a cross section of stakeholders. The assessment concluded that liberalization of the coffee sector would increase farmers' income by ensuring that they receive a higher share of the international coffee price. The Bank plans to conduct an additional PSIA later this year to further inform the future implementation of the ERSG program.

The Government has established a food security safety net to counter any adverse impacts on access to food for the poor and vulnerable. In 2008, the Government adopted a food security safety net to counter any adverse impacts due to food and fuel price hikes on the poor. It is surprising that your letter does not acknowledge this commendable step on the part of the Government to ensure access to food for the poor and vulnerable. This food security safety net has been used to subsidize staple foods thus enabling access by poor families and relieving the effects of food shortages and malnutrition. The Government continues to monitor incomes and food prices in order to implement mitigation measures as the need arises.

A key objective of Bank support to the coffee sector was to introduce new farm practices to reduce exposure to volatile prices and increase access to food. The Bank specifically encouraged the Government to increase expenditure allocation for agriculture and livestock and to protect agriculture, education and health sectors in the event of budget cuts. Through increased budget support for agriculture, rural communities have been encouraged to take up the rearing of small farm animals such as pigs, goats and fowl, and to improve the quality of farm crops such as bananas, cassava, beans and tomatoes. The aim of these interventions is to help meet the food needs of coffee farmers and to increase their income.

The Bank acknowledges the link between development and human rights. In various paragraphs, your letter makes the point that Bank financing should "*support the State's human rights obligations*." The Bank acknowledges the link between development and human rights, and in supporting projects and programs, it takes into account relevant social and environmental factors. This process however, must be in accordance with the mandate vested in the Bank by its shareholders through the *Articles of Agreement*. As you may know, the Articles explicitly state that only economic considerations—meaning those that have a direct and obvious economic effect relevant to the Bank's work—can be taken into account in decisions by the Bank and its officers. Therefore, in our view, your suggestion goes beyond the bounds of the Bank's institutional mandate.

Although not reflective of an official World Bank approach consistent with the World Bank's Board authority to interpret the Articles of Agreement, the World Bank General Counsel's 2006 Legal Opinion needs to be correctly interpreted. Your letter refers extensively to the 2006 "*Legal Opinion on Human Rights and the Work of the World Bank*" issued by a former Senior Vice President and General Counsel of the World Bank. The content of this document is clearly and deliberately focused on the obligations of States rather than outlining any evolving human rights responsibilities for the Bank, contrary to what your letter seems to suggest. In addition, every legal opinion needs to be interpreted, not in isolation, but in conjunction with the Bank's established practice and consistently with the authority vested in the Board of Executive Directors to interpret the *Articles of Agreement*.

The allegation of a potential human rights violation is unfounded. Your reference to a potential human rights "*violation*" for which the Bank may be responsible, and to a specific article of the International Law Commission (ILC)'s *Articles on the Responsibility of International Organizations*, is unfounded and premised on a misreading of the ILC's articles. As outlined above, the alleged harm is not apparent, and there is no direct causal link between what is alleged and the Bank's support to the Government's privatization program. In addition, as you are aware, the International Court of Justice has recognized that international organizations are fundamentally "*unlike states*" in that they "*do not possess a general competence*."[1] International organizations such as the Bank and other specialized agencies are established by the agreement of member states for the specific purposes set out in their constitutive instruments. As such, their powers and responsibilities must be assessed primarily against the provisions of their respective constitutive instruments, and in the case of the Bank, its *Articles of Agreement*. Your letter therefore erroneously conflates alleged obligations of international organizations with the obligations that bind State parties to the International Covenant on Economic

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[1] ICJ, *Legality of the Use of by a State of Nuclear Weapons in Armed Conflict.* ICJ Reports, 1996, p. 66, at p.78.

Social and Cultural Rights—on which the greater part of your arguments hinges. Moreover, the specific ILC article which is used to support your argument of coercion is not applicable to any of the Bank's actions mentioned, by virtue of the very text of that ILC article and the commentary pertaining to it. We question why it should be raised in this context.

The 1947 Relationship Agreement guides the process of engagement between our two institutions. At the end of your letter, you write that the Bank's response will be "*take[n] into account" in your assessment of the "situation and in developing recommendations*" and, further, that the response will be "*made available in a report to the Human Rights Council for its consideration*." In that regard, the 1947 Relationship Agreement between the UN and the Bank, in Article IV paragraph 2, expressly provides that "*[n]either organization, nor any of its subsidiary bodies, will present any formal recommendation to the other without reasonable prior consultation with regard thereto*." This provision is intended to avoid instances in which the two organizations could inadvertently come into conflict by acting unilaterally. We believe that the situation in Burundi is complex and our two institutions have a responsibility to act prudently paying due regard to all relevant facts. For this reason, we are confident that neither your offices nor any United Nations organ or subsidiary organ will make any formal recommendations to the Bank without consulting us, following this initial exchange of letters and factual information.

We thank you for alerting us to the concerns that you have highlighted in the letter and will take them into account in the forthcoming evaluations to be conducted on the Bank's program of support in Burundi. We remain available to provide you with additional information related to our program in Burundi, in the event you consider that useful.

Sincerely,

Anne-Marie Leroy
Senior Vice President and Group General Counsel

Makhtar Diop
Vice President, Africa Region

cc. His Excellency Tabu Abdallah Manirakiza, Minister of Finance, Planning and Economic Development

cc. Dominique Bichara, World Bank Special Representative to the United Nations