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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina*

Summary

Between June 2010 and February 2011, the Office of the United Nations High Commissioner for Human Rights convened three regional multi-stakeholder consultations – in Latin America and the Caribbean, Africa, and Asia and the Pacific – on the draft general guidelines on foreign debt and human rights (“the guidelines”) to assist the Independent Expert in further elaborating the guidelines.

The main goal of the consultations was to generate ideas, based on regional experiences and perspectives, on the form and content of the draft guidelines in order to improve them. The consultations addressed the following issues: (a) the key human rights and international legal principles that should underpin the guidelines; (b) the impact of economic reform policies and debt relief operations on the capacity of States to design and implement national development policies and programmes and to fulfil their human rights obligations; (c) the elements or principles that sovereign loan agreements should contain to ensure that these agreements do not contribute to the violation of human rights or constrain the fulfilment of human rights by borrower States; (d) elements of a new, enhanced debt sustainability framework (based on the principle of shared responsibility of creditors and debtors for preventing and resolving unsustainable debt situations as underscored in the Monterrey Consensus of the International Conference on Financing for Development) which includes an assessment of the impact of debt burdens on the realization of human rights and the achievement of national development objectives; (e) the need for human rights impact assessments before and after loan contraction; (f) measures to safeguard gains from debt relief; (g) mechanisms for public audits of debt and lending portfolios; (h) the

* Late submission.

impact of trade liberalization on the capacity of States to fulfil their human rights obligations and how to ensure the coherence of national and international financial and trade policies; (i) how to promote transparency and accountability in loan contraction and use of loan funds as well as effective public debt management; and (j) the role of parliaments and civil society in holding Governments to account for debt and economic reform policies that may contribute to human rights violations.

The present report, which is submitted pursuant to Human Rights Council resolution 14/4 and decision 12/119, is an update on the consultations. It highlights the main themes of the discussions.

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I. Introduction

1. Between June 2010 and February 2011, the Office of the United Nations High Commissioner for Human Rights (OHCHR) convened three regional multi-stakeholder consultations – in Latin America and the Caribbean, Africa, and Asia and the Pacific – on the draft general guidelines on foreign debt and human rights (“the guidelines”)¹ to assist the Independent Expert in refining and elaborating the guidelines. The first two regional consultations were co-sponsored by the respective regional economic commission. The third regional consultation was generously co-sponsored by the Government of Qatar.

2. The consultations brought together experts from States, United Nations entities, regional economic commissions, international and regional financial institutions, civil society and academia, largely drawn from each region.

3. The present report, which is submitted pursuant to Human Rights Council resolution 14/4 and decision 12/119, provides an update on the consultations.² It highlights the main themes of the consultations.

4. The Independent Expert and his team have benefitted significantly from all these discussions and wish to thank the co-convenors of each consultation, as well as the participants, for their time and insightful contributions. The Independent Expert further wishes to express his special gratitude to the Government of Qatar for its generous support for the Asia-Pacific regional consultation.

II. Background, purpose and format of the consultations

A. Background

5. In its resolution 2004/18, the Commission on Human Rights requested the Independent Expert on the effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights “to draft general guidelines to be followed by States and by private and public, national and international financial institutions in the decision-making and execution of debt repayments and structural reform programmes, including those arising from debt relief, to ensure that compliance with the commitments derived from foreign debt will not undermine the obligations for the realization of fundamental economic, social and cultural rights, as provided for in the international human rights instruments, and to present a preliminary draft on this matter to the Commission at its sixty-first session and a final draft at the sixty-second session of the Commission.”

6. In its resolution 2005/19, the Commission decided to convene an expert consultation to contribute to the Independent Expert’s work to finalize the guidelines (para. 22).

7. In its decision 2/109, the Human Rights Council requested OHCHR to convene an expert consultation for the purpose of contributing to the process of drafting the general Guidelines. The consultation was expected to (a) provide an overall picture of the impact that foreign debt and debt relief programmes, as well as different kinds of economic reform

¹ The draft guidelines are available from <http://www2.ohchr.org/english/issues/development/debt/DraftGuidelines.htm>.

² Summaries of all regional consultations and the lists of participants will be available on the webpage of the Independent Expert at <http://www2.ohchr.org/english/issues/development/debt/index.htm>.

programmes, have on the capacity of States to comply with human rights standards, and (b) identify suggestions on possible recommendations to States, international organizations and other stakeholders regarding possible policy elements to promote and protect human rights in developing countries while implementing debt and economic reform programmes.

8. Following the above-mentioned expert consultation, the then Independent Expert (Bernards Mudho) presented a preliminary draft of the guidelines to the Human Rights Council at its seventh session.

9. The guidelines, which are not intended to be legally binding but are voluntary in character, include:

(a) Guidelines on foreign debt proposing, inter alia, a new debt sustainability framework which takes into account the impact of debt service on a country's ability to fulfil its human rights obligations; debt relief operations guided by human rights considerations; and loan contraction and monitoring;

(b) Guidelines on economic reform policies calling for, inter alia, a human rights-based approach to poverty reduction strategies; trade negotiations and policies based on economic and social impact assessments (including an analysis of potential impact on human rights); structural reforms guided by international human rights obligations; and transparent, responsible, accountable and participatory government.

10. In his report to the Council (A/HRC/7/9), the former Independent Expert stated that the guidelines required further work and consultations.

11. In its resolution 7/4, the Council redefined the mandate of the Independent Expert and renamed it the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights. The Council requested the current mandate holder to continue work on the development of the guidelines with a view to presenting an update thereon to the Council in 2010. It further called upon the Independent Expert to seek the views and suggestions of States, international organizations, United Nations agencies, funds and programmes, regional economic commissions, international and regional financial institutions and non-governmental organizations on the draft general guidelines.

12. In paragraph 37 of his preliminary report to the General Assembly (A/63/289), the Independent Expert intimated that, in order to guarantee the acceptability and effective implementation of the guidelines, it was necessary to ensure the fullest possible participation of all stakeholders (including civil society organizations and rights holders in the affected countries) in their finalization.

13. In its resolution 11/5, the Council requested the Independent Expert "to continue to seek the views and suggestions of States, international organizations, United Nations agencies, funds and programmes, regional economic commissions, international and regional financial institutions and non-governmental organizations on the draft general guidelines and his proposal of possible elements for consideration" (para. 25). In its decision 12/119, the Council requested OHCHR to assist the Independent Expert in the implementation of the activities envisaged in resolution 11/5, including organizing the consultations and providing the Independent Expert with appropriate support to enable him to undertake the consultations.

B. Purpose

14. The main purpose of the consultations was to generate ideas, based on regional experiences and perspectives, on the form and content of the draft guidelines in order to improve them.

15. The consultations addressed the following issues: (a) the key human rights and international legal principles that should underpin the guidelines; (b) the impact of economic reform policies and debt relief operations on the capacity of States to design and implement national development policies and programmes and to fulfil their human rights obligations; (c) the elements or principles that sovereign loan agreements should contain to ensure that these agreements do not contribute to the violation of human rights or constrain the fulfilment of human rights by borrower States; (d) elements of a new, enhanced debt sustainability framework (based on the principle of shared responsibility of creditors and debtors for preventing and resolving unsustainable debt situations as underscored in the Monterrey Consensus of the International Conference on Financing for Development) which includes an assessment of the impact of debt burdens on the realization of human rights and the achievement of national development objectives; (e) the need for human rights impact assessments before and after loan contraction; (f) measures to safeguard gains from debt relief; (g) mechanisms for public audits of debt and lending portfolios; (h) the impact of trade liberalization on the capacity of States to fulfil their human rights obligations and how to ensure the coherence of national and international financial and trade policies; (i) how to promote transparency and accountability in loan contraction and use of loan funds as well as effective public debt management; and (j) the role of parliaments and civil society in holding Governments to account for debt and economic reform policies that may contribute to human rights violations.

C. Format

16. Each regional consultation took place over a period of two days and was divided into a number of thematic sessions.³ The first day set the context by focusing broadly on key human rights principles relating to foreign debt, policies on debt and debt relief, economic reforms, and the impact of these policies on the capacity of States to fulfil their human rights obligations, as well as the roles and responsibilities of creditors and debtors. Discussions during the second day focused on the form and content of the guidelines drawing on the discussions from the first day.

17. In order to contextualize the discussions, two to three expert panellists made brief presentations during each session. The presentations were followed by open discussion and summing up by the session chair.

III. Latin America and Caribbean regional consultation

A. Introduction

18. The Latin America and Caribbean regional consultation was held in Santiago on 18 June 2010. It was organized by OHCHR and co-sponsored by the Economic Commission for Latin America and the Caribbean. The Independent Expert is grateful for this support and for the contributions made by all participants.

19. The consultation was originally scheduled to be held over two days but was held over one day. Although invitations had been sent by OHCHR to all States in the region through their permanent missions in Geneva and New York, it appeared that these may not have been transmitted to the respective capitals. Consequently, the first day of consultations

³ The exception was the Latin America and Caribbean consultation, which took place over one day. See section III of the present report.

was cancelled to enable the OHCHR regional office to follow up the invitations with States that had representation in Santiago.

20. Participants in the consultation included representatives from States, United Nations entities, civil society and the private sector.

21. The consultation was opened by the Regional Representative, OHCHR Regional Office for South America, who underscored the need for economic reform policies which are implemented specifically to guarantee the enjoyment of human rights and the need to discuss the causes and context under which human rights violations occur. He also recalled that the United Nations human rights treaty bodies have observed that high debt burdens and dependency on foreign aid can constitute an obstacle to State efforts to comply with their human rights obligations, such as access to water, food, housing, education and health.⁴

B. Session I: Rationale and purpose of the guidelines

22. This session focused on the rationale and purpose of the guidelines. It was noted that it was important to ensure that the guidelines adopted a framework that had clearly definable rights and responsibilities for debtors and creditors and that the guidelines were entrenched in a human rights-based framework.

23. Participants stressed that human rights should be at the centre of State public policies and that people should be the ultimate beneficiaries of these policies. It was further noted that while States had to service their foreign debt, that should not be done at the expense of basic social services or poverty reduction.

24. One participant proposed that the Independent Expert convene an expert working group to elaborate measures for a human rights-based approach to debt sustainability which could then be incorporated in the guidelines.

C. Session II: Debt, debt relief and economic reform

25. In this session, presentations and discussions focused on debt, debt relief and economic reform. Presentations outlined the status of current multilateral debt relief initiatives and addressed how these supported human rights and development, as well as the

⁴ See, for example, the following concluding observations. Committee on Economic, Social and Cultural Rights: E/C.12/1/Add.57 (Honduras); E/C.12/1/Add.71 (Algeria); E/C.12/1/Add.55 (Morocco); E/C.12/1/Add.63 (Syrian Arab Republic); E/C.12/1/Add.48 (Sudan); E/C.12/1/Add.78 (Benin); E/C.12/1/Add.62 (Senegal); E/C.12/1/Add.106 (Zambia); E/C.12/1/Add.60 (Bolivia, Plurinational State of); E/C.12/1/Add.100 (Ecuador); E/C.12/1/Add.66 (Nepal); and E/C.12/1/Add.49 (Kyrgyzstan). The Committee on the Rights of the Child: CRC/C/15/Add.156 (Tanzania, United Republic of); CRC/C/15/Add.190 (Sudan); CRC/C/15/Add.193 (Burkina Faso); CRC/C/15/Add.179 (Niger); CRC/C/15/Add.160 (Kenya); CRC/C/15/Add.174 (Malawi); CRC/C/15/Add.172 (Mozambique); CRC/C/15/Add.218 (Madagascar); CRC/C/15/Add.138 (Central African Republic); CRC/C/15/Add.204 (Eritrea); CRC/C/15/Add.130 (Suriname); CRC/C/15/Add.115 (India); CRC/C/15/Add.207 (Sri Lanka); CRC/C/15/Add.197 (Republic of Korea); CRC/C/15/Add.124 (Georgia); CRC/C/15/Add.152 (Turkey); and CRC/C/15/Add.186 (Netherlands (Netherlands Antilles)). Committee on the Elimination of Discrimination against Women: *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 38 (A/56/38)*, part one, para. 227 (Jamaica) and part two, paras. 161 (Guyana) and 227 (Netherlands); *ibid.*, *Fifty-fifth Session, Supplement No. 38 (A/55/38)*, para. 44 (Cameroon); *ibid.*, *Fifty-seventh Session, Supplement No. 38 (A/57/38)*, paras. 149 (Uganda) and 155 (Trinidad and Tobago).

need for coherence between trade and debt policies. Attention was drawn to the adverse impact of macroeconomic conditionalities on the capacity of Governments to deliver essential social services and to the need for a new approach to debt sustainability, lending and borrowing and debt resolution that took account of resources needed by Governments to meet their development objectives.

26. In one presentation, some basic principles for responsible lending and borrowing were underlined, including the following: (a) loans must be driven by national needs and growth strategy; (b) fair interest rates and penalties policies must be applied; (c) parliamentary and citizen participation and consent are crucial; (d) full public disclosure of information must be ensured; (e) activities financed must not violate human rights treaties; (f) independent ex ante long-term integrated impact assessments of viability of project and details of how risk must be shared between signatories; (g) compliance with social, labour and environmental standards as enshrined in international agreements must be ensured; and (h) provision must be made for an independent and transparent arbitration procedure in the event of repayment difficulties or dispute.

27. Participants expressed support for the work of the Independent Expert and welcomed the consultation on the guidelines. Participants further highlighted the need for an international sovereign debt resolution or restructuring mechanism, under the aegis of the United Nations, to replace ad hoc mechanisms.

D. Session III: Core human rights principles and obligations

28. This session explored core human rights principles and obligations relevant to foreign debt and economic reform. Participants underscored the importance of adopting a human rights-based approach⁵ to foreign debt and related policies. It was stated that one of the key contributions that the guidelines could make was the utilization of the analytical framework of respect, protect and fulfil – three levels of State obligations – for the framework of public policies concerning external debt.

29. The presentations highlighted the need for: (a) the guidelines to emphasize the shared responsibility of creditors and debtors for preventing and resolving situations of unsustainable debt; (b) public scrutiny of loan negotiations; (c) public participation through domestic representative bodies; (d) a gendered perspective to be central to decision-making; and (e) debt relief not to be considered official development assistance. It was further noted that international assistance was not an act of charity, but rather an obligation that States had assumed through the ratification of international human rights treaties.

30. One participant stated that given the vulnerability to climate change of some island States in the region it was necessary to evaluate how that vulnerability affected gross domestic product and debt management processes.

⁵ A human rights-based approach is a conceptual framework that is normatively based on international human rights standards and operationally directed towards promoting and protecting human rights. See OHCHR, *Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation* (New York and Geneva, United Nations, 2006), p. 15. See also “The human rights-based approach to development cooperation: towards a common understanding among United Nations agencies” (2003).

E. Session IV: Discussion on the way forward and next steps

31. Participants requested that a second consultation be held in the region to enable the full participation of all States and “to reinforce regional positions”. In response, the Independent Expert stated that budgetary constraints rendered it difficult to hold a second consultation in the region but that he was amenable to such a meeting if the States in the region were prepared to muster the necessary resources and host the consultation.

IV. Africa regional consultation

A. Introduction

32. The Africa regional consultation was held in Addis Ababa on 4 and 5 November 2010. It was organized by OHCHR and co-sponsored by the Economic Commission for Africa (ECA). The Independent Expert is grateful for this support, and for the contributions made by all participants.

33. In addition to the co-convenors (OHCHR and ECA), participants at the consultation included representatives from States in the region, parliamentarians, United Nations bodies, civil society organizations and academia. The African Development Bank (AfDB) was also represented at the consultation.

34. Opening remarks made on behalf of the Executive Secretary of ECA underlined the importance of analysing the impact of debt on the capacity of States to fulfil their human rights obligations and noted that the debt problem was not exclusively a problem of developing countries.

B. Session I: Rationale and purpose of the guidelines

35. This session addressed the rationale and purpose of the guidelines. The session began with a briefing by the Independent Expert on the connection between foreign debt and human rights. The Independent Expert also provided a sketch of the content of the draft guidelines focusing on the following elements: (a) a new debt sustainability framework which accounts for the impact of debt service on the debtor country’s ability to fulfil its human rights obligations; (b) participation of national parliaments and civil society in debt sustainability analyses; (c) the shared responsibility of lenders and borrowers for new loans and future debt burdens, which extended to the impact of debt on human rights; (d) transparency in the negotiation and implementation of loan agreements; (e) prudent use by debtor countries of the additional fiscal space provided by debt relief; (f) human rights-based poverty reduction strategies; (g) trade negotiations and trade liberalization guided by human rights considerations; (h) implementation of regulatory frameworks and monitoring mechanisms to ensure that the actions of private actors did not undermine human rights; and (i) transparent, responsible, accountable and participatory governance.

36. The second presentation addressed the form and content of the guidelines. The speaker underlined the positive aspects of the guidelines, indicating that the proposed human rights-based approach to budgeting and monitoring could be a very useful tool for countries. The speaker further acknowledged the value of the holistic approach to debt in that the issue of debt was dealt with in the context of a country’s overall development strategy. Nevertheless, the speaker expressed some doubts concerning the enforceability of the guidelines and, in particular, whether all the provisions were realistic.

37. In the third presentation, the speaker acknowledged that the guidelines adopted a human rights-based approach to debt but noted that they still failed to clearly identify the legal rights at stake on the one hand, and the rights-holders and duty-bearers on the other.

38. Discussions reflected the need to place governance at the heart of the dialogue on foreign debt and human rights. Participants expressed concern regarding the voluntary character of the guidelines.

39. Participants also expressed concern over the lack of an independent international body for the resolution of debt-related disputes and assessment of the legitimacy of debt.

40. There was general agreement that the guidelines could benefit from the lessons drawn from the Heavily Indebted Poor Countries (HIPC) Initiative. Participants further articulated the need to incorporate into the guidelines provisions designed to prevent the sale of sovereign debts to third parties (typically, commercial creditors commonly referred to as “vulture funds”⁶) and to address debt in the context of cooperation with emerging creditors.

C. Session II: Core human rights principles and obligations

41. This session commenced with two presentations, one on the human rights obligations of States, including the obligation of international assistance and cooperation, and the other on key human rights principles relevant to debt and related financial obligations of States.

42. In the first presentation it was underscored that international assistance was increasingly understood as a right (on the part of recipients) and an obligation (on the part of developed countries and donors) under the International Covenant on Economic, Social and Cultural Rights.⁷ Wealthy States had an obligation to provide economic assistance to help developing countries effectively implement the provisions of the Covenant.

43. In his presentation, the Independent Expert emphasized the primacy of human rights obligations as reflected in Article 103 of the Charter of the United Nations and the

⁶ “Vulture funds” are private commercial entities that purchase the defaulted debt of poor countries on the secondary market at significant discounts and then attempt, through litigation, seizure of assets or political pressure, to seek repayment of the full face value of the debt together with interest, penalties and legal fees. For a discussion of vulture funds and their impact on debt relief and human rights in poor countries, see the report of the independent expert (A/HRC/14/21).

⁷ Under article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, each State Party “undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”. According to the Committee on Economic, Social and Cultural Rights, the phrase “to the maximum of its available resources was intended by the drafters of the Covenant to refer to both the resources existing *within* a State and those available from the *international community* through *international cooperation and assistance*” (emphasis added). The Committee has further emphasized that “in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States” and that “it is particularly incumbent upon those States which are in a position to assist others in this regard”. General comment No. 3 (1990) on the nature of States parties obligations, paras. 13 and 14. See also art. 4 of the Convention on the Rights of the Child; art. 4, para. 2, and art. 32 of the Convention on the Rights of Persons with Disabilities; and art. 3, para. 3, of the Declaration on the Right to Development.

importance of the rights to information and participation, which helped citizens hold their Governments accountable in relation to loan contraction, use of loan funds and debt management.

44. In the subsequent discussion, one participant expressed concern in relation to the low level of participation of the African diplomatic corps based in Addis Ababa. It was observed that this could possibly be attributed to the technical nature of the issues under consideration. In this regard, it was suggested that efforts should be made to put the issues under debate on the agenda of the African Union and to convene an African Union summit on the question of foreign debt and its impact on human rights.

45. There was broad agreement on the need for an improved legal framework to address the impact of external debt on the realization of human rights. Some participants expressed concern over the tendency of transnational corporations and international financial institutions to claim that they are not bound by international human rights law.

D. Session III: Debt, debt relief and economic reform

46. The session opened with three panel presentations. The first presentation, addressing debt relief, conditionality and accountability, highlighted the adverse impacts of conditionalities imposed as part of the current multilateral debt relief schemes. These conditionalities, it was contended, occasioned “sovereignty cost” which included a lack of space for policy formulation that undermined national ownership of development policies. The speaker also criticized the joint World Bank/International Monetary Fund debt sustainability framework for its failure to adopt pro-poor and human rights-based approaches.

47. In the second presentation, the relationship between poverty and human rights was explored and a human rights-based approach to poverty reduction strategies was proposed which: (a) takes into account both a moral value and a legal obligation; (b) seeks to empower people; (c) is based on the human rights obligations of States; (d) promotes accountability; and (e) complies with human rights principles.

48. In the third presentation, the speaker addressed the issue of coherence between debt and trade policies and related obligations of States. It was asserted that one of the major obstacles to finding an enduring solution to the debt problems of developing countries had been the approach of bilateral and multilateral lenders that viewed the debt crisis as a mere financial problem. For this reason, the measures aimed at addressing the debt crisis were confined to fiscal and monetary restraints, structural reforms involving the reduction of public sector spending (including on basic social services), and trade and financial liberalization. The view was expressed that the debt problem of developing countries was rooted in the unequal economic relationships between those countries and developed countries and that most debts were illegitimate or odious. The current approach to debt had resulted in massive poverty in many debtor countries. It was proposed that a human rights-based approach to debt management and trade policies be adopted as a lasting solution to the debt crisis and related socio-economic problems.

49. In the discussions that followed, participants opined that the guidelines needed to address more clearly the issue of illegitimacy or odiousness of debt. In this regard, it was proposed that a set of criteria for the identification of illegitimate and odious debt should be established.

50. In regard to the question of policy coherence, participants underlined the need, both at the international and national levels, for better coherence between debt and trade policies. To illustrate, one participant referred to the huge subsidies that creditor countries provided

to their farmers while debtor countries were prevented, by the same creditors, from doing the same, to the detriment of their farmers.

51. Finally, concern was expressed that the lack of legal personality of key actors such as the London and Paris Clubs rendered it difficult to hold them accountable for their decisions which might have negative impacts on human rights in debtor countries.

E. Session IV: Loan negotiation, contraction, management and use – the relevance of human rights principles

52. This session featured several presentations focusing on various issues relating to loan negotiation, contraction, management and use. The first presentation outlined the role of the African Legal Support Facility of AfDB. It was noted that the Facility is an independent entity which provided assistance to States confronted with lawsuits by vulture funds, as well as technical assistance on loan negotiations and agreements.

53. This was followed by presentations on the role of parliament and civil society in ensuring transparency and accountability in loan contraction, use of loan funds and debt management. The speakers identified the secrecy around loan negotiations and difficulty in accessing information on public financial management and loans as key obstacles to accountability and highlighted the need for parliament and civil society to be involved at various stages of the loan processes. Several proposals to enhance the capacity of parliaments to play an effective oversight role were put forward, including (a) strengthening the research, planning, monitoring and evaluation capacity of parliament, and (b) strengthening relationships between parliaments and other oversight bodies.

54. Participants observed that the issue of accountability was not comprehensively dealt with in the guidelines and underscored the need to ensure participation and oversight by parliaments and civil society organizations in loan contraction, use and management. Some participants requested the Independent Expert to facilitate capacity-building sessions for African parliamentarians on the issue of foreign debt and human rights.

55. The oversight role of parliament in relation to public debt was acknowledged and the need for reinforcement of constitutional and legislative frameworks concerning this role emphasized. In addition, participants underscored the importance of public debt audits as an accountability mechanism and acknowledged the value of external debt management initiatives such as those managed by the World Bank and the Commonwealth Secretariat.

F. Other sessions

56. The remainder of the sessions focused on the form and content of the draft guidelines. The sessions were preceded by a sketch of the guidelines by the Independent Expert.

57. The discussions highlighted the need for the guidelines to: (a) incorporate references to international human rights standards (including the Universal Declaration of Human Rights); (b) stress the obligation of international assistance and cooperation in the realization of human rights; (c) link the guidelines to the Paris Declaration on Aid Effectiveness: Ownership, Harmonisation, Alignment, Results and Mutual Accountability; (d) emphasize that privatization should be nationally driven; (e) be less technical in order to make them accessible to all; (f) include provisions on an international debt resolution mechanism; (g) underscore the right of citizens to participate in the formulation of economic policies; (h) address cases of countries experiencing conflict, post-conflict

countries and countries faced with natural and other disasters; and (i) clearly define the role of parliaments and civil society.

58. Some participants felt that the scope of the guidelines was too narrow and that there was a need to broaden it to address issues such the relevance of financed projects and successful or failed projects.

59. One participant cautioned against the use of fluid terms such as macroeconomic stability. It was noted that it was possible to have good macroeconomic indicators while at the same time the poor and marginalized were unable to access basic services.

60. Another participant suggested that the term “principles” should be used in place of “guidelines” in order to bolster the influence of the guidelines.

V. Asia-Pacific regional consultation

A. Introduction

61. The Asia-Pacific regional consultation was held in Doha on 31 January and 1 February 2011. It was organized by OHCHR and generously co-sponsored by the Government of Qatar. The Independent Expert is grateful for this support, and for the contributions of all participants. He reiterates his special gratitude to the Government of Qatar for its generosity and continuing support for his mandate.

62. Participants in the consultation included representatives of States, parliamentarians, civil society organizations and academics. The World Bank was also represented at the consultation.

63. Sheikh Khalid bin Jassim Al-Thani, Director of the Bureau of Human Rights, Ministry of Foreign Affairs of Qatar, delivered an opening statement on behalf of the Government of Qatar in which he noted that the hosting of the meeting was part of his Government’s efforts to consolidate international standards aimed at protecting human rights. He further stated that the regional consultation underscored the importance of improving the guidelines.

B. Session I: Rationale and purpose of the guidelines

64. This session began with the Independent Expert briefing the participants on the background and rationale of the guidelines and explaining the relationship between foreign debt and human rights, including the right to development.

65. The Independent Expert’s briefing was followed by a presentation on the form and content of the guidelines. It was observed that the guidelines failed to clearly identify the legal rights at stake on the one hand, and the rights holders and duty bearers on the other. The presenter pointed to the need for a human rights-based approach which, it was contended, would offer an explicit normative framework underpinned by universally recognized moral values reinforced by legal obligations. It was noted that the voluntary character of the guidelines was a major weakness.

66. Participants stated that the guidelines should inform the economic policies of States and serve as a reminder that the realization of human rights was the primary obligation of all States. There was general consensus that the guidelines should be anchored to the existing legally binding human rights instruments as this would enhance their legitimacy. Some participants stated that the guidelines should not go below minimum international human rights standards.

67. There was broad agreement on the need for more coherence between debt and trade policies at both the national and international level. In addition, participants underlined the need to link international human rights obligations with international financial obligations. Foreign debt, it was emphasized, should be viewed not as an exclusively economic issue but as a human rights issue as well.

68. A number of participants articulated the view that the obligation of international assistance and cooperation as enshrined in the core international human rights treaties and the principle of shared responsibility should be underscored in the guidelines.

69. Participants acknowledged that debt is an important part of the development process. However, they noted that excessive debt undermines the capacity of States to fulfil their human rights obligations.

70. Some participants felt that the guidelines could be enriched by lessons drawn from the multilateral debt relief initiatives, in particular, the HIPC initiative.

C. Session II: Core human rights principles and obligations

71. This session highlighted a number of key human rights principles, such as the primacy of human rights and the principle of non-retrogression, according to which Governments must not take measures or adopt policies that had the effect of jeopardizing the enjoyment of human rights. Other important principles considered were the principles of non-discrimination, participation, transparency, accountability and the right to an effective remedy for those whose rights had been violated.

72. In a presentation on human rights and development, participants' attention was drawn to recent initiatives concerning the World Bank's cooperation on human rights, such as the October 2006 issue of *Development Outreach* on human rights and development, the study *Human Rights Indicators in Development: An Introduction*, and its cooperation with the Human Rights Council, United Nations treaty bodies, the special procedures and the High-Level Task Force on the Right to Development. The presentation also outlined the activities of the World Bank's Nordic Trust Fund that were relevant to human rights.

73. In his presentation on core human rights principles relevant to debt and economic reform, the Independent Expert focused on the principles of the primacy of human rights, international assistance and cooperation, equality and non-discrimination, participation and inclusion, accountability, and non-retrogression. He also highlighted the shared responsibility of creditors and debtors with regard to preventing and resolving unsustainable debt situations.

74. In the discussions that ensued, participants noted the role of the World Bank in providing guidance to national, bilateral and multilateral institutions on debt relief and project appraisal. In this regard, they suggested that the World Bank should promote the incorporation of human rights in project appraisals with a view to mainstreaming the practice in the future. However, one participant stated that the World Bank did not have a normative role in human rights and it was yet to be convinced that adopting a human rights-based approach could yield added value in its development assistance.

75. According to one participant, more work was required to establish data-based evidence, indicators and methodology to support the case for a human rights-based approach to foreign debt.

76. Some participants offered the view that the guidelines would be useful if they provided some practical guidance as to how States and other actors could conduct negotiations on issues related to human rights.

D. Session III: Debt, debt relief and economic reform

77. This session began with three panel presentations, addressing: the issues of debt relief, conditionality and debt sustainability; the integration of human rights into poverty reduction strategies; and coherence between debt and trade policies and related obligations of States. In the first presentation, the speaker highlighted the fact that heavy debt burdens undermined the rights of States to self-determination as elaborated in the International Covenant on Economic, Social and Cultural Rights as these entailed a ceding of sovereignty to international financial institutions.

78. In the second presentation, the speaker lamented the absence of a key human rights element – empowerment of the poor – in poverty reduction strategies. Empowerment in relation to poverty required that steps be taken both immediately and over the long term towards changing systems and structures so that the poor were assured of access to and control over resources, which included economic assets as well as opportunities for education, health and other requisites for human development and well-being. The speaker stressed that from a human rights perspective, the principles of accountability, transparency and participation should be key pillars of poverty reduction strategies.

79. The third presentation reflected the concern that human rights continued to play a secondary role in matters related to trade and economic policy, and the speaker raised the question of how possible it was to achieve coherence, given the normative and institutional fragmentation in international law. The speaker mentioned three potential points of convergence between human rights and economic policy: revisiting trade-offs in economic policy to ensure that they respected human rights; regulating markets to protect human rights; and addressing redistribution to ensure equity and prevent impoverishment.

80. In the discussions that followed, participants stated that the guidelines should address more clearly the issue of illegitimacy or odiousness of debt, provide concrete indicators for evaluating economic policies and debt management against human rights criteria, and ensure that debt arrangements do not have negative effects on the implementation of human rights.

E. Session IV: Loan negotiation, contraction, management and use – the relevance of human rights principles

81. In this session the focus was on the role of human rights impact assessments and the role of parliaments and civil society in ensuring transparency and accountability in loan contraction, use of loan funds and debt management.

82. A panellist described a human rights impact assessment as “a systematic process that aims to measure the impact of an activity or project on human rights”. Recalling resolution 11/5 of the Human Rights Council which called upon debtors and creditors, particularly international financial institutions, to consider preparing human rights impact assessments for development projects, Poverty Reduction Strategy Papers and loan agreements, the speaker noted that the value of a human rights impact assessment lay in the fact that it was based on international standards that were legally binding either as treaty commitments or as customary international law.

83. Concerning the role of parliaments, it was observed that parliaments often did not provide checks and balances or effective oversight of loan negotiations and debt management. It was noted that while in most countries there were usually parliamentary committees with responsibility to scrutinize government expenditure, such committees often had limited or no role in ensuring transparency and accountability in loan agreements,

loan use and debt management. Some suggestions on strengthening parliamentary oversight of debt management were put forward.

84. A presentation on the role of civil society highlighted its role in the formulation, adoption and advocacy of principles, standards and rules on lending and borrowing; public revenue generation, public spending and debt management; establishment and implementation of monitoring mechanisms; and the ensuring of transparency and accountability in both borrowing and lending countries. The speaker emphasized the issues of lender responsibility for the impact of their lending on the one hand and borrowers' dual obligations to the lender and to their citizens, on the other.

85. Participants noted that a human rights impact assessment was not a one-size-fits-all measure for loan agreements and that it depended on the project or activity in question. In this regard, they underscored the need for development of a detailed human rights impact assessment tool. It was further observed that impact assessments were the responsibility of both lenders and borrowers.

86. Participants underlined the need for the adoption of new, or the reinforcement of existing, constitutional and legislative provisions concerning the role of parliament in loan negotiation, contraction and debt management. Some participants expressed support for the creation of specialized parliamentary committees due to the technical nature of the subject. There was general agreement on the importance of debt audits – objective assessments of debt from an ethical, financial, social and legal perspective – in ascertaining the debt portfolio of countries.

87. Concern was expressed over the increase in borrowing from private financial markets due to the fact such loans were not subject to public auditing and impact assessments.

F. Other sessions

88. The rest of the sessions were devoted to commenting on the scope and application of the guidelines, overarching principles, guidelines on foreign debt, and guidelines on economic reform policies, and to identifying missing elements in the draft guidelines.

89. Discussions reflected the need: (a) to include a broad range of international instruments in the general context section of the guidelines; (b) to include definitions of key terms used in the guidelines; (c) to identify key overriding norms and principles, such as the principle of non-retrogression and the do-no-harm principle; (d) to underscore the obligations of international assistance and cooperation as enshrined in legally binding human rights instruments; (e) to clarify the link between foreign debt and economic reform policies; (f) to explain the role of different domestic institutions such as national human rights institutions; (g) to refer to the impact of foreign debt on specific groups, as well as to measures to address the needs of specific groups; (h) to consider whether a system of remedies should be included in the guidelines; (i) to include the issue of bonds, secondary debt markets and “vulture funds”; and (j) to include debt audits.

90. Participants also stressed the importance of drawing lessons from other principles and guidelines, such as those on development-based evictions and displacement developed by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context.

VI. Recurring themes

91. There were a number of recurring themes in the consultations. First, there was general support for the work of the mandate and consensus on the need for the guidelines.

92. Second, participants agreed on the need for the guidelines to be anchored in a rights-based framework and, in particular, to enshrine key human rights principles such as the primacy of human rights, equality and non-discrimination, accountability, participation and non-retrogression, as well as the principle of the shared responsibility of creditors and debtors as underscored in the Monterrey Consensus. Additionally, the guidelines should foster effective implementation and compliance with binding international human rights standards.

93. Third, participants noted that human rights impact assessments are a critical part of due diligence to ensure respect for human rights and should be included in the guidelines.

94. Fourth, participants expressed concern regarding the voluntary character of the guidelines and noted the challenges of enforcing voluntary standards. Nevertheless, most participants felt that anchoring the guidelines in existing human rights obligations would enhance their influence.

95. Fifth, participants underscored the oversight role of parliament and civil society in relation to loan contraction and debt management and articulated the need for robust legal national frameworks to ensure, in particular, an effective role for parliament.

96. Sixth, participants called for measures preventing the sale of sovereign debts to third parties to be included in the guidelines.

97. Seventh, there was agreement that incoherence in debt and trade policies, both at the national and international levels, undermined efforts to find a durable solution to the debt crisis as well as debt relief efforts.

98. Eighth, the guidelines should provide guidance to all actors involved in the formulation, implementation and monitoring of national and international policies on debt and related financial obligations.

99. Ninth, there was broad consensus on the need for an independent and transparent international sovereign debt resolution or restructuring mechanism and for the guidelines to contain provisions in this regard.

100. Finally, the value of public debt audits as an accountability mechanism was acknowledged and it was proposed that the guidelines should include provisions for audits.

VII. Next steps

101. The last regional consultation is scheduled to be held in Geneva on 20 and 21 June 2011.

102. A final seminar of a core group of expert stakeholders will be held in September 2011 in Geneva to discuss a revised version of the guidelines and the operationalization of the guidelines.

103. In view of the proposals from two of the regional consultations for expert workshops to elucidate certain elements of the guidelines, particularly those relating to a new debt sustainability framework and human rights impact assessments, the Independent Expert also hopes, resources permitting, to convene at least two expert consultations on these issues. The Independent Expert calls upon States, international and regional organizations,

international financial institutions, regional economic commissions and non-governmental organizations to consider sponsoring these workshops.

104. The Independent Expert will present a progress report and a revised draft of the guidelines to the Human Rights Council in 2012.

VIII. Conclusion

105. **In the present report, the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, has highlighted the main themes of the three regional multi-stakeholder consultations on the draft guidelines on foreign debt and human rights that were convened by OHCHR to assist the Independent Expert in his ongoing work on developing and elaborating the guidelines. The consultations have been immensely helpful in clarifying aspects of the guidelines, identifying some missing elements and generating ideas on possible elements for inclusion in the guidelines.**

106. **The Independent Expert is encouraged by the broad acceptance by all participants of the need to ensure that commitments derived from foreign debt and related obligations do not undermine the capacity of States to fulfil their human rights obligations. Nevertheless, some challenges remain. These include ensuring the full participation of all stakeholders, particularly States and international financial institutions. In addition, further discussion and elaboration is needed concerning some of the more complex conceptual and operational issues addressed during the consultations.**

107. **The Independent Expert looks forward to continuing the consultations and his dialogue with all stakeholders in order to elaborate the draft guidelines. He urges all States and other stakeholders to continue supporting the process of refining and developing the guidelines.**
