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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,  
Cephas Lumina\***

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\* Late submission.

## Summary

The present report is submitted in accordance with Human Rights Council resolution 7/4 of 27 March 2008, in which the Council decided to redefine the mandate of the independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights, and to rename it “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”, and also decided to extend the mandate for a period of three years.

In section I of the report, the independent expert briefly recalls the plan of implementation of the mandate and the broad objectives it seeks to achieve, as outlined in his preliminary report to the General Assembly (A/63/289). In section II he outlines the activities that he has undertaken since assuming his mandate in May 2008. In section III he proposes a preliminary conceptual framework for understanding the connection between foreign debt and human rights, based on international legal standards. The framework includes a definition of foreign debt, a brief discussion of the relationship between foreign debt and human rights, the value of a human rights-based approach to foreign debt, a review of international standards that are relevant to the mandate, States’ obligations in the framework of international cooperation, the obligations of international financial institutions, and the principle of shared responsibility. While acknowledging the important role of the international financial institutions in addressing the debt crisis, the independent expert argues that a human rights-based approach to foreign debt offers specific value through its emphasis on participation, non-discrimination, transparency, accountability and the universality, interdependence and indivisibility of all human rights, to ensure that the goals of development in general and debt relief measures in particular are consistent with international human rights standards.

Finally, in section IV the independent expert outlines the issues to which he will devote attention during the period 2009-2010. These include the review and development of the draft general guidelines on foreign debt and human rights, exploring the linkages between trade and debt, and examining the issue of illegitimate debt.

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## I. INTRODUCTION

1. The present report is submitted in accordance with Human Rights Council resolution 7/4 of 27 March 2008.
2. In his preliminary report to the General Assembly at its sixty-third session (A/63/289), 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, outlined his vision and plan of implementation for the mandate. The plan focuses on three broad, interrelated objectives:
  - (a) To raise awareness about the need to consider foreign debt as a human rights issue and, in that regard, to broaden support for the mandate through ongoing dialogue with all stakeholders (including States that have traditionally not supported the mandate);
  - (b) To undertake a thematic study on foreign debt and human rights in order to identify and clarify some conceptual issues arising from the mandate;
  - (c) To identify best practices concerning foreign debt and human rights through the review and development of the draft general guidelines on foreign debt and human rights, which are designed to ensure that compliance with commitments arising from foreign debt does not undermine the capacity of States to fulfil their human rights obligations.
3. In keeping with resolution 7/4 and the plan of implementation, the present report sketches the activities undertaken by the independent expert since he assumed his mandate on 1 May 2008, proposes a preliminary conceptual framework for understanding the connection between foreign debt and human rights, and outlines the independent expert's main areas of interest and focus for the period 2009-2010.

## II. ACTIVITIES UNDERTAKEN

4. Since taking up his mandate on 1 May 2008, the independent expert has engaged in numerous activities. In June 2008, he held consultations with a wide variety of stakeholders, including Governments, intergovernmental organizations, international financial organizations, and NGOs. These meetings were very helpful in defining and forming some initial plans and priorities for his mandate.
5. In early September 2008, the independent expert participated in the Social Forum of the Human Rights Council, focusing particularly on the links between foreign debt and poverty. From 4 to 12 September 2008, he undertook a mission to Brussels, Paris and London, to meet with key actors in the area of foreign debt. In Brussels, he met with representatives of the European Commission, the European Parliament and various NGOs. In Paris, he met with representatives of the Organization for Economic Cooperation and Development (OECD), the Paris Club, and numerous NGOs. In London, he met with officials of the European Bank for Reconstruction and Development (EBRD) and civil society representatives. In all three capitals, he had courtesy meetings with government officials. He is grateful to all those whom he met, and for the concerned Governments' inputs to his mandate.

6. From 20 to 23 October, the independent expert participated in the International Symposium on Illegitimate External Debt, organized by the Lutheran World Federation, the Church of Sweden and Norwegian Church Aid in Oslo, Norway. This event brought together many significant actors in the area of illegitimate debt to discuss the topic and to propose further elaboration of this emerging framework.
7. From 28 to 31 October, he met with various stakeholders in Washington, D.C., in particular from the World Bank, the International Monetary Fund (IMF), the Inter-American Development Bank and NGOs. He also attended a conference organized by the World Bank on the theme “Debt Relief and Beyond”, which provided another occasion to engage with key actors in this area.
8. While in Europe in September, the independent expert also participated in a workshop organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on integrating human rights into financing for development. This meeting resulted in a contribution to the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, held in Doha from 29 November to 2 December 2008.
9. As called for in resolution 7/4, the independent expert attended the Financing for Development Conference in Doha, where he made a statement at a round table examining external debt. He drew attention to his mandate and urged delegates to ensure attention to human rights in the outcome document. He regrets to report that the outcome document of the Doha Conference reflects a lack of progress on issues related to debt, and fails to take a holistic approach to debt and development.
10. At the invitation of the Commonwealth Human Rights Unit, on 8 December, the independent expert participated in a seminar at the Commonwealth Secretariat in London to commemorate the sixtieth anniversary of the Universal Declaration of Human Rights, along with the Special Rapporteur on the right to food (Olivier De Schutter) and the Special Rapporteur on freedom of religion or belief (Asma Jahangir). The independent expert addressed the seminar on his mandate and, together with the other mandate holders, met with the Commonwealth Secretary-General, Kamallesh Sharma, to discuss collaboration between the special procedures and the Commonwealth in the promotion and protection of human rights.
11. From 27 to 28 January 2009, the independent expert participated in the Seminar on the “Draft guiding principles on extreme poverty and human rights”, which was organized by OHCHR in Geneva. The discussions in the seminar centred on the added value and practical utility of the guidelines, the content of the current draft and the process to be adopted in order to finalize the guidelines. The seminar provided valuable insights which the independent expert hopes to integrate into the process concerning the development of the guidelines on foreign debt and human rights which he is required to undertake in the context of his mandate.
12. On 20 February 2009, the independent expert participated in the tenth Special Session of the Human Rights Council on “The Impact of the Global Economic and Financial Crises on the Universal Realization and Effective Enjoyment of Human Rights”. At this meeting, he called for

reform of the global financial institutions to ensure that the current system is transformed into one that is more inclusive of the needs and concerns of developing countries and civil society and is based on transparency and equitable relationships between creditor and debtor countries. In this regard, he expressed the view that the United Nations, as the most universal and broadly representative body, should take the leading role in that process.

13. Concerning the issue of illegitimate debt, the independent expert has also had initial consultations with the United Nations Conference on Trade and Development (UNCTAD) about plans to begin a project focused on illegitimate debt. The independent expert believes that the project will provide important opportunities to advance the debate on illegitimate debt at the global level. Consequently, he hopes to work closely with UNCTAD as the project is implemented.

14. These multiple meetings, consultations and conferences have offered invaluable opportunities for the independent expert to raise awareness about his mandate, build partnerships, and explore possible future cooperation with various stakeholders. The meetings also served as important occasions to highlight the draft guidelines on foreign debt and human rights, and to encourage all parties to submit their inputs to the process of revising and updating the guidelines. The insights and perspectives shared during the meetings and subsequent correspondence have been informative for the independent expert, and he has integrated relevant information into the proposed conceptual framework that follows.

15. The independent expert has also had extensive discussions with the Governments of Ecuador and Norway about the possibility of undertaking missions to their respective countries. He is pleased to report that both Governments have expressed a willingness to receive him, and that, by the time he presents this report, he will have visited Norway (from 28-30 April) and Ecuador (from 1-9 May 2009). The focus of his visits to these countries will be on examining their unique roles in the debate about illegitimate debt, with a view to identifying good practices that may be replicated in other countries.

### **III. DEBT AND HUMAN RIGHTS: A CONCEPTUAL FRAMEWORK**

#### **A. General**

16. The total external debt of low- and middle-income countries in 1995 was US\$ 1,951 billion, and by 2006 it had risen to US\$ 2,983 billion.<sup>1</sup> In 2007, it was estimated that the total external debt of these countries was US\$ 3,360 billion,<sup>2</sup> which included public and private debt, as well as multilateral and bilateral debt.

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<sup>1</sup> World Bank, *World Development Indicators* (Washington D.C.: The World Bank, 2008), p. 347.

<sup>2</sup> D. Millet and E. Toussaint, "Figures relating to the debt for 2009", Committee for the Abolition of Third World Debt (CADTM) (available at [www.cadtm.org](http://www.cadtm.org) (accessed 8/3/09)).

17. In 1995, the total debt service payments of developing countries amounted to US\$ 220 billion and, in 2007, the total rose to US\$ 523 billion.<sup>2</sup>
18. While the Heavily Indebted Poor Countries (HIPC) Initiative<sup>3</sup> aims to bring the net value of the debt/export ratio to below the 150 per cent threshold, some poor countries had a higher ratio at completion point: Burkina Faso (208.7 per cent), Ethiopia (218.4 per cent), Niger (208.7 per cent), Rwanda (326.5 per cent) and Malawi (229.1 per cent).<sup>2</sup>
19. These statistics indicate that, despite the obvious seriousness of the debt problem for poor countries, the global response to the debt crisis has thus far been inadequate. This is unsatisfactory, given the human rights implications of heavy indebtedness and the fact that the debt problem is not an exclusively economic problem.
20. In paragraph 10 of his preliminary report to the General Assembly, the independent expert intimated that the challenges posed by the debt problem and the limitations of current debt relief initiatives (viewed against the backdrop of divided opinion in both the Commission on Human Rights and the Human Rights Council on whether foreign debt should be considered a human rights issue) underscore the need for a new approach to the debt problem which, inter alia, incorporates human rights concerns.
21. In this section, the independent expert proposes a preliminary framework for understanding the relationship between foreign debt and the realization of human rights. This proposal is consistent with the reality that human rights lie at the core of the broader mission of the United Nations and that the protection of human rights is essential to building a more secure and prosperous world.<sup>4</sup> The independent expert welcomes the views of Member States on the proposed framework.

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<sup>3</sup> The HIPC Initiative is one of two main international debt relief measures currently promoted by the World Bank and the IMF, the other being the Multilateral Debt Relief Initiative (MDRI). Debt relief under HIPC is conditional on the progress made by qualifying countries in the preparation and implementation of social policies and strategies for reducing poverty. The MDRI provides for 100 per cent relief on eligible debt from three multilateral institutions - the IMF, the International Development Association and the African Development Bank - to heavily indebted poor countries and it is ostensibly designed to help these countries progress toward the MDGs. All countries that reach completion point under the enhanced HIPC Initiative and those with per capita income below US\$ 380 and outstanding debt to the IMF as at the end of 2004 are eligible for the MDRI.

<sup>4</sup> See United Nations, "In larger freedom: towards development, security and human rights for all" (A/59/2005).

## **B. The definition of external debt and debt service**

22. Foreign (or external) debt is debt owed to non-residents and consists of public, publicly guaranteed, and private non-guaranteed long-term debt, short-term debt and use of IMF credit.

23. Debt service refers to payments of the principal (original) amount due under a loan agreement as well as interest actually paid on total long-term debt (public and publicly guaranteed and private non-guaranteed), use of IMF credit and interest on short-term debt. In circumstances where debts are longstanding, interest payments typically constitute a large share of the debt service.

## **C. The relationship between debt and human rights**

24. While it is generally accepted that external finance (including foreign loans) can contribute to countries' development, excessive debt burdens continue to be a significant obstacle both to development and the realization of human rights, particularly economic, social and cultural rights, as well as the attainment of the Millennium Development Goals, in developing countries.<sup>5</sup> Studies indicate that some countries spend more each year on servicing debt than they do on the basic needs of their people or on human rights-related public services, such as education and health care, combined. For instance, in 2005, Lebanon spent 52 per cent of its budget on debt service as compared with 23.1 per cent on education and health; Jamaica spent 27.9 per cent on debt service and 16.1 per cent on education and health; and Bulgaria spent 23 per cent on debt service and 11.6 per cent on education and health.<sup>6</sup>

25. The independent expert recognizes that the current multilateral debt relief initiatives have delivered some benefits in the form of reduced debt service payments and increased funds for poverty reduction expenditure for some countries.<sup>7</sup> However, the impact of these debt relief

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<sup>5</sup> See United Nations, *Claiming the Millennium Development Goals: A Human Rights Approach*, (United Nations publication, Sales No. K. 08.XIV.6) (New York and Geneva: United Nations, 2008).<sup>1</sup>

<sup>6</sup> S. Mandel, *Debt relief as if Justice Mattered* (London: New Economics Foundation, 2008); between 1992-1997, the portion of the budget dedicated to basic social services and to debt service for some countries was as follows: Cameroon - 4.0 per cent on social services and 36.0 per cent on debt service; Côte d'Ivoire - 11.4 per cent on social services and 35.0 per cent on debt service; Kenya - 12.6 per cent on social services and 40.0 per cent on debt service; Zambia - 6.7 per cent on social services and 40.0 per cent on debt service; Niger - 20.4 per cent on social services and 33.0 per cent on debt service; Tanzania - 15.0 per cent on social services and 46.0 per cent on debt service; Nicaragua - 9.2 per cent on social services and 14.1 per cent on debt service; see D. Millet and E. Toussaint, "Figures relating to the debt for 2009", Committee for the Abolition of Third World Debt (CADTM).

<sup>7</sup> See Eurodad, "Multilateral debt: one step forward, how many back?" (April 2007).



measures appears to be limited and of short duration. Furthermore, debt service reductions are offset by an equivalent reduction in future concessional loans from the International Development Association (IDA).

26. The gains from debt relief are often diluted by other factors, including conditions<sup>8</sup> attached to debt relief and the lack of competitiveness of developing countries in an unequal global trading environment.<sup>9</sup> High debt repayments and the conditions attached to debt relief and new loans - which typically limit public spending (even at the expense of funding essential public services, such as education and health care), promote economic liberalization (including privatization of public enterprises, investment deregulation and the introduction of user fees for access to public services) and prioritize debt service over fulfilment of basic needs - have not only exacerbated poverty, they have also had a particularly severe impact on access to education and health care in developing countries.

27. Debt relief conditions limit investment in education and health in many low-income countries. For example, in 2004, the IMF condition that Zambia should freeze public sector wages resulted in the Government's failure to address the massive shortage of teachers through the recruitment of 9,000 newly qualified teachers. Similarly, a 2006 study by the United Nations Development Programme (UNDP) International Poverty Centre, which examined the effect of debt relief on "fiscal space" in Zambia, found that "the net fiscal gain from debt relief had been marginal because of the external policy conditionalities linked to the relief and associated ODA".<sup>10</sup> Thus, even after receiving debt cancellation, Zambia will still not be able to significantly scale-up public spending or investment owing to the continuing demands for "excessively tight fiscal and monetary policies in its IMF loan arrangements".<sup>11</sup>

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<sup>8</sup> For example, according to a recent study by Eurodad, the IMF imposes an average of 13 conditions per low-income loan; most of these conditions entail privatization and liberalization with serious consequences for the poor in the borrower countries; see Eurodad, "Critical conditions: the IMF maintains its grip on low-income governments" (April 2008).

<sup>9</sup> A recent World Bank report notes: "[M]ost policy advice given to poor countries over the last several decades - including by the World Bank - has emphasized the advantages of participating in the global economy. But global markets are far from equitable, and the rules governing their functioning have a disproportionately negative effect on developing countries. These rules are the outcome of complex negotiating processes in which developing countries have less voice" (emphasis added). World Bank, *World Development Report 2006: Equity and Development* (New York: Oxford University Press, 2006).

<sup>10</sup> J. Weeks and T. McKinley, *Does Debt Relief Increase Fiscal Space in Zambia? The MDG Implications*, Country Study No. 5 (Brasilia: UNDP International Poverty Centre, 2006).

<sup>11</sup> Action Aid International, "Overview: Changing IMF Policies to get More Doctors, Nurses and Teachers Hired in Developing Countries" (March 2008) (available at [http://www.actionaidusa.org/assets/pdfs/imf\\_project/IMF\\_and\\_health.pdf](http://www.actionaidusa.org/assets/pdfs/imf_project/IMF_and_health.pdf) (accessed 8/3/09)).

28. According to a recent study by Centre Europe-Tiers Monde (CETIM), the implementation of conditionalities has a number of adverse consequences for the populations of the debtor countries: the privatization of public enterprises often results in massive job retrenchments, thus depriving many of a living; a reduction of public expenditures for public services (such as education, health care and housing) and/or the introduction of user fees for access to these services, which tend to disproportionately affect the most vulnerable sectors of society (women, children, persons with disabilities and the poor); and an increase in poverty, inequality and unemployment.<sup>12</sup>

29. The Special Rapporteur on the right to health has expressed concern that, in many countries, user fees often exclude the poor and other marginalized groups from essential health-care services and that this may be inconsistent with the right to health.<sup>13</sup>

30. Debt repayments have also had a negative impact on the realization of the right to food. For example, in 2002, the Government of Malawi was forced to sell maize from its National Food Reserve Agency to raise funds to repay loans. Following a poor harvest that year, 7 million of a population of 11 million were left facing a serious food shortage.<sup>14</sup>

31. Developing countries' gains from debt relief are further being undermined by the activities of speculative investors in the debt of distressed countries. These "vulture funds", as they are known, purchase the debt of developing countries for a sum far less than the face value of the debt. They subsequently sue (usually when the target country has gained some savings from debt cancellation) to recover the full face value of the debt plus interest, penalties and legal costs.<sup>15</sup> An example is the well-publicized case concerning Donegal International Limited and Zambia, which was heard in the British courts in 2007. Donegal International Limited purchased a Zambian sovereign debt from Romania in 1999 for a total value of US\$ 3.2 million. The debt had a face value of US\$ 30 million. The company then sued Zambia for a total of US\$ 55 million which included interest, penalties, alleged damages and legal fees. It was ultimately awarded US\$ 15 million by the British courts, an amount that a country which had just received debt

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<sup>12</sup> See M. Ozden, "Debt and Human Rights: Consequences for human rights of the debt of the countries of the South and the current state of its treatment within the United Nations bodies", (Geneva, Human Rights Programme of the Europe-Third World Centre 2008).

<sup>13</sup> See E/CN.4/2005/51/Add.2, pp. 49-50.

<sup>14</sup> A. Pettifor, "Debt is still the lynchpin: the case of Malawi" (available at [www.jubileeplus.org/opinion/debt040702.htm](http://www.jubileeplus.org/opinion/debt040702.htm)); cited in K. Raffer, "Debt Workout Mechanisms: Debt Arbitration", paper presented at the Helsinki Process on Globalization and Democracy Meeting of Track 2 Global Economic Agenda, 25-27 March 2004, Geneva, p. 11.

<sup>15</sup> See Eurodad, "Taming the Vultures: Are New Measures Enough to Protect Debt Relief Gains?" (August 2008).

cancellation could hardly afford. The World Bank reports that at least 11 Heavily Indebted Poor Countries have been targeted by lawsuits by a total of 44 commercial creditors.<sup>16</sup>

32. It is notable that high debt burdens are an obstacle not only in the low-income countries that have been the focus of debt relief programmes, but also in several middle-income countries that are not considered eligible for any of these measures on the grounds that their debts are “sustainable”.<sup>17</sup> For example, in 2004, the total external debt of Ecuador was US\$ 16.9 billion. The same year, the country spent a total of US\$ 3.7 billion on debt repayments, and public spending on debt service was more than six times the amount spent on health care. Despite that, the World Bank considers Ecuador’s debt to be “sustainable” because its debt to GDP ratio in 2006 was relatively low. This reality is inconsistent with the Millennium Declaration commitment to “deal comprehensively and effectively with the debt problems of low-and middle-income developing countries, through various national and international measures designed to make their debt sustainable in the long term”.

33. The various human rights treaty bodies have also noted, in their concluding observations on the State party reports submitted to them, that excessive debt burdens pose a significant challenge to the realization of human rights by undermining the human rights obligations of States, thereby confirming the link between foreign debt and human rights. For example, in its concluding observations on the report submitted by Honduras in 2001, the Committee on Economic, Social and Cultural Rights took “note that the efforts of the State party to comply with its obligations under the Covenant [were] impeded by the fact that it [was] classified as a highly indebted poor country and that up to 40 per cent of its annual national budget (was) allocated to foreign debt servicing.”<sup>18</sup>

34. The Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women have made similar observations with respect to the implementation of the rights under the respective treaties they supervise. For example, in its concluding observations on the report of the United Republic of Tanzania in 2001, the Committee on the Rights of the Child noted the “impact of the structural adjustment programme, high external debt payments, and increasing levels of unemployment and poverty within the

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<sup>16</sup> World Bank, “Heavily Indebted Poor Countries (HIPC) Initiative and Multilateral Debt Relief Initiative (MDRI) - Status of Implementation” (February 2008).

<sup>17</sup> See Jubilee-Zambia, “The Benefits and Challenges of Debt Cancellation in Zambia, Testimony submitted to the Foreign Relations Committee of the United States Senate for Hearing, ‘Building on International Debt Relief Initiatives’” (24 April 2008).

<sup>18</sup> E/C.12/Add.57; see also E/C.12/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); E/C.12/1/Add.100 (Ecuador); E/C.12/1/Add.66 (Nepal); and E/C.12/1/Add.49 (Kyrgyzstan).

State party”.<sup>19</sup> In its concluding observations on Guyana’s report in 2000, the Committee on the Elimination of Discrimination against Women noted that “the implementation of structural adjustment programmes and the increasing debt burden, as well as political instability, have impeded progress in the full realization of women’s rights”.<sup>20</sup>

35. It is worthy of note that the Committee on Economic, Social and Cultural Rights has often recommended to States parties to the International Covenant on Economic, Social and Cultural Rights to take into account their duties under the Covenant within the context of their relations with international financial institutions, such as the IMF, the World Bank and the World Trade Organization. Thus, for example, while acknowledging the challenges posed by external debt repayments and structural adjustment policies in regard to the capacity of States to fulfil their human rights obligations, the Committee has urged borrower States to take into account their obligations under the Covenant in all aspects of their negotiations with these international financial institutions in order to ensure that economic, social and cultural rights, particularly of the most vulnerable sectors of society, are not undermined. It has also encouraged creditor countries to do all they can to ensure that the policies and decisions of the international financial institutions of which they are members, in particular the International Monetary Fund and the World Bank, are in conformity with the obligations of States parties to the Covenant, particularly the obligations contained in articles 2 (1), 11, 15, 22 and 23 concerning international assistance and cooperation.<sup>21</sup>

36. Under international human rights law, States have the primary responsibility of ensuring that all people under their jurisdiction enjoy basic human rights, such as the rights to health care, education, food, safe drinking water, and adequate housing. Thus, Governments should not be placed in a situation where they are unable to ensure the realization of basic human rights because of excessive debt repayments.

37. States’ responsibility to ensure the enjoyment of basic human rights may take priority over States’ responsibility to repay their debt obligations, particularly when these payments further

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<sup>19</sup> CRC/C/15/Add.156, para. 9; see also 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).

<sup>20</sup> A/56/38 (SUPP), para. 161; see also A/55/38 (SUPP), para. 44 (Cameroon); A/57/38 (SUPP), para. 149 (Uganda); A/56/38 (SUPP), para. 227 (Jamaica); A/57/38 (SUPP), para. 155 (Trinidad and Tobago); and A/56/38 (SUPP), para. 227 (The Netherlands).

<sup>21</sup> See E/C.12/1/Add.54, para. 31; (Belgium); E/C.12/1/Add.43, para. 20; (Italy); E/C.12/1/Add.68 (Germany); E/C.12/1/Add.70, para. 24; (Sweden); E/C.12/1/Add.72, para. 32; (France); E/C.12/1/Add.79, para. 26; (United Kingdom); and E/C.12/1/Add.77, para. 37; (Ireland).

limit the ability of States to fulfil their human rights obligations. The primacy of this responsibility becomes stark when the large gap in the fulfilment of basic rights is quantified: 75 million children of primary school age (55 per cent of whom are girls) are not in school;<sup>22</sup> nearly 10 million children die every year of largely preventable causes;<sup>23</sup> and an estimated 1.2 billion people lack clean water and sanitation.<sup>24</sup>

38. The fact that many developing countries are diverting a disproportionate part of their budgets (including funds earned from exports) away from programmes aimed at reducing poverty and improving a variety of social conditions, which contribute to the realization of human rights, to debt service makes excessive foreign debt and debt service a human rights issue. It is notable that many of these social conditions find expression as rights in the Universal Declaration of Human Rights and core international human rights instruments such as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

39. Other human rights, such as the right to participate in public affairs, the right to information, and the right to equality and non-discrimination, are also implicated in the debt crisis - a clear reaffirmation of the interdependence, interrelatedness and indivisibility of all human rights.

40. The gravity of the debt problem and the limitations of the current debt relief initiatives therefore underscore the need for a new approach to the debt crisis which incorporates human rights concerns.

41. It is also important to recognize that cancellation of debt does not guarantee that resources arising from the savings will be used to enhance the enjoyment of human rights. States that benefit from debt cancellation must therefore establish mechanisms that ensure participatory and transparent processes of budget planning. Equally important are accountability mechanisms that minimize the possibility of corruption and provide an accessible means of complaint and redress.

42. The independent expert intends to explore further the causal linkage between external debt and human rights through case studies undertaken in the context of country missions.

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<sup>22</sup> United Nations Educational, Scientific and Cultural Organization, "Overcoming inequality: why governance matters" in Education for All - Global Monitoring Report (UNESCO 2008) (available at <http://www.unesco.org/en/education/efareport/reports/2009-governance>, accessed 12/3/09).

<sup>23</sup> See [http://www.who.int/topics/millennium\\_development\\_goals/child\\_mortality/en/index.html](http://www.who.int/topics/millennium_development_goals/child_mortality/en/index.html) (accessed 12/3/09).

<sup>24</sup> United Nations Environment Programme, *Vital Water Graphics: An Overview of the State of the World's Fresh and Marine Waters*, 2nd ed. (2008).

#### **D. A human rights-based approach to external debt**

43. 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.<sup>25</sup>

44. Under such an approach, development policies (including development assistance and debt relief policies) are anchored in a system of rights and corresponding obligations established by international law. United Nations agencies have agreed on the essential attributes of such an approach in the following terms:

(a) All programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights;

(b) Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process;

(c) Development cooperation contributes to the development of the capacities of “duty-bearers” to meet their obligations and of “rights-holders” to claim their rights.<sup>26</sup>

45. These principles make it clear that the main objective of development policies and programmes should be to fulfil human rights. A human rights-based approach identifies rights-holders and their entitlements and corresponding duty-bearers and their obligations, and aims to enhance the capacity of rights-holders to make their claims and of duty-bearers to fulfil their obligations.

46. In practical terms, a human rights-based approach to external debt means, for example, that debt sustainability analyses should take into account the human rights implications of debt service, as well as principles such as transparency, accountability, participation and attention to the most vulnerable.<sup>27</sup> Specific measures to transform

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<sup>25</sup> Office of the United Nations High Commissioner for Human Rights, *Frequently asked questions on a human rights-based approach to development cooperation* (New York and Geneva: United Nations, 2006), p. 15.

<sup>26</sup> “The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies” (2003).

<sup>27</sup> The criteria for assessing debt sustainability under the multilateral debt relief initiatives focus almost exclusively on the ability of debtor countries to repay their debts. According to the IMF, “the primary aim of the debt sustainability framework for low-income countries is to guide borrowing decisions of low-income countries in a way that matches their need for funds with their current and prospective ability to service debt, tailored to their specific circumstances”; see IMF, “The Debt Sustainability Framework for Low-Income Countries” (October 2007).

current external debt relationships to be consistent with human rights principles would need to be further elaborated by the international community through a broad and open consultative process.

47. Effective and meaningful participation in policy and resource utilization decision-making of the most vulnerable communities in the heavily indebted countries is a crucial aspect of a human rights-based approach to the foreign debt problem. It should be noted that the principle of participation is also a fundamental right to which all persons are entitled. In regard to the impact of foreign debt on the enjoyment of economic, social and cultural rights, participation requires respect for and protection and fulfilment of a range of human rights, including freedom of expression, freedom of assembly, freedom of association, and the right to vote and to be elected, as well as the establishment of conditions designed to guarantee the full and informed participation of people in affected countries in the making of decisions concerning external debt and use of savings from debt relief measures.

48. In the context of the debt crisis, accountability entails that creditors should recognize debtor governments' accountability to their own citizens, and not impose unduly onerous conditions on debt relief or loans. It also means that the governments of debtor countries should be responsive to the demands of their citizens that funds from debt cancellation should be utilized for the improvement of basic public services, including education and health care, and that these governments should be open and accountable to their people on the use of these funds, as well as in the contracting of new loans.

49. Thus, while the independent expert accepts that international financial institutions have an important role to play in addressing the debt crisis, he believes that a human rights-based approach to the problem offers specific value, which places emphasis on participation, non-discrimination, accountability, transparency, and the universality, interdependence and indivisibility of all human rights. Such an approach would also be in conformity with the interpretation of the duty of international assistance and cooperation proffered by, inter alia, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child.

#### **E. Relevant international standards**

50. The imperative to address the effects of foreign debt on human rights arises from the principle of international assistance and cooperation, which is implicit or explicitly provided for in the Charter of the United Nations and numerous other binding international instruments.

51. The Charter of the United Nations identifies the overall purposes of international economic and social cooperation. Article 1 (3) of the Charter states that the purposes of the United Nations include the achievement of "international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". In article 56 of the Charter, Members States have pledged themselves "to take joint and separate action in cooperation with the Organization" to achieve these purposes.

52. Article 28 of the Universal Declaration of Human Rights provides that "[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this

Declaration can be fully realized”. An international order characterized by extreme indebtedness of low- and middle-income countries and an attendant inability to fulfil their human rights obligations to their citizenry is inconsistent with this entitlement.<sup>28</sup>

53. Under article 2 (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.<sup>29</sup> 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 “[i]t is particularly incumbent upon those States which are in a position to assist others in this regard”.<sup>30</sup>

54. In terms of article 22, of the International Covenant on Economic, Social and Cultural Rights, the Economic and Social Council “may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports [submitted by the States Parties to the Covenant] which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant”. In its general comment No. 2 (1990), the Committee on Economic, Social and Cultural Rights has interpreted this provision so as to include “virtually all United Nations organs and agencies involved in any aspect of international development organs of the Council such as the Commission on Human Rights,<sup>31</sup> the Commission on Social Development and the Commission on the Status of Women”. It is therefore within the competence of the Human Rights Council, which has replaced the Commission on Human Rights, to consider the impact of foreign debt on the realization of the rights under the Covenant.

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<sup>28</sup> International assistance and cooperation must be directed towards the establishment of a social and international order in which the rights and freedoms set forth in the International Covenant on Economic, Social and Cultural Rights (and the Universal Declaration of Human Rights) can be fully realized; see E/CN.4/1987/17, annex, para. 30.

<sup>29</sup> Committee on Economic, Social and Cultural Rights general comment No. 3 (art. 2 (1)), para. 13 (E/1991/23, annex III).

<sup>30</sup> *Ibid*, para. 14.

<sup>31</sup> The Commission on Human Rights has since been replaced by the Human Rights Council; see General Assembly resolution 60/251.



55. Further, the Committee has recommended that “[e]very effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenants are duly taken into account”.<sup>32</sup>

56. Concerning specifically the issue of foreign debt, the Committee has emphasized that “international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights through, inter alia, international cooperation. In many situations, this might point to the need for major debt relief initiatives”.<sup>33</sup>

57. States parties to the Convention on the Rights of the Child are obliged to undertake measures for the implementation of the economic, social and cultural rights set out in the Convention to the maximum extent of their available resources and, where needed, within the framework of international cooperation (art. 4). The Committee on the Rights of the Child, while noting that this provision reflects “a realistic acceptance” that lack of financial and other resources can hamper the full implementation of economic, social and cultural rights in some States, has emphasized that States must demonstrate that they have implemented these rights “to the maximum extent of their available resources” and, where necessary, have sought international cooperation.<sup>34</sup> Further, the Committee has underlined that upon ratification of the Convention, States parties assume obligations “not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation”.

58. Similarly, article 4 (2) of the Convention on the Rights of Persons with Disabilities, states, with regard to economic, social and cultural rights, that “[e]ach State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law”.

59. Further, in article 32 of the Convention, the States parties “recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society”. These measures include, inter alia, “(a) [e]nsuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities” and “(d) providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies”.

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<sup>32</sup> Committee on Economic, Social and Cultural Rights general comment No. 2 (1990), para. 8 (d) (E/1990/23, annex III).

<sup>33</sup> Ibid, para. 9.

<sup>34</sup> Convention on the Rights of the Child general comment No. 5, (arts. 4, 42 and 44, para. 6), (CRC/GC/2003/5 (2003), para. 7).

60. In addition to the foregoing instruments, which are legally binding on their States parties, there are a number of other instruments that have been adopted by various United Nations bodies (especially the United Nations Economic and Social Council and the General Assembly) that highlight the adverse impact of external debt on the enjoyment of human rights and evince the political commitment of the international community to the enhancement of international cooperation in the field of human rights. These political commitments reinforce the obligations of States under international human rights law concerning, inter alia, international assistance and cooperation.

61. Article 3 (3) of the Declaration on the Right to Development proclaims the duty of States “to cooperate with each other in ensuring development and eliminating obstacles to development” and that “States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and cooperation among all States, as well as to encourage the observance and realization of human rights” (see General Assembly resolution 41/128).

62. In paragraph 10 of the Vienna Declaration and Programme of Action, the World Conference on Human Rights reaffirmed “the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights” and in paragraph 12 called “upon the international community to make all efforts to help alleviate the external debt burden of developing countries, in order to supplement the efforts of the Governments of such countries to attain the full realization of the economic, social and cultural rights of their people”. In paragraph 13, the Conference recognized “a need for States and international organizations, in cooperation with non-government organizations, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights”.

63. The Vienna Declaration, in paragraph 13, essentially calls for a holistic approach to human rights by calling upon States to “eliminate all violations of human rights and their causes, as well as obstacles to the enjoyment of these rights”.

64. Finally, the Millennium Declaration, from which the eight MDGs were drawn, not only makes substantial reference to human rights; it also underscores that international cooperation is an essential element of the global response to the debt crisis. In paragraph 13 of the Declaration, States committed themselves “to an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system” and, in paragraph 16, they expressed their resolve “to deal comprehensively and effectively with the debt problems of low- and middle-income developing countries, through various national and international measures designed to make their debt sustainable in the long term”. In paragraph 28, the States resolved to “take special measures to address the challenges of poverty eradication and sustainable development in Africa, including debt cancellation”.

65. Overarching MDG 8 places additional responsibility on the international community to assist and contains a specific commitment to an “enhanced programme of debt relief for heavily indebted poor countries and cancellation of official bilateral debt, and more generous official development assistance for countries committed to poverty reduction”.

## F. States' obligations

66. Under international law, human rights obligations are primarily held by States. These obligations are of three types: the obligation to respect (right-holders, their freedoms, autonomy, resources and liberty of their actions), to protect (right-holders against third parties by legislation and provision of effective remedies) and to fulfil (the rights of everyone by using available resources to establish an environment conducive to the enjoyment of rights and by direct provision of basic needs). The obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide.<sup>35</sup>

67. In its general comment No. 3 (1990), the Committee on Economic, Social and Cultural Rights expressed the view that a minimum core obligation to ensure the satisfaction of the minimum essential levels of each of the rights in the Covenant is incumbent upon each State party.<sup>36</sup>

68. It is notable that any assessment concerning whether a State has discharged its minimum core obligations must also take account of resource constraints that apply within the country concerned. Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights enjoins each State party to take the necessary steps “to the maximum of its available resources”. Thus, for a State to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources at its disposal in an effort to satisfy those minimum obligations.<sup>37</sup>

69. The Committee has further emphasized that the inadequacy of available resources does not relieve a State party of its obligation to strive to ensure the widest possible enjoyment of the rights under the prevailing circumstances and that even in times of severe resources constraints, vulnerable members of society must be protected by the adoption of relatively low-cost targeted measures.<sup>38</sup> Thus, a high debt burden does not nullify or diminish the duty of a State to attempt to satisfy the minimum obligations it has with regard to economic, social and cultural rights.

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<sup>35</sup> See Committee on Economic, Social and Cultural Rights general comment No. 12, para. 15 (E/2000/22).

<sup>36</sup> Committee on Economic, Social and Cultural Rights general comment No. 3 (1990), para. 10. (E/1991/23, annex III).

<sup>37</sup> See also Convention on the Rights of the Child general comment No. 5, para. 8 (CRC/GC/2003/5).

<sup>38</sup> Committee on Economic, Social and Cultural Rights general comment No. 3 (1990), paras. 11 and 12 (E/1991/23, annex III); see also Convention on the Rights of the Child general comment No. 5, para. 8 (CRC/GC/2003/5).

### G. International financial institutions

70. The question of whether international financial institutions (notably, the World Bank and the IMF) may legitimately concern themselves with human rights, or are under an obligation to do so, remains unresolved. Nevertheless, it can be contended that the international legal status of these institutions in general and as specialized agencies of the United Nations in particular provides a basis for holding them accountable in terms of human rights law.<sup>39</sup> The mutually reinforcing relationship between human rights and development provides a further basis for asserting that these institutions must take human rights into account in their operations.<sup>40</sup>

71. The Relationship Agreements between the United Nations, on the one hand, and the World Bank and the IMF, on the other hand, provide that these institutions should “consider” the decisions and recommendations of the United Nations.<sup>41</sup> However, the two institutions have narrowly interpreted these agreements as precluding the United Nations from requiring specific action on their part and as conferring upon them completely independent decision-making power.

72. Nevertheless, as specialized agencies of the United Nations, both the World Bank and the IMF have, in common with all other United Nations agencies, certain obligations arising under the Charter of the United Nations, including the implementation of the two international Covenants. This position is consistent with the interpretation accorded to article 22 of the International Covenant on Economic, Social and Cultural Rights by the Committee on Economic, Social and Cultural Rights.

73. Several provisions in part IV of the International Covenant on Economic, Social and Cultural Rights explicitly describe the role of the specialized agencies in the implementation of the Covenant. For example, article 19 allows for reports to be transmitted to the Commission on Human Rights,<sup>31</sup> and the specialized agencies may, in terms of article 20,

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<sup>39</sup> See C. Lumina, “An assessment of the human rights obligations of the World Bank and the International Monetary Fund with particular reference to the World Bank’s Inspection Panel” (2006), in *Journal for Juridical Science*, vol. 31, issue 2, p. 108; S. Skogly, “The Position of the World Bank and the International Monetary Fund in the Human Rights Field”, R. Hanski and M. Suksi, editors, in *An Introduction to the International Protection of Human Rights: A Textbook*, 2nd rev. ed., pp. 231-250 (Turku/Abo: Abo Akademi Institute for Human Rights, 2002).

<sup>40</sup> M. E. Salomon, *International economic governance and human rights accountability*, (LSE Law, Society and Economy Working Papers 9/2007, 5).

<sup>41</sup> See the agreement between the United Nations and the World Bank, United Nations Treaty Series, vol. 16, p. 346 and the agreement between the United Nations and the IMF, United Nations Treaty Series, vol. 16, p. 328.

submit comments on these reports. Article 22 provides that the United Nations Economic and Social Council may furnish the specialized agencies with such information from the State reports as may assist them to decide on international measures likely to contribute to the implementation of the Covenant.<sup>42</sup>

74. In its general comment No. 2 on article 22 of the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights has indicated that the provision “should be interpreted so as to include virtually all United Nations organs and agencies involved in any aspect of international development cooperation”, including agencies such as the World Bank and the IMF (see paragraph 2). Stressing the indivisibility and interdependence of all human rights, the Committee has further urged that the United Nations agencies involved in the promotion of economic, social and cultural rights should do their utmost to ensure that their activities are fully consistent with the enjoyment of civil and political rights. Thus, international agencies “should scrupulously avoid involvement in projects” that infringe human rights, and they should promote projects and approaches which contribute not only to economic growth and other defined objectives, but also to enhanced enjoyment of all human rights (see paragraph 6). In a similar vein, the Committee on the Rights of the Child has stated that the World Bank Group, the IMF and the World Trade Organization should ensure that their activities related to international cooperation and economic development promote the full implementation of the Convention on the Rights of the Child.<sup>43</sup>

75. It is important to note that both the World Bank and the IMF are established by Governments that constitute their decision-making bodies. These Governments have undertaken various human rights obligations that cannot be neglected or ignored simply by operating through the medium of an organization. Thus, for example, the European Court of Human Rights has held that the human rights obligations of Member States continue even after the transfer of competences to international organizations.<sup>44</sup>

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<sup>42</sup> See also article 40 of the Covenant on Civil and Political Rights, which states that “[t]he Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence”.

<sup>43</sup> Convention on the Rights of the Child general comment No. 5 (2003), para. 64 (CRC/GC/2003/5).

<sup>44</sup> See *Mathews v. United Kingdom*, ECtHR Application No. 24833/94, Grand Chamber judgment of 18 February 1999, paras. 29, 32 and 34; *Waite and Kennedy v. Germany*, ECtHR Application No. 26083/94, Grand Chamber judgment of 18 February 1999, para. 67; *Bosphorus Airways v. Ireland*, ECtHR Application No. 45036/98, Grand Chamber judgment of 30 June 2005, paras. 152-156; see also para. 19 of the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, which states that “[t]he obligations of States to protect economic, social and cultural rights extend to their participation in international organizations, where they act collectively”.

76. It can therefore be argued that international financial institutions which are specialized agencies of the United Nations are obliged at a minimum to respect human rights in their operations. This implies that they should ensure that their development cooperation activities (including debt relief measures and aid conditionalities) do not undermine human rights.

#### **H. The principle of shared responsibility**

77. A fundamental principle in the Millennium Declaration is that of shared responsibility. The Declaration underscores that the responsibility for managing global economic and social development must be shared among the nations of the world and should be exercised multilaterally. In a similar vein, paragraph 47 of the Monterrey Consensus of the International Conference on Financing for Development emphasizes that “debtors and creditors must share the responsibility for preventing and resolving unsustainable debt situations”.<sup>45</sup>

78. The independent expert considers that it is important, as a key aspect of the shared responsibility of debtors and creditors, that generally agreed criteria for the definition and treatment of illegitimate debt be developed.

### **IV. AREAS OF FOCUS FOR THE PERIOD 2009-2010**

79. In the coming year, the independent expert intends to focus on the development of the draft general guidelines on foreign debt and human rights. He will also explore the linkages between debt and trade, as well as the issue of illegitimate debt.

#### **A. Draft guidelines on foreign debt and human rights**

80. It will be recalled that, in its resolutions 2004/18 and 2005/19, the Commission on Human Rights called upon the previous mandate holder (Bernards Mudho) to develop guidelines on economic reform policies and human rights and that, in February 2008, Mr. Mudho informally presented a preliminary draft of the guidelines to the Human Rights Council. In his report (A/HRC/7/9), the previous mandate holder stated that the guidelines required further work and consultations.

81. In its resolution 7/4, the Council requested the current mandate holder to continue work on the development of the draft guidelines with a view to presenting an update thereon to the Council in 2010. In accordance with the request of the Council and in the light of the redefined focus of the mandate from “economic reform policies and foreign debt” to “foreign debt and other related international financial obligations of States”, the independent expert intends to revise the guidelines to ensure, inter alia, that: (a) they take the form commonly adopted by other guiding principles prepared by other special procedures of the Council; and (b) they include

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<sup>45</sup> *Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002 (A/CONF.198/11, chapter 1, resolution 1, annex).*

appropriate links to existing international human rights and other standards. In this regard, the independent expert will draw upon the insights he gained from participating in the seminar on the draft guiding principles on extreme poverty and human rights in January 2009.

82. The Council, in its resolution 7/4, requests 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-government organizations on the draft general guidelines”. While the independent expert has brought the guidelines to the attention of all stakeholders that he has met since assuming his mandate, the response rate has been low.

### **B. Trade and debt**

83. In accordance with resolution 7/4, the independent expert intends to explore the linkages between debt and trade.

84. The independent expert is of the view that a debt level consistent with fulfilling human rights commitments cannot be maintained by debt relief measures alone. The evolution of HIPC Initiative beneficiaries after debt relief, whereby several have seen their debts quickly rise again owing to the plunge in the prices of commodities they export clearly demonstrates the link between terms of trade and the process of debt accumulation.

85. Since debts must ultimately be repaid by exports, a decline in export prices raises the real value of debt. Consequently, measures to enhance the terms of trade for indebted countries, particularly through export diversification and measures to strengthen the contribution of exports to public revenue, should be part and parcel of long-term debt sustainability. In turn, debt service payments should not be so high as to prevent the development of an export-investment nexus that can assist low- and middle-income developing countries to progress towards greater prosperity and self-sufficiency in raising the standards of living of their populations, and enhancing the enjoyment of all human rights.

86. In this regard, the independent expert intends to monitor and examine trade rules and policies in the context of global efforts to address the debt problem, and he will undertake consultations with all stakeholders with a view to making recommendations that could contribute to ensuring coherence between trade and debt policies.

### **C. Creditor co-responsibility and illegitimate debt**

87. Although the debate concerning responsibility for debts incurred through reckless or self-interested lending by some developed countries has a long history, it has, since the Monterrey Consensus, assumed a prominent place in recent discussions concerning the just resolution of the debt crisis. The recognition in the Monterrey Consensus that creditor and debtor countries are both equally responsible for preventing and solving unsustainable debt problems has opened up the debate on the question of creditor co-responsibility for illegitimate debts.

88. In recent years, debt campaigners and some official creditors such as Norway, have evoked the issue of creditor co-responsibility as a way of promoting responsible lending practices in the future.<sup>46</sup> However, some creditors and multilateral institutions have narrowly interpreted the issue of responsibility, restricting it to a question of debt sustainability.<sup>47</sup>

89. Of particular interest to the independent expert is the idea of debt audits undertaken by national authorities or civil society organizations in developing countries to ascertain what portion of a country's debt could be considered illegitimate and therefore subject to unconditional cancellation and that of a fair and transparent debt arbitration mechanism focusing on reduction of a country's debt based on its capacity to pay or arbitration confined to specific types of debts, such as illegitimate or odious debts.

90. The independent expert considers that the issue of co-responsibility as reflected in the Monterrey Consensus requires further elaboration as part of the global effort to address the debt crisis, with the United Nations playing a central role in this process. Consequently, he intends, in the coming year, to devote some attention to this issue.

## V. CONCLUSIONS AND RECOMMENDATIONS

91. **This report has outlined some basic elements underpinning a conceptual framework for understanding the relationship between foreign debt and human rights and has argued for a human rights-based approach to the debt crisis that takes into consideration the principles of transparency, accountability, participation and non-discrimination, and the universality, interdependence and indivisibility of all human rights. While the proposed elements for the framework are identified on a tentative basis and require further elaboration, the independent expert considers that the principles outlined therein serve as a useful starting point for addressing the debt crisis in a just, equitable and sustainable manner.**

92. **The problem of debt is not an exclusively economic one; it has political, ethical, moral and legal dimensions. It therefore cannot be addressed from an exclusively economic focus. The independent expert is firmly of the view that human rights must occupy a central place in the global responses to the debt crisis if the outcome is to have a real impact on the intended beneficiaries. A human rights-based approach to the debt crisis will ensure that the methods for achieving economic growth are just and that its benefits are fairly distributed. This approach is consistent with the centrality of human rights within the broader mission of the United Nations and with the commitments expressed in the Monterrey Consensus.**

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<sup>46</sup> The Norwegian Government's 2005 Declaration explicitly expresses the intention to support international debt arbitration of illegitimate debts: "The Government will support the work to set up an international debt settlement court that will hear matters concerning illegitimate debt."

<sup>47</sup> Eurodad, "Parliamentary activity on debt: a growing challenge", June 2007, p. 6.



93. 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 draft general guidelines on foreign debt and human rights, it is necessary to ensure the fullest possible participation of all stakeholders (including civil society organizations and right-holders in the affected countries) in the finalization of the guidelines. Owing to financial constraints, however, the independent expert is unable to seek more diverse views from different stakeholders nationally and regionally. In this regard, he wishes to call upon all Member States to provide adequate resources to enable him to carry out regional consultations on the draft guidelines.

94. In its resolution S-10/1 on the impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights, the Council invited all relevant thematic special procedures, within their respective mandates, building on the deliberations of the special session of the Council, “to consider any of the impacts of the global economic and financial crises on the realization and enjoyment of all human rights particularly economic, social and cultural rights, and to integrate their findings in this regard into their regular reports to the Council”.<sup>48</sup> In response to this invitation, the independent expert makes the following preliminary observations based on his contribution to the special session.

95. The independent expert notes that the current global economic and financial crises proffer a prime opportunity to integrate principles such as accountability, participation and transparency into the process of reforming the global financial architecture, working towards a more equitable system that not only promotes economic prosperity, but also more fundamentally advances the enjoyment of all human rights.<sup>49</sup>

96. The current global financial and economic crises should not result in a decrease in debt relief, nor should they be used as an excuse to stop debt relief measures, as that would have negative implications for the enjoyment of human rights in the affected countries. As indicated earlier in this report, the gains from debt relief are already being undermined by a variety of factors, including an unequal global trading environment and onerous conditionalities attached to debt relief. The current crises are likely to make this reality worse unless a bolder approach to the debt crisis is adopted that places human rights at its core to ensure that the most vulnerable are not further marginalized.

97. The independent expert suggests that both creditors (particularly, international financial institutions) and debtors should, as a preliminary step towards incorporating a human rights-based approach to development cooperation in general and the debt problem in particular, urgently consider the preparation of human rights impact assessments with regard to development projects, loan agreements or Poverty Reduction Strategy Papers

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<sup>48</sup> Human Rights Council resolution S-10/1 para. 9.

<sup>49</sup> In paragraph 9 of the Monterrey Consensus, States have declared their commitment to “promoting national and global economic systems based on the principles of justice, equity, democracy, participation, transparency, accountability and inclusion”.

**given that the World Bank has extensive experience in the preparation of environmental impact assessments, this proposal would not represent a new method of working if also applied to human rights, particularly if the Bank collaborates with the relevant United Nations human rights organs and bodies.**

98. **A related idea is the use of indicators in order to assess the progressive realization of economic and social rights. In keeping with the request of the Council in its resolution 7/4, the independent expert will devote attention to the potential role of indicators in assessing the impact of commitments arising from debts on the capacity of States to implement their human rights obligations and to attain the MDGs. In this regard, he anticipates working in concert with other stakeholders who are undertaking work on human rights indicators.**

99. **The independent expert welcomes the views of Member States on any aspect of this report and on his mandate in general, and especially on the issues on which he intends to primarily focus in the coming year: the draft guidelines on foreign debt and human rights, trade and debt, and creditor co-responsibility and illegitimate debt.**

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