



General Assembly

Distr.: General
10 April 2011

Original: English

Human Rights Council

Twentieth session

Agenda item 3

**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

Guiding principles on foreign debt and human rights

Summary

This report presents the guiding principles on foreign debt and human rights for consideration by the Human Rights Council. It also provides a context in which the principles should be understood, briefly describes the process leading to the development of the text submitted to the Council, provides a snapshot of the principles and highlights the normative contribution of the principles.

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I. Introduction

1. The issue of foreign debt and its impact on human rights and development, particularly in developing countries, has preoccupied the international community for more than three decades and although a number of official initiatives to address it have been implemented over the years, these have failed to deliver an equitable and enduring solution in line with the political commitments reflected in various resolutions and declarations, notably the Millennium Declaration¹ and the Monterrey Consensus of the International Conference on Financing for Development.² Moreover, the debt of these countries has continued to grow and to constrain not only their development prospects but also to undermine their capacity to establish the conditions for the realization of human rights, particularly economic, social and cultural rights.

2. The total external debt of emerging and developing economies rose from US\$2,678.4 billion in 2003 to US\$5,414.6 billion in 2010 and is projected to rise to US\$6,446.3 billion in 2012.³ Debt service payments rose from US\$795.2 billion in 2003 to US\$1,743.7 billion in 2010, and were projected to rise to US\$2,010.8 billion and US\$2,265.5 billion in 2011 and 2012 respectively. In 2003, the total external debt of the Heavily Indebted Poor Countries (HIPCs) – those countries whose debts are deemed “unsustainable” by the International Monetary Fund (IMF) and World Bank – was US\$172 billion. In 2010, it decreased marginally to US\$147.9 billion, ostensibly due to international debt relief. However, it was projected to rise to US\$163.3 billion in 2011 and US\$178 billion in 2012 largely as a consequence of new loans taken out to mitigate the impacts of the global financial crisis. Additionally, as recent events in Europe suggest, debt problems are not the exclusive preserve of developing countries.⁴

3. The Independent Expert accepts that, depending on a variety of factors, such as responsible lending and borrowing, the loan terms and conditions, prudent use of loans and proper debt management, debt financing can contribute to countries’ economic development and the establishment of conditions for the realization of human rights.⁵ Nonetheless, empirical evidence shows that in many of the poorest countries the fulfilment of debt service obligations is often undertaken at the expense of social investment, including investment in services that contribute to the realization of human rights.⁶ In

¹ General Assembly resolution 55/2, paras. 11-16.

² Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002, (A/CONF.198/11), chap. I, paras. 47, 51 and 60.

³ International Monetary Fund (IMF), *World Economic Outlook*, September 2011, available from www.imf.org/external/pubs/ft/weo/2011/02/pdf/tblpartb.pdf.

⁴ In recent years, Europe has experienced a series of debt crises affecting Iceland, Ireland, Greece, Spain and Portugal.

⁵ See Human Rights Council, Consolidation of findings of the high-level task force on the implementation of the right to development, (A/HRC/15/WG.2/TF/2/Add.1), para. 52.

⁶ For example, in 2004, Ecuador’s external debt was US\$16.9 billion and its debt service payments amounted to US\$3.7 billion (more than six times its expenditure on health care); in 2006, Kenya spent more on debt servicing than on health; in 2006, the Philippines spent over 32 per cent of its annual budget on servicing interest payments compared with around 14 per cent on education and 1.3 per cent on health. See Jubilee Debt Campaign, *Debt and Health*, Briefing (2007), available from www.jubileedebtcampaign.org.uk/Debt3720and3720Health+3795.twl; Jubilee Debt Campaign, *Debt and Education*, Briefing (2007), available from www.jubileedebtcampaign.org.uk/Debt3720and3720Education+3198.twl; and Jubilee Debt Campaign, *Debt and Public Services*, Briefing (October 2007), available from www.jubileedebtcampaign.org.uk/Debt3720and3720PublicServices+3704.twl.

addition, excessive debt service burdens and harmful conditions linked to loans and debt relief often limit investment in and undermine the provision of accessible public services.

4. Apart from undermining obligations on economic, social and cultural rights, excessive debt burdens pose major obstacles for some countries in achieving the Millennium Development Goals.⁷ In 2011, the World Bank and the IMF, while reporting that HIPC countries have increased their poverty reducing expenditure, noted that “HIPC countries have made uneven, and in some cases, limited, progress towards achieving the Goals.”⁸ Only a quarter of completion-point HIPC countries were on track to achieving Goal 1 (to eradicate extreme poverty and hunger), with progress toward Goal 5 (to improve maternal health) less certain.⁹ Further, only a few HIPC countries were on track to meet Goal 8 (to build a global partnership for development).¹⁰

5. The lack of progress towards the Goals has also been noted in a recent World Health Organization and UNICEF report covering 68 countries where more than 95 per cent of all maternal and child deaths occur. The report shows that 49 of the countries surveyed are off track for achieving Goals 4 (reduce child mortality) and 5 (improve maternal health).¹¹ It is notable that, while the report does not identify the external burden as the cause of this lack of progress,¹² 33 of the countries surveyed are HIPC countries (including 27 post-completion HIPC countries).

6. Where countries have had their foreign debt forgiven, they have been able to invest more in public services, such as health care, education, water and sanitation, and to abolish user fees for some of these services (previously introduced as part of austerity measures prescribed by international financial institutions) thereby enhancing the enjoyment of the rights to, inter alia, health, education, water and sanitation.¹³

7. Efforts to address the issue of foreign debt from a human rights perspective within the United Nations have, regrettably, evoked a profoundly divisive debate in both the Commission on Human Rights and the Human Rights Council, with some States contending that these bodies were not those “appropriate” to address the issue and others calling for a holistic approach to human rights focusing on both the causes and context within which human rights violations occur.¹⁴ While the Independent Expert does not wish to reignite the debate, he wishes to draw attention to a number of issues. First, rules other than human rights law and other international forums (which are presumably better

⁷ See A/HRC/15/WG.2/TF/2/Add.1, para. 54.

⁸ International Development Association (IDA) and IMF, Heavily Indebted Poor Countries (HIPC) Initiative and Multilateral Debt Relief Initiative (MDRI) – Status of Implementation and Proposals for the Future of the HIPC Initiative, 8 November 2011, para. 5.

⁹ Ibid.

¹⁰ Ibid.

¹¹ World Health Organization and United Nations Children’s Fund, *Countdown to 2015 decade report: Taking stock of maternal, newborn and child survival* (2010), p. 1.

¹² Ibid, p. 2. The report identifies user fees and insufficient levels of official development assistance as the main financial barriers.

¹³ According to the World Bank and IMF, debt relief under the Initiatives “has substantially lowered the debt burdens of HIPC countries” and for the 36 post-decision point countries, poverty reducing spending increased by more than three percentage points of GDP, on average, between 2001 and 2010, while debt service payments declined by a somewhat smaller amount.” See IDA & IMF, HIPC Initiative and MDRI – Status of Implementation and Proposals for the Future of the HIPC Initiative, 8 November 2011, para. 5.

¹⁴ See, e.g., Commission on Human Rights resolution 2004/18 of 16 April 2004, adopted by a vote of 29 in favour, 14 against and 10 abstentions; Human Rights Council decision 12/119, adopted on 12 October 2009 by a vote of 31 in favour, 13 against and 2 abstentions.

equipped to deal with the questions of foreign debt) have thus far failed to deliver an equitable and lasting solution to the sovereign debt problem in line with the various commitments made by the international community. In addition, these other forums do not have explicit mandates to promote and protect human rights and have not factored human rights into their policies and programmes in line with the internationally accepted human rights-based approach to development. Second, the Vienna Declaration and Programme of Action calls for a holistic approach to the promotion and protection of human rights which essentially entails consideration of the causes and context of human rights violations.¹⁵ Third, in terms of article 22 of the International Covenant on Economic, Social and Cultural Rights, the Economic and Social Council (ECOSOC) “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 realization of the present Covenant.” According to the Committee on Economic, Social and Cultural Rights this provision includes “virtually all United Nations organs and agencies involved in any aspect of international development cooperation.”¹⁶ It is therefore within the competence of the Human Rights Council to address the issue of foreign debt and human rights. Fourth, States’ human rights obligations are clearly relevant in the context of their external debt arrangements. Thus, for example, the Committee on Economic, Social and Cultural Rights has often urged borrower States to take into account their obligations under the Covenant in all aspects of their negotiations with 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 part are in conformity with the obligations of the States parties to the Covenant, especially the obligations of international assistance and cooperation.¹⁷ Fifth, the declarations, resolutions and decisions of major United Nations conferences and bodies as well as the concluding observations of the various treaty bodies have confirmed the link between debt, human rights and development.¹⁸ Finally, under international human rights law, States bear primary

¹⁵ Paragraph 13 calls upon States to “eliminate all violations of human rights and their *causes*, as well as *obstacles* to the enjoyment of these rights” (emphasis added).

¹⁶ General comment No. 2.

¹⁷ 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, para. 31 (Germany); E/C.12/1/Add.70, para. 24 (Sweden); E/C.12/1/Add.72, para. 32 (France); E/C.12/1/Add.77, para. 37 (Ireland); and E/C.12/1/Add.79, para. 26 (United Kingdom). It is also notable that the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights deem a human rights violation of omission “[t]he failure of a State to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations” (para. 15(j)).

¹⁸ See, e.g., the Universal Declaration on the Eradication of Hunger and Malnutrition, adopted on 16 November 1974 by the World Food Conference, in accordance with General Assembly Resolution 3347 (XXIX), 17 December 1974; the Programme for the Further Implementation of Agenda 21, adopted by the General Assembly at the Earth Summit +5 during its nineteenth session, 23-28 June 1997, paras. 20 and 82; Copenhagen Declaration on Social Development, adopted at the World Summit for Social Development, Copenhagen, 6-12 March 1995 (commitments 1.k and 7.c); the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, Vienna, 14-25 June 1993, para. 12; the Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, Beijing, 4-15 September 1995, para. 13; the Millennium Declaration, paras. 15 and 28; Report of the World Summit on Sustainable Development, A/CONF.199/20 and Corr.1, Johannesburg, 26 August to 4 September 2002, annex, para. 89. See also

responsibility for ensuring all human rights to all people living in their territory and under their jurisdiction. Thus, States should not be placed in a situation where they are unable to fulfil this obligation due to excessive debt service obligations.

8. The guiding principles on foreign debt and human rights, which are presented with this report, represent an attempt to contribute to the quest for an equitable and durable solution to the debt crisis that is not only in line with the political commitments made by the international community but is also consistent with the human rights obligations of all States.

II. Background to the principles

9. In 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 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 foreign debt relief, to ensure that compliance with the commitments derived from foreign debt would 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 the matter to the Commission at its sixty-first session and a final draft at the sixty-second session of the Commission.

10. In its decision 2/109, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to convene an expert consultation for the purpose of contributing to the process of drafting the general Guidelines. Following that consultation, the Independent Expert (renamed 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) presented a preliminary draft of the guidelines to the Council at its March 2008 session. In his report to the Council (A/HRC/7/9), the Independent Expert noted that the guidelines required further consultation and work.

11. In its resolutions 7/4 and 11/5, the Council requested 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, to

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

continue to work on the guidelines, including by seeking “the views and suggestions of States, international organizations, United Nations agencies, funds and programmes [and] regional economic commissions”. In its decision 12/119, the Council requested OHCHR to assist the Independent Expert in the organization and holding of regional consultations on the guidelines.

12. With the support of OHCHR, the Independent Expert held four regional consultations between June 2010 and June 2011 (Latin America and the Caribbean in June 2010; Africa in November 2010; Asia Pacific in February 2011; and Western Europe and other groups in June 2011).¹⁹ These consultations, which brought together government representatives, members of parliament, regional economic commissions, international financial institutions, civil society organizations, individual experts and other stakeholders, generated ideas, based on regional experiences and perspectives, on how best the guidelines could assist States in complying with their human rights obligations while fulfilling their obligations under their debt arrangements.

13. In November 2011, the Independent Expert convened an expert meeting to review a new draft that he had prepared based on the insights from the regional consultations. In February 2012, he convened a public consultation in Geneva on the updated text of the guiding principles that had been prepared following the aforementioned expert meeting. Several States and civil society organizations participated in this consultation. The text of the principles was also placed on the Independent Expert’s web page together with an invitation for public comments. Several stakeholders, including States, international financial institutions, regional economic commissions, civil society organizations and individuals provided written comments on the new draft.²⁰

14. The final text of the guiding principles now before the Council is the outcome of the broad and inclusive process of consultation outlined above. The Independent Expert acknowledges the invaluable contributions of the broad range of stakeholders in contributing to the articulation of a universally applicable framework on foreign debt and human rights that is designed to ensure that the obligations assumed by States under debt and other international financial arrangements do not undermine their capacity to create the conditions for the realization of all human rights, particularly economic, social and cultural rights and the right to development.

III. Overview of the principles

15. In line with the views that emerged from the regional consultations and in keeping with the standards developed by other special procedures mandate holders, the Independent Expert has proposed that the guidelines be renamed “guiding principles on foreign debt and human rights.”

16. The text of the principles has an introduction and three main sections. The introduction draws attention to the adverse impact of excessive debt burdens on human rights and development and highlights the need to strike an appropriate balance between the obligations of States arising from their external debt arrangements and under international human rights law. Section I outlines the scope and purpose of the principles; section II

¹⁹ The Independent Expert submitted a report on the first three regional consultations to the Human Rights Council in April 2011 (A/HRC/17/37).

²⁰ The United Nations Secretariat was not able to provide full translation of the comments received in other languages. Consequently, the Independent Expert had to rely on informal translations provided by OHCHR staff and he cannot guarantee his full knowledge of their precise content.

outlines the foundational principles drawn from existing international human rights and other standards on which the principles are based; section III contains the operational principles.

IV. Implementation of the principles

17. The guiding principles do not seek to create new rights or obligations in international law, nor do they supplant other mechanisms designed to address aspects of the sovereign debt problem. Rather, their normative contribution lies in identifying existing basic human rights standards applicable to sovereign debt and related policies, as well as in elaborating the implications of these standards. Further, the principles should be seen as a complement to other initiatives such as the United Nations Guiding Principles on Business and Human Rights; the United Nations Conference on Trade and Development Draft Principles on Promoting Responsible Sovereign Lending and Borrowing; and international debt relief mechanisms.

18. The Independent Expert is honoured to submit these guiding principles to the Human Rights Council for its consideration. He urges the Council and all Member States of the United Nations to demonstrate their commitment to finding an equitable and durable solution to the debt crisis, particularly of developing countries, as expressed in, inter alia, the Millennium Declaration and the Monterrey Consensus, by endorsing the guiding principles.

19. In order to assist States and other stakeholders in implementing the principles, it has been suggested that a commentary on the guiding principles be developed. The Independent Expert is amenable to this proposal and, if the Council is agreeable, he could prepare such a commentary and submit it to the Council for its consideration.

Annex

Guiding principles on foreign debt and human rights

Introduction

The Charter of the United Nations expresses a universally shared commitment “to achieve international cooperation in solving international problems of an economic, social and 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.” This commitment is also reflected in several human rights treaties and declarations. Further, article 28 of the Universal Declaration of Human Rights provides that everyone has the right to a social and international order in which the rights and freedoms stipulated in the Declaration can be fully realized.

The full enjoyment of all human rights requires that adequate resources are allocated to this goal by States, which bear the primary responsibility for the protection and promotion of human rights. Nevertheless, the available resources are often limited and resource allocation undermined by a broad range of factors, including the fulfilment of unduly burdensome external debt service obligations. There is extensive evidence that the diversion of scarce national resources from fundamental public services of education, health, water, sanitation, housing and infrastructure to debt servicing significantly reduces the capacity of debtor countries, particularly poor countries, to establish the conditions for the realization of human rights, particularly economic, social and cultural rights. In this regard, it is notable that the various United Nations human rights bodies have consistently observed that excessive debt service payments constitute an obstacle to development and the realization of human rights in many developing countries.¹ Where debt burdens have been significantly reduced as a result, for example, of debt forgiveness, countries have been able to scale up spending on poverty reduction and social investment.

It is recognized that, depending on a variety of factors such as the loan terms and conditions, prudent use of loan funds and effective debt management, debt financing can contribute to countries’ development. It is also acknowledged that multilateral debt relief

¹ See, for example, the following concluding observations, Committee on Economic, Social and Cultural Rights: E/C.12/1/Add.106 (Zambia); E/C.12/1/Add.78 (Benin); E/C.12/Add.71 (Algeria); E/C.12/1/Add.66 (Nepal); E/C.12/1/Add.63 (Syrian Arab Republic); E/C.12/1/Add.62 (Senegal); E/C.12/1/Add.60 (Bolivia, Plurinational State of); E/C.12/1/Add.57 (Honduras); E/C.12/1/Add.55 (Morocco); E/C.12/1/Add.49 (Kyrgyzstan); and E/C.12/1/Add.48 (Sudan); Committee on the Rights of the Child: CRC/C/15/Add.218 (Madagascar); CRC/C/15/Add.204 (Eritrea); CRC/C/Add.207 (Sri Lanka); CRC/C/15/Add.197 (Republic of Korea); CRC/C/15/Add.193 (Burkina Faso); CRC/C/15/Add.190 (Sudan); CRC/C/15/Add.186 (Netherlands/Netherlands Antilles); CRC/C/15/Add.179 (Niger); CRC/C/15/Add.174 (Malawi); CRC/C/15/Add.172 (Mozambique); CRC/C/15/Add.160 (Kenya); CRC/C/15/Add.152 (Turkey); CRC/C/15/Add.138 (Central African Republic); CRC/C/15/Add.130 (Suriname); CRC/C/Add.124 (Georgia); and CRC/C/15/Add.115 (India); Committee on the Elimination of Discrimination against Women, *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 38 (A/57/38)*, paras. 149 (Uganda) and 155 (Trinidad and Tobago); *ibid*, *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). See also Human Rights Council, Consolidation of findings of the high-level task force on the implementation of the right to development, 25 March 2010, A/HRC/15/WG.2/TF/2/Add.1, para. 54.

initiatives have provided some fiscal space for heavily indebted poor countries to implement some social programmes. However, these initiatives are fraught with problems, including lengthy policy conditionality requirements (which not only undermine the poverty reduction goals of debt relief but also undermine country ownership of national development strategies) and exclusion of many countries that need or deserve debt relief. Further, they do not appear to have provided a durable solution to the debt problem as shown by international financial institution assessments indicating that some of the countries that have completed the debt relief processes are at risk of debt distress.

These challenges require a response that strikes an appropriate balance between the obligations of States arising from their external debt arrangements and under international human rights law. This balance cannot be achieved through unilateral actions alone and domestic policy orientations on the part of individual States but requires concerted international action in the spirit of international cooperation and assistance as underscored in the Charter of the United Nations and other instruments. Consequently, a number of high-level summits of world leaders have called for the formulation of a comprehensive solution to the external debt problem, particularly of developing countries. In this regard, the *Vienna Declaration and Programme of Action* (1993) “calls 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.”² Similarly, the *Millennium Declaration* (2000) from which the Millennium Development Goals are drawn, acknowledges the need for reform of the international financial system to make it open, rules-based, predictable and non-discriminatory.³ This goal specifies the need to “deal comprehensively and effectively with the debt problems of [...] developing countries” through [...] national and international measures designed to make debt sustainable in the long term. Lastly, the *Monterrey Consensus of the International Conference on Financing for Development* (2002) underscores the mutual accountability of creditors and debtors for their decisions relating to external debt and it advocates exploration of “innovative mechanisms to comprehensively address debt problems of developing countries” as well as “consideration by all relevant stakeholders of an international debt workout mechanism, in the appropriate forums, that will engage debtors and creditors to [...] restructure unsustainable debts in a timely and efficient manner.”⁴

In response to the foregoing challenges, on 16 April 2004, the Commission on Human Rights adopted resolution 2004/18 in which it requested the independent expert on the effects of structural adjustment policies and foreign debt on the full enjoyment of 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 foreign 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.” In subsequent resolutions and decisions, the Commission and the Human Rights Council requested the independent expert to seek the views and suggestions of a broad range of stakeholders, including States, international

² Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, A/CONF.157/23 (1993), part I, para. 12.

³ United Nations General Assembly resolution A/RES/55/2 (2000), paras. 11-16.

⁴ *Report of the International Conference on Financing for Development: Monterrey, Mexico, 18-22 March 2002* (United Nations publication, Sales No. E.02.II.A.7), chap. I, resolution 1, annex, paras. 47, 51 and 60.

organizations, United Nations agencies, funds and programmes, regional economic commissions, international and regional financial institutions and non-governmental organizations, on the draft guidelines and to present a draft to the Council.

The present guiding principles are the outcome of an extensive and inclusive consultation process. The principles are based on the recognition of States' existing obligations to respect, protect and fulfil all human rights, the obligations of international financial institutions and private corporations to respect human rights, as well as the need for a comprehensive solution to the sovereign debt problems of developing countries that is anchored to a human rights-based framework.

Section I – Scope and purpose

1. These guiding principles are designed to assist States and all relevant actors including private and public, national and international financial institutions, bilateral lenders and organized groups of bondholders in the conduct of their respective activities and pursuit of their respective interests relating to external debt.

2. The overriding aim of these principles is to balance a debtor and creditor State's contractual obligations arising from external debt arrangements and both debtor and creditor's international legal obligations to respect, protect and fulfil all human rights, particularly economic, social and cultural rights.

3. These principles apply to the lending and borrowing decisions of States and other actors such as international financial institutions and private institutions as appropriate, the negotiation and execution of loan agreements or other debt instruments, the utilization of external loan funds, debt repayments, the renegotiation and restructuring of external debt, the provision of debt relief when appropriate and to all policies, strategies and activities related thereto. The principles recognize the contingent liabilities which can arise for a State from external borrowing and lending between private actors.

4. For the purposes of these principles, external (or foreign debt) refers to an obligation (including monetary obligation) created under a contractual agreement and owed by a State to a non-resident lender which may either be an international financial institution, a bilateral or multilateral lender, a private financial institution or a bondholder, or is subject to foreign law. It includes: (i) loans, that is, advances of funds to the debtor by the lender on the basis of an undertaking that the borrower will repay the funds at some future point (including deposits, bonds, debentures, commercial loans and buyer's credits); and (ii) suppliers' credits, that is, contracts whereby the supplier allows the customer to defer payment until some time after the date on which the goods are delivered or the services are provided. The aggregate of a State's outstanding external debts is referred to as its external debt stock.

5. These principles reflect and are consistent with international human rights standards. They apply existing human rights standards as they pertain to problems or issues occasioned by the external indebtedness of States and related policies.

Section II – Foundational principles

Ensuring the primacy of human rights

6. All States, whether acting individually or collectively (including through international and regional organizations of which they are members), have the obligations to respect, protect and fulfil human rights. They should ensure that any and all of their activities concerning their lending and borrowing decisions, those of international or

national public or private institutions to which they belong or in which they have an interest, the negotiation and implementation of loan agreements or other debt instruments, the utilization of loan funds, debt repayments, the renegotiation and restructuring of external debt, and the provision of debt relief when appropriate, do not derogate from these obligations.

7. All States should pursue effective policies and measures aimed at creating the conditions for ensuring the full realization of all human rights, bearing in mind the indivisibility, interdependence and interrelatedness of all human rights and taking into account the potentially negative impact on the enjoyment of human rights of external debt servicing and the adoption of related economic reform policies.

8. Any foreign debt strategy must be designed not to hamper the improvement of conditions guaranteeing the enjoyment of human rights and must be directed, *inter alia*, to ensuring that debtor States achieve an adequate level of growth to meet their social and economic needs and their development requirements, as well as fulfilment of their human rights obligations.

9. International financial organizations and private corporations have an obligation to respect international human rights.⁵ This implies a duty to refrain from formulating, adopting, funding and implementing policies and programmes which directly or indirectly contravene the enjoyment of human rights.

Equality and non-discrimination

10. States have an obligation to ensure all human rights to all without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, as stipulated in the Universal Declaration of Human Rights.

11. States must design and implement policies and programmes to further the delivery of basic services essential for the enjoyment of all human rights, particularly economic, social and cultural rights, in a manner that is consistent with the principle of equality and non-discrimination.

12. States should analyse policies and programmes, including those relating to external debt, macroeconomic stability, structural reform and investment, with respect to their impact on poverty and inequality, social development and the enjoyment of human rights, as well as their gender implications, and adjust them as appropriate, to promote a more equitable and non-discriminatory distribution of the benefits of growth and services.

13. Such impact analyses should pay special attention to certain groups in society which may be particularly vulnerable to policies and programmes relating to external debt, macroeconomic stability, structural reform, trade liberalization and investment, including children, women, persons with disabilities, older persons, persons belonging to minorities and migrant workers and members of their families.

14. States should pay particular attention to the gender impact of reductions in public services, social security benefits, childcare facilities and public employment and to women's share of increased unemployment and they should take measures to prevent greater impoverishment of women.

⁵ See Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, annex: Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31).

Progressive realization

15. The obligation of States to achieve progressively the full realization of economic, social and cultural rights requires States to move as expeditiously and effectively as possible towards the full realization of these rights.

16. States should ensure that their rights and obligations arising from external debt agreements or arrangements, particularly accepting an unreasonable or excessive obligation to repay external debt,⁶ do not hinder the progressive realization of economic, social and cultural rights. Non-State lenders have an obligation to ensure that debt contracts to which they are party or any policies related thereto fully respect human rights.

Minimum core obligations

17. Every State has an obligation to ensure the satisfaction of, at the very least, the minimum essential levels of each economic, social and cultural right. The minimum essential levels of each of these rights should be seen as the base level from which States should endeavour to improve the enjoyment of the right.

18. States should ensure that their rights and obligations arising from an external debt agreement or arrangement, particularly the obligation to repay external debt, do not derogate from their minimum core obligations with respect to these rights.

Non-retrogression

19. States have an obligation to avoid retrogressive measures, that is, any deliberate action which has the effect of impairing the advancement in economic, social and cultural rights and thus hindering the continuous realization of these rights.

20. States should ensure that their rights and obligations arising from external debt, particularly the obligation to repay external debt, do not lead to the deliberate adoption of retrogressive measures.

The duty of international cooperation among States

21. Articles 55 and 56 of the United Nations Charter and various human rights treaties and declarations reflect clear requirements for States to cooperate with and assist each other in order to achieve certain goals, including ensuring development and eliminating obstacles to development, finding solutions to international economic, social, health and related problems, and promoting universal respect for, and observance of, human rights and fundamental freedoms.

22. The duty of international assistance and cooperation enjoins States to ensure that their activities, and those of their residents and corporations, do not violate the human rights of people abroad and that States, individually or through membership of international institutions, do not adopt or engage in policies that undermine the enjoyment of human rights or further engender disparities between and within States.

⁶ The obligation to repay external debts is emphasized here (and in sections 2.3 and 2.4) because the amounts that a debtor State allocates for debt repayments are thus deducted from its “available resources” which, pursuant to article 2(1) of the International Covenant on Economic, Social and Cultural Rights, should be optimally devoted to the realization of economic, social and cultural rights.

The shared responsibility of creditors and debtors

23. Creditors and debtors share responsibility for preventing and resolving unsustainable debt situations.⁷ For creditors, this includes the obligation to perform due diligence on the creditworthiness and ability to repay of the borrower as well as the duty to refrain from providing a loan in circumstances where the lender is aware that the funds will be used for non-public purposes or for a non-viable project. For debtor States, this entails an obligation to contract loans and use the loan funds in ways that serve the public interest and repay the debt in a timely fashion.

24. The mutual accountability of creditors and debtors for their decisions is an important precondition for the establishment of an equitable global financial system.

Ensuring an independent process of national development

25. Every State has the sovereign and inalienable right to implement a process of national development independently and free from pressure, influence or interference from external actors, including other States and international financial institutions. An independent process of national development means that the legitimate leaders of the people have effective control over the direction of the country's economic development. This process should be transparent, participatory, accountable and responsive.

26. The right to self-determination requires the legitimate authorities of a State to have independent control over the direction of a State's economy (i.e. where it is going) and effective involvement in economic planning (i.e. how to get there).

27. The principle of permanent sovereignty over natural resources implies the right of all States to possess, use, or otherwise dispose of their natural wealth and resources as they deem proper, free from pressure, influence or interference from external actors, including other States and international financial institutions. State sovereignty must be exercised in full compliance with and respect for human rights, paying particular attention to the most vulnerable groups in society.

Transparency, participation and accountability

28. Transparency, participation and accountability are core values that should be observed in the lending and borrowing decisions by States, international financial institutions and other actors as appropriate, the negotiation and execution of loan agreements or other debt instruments, the utilization of loan funds, making of debt repayments, the renegotiation and restructuring of external debts, and implementation of debt relief when appropriate.

29. Transparency requires the full disclosure of all relevant information regarding loan agreements, debt repayments, debt management, outcomes of public debt audits and other related matters.

30. Participation requires effective and meaningful input from all stakeholders (including project beneficiaries) in loan policy and resource utilization decisions.

31. Accountability requires remedial measures that ensure decision-makers are answerable, if warranted, for their actions regarding external debt agreements or arrangement, as well as external debt policies and strategies.

⁷ *Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002* (United Nations publication, Sales No. E.02.II.A.7), chap. I, resolution 1, annex, para. 47.

32. Transparency and participation further require oversight by the relevant representative bodies and civil society organizations.

Section III – Operational principles

A. External debt

General legal and institutional framework

33. Borrower States should have a comprehensive legal and institutional framework that promotes and ensures transparency and accountability in the loan negotiation and contracting as well as public debt management processes. Such a framework should also clarify the roles of different institutions in loan negotiation, contraction, debt management and oversight.

34. Borrower States should set limits for international loans through appropriate budgetary legislation. Any changes to such ceilings should require the approval of Parliament or some other democratically constituted national legislative body.

35. Lender States, international financial institutions and private institutions should have a comprehensive legal and institutional framework that promotes and ensures transparency and accountability in the negotiation and contracting of loans.

Decision to borrow or to lend

36. Every Borrower State should conduct a transparent and participatory needs assessment, as part of its annual debt strategy, in order to ascertain whether it has a genuine need to obtain new loans. It is incumbent upon each Borrower State to demonstrate that its decision to borrow has been given the most careful consideration and is fully compliant with the foundational principles identified in Section II above, particularly the need to ensure the primacy of human rights.

37. Prior to obtaining a new loan, a Borrower State should reassess the existing allocation of its financial resources and should satisfy itself that its need for additional funds cannot be met by re-orienting existing budgetary allocation. In addition, if such allocation does not reflect a high priority for human development spending and enhanced protection for the enjoyment of fundamental human rights and freedoms, it should be adjusted accordingly.

38. All lenders should satisfy themselves that a Borrower State has made an informed decision to borrow and that the loan is to be used for a public purpose. They should conduct due diligence or obtain assurances from the Borrower State to ensure that the loan funds will not be wasted through official corruption, economic mismanagement or other unproductive uses in the Borrower State. If any such eventuality is reasonably foreseeable under the circumstances, lenders should not provide the loan or continue with the disbursement of the loan.

39. All lenders should conduct due diligence to ensure that the proposed loan will not increase the Borrower State's external debt stock to an unsustainable level that will make debt repayment difficult and impede the creation of conditions for the realization of human rights. Lenders should satisfy themselves that, even with the new loan, the Borrower State is still capable of servicing its external debt without compromising its ability to perform its international human rights obligations as mentioned in section II.

40. Lenders should not finance activities or projects that violate, or would foreseeably violate, human rights in the Borrower States. To avoid this eventuality, it is incumbent upon

lenders intending to finance specific activities or projects in Borrower States to conduct a credible Human Rights Impact Assessment (HRIA) as a prerequisite to providing a new loan. Alternatively, lenders may request the national human rights institution of the Borrower State, if any, to conduct such assessment.

41. For the purposes of these principles, a HRIA is understood as a systematic process, undertaken by an independent body with the full and informed participation of affected communities, based on the normative framework for international human rights law, which aims to measure the impact of an activity or project on the realization of human rights.

Loan negotiation and contracting

42. The negotiation process should be informed by the inputs previously gathered through consultations with all stakeholders, including affected communities and civil society organizations, both by borrowers and lenders as appropriate.

43. The key terms and conditions of loan agreements should be publicly disclosed by both borrowers and lenders.

44. Lenders who negotiate with officials of a Borrower State should recognize that the latter have a fiduciary duty to act in the best interest of their principal, namely, the Borrower State, which in turn represents its people in the international system. Similarly, borrowers should recognize that officials acting on behalf of a lender stand in a fiduciary relationship to the lender. The discharge of this fiduciary duty is typically governed by formal and substantive requirements prescribed by the law of the Borrower State.

Legal authority to contract

45. The contracting of loans or other debt obligations should comply with the formal and substantive requirements which are prescribed by the applicable national laws and regulations of both the Borrower State and the Lender State (or, as the case may be, the State having jurisdiction over private lenders) or, in the case of an international financial institution, its articles of agreement or other similar constitutional instrument. In particular, any prior approval or authorization required by domestic law or regulation should be fully complied with.

Use of loan funds

46. Except in the case of general-purpose borrowing, the additional funding made available through external loans should only be used for the activity or project for which it was originally contracted.

47. In addition, funds obtained through external loans should not be used to fund any activity or project that will contribute to or exacerbate violations of human rights, particularly economic, social and cultural rights.

Debt servicing or repayment

48. Debtor States should ensure that their level of debt servicing is not so excessive or disproportionate relative to their financial capacity and other resources as to amount to a diversion of their resources away from the provision of social services to all persons living in their territory and under their jurisdiction, including those pertaining to economic, social and cultural rights.

49. Debtor States should use their financial resources optimally in order to realize all human rights. Excessive or disproportionate debt servicing that takes away financial resources meant for the realization of human rights should be adjusted or modified

accordingly to reflect the primacy of human rights. Debtor States' budgetary allocations should reflect the priority of human rights-related expenditures.

50. Debtor States should not allow their external debt repayments to reach an excessive or disproportionate level at which they can no longer perform their minimum core obligations as referred to in section II.

51. Debtor States should avoid deliberately adopting retrogressive measures as defined in Section II in order to allocate more financial resources to external debt repayments.

Renegotiation and restructuring

52. The obligation of debtor States to repay under a valid and legitimate external debt agreement must be honoured. However, circumstances rendering the debt unpayable (such as severe financial distress of the borrower and natural disasters) may warrant changes in the reciprocal obligations between a debtor State and its creditors.

53. Debtor States which experience difficulty in repaying their external debts should renegotiate these with their creditors with the aim of reaching a restructuring agreement that enables the debtor State to service its external debts without compromising its capacity to fulfil its international human rights obligations as mentioned in section II or implement its development goals.

54. The renegotiation and restructuring should be conducted in good faith and should cover all types of external debts owed to all types of external creditors, including international financial institutions.

Debt relief

55. The alleviation of debt and debt-service burdens of heavily indebted countries, including through debt relief efforts (such as debt forgiveness, debt rescheduling, debt service reduction and interest moratorium), should take place in the context of the realization of all human rights, particularly economic, social and cultural rights.

56. Debt relief efforts must not compromise the provision of basic services. In particular, debt relief conditions that may adversely impact the realization of human rights or undermine development in the beneficiary State must be avoided.

57. Financing from debt relief must neither replace official development assistance nor be considered as such.

Debt moratorium

58. When a change in circumstances beyond the control of the Borrower State arises, the parties should negotiate and agree on a moratorium on debt repayment. Such a moratorium should apply to the principal, interest, commission and penalties and should apply throughout negotiations on debt restructuring.

Sale of debt on the secondary market

59. Loan agreements should impose clear restrictions on the sale or assignment of debts to third parties by creditors without the prior informed consent of the Borrower State concerned. Every effort must be directed towards achieving a negotiated settlement between the creditor and the debtor.

60. Where a debt has been sold or assigned after the failure of settlement negotiations between the creditor and debtor, all relevant provisions contained in the original loan agreement, such as interest rates and change of circumstances, should apply.

61. If the debtor State has been granted debt relief through an international debt relief mechanism (such as the Heavily Indebted Poor Countries' Initiative), the amount of debt recoverable by the litigating creditor should not exceed that recovered by other creditors.

62. Creditors should not sell sovereign debt on the secondary market to creditors that have previously refused to participate in agreed debt restructuring.

Sharing risk of the loan

63. In order to help balance exchange rate risk, lenders should offer the possibility of denominating all or part of the loan in the Borrower State's local currency.

64. In order to help balance output or trade risk, lenders should offer the possibility of indexing loan repayments to rates of economic and/or export growth.

B. Debt sustainability

Debt sustainability assessment

65. Debt sustainability assessments must not be limited to economic considerations (the debtor State's economic growth prospects and ability to service their debt obligations) but must also take into consideration the impact of debt burdens on a country's ability to achieve the Millennium Development Goals and to create the conditions for the realization of all human rights.

66. Such assessments must be undertaken by an independent body as contemplated in paragraph 82(b) of these principles.

Public audits of debt and lending portfolios

67. Borrower States should conduct transparent and participatory periodic audits of their debt portfolios in accordance with national legislation designed for this purpose. The findings of such audits must be publicly disclosed to ensure transparency and accountability in the management of the State's external debt stock and should inform future borrowing decisions by the State as well as its debt strategy, development expenditure and human rights action plans.

68. Public audits of debt portfolios should assess the loan contraction process, use of loan funds and the impact of debt on development and the realization of human rights.

69. Lenders should similarly conduct periodic public audits of their lending portfolios to assess compliance with the objectives of their foreign development cooperation or lending policies, the development priorities of Borrower States and universally recognized human rights standards. The findings of such audits should be publicly disclosed.

70. In the case of borrower or lender States, public audits should be conducted by institutions or entities as may be provided for by national legislation, including national legislatures, national human rights institutions, debt management offices, or any other independent Government agency or office.

Contingent liabilities

71. Borrower States and lenders should consider the impact that contingent liabilities (including debts generated by or related to export credits or foreign investments and debt obligations arising from public-private partnerships) have on the borrower government's financial position when making borrowing or lending decisions or assessing the sustainability of the debts of Borrower States.

72. All States should monitor and regulate external lending and borrowing (as appropriate) within the private sector in order to prevent private debt burdens being created which bring financial instability and ultimately undermine the realization of human rights.

C. National development strategy

73. A national development strategy should be country-owned and should contain development goals that are responsive to the needs of the people who are the ultimate beneficiaries of development. Such goals should be agreed through a meaningful and participatory consultation process involving all stakeholders, especially civil society organizations.

74. Country ownership of national development strategies is the foundation of development effectiveness. It implies that national governments should have the ability to freely choose the strategies which they design and implement, and take the lead in both policy formulation and implementation.⁸

75. In particular, any economic, financial or technical advice, instruction guidance or similar recommendation by external actors, particularly by international financial institutions, which are meant to address the problems occasioned by external indebtedness, must respect the debtor State's independent process of national development as defined in Section II.

76. Any such economic, financial or technical advice, instruction, guidance or similar recommendation should be accorded lesser weight or importance by a debtor State if it contravenes the main development goals prioritized and agreed during the consultation process referred to in section III (A).

77. Creditors should not make loans or debt relief conditional on the implementation of policies such as privatization, equitization, trade liberalization, investment deregulation or financial sector liberalization.

78. Any such economic, financial or technical advice, instruction, guidance or similar recommendation should be exclusively aimed towards restoring a debtor State's economic viability and growth, and thus its ability to repay its external debts without sacrificing its ability to perform its international human rights obligations. Other objectives that are remotely or tangentially connected with this aim should be avoided.

79. States should ensure that the implementation of the policies mentioned in paragraph 74 above does not impair the realization of all human rights, particularly economic, social and cultural rights, in debtor States. Whenever such policies are deemed necessary by a debtor State, adequate social security measures to mitigate the adverse impact thereof, especially on vulnerable or marginalized groups, must be put in place.

80. Creditor States and the international financial institutions must not take advantage of an economic, financial or external debt-related crisis as an opportunity to push for structural reforms in debtor States, however useful such reforms might be perceived to be in the long term. Such reforms should be initiated, formulated and implemented by the debtor States themselves, if they deem appropriate, in pursuance of an independent process of national development.

⁸ The United Nations Declaration on the Right to Development underscores the importance of country ownership: "States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development." General Assembly resolution. 41/128, annex, art. 3(1).

Alignment to national development goals

81. Loans and foreign investment agreements must be consistent with country-designed development strategies.

Investment agreements

82. International investment agreements, while ensuring the promotion and protection of investments, should comply with all human rights in the territories of the contracting States.

83. To the extent that international investment agreements contemplate sovereign debt as a type of investment such agreements should be consistent with and interpreted in a manner that is consistent with these principles.

D. Resolution of debt-related issues

84. Debt repayment problems and debt-related disputes must be resolved by an independent mechanism. In this regard, States and all relevant actors including international financial institutions, bilateral or multilateral lenders and private financial institutions should consider the establishment of an international debt workout mechanism to restructure unsustainable debts and resolve debt disputes in a fair, transparent, efficient and timely manner.

85. The main aim of such a mechanism is to ensure that debtor States can achieve economic viability and growth, and restore their capacity to service their external debts without compromising the fulfilment of their international human rights obligations.

86. The establishment and operation of such a mechanism should be guided by the foundational principles set out in Section II, as well as the following specific considerations:

(a) The international debt restructuring mechanism should be independent of creditors and debtors;

(b) The assessment of the debtor State's economic or financial situation should be made by a neutral body;

(c) The mechanism should ensure that a debtor State, during and after the restructuring process, should be able to fulfil its international human rights obligations, implement its development programme and provide basic services to all persons living in its territory and under its jurisdiction;

(d) The mechanism should have the mandate to rule on the alleged "odiousness" or "illegitimacy" of particular external debts. The criteria to be used to ascertain the odiousness or illegitimacy of a particular external debt should be defined by national legislation taking into account the following elements:

(i) The absence of consent by the debtor State's population;

(ii) The absence of benefit to the debtor State's population; and

(iii) The creditor's awareness of the above facts.
