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### Совет по правам человека

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**Поощрение и защита всех прав человека,  
гражданских, политических, экономических,  
социальных и культурных прав, включая  
право на развитие**

### **Доклад независимого эксперта по вопросу о последствиях внешней задолженности и других соответствующих международных финансовых обязательств государств для полного осуществления всех прав человека, в частности экономических, социальных и культурных прав Чефаса Лумины\***

Добавление

### **Миссии в Норвегию и Эквадор\*\***

#### *Резюме*

Независимый эксперт по вопросу о последствиях внешней задолженности и других соответствующих международных финансовых обязательств государств для полного осуществления всех прав человека, в частности экономических, социальных и культурных прав посетил Норвегию 28-30 апреля и Эквадор 2-8 мая 2009 года. Главная цель поездок заключалась в изучении уникальной роли этих двух стран в дискуссиях о незаконной задолженности и в рассмотрении последствий последних решений этих стран в области государственного долга для соблюдения прав человека. Эти поездки были связаны между собой с тем, чтобы можно было рассмотреть эти вопросы с точки зрения как кредиторов, так и должников. Настоящий доклад подготовлен по итогам этих поездок.

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В 2006 году правительство Норвегии объявило об одностороннем и безоговорочном списании задолженности пяти развивающихся стран (включая Эквадор), образовавшейся в результате Кампании по судоходному экспорту (1976-1980 годы). Это решение основывалось на заключении о том, что эта кампания оказалась неудачей в процессе развития и что Норвегия в качестве кредитора должна принять на себя частичную ответственность за задолженность. Тем не менее правительство подчеркнуло, что списание задолженности представляло собой единичный односторонний шаг, сделанный вне рамок Парижского клуба, и что любое другое списание долгов в будущем должно осуществляться на основе многосторонних инициатив по уменьшению бремени задолженности.

В Эквадоре комиссией, в состав которой входили представители Эквадора и международных организаций по облегчению бремени задолженности, в целях установления законности образовавшейся задолженности более года (с августа 2007 года по июль 2008 года) проводилась аудиторская проверка государственных долговых обязательств страны за период с 1976 по 2006 год. Аудиторская комиссия пришла к выводу о том, что в рассматриваемый период при получении кредитов сменявшимися друг друга правительствами Эквадора было допущено множество нарушений, условия многих кредитов и их последствия нарушали многие принципы международного и внутреннего права, включая права человека, и, следовательно, эти кредиты являлись "незаконными". В декабре 2008 года и феврале 2009 года Эквадор объявил мораторий на погашение некоторой задолженности, включавшей глобальные облигации, что, по мнению комиссии, было незаконным. Однако в апреле 2009 года он купил большинство глобальных облигаций на измененном на добровольной основе "голландском аукционе", погасив тем самым большую часть своей внешней задолженности.

Раздел I посвящен представлению доклада. В разделе II приводится краткий обзор рамочных основ норвежской политики в области международного развития и облегчения бремени задолженности. В разделе III вкратце обсуждается списание Норвегией задолженности, возникшей в результате Кампании по судоходному экспорту. В разделе IV отражается нормативная база и рамочные основы политики Эквадора в области задолженности и прав человека. В разделе V кратко рассматривается аудиторская проверка государственной задолженности Эквадора. В разделе VI обрисовывается совместная ответственность кредиторов и должников и с этих позиций разбираются аспекты норвежского решения о списании задолженности, возникшей в результате Кампании по судоходному экспорту, и эквадорское решение провести аудиторскую проверку своего портфеля долговых обязательств. В разделе VII вкратце излагается роль гражданского общества как в Норвегии, так и в Эквадоре в связи с соответствующими решениями правительств списать задолженность, возникшую в результате Кампании по судоходному экспорту, и провести национальную аудиторскую проверку. В разделе VIII приведены некоторые выводы и рекомендации.

## Annex

### Missions to Norway (28–30 April 2009) and Ecuador (2–8 May 2009)

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## **I. Introduction**

1. At the invitation of their respective Governments, the independent expert visited Norway from 28 to 30 April 2009 and Ecuador from 2 to 8 May 2009. The primary objective of these missions was to examine the unique roles of the two countries in the debate concerning illegitimate debt and to consider the implications, for the realization of human rights, of recent decisions by both Governments relating to public debt. Specifically, the missions examined Norway's 2006 decision to cancel the official debts resulting from its Ship Export Campaign (1976–1980) for five developing countries (including Ecuador) and the national debt audit of Ecuador and its Government's subsequent decision to place a moratorium on the servicing of certain debts that it deemed illegitimate. The visits were linked in order to allow for consideration of the issues from both the creditor and debtor perspective.

2. During the mission to Norway, the independent expert met with the Vice-Minister of Foreign Affairs, senior officials from the Multilateral Bank and Ministries of Finance, Human Rights and Democracy, the Latin American sections of the Ministry of Foreign Affairs, and representatives of the Norwegian Guarantee Institute for Export Credits (Garanti-instituttet for eksportkreditt, or GIEK) and the Norwegian Agency for Development Cooperation (NORAD). He also held a meeting with academics and representatives of various civil society organizations involved in advocacy efforts to cancel debt resulting from the Ship Export Campaign.

3. In Ecuador, the independent expert met with a variety of senior government officials including the Minister of Policy Coordination, the Minister of Foreign Affairs, the Minister of Finance, the Minister of the National Secretariat of Planning and Development, the Governor of the Central Bank (Banco Central del Ecuador), the Superintendent of Banks, the Ombudsman (Defensor del Pueblo), and members of the Legislative Commission for Tax, Fiscal Matters and Finance and of the National Debt Audit Commission. He also had consultations with representatives from the United Nations system, development agencies, the World Bank, the Inter-American Development Bank, academics and civil society organizations.

4. The independent expert is grateful to the Governments of Norway and Ecuador for the invitations to undertake missions and for their high level of cooperation and assistance throughout his missions. He also takes this opportunity to express his special gratitude to the United Nations Country Team in Ecuador for its support throughout his visit and for its keen interest in his mission.

## **II. Norwegian policy frameworks on international development and debt relief**

### **A. International development policy**

5. According to the Norwegian Ministry of Foreign Affairs, the main objective of the Government's policy on international development is to "fight poverty and bring about

social justice”.<sup>1</sup> The Ministry also states that Norway intends to be “an international driving force in the efforts to reduce economic disparities between North and South”.<sup>2</sup>

6. These policy objectives are also reflected in the Soria Moria declarations, which were adopted as the cross-party political platform for the country’s coalition Government in 2005 and 2009.<sup>3</sup> According to the Soria Moria Declaration of 2005 (Soria Moria I), the Government’s objective is that the country’s development policy “is to have greater focus on Norway’s contribution to economic and sustainable development as well as the promotion of human rights”. The Declaration commits the Government to strengthening “poor countries’ opportunities for and ability to engage in trade, building of democratic institutions and development of public welfare services such as health and education”.

7. The Soria Moria Declaration of 2009 (Soria Moria II) states that the Norwegian Government will “work so that developing countries receive greater political policy space to formulate their own national development strategies, and strengthen the ability and opportunity of poor countries to promote their interests in the International Monetary Fund, the World Bank Group and the World Trade Organization” and that it will not only continue its efforts to make the World Bank and International Monetary Fund “more democratic”, but also “work for greater influence by developing countries, for example that the right to vote is not based exclusively on paid-in capital”.<sup>4</sup>

## B. Debt relief policy

8. An important element of Norwegian international development policy is the promotion of debt relief for poor countries to ensure that these countries are able to reduce poverty and improve health, the environment and development. The country’s debt relief strategy is contained in the document, *Debt Relief for Development: A Plan of Action* (the Plan of Action).<sup>5</sup> This is an update of the document, *Towards the Year 2000 and Beyond: The Norwegian Debt Relief Strategy*, the country’s first coherent plan of action which was launched in October 1998. The strategy was designed to contribute to the resolution of the debt problems of developing countries. Under this strategy, Norway had cancelled 1.6 billion kroner of bilateral debt owed by 21 poor countries by the end of 2003.<sup>6</sup>

<sup>1</sup> For further information, see [http://www.regjeringen.no/en/dep/ud/selected-topics/development\\_cooperation.html?id=1159](http://www.regjeringen.no/en/dep/ud/selected-topics/development_cooperation.html?id=1159).

<sup>2</sup> For further information, see <http://www.regjeringen.no/en/dep/ud/selected-topics/un.html?id=1149>.

<sup>3</sup> See “Political platform for a majority government issued by the Labour Party, the Socialist Left Party and the Centre Party”, negotiated at Soria Moria Hotel, Oslo, from 26 September to 13 October 2005 (Soria Moria I), chap. 2: International policy. Available from <http://www.regjeringen.no/en/dep/smk/documents/Reports-and-action-plans/rapporter/2005/The-Soria-Moria-Declaration-on-Internat.html?id=438515>. See also “Political platform as basis for the Government’s work 2009–2013”, formed by the Labour Party, Socialist Left Party and Centre Party, Soria Moria Hotel, 7 October 2009 (Soria Moria II), chap. 2: International policy. Available from <http://arbeiderpartiet.no/Kontakt/Information-in-English>.

<sup>4</sup> Soria Moria II, p. 9.

<sup>5</sup> Norway, Ministry of Foreign Affairs, *Debt Relief for Development: A Plan of Action* (Oslo, 2004). Available from <http://www.regjeringen.no/upload/kilde/ud/rap/2004/0225/ddd/pdfv/217380-debtplan.pdf>.

<sup>6</sup> Ibid., pp. 6 and 12. In addition, Norway has cancelled accumulated annual allocation of approximately Nkr 300 million to cover its contributions to multilateral debt relief initiatives and approximately Nkr 0.5 billion Ship Export Campaign debt in 2007.

9. The overarching aim of the country's debt relief strategy has been to help reduce the debt burdens of the poorest and most indebted countries so that they do not impede economic and social development, while the "overarching strategy was — and still is — to actively support international initiatives for a lasting solution to the debt problems of the poorest countries".<sup>7</sup>

10. The debt relief strategy emphasizes that international debt relief efforts must be both bilateral and multilateral. Thus, the Plan of Action outlines two basic premises for Norwegian debt relief policy: "to strengthen and rationalise the multilateral debt relief mechanisms, because this is more crucial in solving the debt problems of poor and indebted countries than what Norway does with its relatively modest claims" and "targeted, unilateral measures that will benefit countries' development and poverty reduction processes, with a special view to encouraging other, larger creditor countries to implement new, improved debt relief measures".<sup>8</sup> The decision to cancel the debt of five developing countries (Ecuador, Egypt, Jamaica, Peru and Sierra Leone) was an example of such a targeted, unilateral measure.

11. The Plan of Action outlines a number of approaches to implementation of the two basic principles, including actively supporting and influencing the work of the Paris Club,<sup>9</sup> working to ensure that all debt relief benefits debtor countries and not other creditors, supporting the United Nations Secretary-General's proposal for the establishment of an international working group to consider the issue of a new international debt negotiation mechanism, and supporting a multilaterally based study of "illegitimate debt".

12. Although the fundamental principles underlying *Towards the Year 2000 and Beyond* and the updated Plan of Action are the same, the latter provides for unilateral Norwegian debt relief for certain middle-income countries through multilaterally coordinated debt swaps and poor countries emerging from war and conflict.

13. The policy recognizes that "a solution to the debt problems of developing countries requires binding international cooperation".<sup>10</sup> In this regard, it includes an important commitment by Norway to actively support international efforts to find lasting solutions to the debt problems of the poorest countries. The Plan of Action underscores that, in addition to bilateral debt forgiveness, Norway has contributed significant funds to international debt relief operations through its Debt Relief Fund, which is financed from the development assistance budget. However, the Plan of Action also stresses that "binding multilateralism must never serve as an excuse for a lack of initiative" on the part of Norway.<sup>11</sup>

14. The Plan of Action explicitly acknowledges that a significant portion of poor countries debt to Norway "is ascribable to the Ship Export Campaign".<sup>12</sup> It also contains a commitment to cancel the remaining debt arising from the campaign "in a way that ensures the greatest possible development effect".<sup>13</sup>

15. The country's debt relief strategy is reinforced by the Soria Moria declarations. Soria Moria I declares that "Norway will lead the way in the work to cancel the debt of the poorest countries" and that it "must adopt an even more offensive position in the

<sup>7</sup> Ibid., p. 11.

<sup>8</sup> Ibid., p. 6.

<sup>9</sup> The Paris Club is an "informal" special-interest forum of creditor countries whose ostensible aim is to find coordinated, sustainable solutions to payment difficulties experienced by debtor countries. It only negotiates with debtor countries that are pursuing an International Monetary Fund (IMF) programme.

<sup>10</sup> *Debt Relief for Development: A Plan of Action*, p. 10.

<sup>11</sup> Ibid., p. 27.

<sup>12</sup> Ibid., p. 13.

<sup>13</sup> Ibid., p. 13.

international work to reduce the debt burden of poor countries”. It goes on to state that the United Nations “must establish criteria for what can be characterised as illegitimate debt” and that “no requirements must be made for privatisation as a condition for the cancellation of debt”. Soria Moria II declares the commitment of the Government to “work for mechanisms to abolish international debts and deal with illegitimate debts, a binding international set of regulations ... and by applying a Norwegian debt revision scheme”. It further states that “the cost of bilateral debt abolition shall not be a strain on the aid budget itself, and no conditions must be set for any privatisation”.<sup>14</sup>

16. It is notable that, unlike most sovereign creditors, Norway advocates debt reduction for middle-income countries with obvious repayment problems. However, it stresses that such debt relief “must not take place at the expense of the poorest countries”.<sup>15</sup>

17. With regard to Ecuador, Norway planned to “conduct negotiations, within its Plan of Action”, on “a multilaterally coordinated debt swap with Ecuador”. However, as indicated in the ensuing sections, Norway subsequently announced the cancellation of the debt of Ecuador that was linked to the Norwegian Ship Export Campaign.

18. During his visit to Norway, the independent expert was impressed with the Government’s commitment, in the spirit of international assistance and cooperation, to finding a sustainable solution to the debt problem of developing countries in the spirit of international assistance and cooperation. He commends the Norwegian Government for its demonstrable commitment to and practical support for global efforts in this regard and he encourages other creditor countries to emulate Norwegian progressive stance on debt issue.

### III. Cancellation by Norway of the Ship Export Campaign debt

#### A. Background

19. In the mid-1970s, the supply of ships from the Norwegian shipbuilding industry outstripped demand, as was the case for several other ship-producing countries. Only about 55 per cent of the country’s shipyards had any work after 1977. To save the 30,000 jobs that were at risk, the Government introduced the Ship Export Campaign – a mechanism by which developing countries would get cheap credits in return for buying ships from Norwegian shipyards. It was hoped that the campaign would serve as development aid, and both be beneficial for the borrowing countries and help the Norwegian shipyards through the crisis. The campaign was ratified by the Norwegian Parliament, the Storting, on 19 November 1976. In all, Norway exported 156 ships and equipment worth US\$ 594 million to 21 countries.<sup>16</sup>

20. According to the standard operating procedures, GIEK was required to assess the risk and financial soundness of the projects. In addition, because the credits contained a grant element of 25 per cent required by the Organization for Economic Cooperation and

<sup>14</sup> Soria Moria II, p. 10.

<sup>15</sup> *Debt Relief for Development: A Plan of Action*, p. 4.

<sup>16</sup> The countries were Costa Rica, Dominican Republic, Gambia, Ghana, Ecuador, Egypt, India, Jamaica, Lebanon, Mexico, Myanmar, Peru, Senegal, Sierra Leone, Singapore, Sudan, United Republic of Tanzania, Turkey, Bolivarian Republic of Venezuela and Viet Nam. According to the white paper, there are 21 countries but only these 20 are listed. However, Bistandsaktuelt 2/98 includes Cote d’Ivoire, the Democratic Republic of the Congo and Guinea bringing the number to 23. See Kjetil G. Abildsnes, *Why Norway took Creditor Responsibility – the case of the Ship Export campaign* (Oslo, Norwegian Debt Campaign and Norwegian Forum for Environment and Development, 2007) p. 3.

Development/Development Assistance Committee (OECD/DAC) at the time and the export had to offer a developmental benefit for the recipient country, NORAD had to assess this developmental benefit. These standard operating procedures, however, were set aside and credits were given for projects that would normally have been regarded as too risky.<sup>17</sup> The GIEK board was sidelined and had little say in evaluating many of the projects – its role being confined to providing a stamp of approval. In June 1977, the Parliament made it possible to export ships without the approval of NORAD because of the special needs of the shipbuilding industry. The role of NORAD was assumed by the Ministry of Trade and Commerce. Of the 68 guarantees given throughout the campaign (for 36 projects), NORAD approved 22 (13 projects). In many of these projects, NORAD approval was given subject to changes in the project (although these changes were often not implemented).

21. The price of ships dropped drastically during the 1980s with the result that the ships were no longer worth much as security for the loans. Following high interest rates and the mounting debt crisis in the early 1980s, the borrowers had problems repaying. The loans became very expensive.<sup>18</sup> In 1987, 12 countries had renegotiated their debt, representing 72 per cent of the total Ship Export Campaign debt. Ultimately, only two countries managed to repay their debts. Ecuador was one of the countries that did not manage to repay its debt.

## **B. The decision to cancel the Ship Export Campaign debt**

22. In 1988–1989 the Parliament produced a white paper<sup>19</sup> on the Ship Export Campaign which described the campaign as “an effective tool to alleviate an acute crisis in the shipbuilding industry which was affecting many workplaces in the country”. The white paper concluded that the campaign “had limited importance as development aid”. Nevertheless, the loans remained and were converted into bilateral debt and treated under the Paris Club rules. In 1998, it was decided that all heavily indebted poor countries would have their debts to Norway written off after going through the programme.

23. On 2 October 2006, the Government of Norway announced that it would unilaterally and unconditionally cancel the official debts of around US\$ 80 million incurred under the Ship Export Campaign by five countries: Ecuador, Egypt, Jamaica, Peru and Sierra Leone. In keeping with its Plan of Action on Debt Relief, the Government decided that the cancelled debts would not be reported as official development assistance to the OECD/DAC.<sup>20</sup> In other words, the cancelled debts would be additional to the country’s official development assistance.

24. According to a Norwegian Ministry of Foreign Affairs press release announcing the decision, the Ship Export Campaign “represented a development policy failure”.<sup>21</sup> The Government further stated that the cancellation of the debt would be implemented outside the cooperative framework of the Paris Club since, in that particular case, the Government

<sup>17</sup> The downturn in the world economy after the oil crisis of the 1970s constrained ship-exporting countries in Europe to design mechanisms to support their shipbuilding industries. This occasioned significant competition over a limited number of projects. In order to be competitive, the Government designed a fast and easy way of treating credits and lowered quality controls.

<sup>18</sup> In the 1980s, loans given by Norway had an interest rate of 12–13 per cent, or 4–5 per cent above the London Inter-Bank Offered Rate (LIBOR) at the time. The LIBOR is a reference rate on the financial market for inter-bank loans. It is the rate at which the major London banks lend to other banks.

<sup>19</sup> Report to the Storting, No. 25 (1988–1989).

<sup>20</sup> Norway is the only country that has not reported cancelled bilateral debt (of the 21 poorest countries) to the OECD/DAC as official development assistance.

<sup>21</sup> Norway, Ministry of Foreign Affairs, press release No. 118/06, 2 October 2009.



found that there was “good reason for Norway to take an independent stand”. Nevertheless, it stressed that the unilateral forgiveness of debt in 2007 would be “a one-off debt relief policy measure” and that all future debt forgiveness would “be effected through multilaterally coordinated debt relief operations”.<sup>22</sup>

25. The assessment of GIEK, however, appears to differ from that of the Ministry of Foreign Affairs. According to GIEK, the decision to cancel Ship Export Campaign was purely political because the standard operating procedures were set aside and the key decisions taken at a political level. While the independent expert appreciates the opinion of GIEK, it is his considered view that focusing on the “political” aspect of the decision may tend to dilute the significance and implications of the decision for global efforts to secure a just and durable solution to the debt problems of developing countries.

### C. The Ship Export Campaign: the case of Ecuador

26. The Ecuadorian State-owned company Flota Bananera Ecuatoriana S.A. (FBE) purchased four ships from Norwegian shipbuilders, Kaldnes Mek Verksteder A/S and Drammen Slip og Verksteder, between 1978 and 1981 at the total cost of US\$ 56.9 million.<sup>23</sup> Of this amount, approximately US\$ 4.4 million was paid by FBE as a down payment and the balance was financed by export credits guaranteed by GIEK. In 1985, FBE went bankrupt and another State-owned enterprise, Transportes Navieros Ecuatorianos (TRANSHAVE), took over the ships and claims. The debt was then divided into two: one portion of US\$ 17.5 million which the Ecuadorian State and TRANSHAVE assumed responsibility for,<sup>24</sup> and another of US\$ 13.6 million which was renegotiated under the Paris Club rules.<sup>25</sup> The first portion was fully paid but the second grew exponentially during the ensuing years. By March 2001, it amounted to US\$ 49.6 million, whereas the total amount paid by FBE, TRANSHAVE and the Government was US\$ 51.9 million.

27. In 1996, TRANSHAVE sold the ships to buyers that remain unknown. Although the ships were in good working condition and profitable, it is apparent from the available information that the Ecuadorian people never derived any benefit from the ships and that very little of the proceeds went into repaying the debt.

28. Under pressure from the debt cancellation movement both in Norway and Ecuador, in 2006, the Government of Norway acknowledged its share of responsibility for the failure of the development aid projects set up during the Ship Export Campaign. As intimated above, it subsequently announced the cancellation of debts arising from the campaign for countries that still owed money. As a result of the cancellation, Ecuador has saved US\$ 36.1 million, which was to be paid until 2018.

<sup>22</sup> Annex to press release No. 118/06.

<sup>23</sup> Kaldnes and Drammen Slip were dissolved in 1984 and 1986, respectively.

<sup>24</sup> See, Loan Agreement between Transportes Navieros Ecuatorianos (TRANSHAVE) (as Borrower), the Republic of Ecuador (as Borrower and Guarantor) and the Norwegian Guarantee Institute for Export Credits (GIEK) (as Lender), 21 June 1988.

<sup>25</sup> See, Agreement between the Government of the Kingdom of Norway and the Government of the Republic of Ecuador on the consolidation of the debt of the Republic of Ecuador, 31 July 1992. Available from <http://www.lovdato.no/traktater/texte/tre-20040928-038.html>.

## IV. The legal and policy frameworks of Ecuador on debt and human rights

### A. Debt situation and impact on human rights

29. Ecuador is classified by the World Bank as a lower middle-income country.<sup>26</sup> In 2006, the Bank estimated the country's total external debt at US\$ 16.536 billion, representing 41.9 per cent of gross national income, while total debt service (as a percentage of exports of goods and services and income) was estimated at 24.1 per cent.<sup>27</sup> Of this amount, US\$ 10.108 billion was public and publicly guaranteed debt.<sup>28</sup> In 2007, according to figures available from the Central Bank of Ecuador, the total external debt was US\$ 17.12 billion and the projected debt service was 38 per cent of the national budget. Between 2007 and 2010, President Correa's Government intends to reduce the country's external debt service from 38 per cent to 11.8 per cent of its budget and increase investment in social spending and infrastructure.<sup>29</sup>

30. As in all developing countries, Ecuador's external debt has increased over the years, rising from US\$ 241 million in 1970 to US\$ 17.12 billion in 2007. The growth in Ecuadorian foreign debt is attributable to several factors. In the early 1980s, following successive devaluations of the country's currency (the sucre), a serious financial crisis erupted in the country's financial sector. In order to address the crisis, the Government introduced a mechanism to save the banking sector, which held the debts of State-owned companies. This mechanism, which was known as "sucretization", effectively consisted in converting the greater part of the country's private debt (most of which had been contracted at an average exchange rate of 25 sucres to the US dollar) into a public one at the average rate of 63.55 sucres to the dollar. This significantly increased the amounts to be repaid and, in the end, the country's public debt.<sup>30</sup>

31. The indebtedness of Ecuador continued to rise in the 1990s with the issuing of new State bonds, including the Brady bonds.<sup>31</sup> Following the financial crisis of 1999, a new rescue operation, consisting of the exchange of Brady bonds for "global bonds" at interest rates of 10 to 12 per cent, was launched. These global bonds fell into two categories: (1) global bonds 2012 of US\$ 1.25 billion repayable over 12 years at an annual fixed rate of 12 per cent and global bonds 2030 of US\$ 4.5 billion repayable over 30 years at an interest rate of 4 to 10 per cent (increasing by one percentage point per annum).

<sup>26</sup> See World Bank, *World Development Indicators 2008* (Washington DC, World Bank, 2008).

<sup>27</sup> Ibid., pp. 344–346.

<sup>28</sup> Ibid., p. 344.

<sup>29</sup> For more information on the Government's 2007–2010 plan, see the website of the Ministry of Finance and Economy at <http://www.mef.gov.ec>.

<sup>30</sup> The country's public debt rose from US\$ 1,650 million to US\$ 7,500 million.

<sup>31</sup> In March 1989, the Brady Plan (designed by former United States Treasury Secretary Nicholas Brady with the support of the International Monetary Fund (IMF)) offered an exchange of commercial bank claims for bonds guaranteed by the United States Treasury, on condition that the creditor banks reduce the amount of claims and put back the money in circulation. For their part, the beneficiary (South American) countries undertook to consolidate part of their debt and to implement IMF-prescribed structural adjustment programmes. The so-called Brady bonds were thus meant to create new liquidity and a distribution of risk in the financial markets. However, the outcome of this operation significantly benefited private commercial banks and the Government of the United States of America, whose own public debt was paid off. Conversely, the impact on Ecuador's economy was devastating. The country's foreign debt continued to rise, the financial situation worsened and poverty and inequality became widespread.

32. In 2004, debt service represented 148 per cent of oil revenues and, in 2006, 200 per cent.<sup>32</sup> In 2006, around 38 per cent of government revenue was spent on debt service, while only 22 per cent was directed towards the whole spectrum of social expenditures.

33. Despite having high poverty indicators, Ecuador has been excluded from all bilateral and multilateral debt cancellation initiatives<sup>33</sup> and has instead been eligible for debt restructuring. According to the available information, Ecuador has renegotiated its debt with the Paris Club under the Houston and Classic terms eight times between 1983 and 2003.<sup>34</sup> With the exception of one agreement, all restructuring deals rescheduled interest and interest on interest only. The agreements negotiated under the Houston terms are still active, while those under the Classic terms have been fully discharged.

34. Due to time constraints, the independent expert was unable to assess the impact of debt service on the realization of human rights by the Government of Ecuador. Nevertheless, the negative impact of the country's external debt and the macroeconomic policies prescribed by the international financial institutions and implemented by the Government over the years on the realization of socio-economic rights is well-documented. For example, in 1996, the Committee on the Rights of the Child observed that "the adjustment measures were costly in social terms".<sup>35</sup> In 2004, the Committee noted a number of factors and difficulties impeding implementation of the Convention on the Rights of the Child in the country, including "the negative impact on children of external debt and structural adjustment measures; and ... the widespread poverty and socio-economic disparities characterizing the country".<sup>36</sup> Similarly, in 2004, the Committee on Economic, Social and Cultural Rights noted that the structural adjustment policies in the country had "negatively affected the enjoyment of economic, social and cultural rights by the population, particularly the disadvantaged and marginalized groups of society".<sup>37</sup> It further especially noted "the high percentage of the annual national budget (around 40 per cent) allocated to foreign debt servicing that seriously limits the resources available for the achievement of effective enjoyment of economic, social and cultural rights".<sup>38</sup> Consequently, the Committee strongly recommended that "the State party's obligations under the Covenant should be taken into account in all aspects of its negotiations with the international financial institutions and other regional trade agreements to ensure that economic, social and cultural rights, particularly of the most disadvantaged and marginalized groups, are not undermined".<sup>39</sup> It is therefore evident that the external debt burden and the structural adjustment policies have posed a significant challenge to the

<sup>32</sup> Oil is the main export commodity of Ecuador.

<sup>33</sup> Ecuador does not meet the conditions of the Heavily Indebted Poor Countries Initiative for two reasons: (1) its GDP per capita (US\$ 2,628) is too high and (2) the ratio between its public debt and its exports (approximately 120 per cent) is not considered sufficiently unbalanced. However, this assessment ignores the fact that external debt service as a percentage of Government revenues is very high in the country.

<sup>34</sup> The Houston terms apply to highly-indebted lower-middle income countries, while the Classic terms apply to any country which has an appropriate programme with the IMF that shows the need for Paris Club debt relief. The debt treaties of Ecuador under the Houston terms are dated: 13 June 2003, 15 September 2000, 27 June 1994, 20 January 1992; debt treaties under the Classic terms: 24 October 1989, 20 January 1988, 24 April 1985 and 28 July 1983. See <http://www.clubdeparis.org/>.

<sup>35</sup> Initial report of Ecuador, CRC/C/3/Add.44, para. 19.

<sup>36</sup> Second and third periodic reports of Ecuador, CRC/C/65/Add.28, para. 53.

<sup>37</sup> Concluding observations on Ecuador, E/C.12/1/Add.100, para. 9.

<sup>38</sup> *Ibid.*, para. 9.

<sup>39</sup> *Ibid.*, para. 56. However, the findings of the national debt audit discussed below imply that this recommendation was never taken into consideration by the Government prior to 2009.

Government's ability to provide basic social services and fulfil its human rights obligations, particularly those relating to economic, social and cultural rights.

## **B. Human rights obligations**

35. Ecuador has ratified all of the core international treaties and the relevant regional human rights treaties.

36. The Constitution of Ecuador, which was approved by 63.93 per cent of Ecuadorians in a referendum on 28 September 2008, makes significant changes to the legal and institutional framework of the country. It provides for the fundamental responsibility of national development planning and poverty eradication. It also establishes a system of social inclusion and equity guided by the principles of universality, equality, equity, interculturalism, solidarity and non-discrimination and operating under the criteria of quality, efficiency, effectiveness, transparency, accountability and participation (art. 340).

37. The Constitution guarantees a wide range of human rights including the right to water and sanitation (arts. 12 and 66), the right to food and food sovereignty (art. 13), the right to dignity and adequate housing (art. 30), the right to health (art. 32) and universal free education (arts. 28 and 348) and health services (arts. 43 and 362). It also explicitly prohibits discrimination on various grounds and any act of regression in the enjoyment of rights and provides for mechanisms for the enforcement of the guaranteed rights. The Constitution further provides for the direct application of human rights treaties (art. 417).

38. A number of institutional reforms have been introduced to enhance the protection of human rights. These include the establishment of a constitutional court to serve as the main body for constitutional interpretation and oversight of the administration of justice and the creation of a transparency and citizen monitoring branch (consisting of the Ombudsman, the General Controller and the superintendents), whose main function is to exercise oversight to ensure the citizens' right to participation.

39. In addition, a number of ministries have launched policy initiatives to improve the enjoyment of human rights. For example, the National Health Council has presented a project to restructure and improve the health system, while the Government has granted US\$ 22,629,911 to universities as compensation for tuition fees that they would not receive from students.

40. The Government has significantly increased social spending, from 5.4 per cent of gross domestic product (GDP) in 2006 to an estimated 8.3 per cent of GDP in 2008.<sup>40</sup> This included an expansion of the Human Development Cash Transfer Programme (Bono de Desarrollo Humano) for the poorest households, a US\$ 474.3 million increase in spending on housing for low-income families and new programmes in education, training and microfinance. Spending on health care has increased<sup>41</sup> to 3.5 per cent of GDP (about US\$ 1.8 billion) and free health-care coverage has been expanded, especially for children and pregnant women.

<sup>40</sup> The average for the 2000–2006 period was 4.8 per cent of GDP. See Mark Weisbrot and Luis Sandoval, "Update on the Ecuadorian Economy" (Washington, D.C., Center for Economic and Policy Research, June 2009).

<sup>41</sup> Between 1990 and 2004, public spending on health averaged 1.1 per cent of GDP. In 2007, this had increased to 1.5 per cent of GDP.

## C. Public debt in the Constitution

41. The Constitution contains several articles relating to public debt. Article 120, paragraph 12, states that the duties of the National Assembly include the approval of a general national budget, in which the Assembly will set the limit for public debt and oversee its implementation. Article 261 gives the central Government exclusive competence in regard to policies on external trade and debt. Article 271 states that autonomous, decentralized governments will participate in at least 15 per cent of permanent income and no less than 5 per cent of temporary income corresponding to the central State, except those related to public debt.

42. Section three (comprising arts. 289–291) of the Constitution contains detailed provisions on public debt. Article 289 provides that the contracting of public debt at all levels of the State will be governed by the guidelines/rules of planning and budget and will be authorized by a committee on debt and financing according to law. It further enjoins the State to promote citizen oversight and participation in audits of public debt. In terms of article 290, foreign debt will be subject to a number of regulations, including that public debt will be incurred only when fiscal income and resources from international cooperation are insufficient; public loans will be used exclusively to finance programmes and projects for infrastructure investment, or those which have the financial capacity for payment; foreign public loans may only be refinanced if the new conditions are more beneficial for Ecuador; renegotiation contracts must not contain, either tacitly or expressly, any form of usury; debt that is declared illegitimate by the competent organisms will not be paid; and nationalization of private debts is prohibited. Article 291 stipulates that in order to examine the impact implied by public debt, financial, social and environmental analyses will be carried out by the entities determined in the Constitution and law. In addition, these offices will provide oversight and financial, social and environmental audits at all stages of internal and external public debt, both in terms of the initial contracts as well as the management and renegotiation. Under article 293, autonomous, decentralized governments will be subject to fiscal rules and rules concerning internal debt, analogous to those of the national State budget, according to the law.

43. In addition to the above provisions, the National Development Plan 2009–2013 of Ecuador contains several policies concerning external debt.

## V. The Ecuadorian public debt audit<sup>42</sup>

### A. The public debt audit commission

44. Prior to and upon assuming office in January 2007, the Government of President Rafael Correa Delgado committed itself to restructuring the country's internal and external public debt and to continuing the debt auditing process initiated by former President Alfredo Palacio.<sup>43</sup> To this end, on 9 July 2007, President Correa issued Executive Decree

<sup>42</sup> The information in this section is based on the information contained in the executive summary of the report prepared by the Ecuadorian Commission for the Comprehensive Auditing of the Public Credit (Comisión para la Auditoría Integral del Crédito Público, CAIC) and other information gathered during the independent expert's mission to Ecuador in May 2009.

<sup>43</sup> President Palacio set up the Special External Debt Audit Commission (CEIDEX) with a six-month mandate to assess whether the country's external debt was legitimate, analyse the social and economic consequences of debt renegotiations, examine whether development projects had been carried out and objectives met, and make recommendations on debt

No. 472 (published in the Official Register on 20 July 2007) establishing the Commission for the Comprehensive Auditing of the Public Credit (Comisión Para la Auditoría Integral del Crédito Público, or CAIC) with a one-year renewable mandate.

45. The Decree defined comprehensive auditing as an action aimed at “examining and evaluating public debt contracting and/or renegotiation processes, the origin of the resources and their intended use and the implementation of programmes and projects financed by foreign and domestic loans in order to determine their legitimacy, legality, transparency, quality, efficacy and efficiency, considering legal and financial aspects, and the economic, social, regional, and ecological impacts, as well as the impact on gender, nations and communities”.<sup>44</sup>

46. The primary purposes of the commission were to “define and carry out a Comprehensive Auditing methodology for each loan, the renegotiations and other restructuring methods which may have been carried out, the amounts paid for capital and interest, the investments made in the corresponding projects and the impacts on those projects”; to “audit the agreements, contracts and other means and methods of acquiring public debt in Ecuador, governments’ providers, multilateral financial system institutions or the banking system and the foreign and domestic private sector, from 1976 to 2006”; and to “establish a transparent information system for the investigative and auditory processes as well as future loan acquisition processes”.<sup>45</sup>

## **B. Audit process, challenges and findings**

47. The commission was organized in six subcommissions according to type of debt or sector.<sup>46</sup> It included representatives of Ecuadorian civil society organizations, international debt relief campaign movements and the Ministry of Economy and Finance, Anti-Corruption Commission, as well as the State Controllers and the Attorney-General. All members of the Commission for the Comprehensive Auditing of the Public Credit were to be appointed by the President and, once so appointed, were to elect the president and vice-president of the commission “at their discretion”. The commission was supported by an administrative team, legal analysts and researchers. The audit took place over a period of 12 months, from August 2007 to July 2008.

48. The commission faced two main challenges. The first was the difficulty of retrieving the necessary information covering a period of 30 years. Although the Decree enjoined all public sector entities to provide information requested by the commission and the audit had presidential support, there was a poor response from public entities. Of the 18 public entities from which the commission requested information, only 4 provided the relevant information, while 11 offered information that “did not correspond to what was solicited” and 3 did not respond. The second challenge was the lack of time. According to the Commission for the Integral Auditing of the Public Credit, the 12 months devoted to the audit was insufficient time to adequately review materials and information spanning a period of 30 years.

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policy. The audit found many irregularities in the manner in which debts were renegotiated, new loans granted and funds used.

<sup>44</sup> Decree No. 472, art. 2.

<sup>45</sup> Decree No. 472, art. 3.

<sup>46</sup> See Commission for the Integral Auditing of the Public Credit/Ministry of Economy and Finance, “Final Report of the Integral Auditing of the Ecuadorian Debt: Executive Summary” (Quito, November 2008), appendix 4.

49. On 20 November 2008, the commission published the summary of its final report.<sup>47</sup> According to the report, between 1976 and 2006, the total amount of loans acquired by Ecuador was US\$ 29.976 billion. During the same period, it paid approximately US\$ 35.321 billion in capital and interest. Ecuador negotiated 286 loan agreements with multilateral institutions, totalling US\$ 12.5 billion, or 42 per cent of the country's foreign loans contracted in that period and, as of 31 December 2007, the country's bilateral debt was US\$ 1.371 billion, or 52 per cent of the total debt incurred during the period 1976–2006.

50. The main findings of the audit were that foreign loans had occasioned “incalculable damage” to the country's economy. According to the report, in some years, almost 70 per cent of the national budget was diverted towards debt service. Between 1986 and 2006, only 14 per cent of new loans were invested in development projects (drinking water supplies, irrigation, energy, transport, communications, social infrastructure, etc.). The remaining 86 per cent went to servicing external debt. Further, a large number of loans were granted at largely unfavourable conditions for the country and its population. Most were linked to the awarding of multimillion dollar contracts to foreign firms for projects that did not always yield the expected benefits.

51. The audit highlighted the lack of monitoring and popular participation in decision-making. In the period covered by the audit, the Government of Ecuador signed a number of important financial agreements with “astounding swiftness”. For instance, on 10 February 1995, while the Government of President Sixto Duran Ballen signed a loan agreement with the Inter-American Development Bank to buy United States Treasury bills as security for issuing “Brady bonds”, it also took on four more loans from the World Bank, which involved a structural adjustment programme, a debt reduction programme, technical assistance for the reform of State-owned enterprises, and technical assistance for modernizing the public sector.

52. CAIC concluded that there were numerous instances of irregularities and illegalities in the contraction of public commercial, bilateral and multilateral loans during the period 1976–2006, that many of the loans violated principles of international and domestic law and had harmful impacts on the country's population and environment and that the loans were therefore “illegitimate”. With regard to the global bonds 2012 and 2030 in respect of which the Government subsequently declared a moratorium, CAIC found that the issuing of these bonds was “not authorized by Ecuadorian laws due to the fact that the relevant Executive Decree had not yet been published at the date of subscription”.

### **C. Moratorium on debt service and restructuring of the global bonds**

53. Based on the conclusions of CAIC that the renegotiation of the 2012 and 2030 global bonds during the period from 1976 to 2006 violated local laws and lacked transparency and were therefore “illegitimate”, in December 2008, the Government of Ecuador announced that it would officially default on its global bonds 2012 and, in February 2009, it announced a technical moratorium on global bonds 2030. The total value of these bonds was US\$ 3.2 billion.

54. In April 2009, Ecuador offered to buy back its defaulted global bonds at 30 cents on the dollar. On 11 June 2009, the Government purchased 91 per cent of the global bonds 2030 at 30–35 cents on the dollar through a modified Dutch auction. This reduced the country's total foreign debt by US\$ 2 billion plus US\$ 7 billion on saved interest until

<sup>47</sup> Ibid., appendix 4.

2030. The savings represent a significant source of funds for investment in the country's development and social spending.

## **D. Criticism of the audit**

55. There have been a number of criticisms levelled against the audit. First, two of the interlocutors during the independent expert's visit to Ecuador questioned the legal basis of the audit. However, they were unable to demonstrate that the audit commission was established contrary to the law. As indicated above, the commission was established by Executive Decree, which was published in the Official Register. The independent expert did not find any evidence to support the suggestion that the Decree was outside the scope of the President's powers.

56. Second, the fact that the audit commission was set up by Executive Decree and had the full support of the executive branch led to the allegation — again, by the two Ecuadorian interlocutors — that the commission was a “witch hunt” and a pretext for vilifying political opponents and leaders from the past. These views are not shared by the majority of individuals — from Government, civil society and academia — with whom the independent expert had discussions during his visit to the country.

57. Lastly, the objectivity of the audit process has been called into question largely by external commentators based on the fact that the CAIC membership included individuals who had previously campaigned for debt cancellation or done other work related to sovereign debt. For GIEK, the audit was problematic in that it was a “self-audit” as opposed to an “independent audit conducted by a third party”.

58. Despite the criticisms levelled against it, however, the independent expert is of the view that the Ecuadorian debt audit is an important step in the country's quest to resolve its unsustainable debt burden and the attendant social problems.<sup>48</sup> As noted by the CAIC report, the audit was a response to Ecuadorian society's desire, expressed through the country's civil society organizations' sustained advocacy efforts, to know the magnitude, conditions and circumstances surrounding the contraction of the loans payment with which the citizens of the country are burdened. The audit should also be seen as an important contribution to the international debate concerning the shared responsibility of creditors and debtors for preventing and resolving unsustainable debt situations.

59. In addition, it is important to underline that the Ecuadorian public debt audit is consonant with the obligations of States concerning development issues as laid down in the Declaration on the Right to Development.<sup>49</sup> Article 2, paragraph 3, of the Declaration provides that “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom”. The audit is also consistent with Millennium Development Goal 8 which calls upon States to “deal comprehensively with the debt problems of developing countries through national or international measures in order to make debt sustainable in the long term”.

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<sup>48</sup> According to the available information, between 1995 and 2000, for example, 71 per cent of the population lived below the poverty threshold and, in 2000, 31 per cent of the population lived in extreme poverty.

<sup>49</sup> A/RES/41/128.



## VI. The shared responsibility of creditors and debtors

60. This section outlines the shared responsibility of Norway (as creditor) and Ecuador (as debtor) for preventing and resolving sustainable debt situations as underscored in the Monterrey Consensus and then applies this framework to aspects of the Norwegian decision (as creditor) to cancel the Shipping Export Campaign debt and the Ecuadorian decision to conduct a national audit of the country's debt portfolio.

### A. The Monterrey Consensus

61. The Monterrey Consensus of the International Conference on Financing for Development<sup>50</sup> contains a number of wide-ranging commitments by heads of State and Government which are relevant to the quest for a sustainable solution to the debt problem of developing countries. In paragraph 4, a commitment is reflected to, inter alia, "sustainable debt financing and external debt relief". In paragraph 6, it is recognized that "each country has primary responsibility for its own economic and social development" and that "the role of national policies and development strategies cannot be overemphasized". Paragraph 9 contains a pledge to promote "national and global economic systems based on the principles of justice, equity, democracy, participation, transparency, accountability and inclusion".

62. Paragraph 47 of the Consensus underscores that "national comprehensive strategies to monitor and manage external liabilities, embedded in the domestic preconditions for debt sustainability, including sound macroeconomic policies and public resource management, are a key element in reducing national vulnerabilities". It further stresses that "debtors and creditors must share the responsibility for preventing and resolving unsustainable debt situations". In paragraph 51, the exploration is encouraged of "innovative mechanisms to comprehensively address debt problems of developing countries, including middle-income countries and countries with economies in transition".

63. The concept of shared responsibility has varying interpretations. For the creditor State, it is often described to include the responsibility to perform due diligence on the credit worthiness and ability to repay of the borrower and the responsibility to refrain from providing a loan in circumstances where the lender is aware that the funds will be used for personal rather than State purposes. In cases where the legitimacy of a loan is questioned, it has been suggested that the burden of proof falls on the lender, not on successor Governments.<sup>51</sup> For the borrowing country, responsibilities include contracting loans and spending the loan funds in ways that serve the interests of the people, and servicing the debt in a timely manner.

### B. The responsibility of Norway as creditor

64. It is evident that the Ship Export Campaign was motivated by a desire to save the ailing Norwegian shipbuilding industry. Norway ignored its own standard operating procedures concerning export credit guarantees and approval of development projects during the campaign, with the result that loans were given to developing countries for commercially unsound projects. As stated above, in announcing the cancellation of the campaign debt, the Government of Norway made it clear that the campaign had been a

<sup>50</sup> Report of the International Conference on Financing for Development: Monterrey, Mexico, 18–22 March 2002, chap. I, resolution 1, annex (A/CONF.198/11).

<sup>51</sup> See Joseph Hanlon, "Illegitimate Loans: lenders, not borrowers, are responsible", *Third World Quarterly*, vol. 27, No. 2 (2006), pp. 211–226.

development policy failure and that, for this reason, it accepted responsibility for the resulting debt.

65. The independent expert commends Norway for acknowledging its co-responsibility for the debt arising from the Ship Export Campaign and for its decision to cancel that debt. As the Ecuadorian organization Centro de Derechos Economicos y Sociales (Centre for Economic and Social Rights, or CDES) has observed, this decision presents an important challenge to the international financial system – that of bilateral and multilateral creditors assuming responsibility for resolving unsustainable debt situations and creating a more equitable global financial system, as underscored in the Monterrey Consensus.<sup>52</sup>

### **C. The responsibility of Ecuador as debtor**

66. For its part, Ecuador is responsible for having assumed private debts at exorbitant interest rates and unfavourable conditions to the detriment of its people and for having failed to ensure the availability of appropriate accountability mechanisms in the contraction of many of its loans during the period reviewed by the audit. It has demonstrated its assumption of responsibility for its unsustainable debt burden by negotiating the restructuring of debt that it had deemed questionable. This assessment is supported by the views of Ecuadorian government officials with whom the independent expert held discussions during his mission. According to these officials, in repurchasing the debt it had declared “illegitimate”, Ecuador was assuming its responsibility as debtor and offering the price which the audit deemed to be fair.

67. In addition, the Government of Ecuador has been clear that its focus is on its obligations to its people as a first priority (including the obligations to respect, protect and fulfil the human rights of its citizens) and that this priority will be reflected in budgetary allocations. In undertaking the audit, the Government was responding to the expectations of the Ecuadorian people to learn the magnitude, conditions, circumstances and responsibilities of the large contraction of debt that occurred in the country’s history from 1976 to 2006.

68. It is also notable that the country’s debt audit process was intended to contribute to the developing international debate on illegitimate debt, identify the co-responsibility of creditors and promote possible actions to repair the impact of the inequitable debt problem. By questioning the legitimacy of certain loans contracted by previous Governments, Ecuador calls into question the assumption that successor Governments inherit the debts of previous Governments.

69. As mentioned above, article 289 of the Constitution of Ecuador provides that the State will promote opportunities by which the people can monitor and audit public debt. If implemented fully, this provision should contribute to ensuring transparency and accountability in the loan contraction process and help avert unsustainable debt situations of the type identified by the country’s audit.

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<sup>52</sup> See International Financial Institutions in Latin America, “CDES celebrates the Norwegian Government’s decision to cancel its illegitimate debt with Ecuador”, 6 October 2006. Available from <http://www.choike.org/2009/eng/ifis/informes/450.html>.

## VII. The role of civil society<sup>53</sup>

70. Civil society organizations played a significant role in advocating for the cancellation by Norway of the Ship Export Campaign debt and the establishment by Ecuador of the public audit commission. In Norway, advocacy efforts by the Norwegian Coalition for Debt Cancellation (Slett u-landsgjelda) helped to reorient the Government's debt relief policy. The coalition was established in 1994 with the demand that all claims from the Ship Export Campaign had to be cancelled without burdening the country's aid budget. In 1998, the then Minister of International Development, Hilde Frafjord Johnson, described the Ship Export Campaign as "a stain of shame on Norway's aid policy". Shortly thereafter, Norway adopted its first debt relief strategy. In 2001, the coalition started advocacy work on the cancellation of illegitimate debt. In 2002, the organization arranged a public hearing on debt, where the legitimacy of the Ship Export Campaign was discussed. In 2003, the Norwegian NGO Changemaker launched the dictator-debt campaign in which the Government was challenged to address illegitimate debt. One year later, the Government launched a revised version of the country's debt relief strategy which discussed illegitimate debt and called for a multilateral, institution-led study on the subject.

71. In Ecuador, civil society organizations, such as CDES and Jubilee 2000 Red Guayaquil, played an equally important role in lobbying for and participating in that country's debt audit. CDES also collaborated with the Norwegian Coalition for Debt Cancellation in the latter's campaign for the cancellation of the Ship Export Campaign debt.

72. The independent expert urges all States to afford civil society organizations the necessary space to engage with the Government on the issue of unsustainable debt. Such an approach is not only consistent with the human rights principles of participation and accountability, but will help ensure that creditor and debtor Governments alike are accountable to their people for their decisions on international development policy and public debt.

## VIII. Conclusions and recommendations

73. **The decisions by the Governments of Norway and Ecuador are significant steps in the global campaign against unsustainable debt and for the creation of an equitable global financial system. They also represent a clear reaffirmation by both countries of the principle of shared responsibility as underscored in the Monterrey Consensus.**

74. **The independent expert supports the performance by all countries — creditor and debtor alike — of transparent and rigorous audits of their debt and lending portfolios. He also considers that there is an urgent need for the international community to revisit the principle that successor Governments inherit the debts of their predecessors, irrespective of the character of the predecessor regimes or questionable circumstances surrounding the debt. The outcomes of audits of countries' debt and lending portfolios may usefully inform such an effort.**

75. **A State's obligations to respect, protect and promote the human rights of all people subject to its jurisdiction must take precedence over obligations to spend**

<sup>53</sup> This section draws on information from a variety of sources, including the Norwegian Coalition for Debt Cancellation publication, entitled *Why Norway took Creditor Responsibility – the case of the Ship Export Campaign* (Oslo: Norwegian Coalition for Debt Cancellation, 2007), *Debt Relief for Development: A Plan of Action* and the independent expert's discussions with civil society and academia in both Norway and Ecuador.

budgetary resources on debt servicing, in cases where the two are competing for funds. In this regard, the independent expert considers that States are justified in querying the repayment of debt that has been incurred in questionable circumstances. However, as stated in his report to the General Assembly (A/64/289), this is an area that requires further attention.

76. The independent expert supports the initiative of Ecuador to conduct a national debt audit and he commends the Government of Ecuador for its commitment to human rights-based social policies, citizen participation and accountability in the use of public resources. As intimated in his report to the General Assembly (A/64/289), debt audits are a valuable analytical tool for determining the nature of a country's debt/lending portfolio, assessing the impact of debt/lending on the realization of human rights, and contributing to the development of an appropriate accountability mechanism and a sound debt management framework. The results of the audit represent a significant initial step in the country's quest to resolve its unsustainable debt burden and to fulfil its human rights obligations towards its citizens.

77. It is vital for any Government that embarks on an audit of its debt or lending portfolio to ensure the broadest possible participation in order to enhance the credibility of the audit findings. In addition, sufficient time and resources should be devoted to the audit process in order to assure a thorough investigation of the issues.

78. The independent expert urges the Government of Ecuador to thoroughly investigate the instances of abuse of power by public officials in the contraction of the country's loans which were identified in its audit and to take appropriate action to hold those officials implicated in irregular practices to account. He recommends that such investigations be undertaken in a transparent and fully participative manner and that any contemplated action be taken in accordance with the established legal processes.

79. The policies and actions of Norway concerning development assistance and debt relief are commendable. The independent expert commends the Government of Norway for its unprecedented but progressive decision to cancel the debt of five developing countries (including Ecuador) arising from its Ship Export Campaign and for explicitly acknowledging its co-responsibility, as creditor, for this debt. The decision is a departure from the creditor-solidarity principle of the Paris Club. He further commends the Government of Norway for its commitment to, and support for, multilateral efforts to promote responsible sovereign lending and borrowing and to develop criteria for assessing legitimacy of sovereign debt. He urges other creditor countries to support these important initiatives.

80. The respective decisions of the Governments of Norway and Ecuador relating to public debt were taken after sustained campaigns by civil society organizations in both countries. Civil society advocacy efforts are vital to ensuring accountability of Governments to their citizens. Consequently, the independent expert encourages all Governments to afford civil society the necessary space to articulate their views on debt, lending and development policy issues.

81. The principle of shared responsibility for preventing and resolving unsustainable debt situations (as underscored in the Monterrey Consensus) is a critical element of global efforts to create an equitable global financial system. The independent expert encourages all States — creditors and debtors alike — to fulfil their pledges in this regard.