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Effects of economic reform policies and foreign debt on the full enjoyment of all human rights

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* The reason for the late submission of this report is to reflect the latest information.

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Summary

This annual analytical report has been prepared pursuant to Commission resolution 2000/82 and more specifically in response to resolutions 2004/18 and 2005/19, which requested the independent expert, inter alia, to draft general guidelines to be followed by States and by private and public, national and international financial institutions in the decision-making on 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 this report, the independent expert reviews the latest developments on the G-8 debt relief initiative, and possible implications for the debt sustainability framework currently employed by the International Monetary Fund and the World Bank. He welcomes the political commitment towards 100 per cent debt cancellation of multilateral debts owed to these institutions for Heavily Indebted Poor Countries (HIPC) completion point countries, as a step forward towards broader and deeper debt relief. The international community needs to ensure that these and other debt relief initiatives represent truly additional resources, and to consider additional measures and initiatives aimed at ensuring long-term sustainability through increased grant-based financing, full cancellation of other official multilateral and bilateral debt of HIPCs, as well as significantly more debt relief for low- and middle-income non-HIPC developing countries.

The independent expert also highlights the need to explore new mechanisms to comprehensively address the debt problems of these countries. In particular, he points out the urgent need to rethink the current macroeconomic approach to debt sustainability analysis and complement it with additional analysis to integrate human rights considerations, and not to undermine the country’s ability to achieve the Millennium Development Goals and to provide minimum core obligations under international human rights instruments. Towards this end, he suggests that an independent peer review mechanism be instituted to determine, or provide alternative views on, a country’s debt sustainability situation. Such a peer review would serve as an accountability mechanism, with participation of independent national human rights institutions.

While these considerations have informed the further elaboration of proposed draft general guidelines, the independent expert deems it necessary to seek, with a view to benefiting from, an extended time frame for its elaboration, particularly in view of significant recent developments in this field over the past year. In this connection, he notes with regret that expert consultations among all stakeholders, as recommended by the Commission, did not materialize. An extended time frame would, therefore, not only allow proper and meaningful consultations with all stakeholders from both debtor countries and creditors, but also ample opportunity to seek the views of a significant number of Member States on the need and scope of such guidelines.

The report concludes with the following interim recommendations and proposals for the next steps in further elaborating guidelines: (a) welcoming the political commitment of the international community represented, in particular, in the G-8 initiative and taking note of recent developments with respect to debt sustainability; (b) extending by one year the time frame for the elaboration of draft guidelines and calling for holding an expert consultation; (c) urging States, international organizations, civil society and other stakeholders to submit their views and suggestions on possible elements for consideration in the draft general guidelines; and (d) encouraging the Office of the High Commissioner for Human Rights to continue working on the issues of indicators as well as to cooperate with the United Nations Development Programme, the United Nations Department for Economic and Social Affairs, the World Bank and the IMF to integrate human rights considerations into MDG-based assessment of debt sustainability.

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Introduction

1. The independent expert submits this annual report to the Commission pursuant to its resolution 2000/82, in which the Commission requested him to pay particular attention to: (a) the effects of the foreign debt and the policies adopted to face them on the full enjoyment of all human rights, in particular, economic, social and cultural rights in developing countries; (b) measures taken by Governments, the private sector and international financial institutions to alleviate such effects in developing countries, especially the poorest and heavily indebted countries; and (c) new developments, actions and initiatives being taken by international financial institutions, other United Nations bodies and intergovernmental and non-governmental organizations with respect to structural adjustment policies and human rights. In its resolutions 2004/18 and 2005/19, the Commission further requested the independent expert, in the discharge of his mandate, 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, and to present a final draft of general guidelines at the sixty-second session of the Commission.

2. In an addendum to this report (E/CN.4/2006/46/Add.1), the independent expert submits the report of his mission to Mozambique, undertaken at the invitation of the Government from 27 to 29 July 2005. The mission was a part of his mandate to study the impact of foreign debt and economic reform policies as well as experiences and initiatives of Governments, including those of the adversely affected countries, and the international community to overcome debt problems, following his previous such missions to Bolivia in 2002 (see E/CN.4/2003/10, sect. II), Uganda in June 2003 (see E/CN.4/2004/47/Add.1), Kyrgyzstan in June 2004 (see E/CN.4/2005/42/Add.1). The independent expert wishes to thank all parties involved in the mission, particularly the Government of Mozambique for its invitation and cooperation, as well as the United Nations Office of the Resident Coordinator, which provided local assistance for the realization of the mission.

3. Guided, as appropriate, by his mandate and directives of the Commission, the independent expert continued to follow with interest and sought to contribute to the process entrusted to the follow-up to the International Conference on Financing for Development with a view to bringing to its attention the issues relating to his mandate. He expresses his gratitude and satisfaction with cooperation received from the Financing for Development Office of the Department of Economic and Social Affairs. The invitation to participate in the multi-stakeholder consultations on sovereign debt for sustained development, held in Geneva from 20 to 23 June 2005, which the independent expert found useful, is but one manifestation of fruitful collaboration.

4. The independent expert is also grateful to the Government of the United Kingdom of Great Britain and Northern Ireland for favourably responding to his request for a briefing and discussion with Her Majesty’s Treasury and the Department for International Development on the initiatives of the Government of the United Kingdom for debt relief under the G-8 framework and the proposed International Financing Facility. Those meetings took place in London on 27 June 2005.

5. As requested by Commission resolution 2005/19 and Economic and Social Council decision 2005/260, the independent expert submitted a report to the General Assembly (A/60/384) for the first time, and engaged in an interactive dialogue with Member States in the Third Committee on 28 October 2005. This was a welcome and timely opportunity that enabled him to highlight the issue of economic reform policies and foreign debt and their impact on the full enjoyment of all human rights soon after the High-level Plenary Meeting of the General Assembly, which reviewed the progress of the implementation of the United Nations Millennium Declaration, as well as the annual meeting of the boards of the World Bank and the International Monetary Fund.

6. While the independent expert has outlined some basic elements of the draft general guidelines in his previous report (E/CN.4/2005/42, sect. III), he deemed it necessary to: (a) collect further views and ideas from Member States on the need and content of the proposed draft general guidelines; and (b) convene an expert consultation to solicit views from experts in the fields of both human rights and economics and finance, as well as government officials charged with debt management. The Commission subsequently endorsed this idea and decided to recommend that such an expert consultation be held before the finalization of the draft general guidelines.

7. Due to unexpected constraints, including but not limited to budgetary considerations, the independent expert has not been able to benefit from the proposed expert consultation as called for by the Commission. Moreover, the responses received from Member States to his requests for views and information have so far been very limited. The independent expert, therefore, deemed it inappropriate to present the final draft framework for the proposed guidelines, without thorough consultations with Member States and other stakeholders.

8. At the same time, there have been many new developments and proposals that deserve further consideration following the G-8 initiative. Those recent debt relief initiatives as well as the experience of HIPC implementation reviewed in the past reports of the independent expert raise some issues that may have important implications for the elaboration of the proposed draft of general guidelines requested by the Commission. Among these new developments are: the concept of debt sustainability, the question of additional conditionalities, and the principle of country ownership.

9. In the first section of the present report, the independent expert reviews the recent development in debt sustainability issues, in particular the recent initiatives on debt relief. In the second section, he outlines some issues for further consideration in developing draft general guidelines, and the related need to rethink the current debt sustainability concept as well as bringing human rights consideration in country and international framework governing debt management. The report concludes with general recommendations for the next steps to facilitate the elaboration of the final guidelines.

I. DEBT SUSTAINABILITY: RECENT DEVELOPMENTS

10. *Scale of external debt*. The independent expert is concerned with the continuing rise of the external debt of developing countries, albeit at a slower pace. The total debt stock of developing countries and countries with economies in transition stood at almost US$ 2.6 trillion at the end of 2004. Compared to 2003, this represented an increase of around US$ 43 billion,

or 1.7 per cent, which was more modest than US$ 217.6 billion increase, or 9.3 per cent in the previous year. An encouraging sign is that the countries in sub-Saharan Africa saw their total debt stocks decline by 5.6 per cent in 2004, as compared with the 9.4 per cent rise in 2003, thanks partly to the Heavily Indebted Poor Countries (HIPC) Initiative (A/60/139, para. 4).

11. *Progress in HIPC implementation*. In August 2005, Burundi reached the decision point, bringing the total number of decision point countries to 28. Of these, 18 countries have reached the completion point, most recent additions being Honduras, Rwanda and Zambia in April 2005. For the 10 countries that are in the interim period between the decision and completion point, the enhanced HIPC initiative requires that they meet floating completion point triggers, including a track record of macroeconomic performance. However for some of these countries, maintaining macroeconomic stability continues to be a daunting challenge.[1]

12. *Impact of HIPC*. Nominal debt service relief of more than US$ 56 billion has been approved for 28 countries that have reached the decision point, which is expected to bring down the debt stocks of these countries by two thirds and substantially reduce their debt service payments by US$ 1 billion annually. According to the World Bank and the International Monetary Fund (IMF), this has enabled the decision point countries to spend on poverty reduction almost four times as much as their debt-service payments in 2004.[2] This progress notwithstanding, there is an increasing recognition that the HIPCs, including those which have gone beyond the completion point, are falling short of their Millennium Development Goals.[3] The Secretary-General in his report "In larger freedom: towards development, security and human rights for all" (A/59/2005) pointed out the need for additional debt cancellation - 100 per cent debt cancellation for the HIPCs and significantly more debt reduction for heavily indebted non-HIPCs - without reducing the overall resources available to other developing countries, and without jeopardizing the long-term financial viability of international financial institutions.[4]

13. *Net resource outflows*. However, despite all efforts for debt relief and calls for increased aid, net resource outflows from developing countries continued in 2004. Since 1997, resources have been steadily and increasingly drained away from developing countries to developed countries. These net outward transfers reached an estimated US$ 350 billion in 2004.[5] Comparing this figure with an estimated US$ 100 billion required annually to realize the MDGs and a mere US$ 1 billion annual savings in debt repayment expected from the HIPC, it is evident that a more radical and decisive solution is required.

14. *Calls for 100 per cent debt cancellation*. The report of the Commission for Africa called for 100 per cent debt cancellation as soon as possible for poor countries in sub-Saharan Africa. It recommended that work should begin immediately to establish a transparent debt compact to include all sub-Saharan African low-income countries, including those excluded from current schemes. It argued for the cancellation of debt stock and debt service by up to 100 per cent, covering both multilateral and bilateral debt. As an urgent measure, it recommended that financing should be put in place immediately to provide 100 per cent multilateral debt service cancellation, where this is necessary to achieve the MDGs.[6] The report of the Millennium Project argued for a sharpened focus on achieving MDGs in providing debt relief. It pointed out

that many HIPCs retain excessive debt owed to official creditors (such as the Bretton Woods institutions) even after relief.[7] If the current debt sustainability framework could be aligned to the financial needs to achieve MDGs, it would imply a dramatic acceleration of debt relief for many HIPCs.[8]

15. *The Multilateral Debt Relief Initiative*. Against this backdrop of growing public pressure for more commitment to developing countries, particularly in Africa, the Group of Eight (G-8) leaders took a welcome step, when it met in Gleneagles, Scotland in July 2005, by endorsing the proposal made by G-8 finance ministers earlier in June 2005 to provide full debt relief for HIPC countries that had reached the completion point. The deal covers 18 HIPC completion countries (Benin, Bolivia, Burkina Faso, Ethiopia, Ghana, Guyana, Honduras, Madagascar, Mali, Mauritania, Mozambique, Nicaragua, Niger, Rwanda, Senegal, Uganda, United Republic of Tanzania and Zambia) and provides for the cancellation of 100 per cent of their debt owed to IMF, the World Bank and the African Development Bank. The finance ministers' communiqué of 11 June 2005 stated that additional donor contributions would be allocated to all recipients of the International Development Association (IDA) and the African Development Fund (AfDF) based on existing IDA and AfDF performance-based allocation systems. Such action will further assist the efforts of these countries to achieve the Millennium Development Goals and ensure that assistance is based on country performance. Furthermore, the G-8 finance ministers recognized that good governance, accountability and transparency are crucial to releasing the benefits of the debt cancellation, and made a commitment to ensure that this is reaffirmed in future bilateral and multilateral assistance to the countries concerned.

16. However, the G-8 debt deal was marred by several weaknesses and ambiguities at the time of its agreement, and much of its operational details were left for further discussions and endorsement before the annual meeting of the boards of the World Bank and the IMF in September 2005. First of all, the deal covers only 18 countries that have reached the HIPC completion point, leaving many more low- and middle-income countries with difficulties servicing their debt. The focus on the HIPC completion point also means that only those countries that have successfully met the IMF conditionalities, including structural reforms, would be eligible, and not those countries that have difficulties in meeting such stringent conditions. Secondly, the proposal only covers debt owed to IMF, the World Bank and the African Development Bank and not to other lenders such as other multilateral banks, including the Asian Development Bank, the Inter-American Development Bank and the Caribbean Development Bank, or to private creditors. Thirdly, a clear picture is yet to emerge as to whether the deal will represent additional resources flowing to those countries concerned. The G-8 finance ministers' communiqué stated that, for IDA and AfDF debt, "100 per cent stock cancellation will be delivered by relieving post-completion point HIPCs that are on track with their programmes of repayment obligations and adjusting their gross assistance flows by the amount forgiven. Donors would provide additional contributions to IDA and AfDF, based on agreed burden shares, to offset dollar for dollar the foregone principal and interest repayments of the debt cancelled". This in essence could be interpreted to mean that those eligible countries will no longer have to pay their debt owed to IDA and AfDF, but they will have less access to future lending or assistance by the same amount. On the other hand, donors will redistribute the funds across all IDA-only countries, not necessarily to those countries that have benefited from the debt cancellation, based on their policy performance. Lastly, the G-8 commitment covers

only the next three years until the end of the IDA-14 and AfDF-10 period, i.e. until 30 June 2008 and 31 July 2007, respectively. Beyond that point, the communiqué only makes vague commitment to make additional contributions to regular replenishment of IDA and AfDF for the rest of the life of the loans.[9]

17. In September 2005, the Development Committee of the World Bank and the IMF endorsed the G-8 proposal at their annual meetings. The G-8 proposal was subsequently called the Multilateral Debt Relief Initiative (MDRI), while the three institutions - the IDA, IMF and the African Development Bank - continued to study the modalities of its operationalization under their respective institutional framework. This is due to the fact that, although the MDRI is an initiative common to the three international financial institutions the decision to grant debt relief is ultimately the separate responsibility of each institution, and the approach to coverage and implementation may vary. For example, the IMF announced that its target date for implementing the MDRI is the beginning of 2006, but the MDRI legal framework will only become effective once the consent of the 43 country contributors to the Poverty Reduction Growth Facility (PRGF) Subsidy Account have been received. The effective date of delivery of MDRI debt relief for a given member will be determined case-by-case. For the IDA, it is expected that implementation of MDRI will begin by 1 July 2006, after obtaining the decision of the IDA Board of Governors and provided that donor financing becomes available as planned.

18. The MDRI/G-8 debt relief initiative is certainly a welcome step forward. Significantly, it represents an increased political momentum towards 100 per cent debt cancellation of HIPCs linked to MDG achievement. However, as mentioned above, the initiative is not truly 100 per cent cancellation in the sense that it is limited to the three international financial institutions and leaves aside other important creditors such as the Inter-American Development Bank. There is also a continuing concern to ensure the true additionality of resources and that gains from debt relief is not simply offset by reduction in future official development assistance. Furthermore, there remains the question as to whether or not the World Bank and IMF, within their existing frameworks, will treat the issues of good governance and transparency as additional conditionalities suggested by the G-8.

II. FURTHER CONSIDERATIONS ON THE PROPOSED DRAFT GENERAL GUIDELINES

19. The stated purpose of the draft of general guidelines, according to the Commission, is to provide general guidance to States as well as private and public, national and international financial institutions in the decision-making on and execution of debt repayments, 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. This will essentially require: (a) determining the "sustainable" level of external debt of a country; (b) an independent estimation of what constitutes an essential need to meet the minimum core obligations of a State under international human rights instruments; and (c) elaboration of processes that are in line with human rights principles with possibilities for remedies and recourse.

20. While these could be considered a logical and sound framework, the task is not so simple and not without conceptual and operational challenges. First, economists agree that there is no straight or single answer to the question of what a country's sustainable level of debt should be.

Secondly, the international human rights community is still far from developing appropriate indicators and a methodology to measure the cost of realizing human rights in monetary terms, if this is to be a factor in the debt repayment calculation. Thirdly, even with complete debt write-off, the proposal does not provide sufficient resources or conditions for developing countries to meet the Millennium Development Goals, let alone the full realization of all human rights. A significant increase in official development assistance (ODA) would be required in addition to debt relief, as well as further strengthening of the capacity of recipient countries to absorb and effectively use the assistance for the benefit of their people. Moreover, the much-anticipated successful and timely reform of the international trading system - under the so-called Doha Development Round - still remains in doubt. These challenges notwithstanding, there are imperative justifications for bringing human rights considerations into: (a) determining the sustainable level of debt in a country; and (b) addressing process-related issues in managing sovereign debts, including the questions of country ownership and additional conditionalities.

A. Rethinking the concept of debt sustainability

21. In determining which and how much countries are eligible for debt relief, a debt sustainability analysis plays a fundamental role. The current macroeconomic approach used by the international financial institutions in determining debt sustainability level, based on debt-to-export ratio, has met with widespread criticism for its arbitrariness and failure to take into consideration poverty and social dimensions for HIPCs and other indebted countries to meet their MDGs, let alone full realization of all human rights. Civil society groups have particularly voiced concern that these debt sustainability criteria by the international financial institutions serves in practice to ensure the repayability of debts rather than providing sustainable exit from debt problems. Economists such as Jeffrey Sachs argued that the net present value (NPV) debt-to-export ratio does not provide any real measure of sustainability because these criteria could point to when a country becomes insolvent, but do not take us far enough since sustainable is not simply the obverse of unsustainable. The General Assembly in its resolution 59/223 stressed that debt sustainability depends on a confluence of many factors at international and national levels, and underscored the fact that no single indicator should be used to make definitive judgements about debt sustainability.

22. In adopting the Monterrey Consensus in 2002, Member States at the International Conference on Financing for Development agreed that future reviews of debt sustainability should also bear in mind the impact of debt relief on progress towards the achievement of the Millennium Development Goals and that continued efforts are needed to reduce the debt burden of HIPCs to sustainable levels. This would require that considerations of debt servicing be based on the need to finance the Goals. Yet the report of the United Nations Millennium Project sharply criticized that current debt relief is not aligned with the Goals and that many heavily indebted poor countries (HIPCs) retain excessive debt owed to official creditors (such as Bretton Woods institutions) even after relief, at the same time leaving many middle-income (non-HIPC) countries in a similar situation with little or no debt relief.[10]

23. Following the recommendation of the report of the United Nations Millennium Project, the Secretary-General, in his report “In larger freedom” proposed to “redefine debt sustainability as the level of debt that allows a country to achieve the Millennium Development Goals and reach 2015 without an increase in debt ratios”.[11] The 2005 World Summit in its Outcome subsequently embraced this proposal and underlined the importance of debt sustainability to the

efforts to achieve national development goals, including the Millennium Development Goals, recognizing the key role that debt relief can play in liberating resources that can be directed towards activities consistent with poverty eradication, sustained economic growth and sustainable development. The Summit further stressed the need to consider additional measures and initiatives aimed at ensuring long-term debt sustainability through increased grant-based financing, cancellation of 100 per cent of the official multilateral and bilateral debt of HIPCs and, where appropriate, and on a case-by-case basis, to consider significant debt relief or restructuring for low- and middle-income non-HIPC developing countries, as well as the exploration of mechanisms to comprehensively address the debt problems of those countries.[12]

24. Some even hold that the IMF/World Bank debt sustainability framework under the HIPC has become obsolete in light of the G-8 debt relief initiative and subsequent establishment of MDRI.[13] Using the present formula for the HIPC thresholds for debt sustainability, the full implementation of the G-8 debt relief proposal will produce ratios well below the threshold for the recipient countries, which would exclude them from receiving grants from the International Development Association in future. This poses the risk that such countries will enter into a new cycle of borrowing and debt accumulation if solutions are not found to guarantee their continued access to grant-based aid additional to the debt relief provided. In this respect, the decision that the G-8 commitment made in Gleneagles on more than doubling aid to Africa by 2010 must be welcomed, as is the progress that has been made on proposals for other innovative forms of development financing such as the International Financing Facility. However, some developing countries will have continuing need to access concessional and other loans to fully finance their development requirements, and their eligibility will continue to be determined largely on the basis of macroeconomic projections, which may offer imperfect picture on a country's debt sustainability.

25. It is, therefore, necessary to explore alternative views and approaches to the present formula for debt sustainability analysis. The current framework needs to be revised to build on the principle of safeguarding a country's essential needs, in a manner that will not undermine its obligations for the realization of fundamental economic, social and cultural rights, as provided for in the international human rights instruments. At the same time, it is recognized that the human rights community is still a long way from developing appropriate indicators and a methodology to measure quantitatively the basic requirements for the realization of human rights, to be considered in future debt sustainability framework. In the absence of appropriate indicators, it may be worthwhile to use the financing needs to achieve the Millennium Development Goals and related targets as proxy, since the Goals can be considered as important benchmarks and, viewed under the framework of Millennium Declaration, representing international commitments towards full realization of human rights. In this context, the independent expert notes with interest the initiative of the United Nations Development Programme to offer advice and assistance to interested Governments and to jointly undertake debt sustainability analysis on the basis of the Goals.

B. Strengthening systemic coherence at national and international level

26. In his previous reports to the Commission and General Assembly, the independent expert has already highlighted that human rights principles such as indivisibility, non-discrimination, equality, participation and accountability could be the underpinning of improved policy coherence and international support for indebted developing countries. A human rights approach

to international cooperation with regard to debt compels all countries and institutions to contribute to the creation of a favourable national and international environment, in particular through good governance and the rule of law at national level, and at international level, through transparency and democratization of decision-making in the bodies and institutions concerned with trade, finance, monetary policy, intellectual property and development assistance, as well as through greater international cooperation in the areas of assistance, financing and investment.

27. As with development, States have the primary responsibility for the realization of the human rights of their people. Creating favourable national conditions through appropriate economic policies and sound management of external debt is an essential part of the duty of the State. In recent years, there has been increased shift of emphasis in development cooperation towards greater country ownership, premised on the basic idea that if policy reforms are owned by the Government and the people, rather than imposed by outsiders, they are more likely to succeed. These considerations resonate closely with the Declaration on the Right to Development, annexed to General Assembly resolution 41/128 of 4 December 1986, which proclaimed that "the human person as the central subject of development and should be the active participant and beneficiary of the right to development" and 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". It is also in line with the Charter of Economic Rights and Duties of States contained in General Assembly resolution 3281 (XXIX) of 12 December 1974, which provides that "[e]conomic as well as political and other relations among States shall be governed, inter alia, by the following principles … (b) Sovereign equality of all States" and, in article 1, that: "Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever."

28. While the concept of country ownership is therefore not new in human rights terms, it had received secondary attention in the debt discussions until public pressures for the reform of conditionalities associated with structural adjustment programmes gained momentum. Nearly 10 years ago, the Structural Adjustment Policy Review Initiative - SAPRI - jointly launched by the World Bank and a network of NGOs in 1997 emphasized, among other things, the imperatives for a country's "ownership" of its adjustment programmes to ensure their success and underscored the need to provide adequate safety nets to the most vulnerable as well as to safeguard social expenditures and maintain access to health care and education.

29. There are encouraging signs of positive changes in recent years. For example, Uganda, one of the first countries to benefit from the HIPC initiatives, where an extensive national consultation process led to the elaboration of its own national comprehensive strategy to fight poverty and the reorientation of their policies from structural adjustment to country-driven, pro-poor and participatory policies. To that end, the Uganda Government established the Poverty Action Fund (PAF) to channel proceeds from HIPC relief to protect social expenditures. More recently, the World Bank overhauled its adjustment lending, with more streamlined development policy lending instruments that emphasize the importance of country ownership.

30. At the same time, further examination is required on the real extent of country ownership in debt management and economic reform programmes - as the terms could be understood and interpreted in different ways according to different actors - as well as in addressing policy, capacity and institutional constraints to ensure the country ownership in the overall development process as well as in the particular context of debt management. The burden of conditionality continues to undermine true country ownership in many HIPCs. When the G-8 deal was announced, the President of Guyana “cautiously welcomed” the new deal, noting that in the past his country suffered from “conditionalities imposed in many ways arbitrarily” by the international financial institutions.[14] While the recent review of World Bank conditionality found that the average number of conditionalities per lending has declined sharply over the last decade,[15] civil society responses present a more cautious view that the actual burden on developing government officials have not eased and could be underestimated.

31. Furthermore, the extent and nature of country ownership could be put into question when, in many countries, contracting new loans does not require review or approval by the legislature and the public is not often well informed before the Government enters into a significant commitment. Increased transparency and open dialogue between government departments, the legislature and the public would also be necessary before the Government commits itself to new large borrowings. The full implications of loans, such as those for large infrastructure projects, should be studied and debated in an open policy dialogue. Greater transparency and timely disclosure of information by the Government and the creditors are essential for the achievement of this objective.

32. Since the Poverty Reduction Strategy Papers (PRSP) process is one of the key conditionalities of the current Bank and Fund programmes, integration of human rights into PRSPs is an essential step in this regard. Far greater attention should be paid to the need for the building capacity of developing countries to conduct their own assessments on debt sustainability, manage external financing and make decisions in consultation with the public in the ways most appropriate to their national context. In making borrowing decisions, it is essential that the capacity of national debt management offices and civil society groups to conduct independent analyses be strengthened to ensure genuine country ownership. In particular, independent human rights institutions and ombudspersons could, and should, be empowered to examine and to monitor the impact of the foreign debt burden on human rights in order to ensure that the debt relief will make a positive contribution to the realization of human rights.

33. At the same time, it should be emphasized that a decision regarding external financing involves not only borrowers, but also creditors. Creditors have their share of responsibility in exercising “due diligence” so as to make responsible lending to developing countries and avoid unsustainable debt accumulation. For non-HIPCs, in view of the large role played by the private sector, including individual investors, greater transparency and open communication between the Government and creditors are essential to ensure investor confidence and avoid sudden large capital outflows.

34. To this end, the independent expert would like to propose that the general guidelines offer a suitable framework for establishing a peer review mechanism to determine, or provide alternative views on, a country’s debt sustainability situation. The purpose of such a mechanism would also be to collect and disseminate real-time debt information about country’s debt to all

types of creditors, as well as borrowers, and to serve as a forum for policy dialogue and crisis resolution. The peer review would include representatives of independent national human rights institutions, where they exist in a country, which can provide inputs on the impact of external debt situation on human rights, and on financial requirements and conditions necessary to ensure that minimum human rights standards are protected in the country.

35. More broadly, at the international level, the independent expert believes that more formal international mechanisms beyond the framework of the Paris Club would be necessary in order to monitor the debt situations of developing countries and their impact on the development and human rights potentials of those countries. While the development of general guidelines would be ultimately helpful, the guidelines will most likely remain voluntary in nature, rarely resorted to by States, and cannot be a substitute for a more formal mechanism to ensure the long-term debt sustainability of developing countries. In this connection, while welcoming the current international debate on debt relief, including the G-8 initiative, it may be noted that these are still very much creditor-led and do not address some issues of serious concern expressed by debtor countries, such as the question of illegitimate debt. Consideration of the debt relief issue should be guided not only by how much relief a country needs or how much relief the international community can afford, but also by how a country became indebted in the first place.

36. For years, many NGOs have called for the creation of a fair and transparent arbitration process (FTAP) for illegitimate and odious debt owed by developing countries resulting from irresponsible lending and borrowing. Such a process would involve a neutral decision-making body that is independent from immediate parties involved, and all stakeholders would have the right to be heard. Civil society proposals for FTAP include rights-based criteria and approaches, including impartiality of the process and the assessment, primacy of human rights over debt repayment by guaranteeing the protection of the basic minimum standards for the citizens, participation of all stakeholders in the procedures, and ensuring monitoring and accountability of actors for the implementation of FTAP outcomes.

III. CONCLUSION AND RECOMMENDATIONS

37. **Based on the foregoing updates since his previous report and further considerations outlined, the independent expert deems it necessary to seek an extended time frame for the elaboration of the proposed draft general guidelines, particularly in view of significant recent developments in this field over the last year. As stated previously, the process of such elaboration should as much as possible seek views and inputs from all stakeholders, from both debtor countries and creditors. In concluding this report, the independent expert would therefore like to submit the following interim recommendations, including proposals for the next step in elaborating the general guidelines, and looks forward to feedback and guidance from the Commission:**

(a) The Commission may wish to welcome the renewed political commitment contained in the G-8 initiative and the 2005 World Summit Outcome, and to take note of the recent developments in the field with respect to debt sustainability and notably the establishment of MDRI to implement the G-8 proposal;

(b) The Commission may wish to extend the time frame given for the elaboration of the draft of general guidelines by one year, and to once again request an expert consultation to be convened to discuss the proposed draft general guidelines, and to invite the international financial institutions, notably the World Bank and the IMF, as well as regional development banks, relevant United Nations agencies and national experts and stakeholders to contribute to the consultations;

(c) The Commission may wish to urge States, international organizations, United Nations agencies, funds and programmes, regional economic commissions, international and regional financial institutions and non-governmental organizations to cooperate with the independent expert in the discharge of his mandate, and in particular to respond to his requests for their views and suggestions on possible elements for consideration in the draft general guidelines; and

(d) The Commission may wish to request the Office of the High Commissioner for Human Rights to continue working on the issues of indicators, and to cooperate with the United Nations Development Programme, the United Nations Department for Economic and Social Affairs and the World Bank and the IMF to integrate human rights considerations into MDG-based assessment of debt sustainability.

Notes

[1] International Monetary Fund and International Development Association, "Heavily Indebted Poor Countries (HIPC) Initiative - Status of implementation", 19 August 2005, p. 6.

[2] Ibid, p. 10.

[3] See A/60/139, sect. III.B, para. 10.

[4] A/59/2005, para. 54.

[5] A/60/163, para. 2 and table 1.

[6] Commission for Africa, *Our Common Interest*: *Report of the Commission for Africa*, 2005, p. 62.

[7] United Nations Millennium Project, *Investing in Development*: *A Practical Plan to Achieve the Millennium Development Goals*, 2005, Part III, chap. 13, para. 7, p. 197.

[8] Ibid., table 13.3, line 7, p. 200.

[9] For more detailed criticism of and concerns about the G-8 proposal at the time of its announcement, see, for example, European Network on Debt and Development (EURODAD) NGO Briefing, "Devilish Details: Implications of the G7 Debt Deal", 14 June 2005 (http://www.eurodad.org/uploadstore/cms/docs/Overview_G7_debt_deal.pdf).

[10] United Nations Millennium Project, p. 197.

[11] A/59/2005, para. 54.

[12] A/RES/60/1, para. 26.

[13] Jürgen Kaiser (UNDP), presentation at UNCTAD Fifth Inter-Regional debt Management Conference, 20 June 2005.

[14] Quoted in Oxfam International, "Beyond HIPC: Debt cancellation and the Millennium Development Goals", Oxfam Briefing Paper 78, September 2005, p. 13.

[15] The World Bank, *Review of World Bank Conditionality*, September 2005, p. 9.
