

Statement on the Doha Outcome Document by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights,  
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## Introduction

In March of this year, Dr. Cephias Lumina was appointed by the Human Rights Council as one of its Independent Experts, with a mandate to examine, *inter alia*, the effects of foreign debt and the policies adopted to address them on the full enjoyment of all human rights, particularly, economic, social and cultural rights in developing countries.

Paragraph 4 of Human Rights Council Resolution 7/4 requested the Independent Expert to “contribute, as appropriate, to the process entrusted with the follow-up to the International Conference on Financing for Development (FFD), with a view to bringing to its attention the broad scope of his/her mandate”. The Independent Expert submits the present statement as part of his contribution to the Doha FFD Review Conference (‘the Doha Conference’).

The Doha Conference coincides with the sixtieth and fifteenth anniversary, respectively, of two landmark human rights instruments: the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action on Human Rights. Significantly, the Universal Declaration calls for a social and international order in which everyone’s rights can be fully realized. The Vienna Declaration recognized that ‘the promotion and protection of human rights is a matter of priority for the international community’.

Both the Doha Conference and the commemoration of the Universal Declaration and the Vienna Declaration offer an opportunity for governments to assess the extent to which they have fulfilled their commitments through the implementation of the holistic range of policies that embody international development cooperation. In particular, human rights instruments such as the International Covenant on Economic, Social and Cultural Rights contain a commitment (Art. 2) to undertake steps not only individually, but also through international assistance and cooperation, towards the progressive realization of the rights recognized in the Covenant. The Convention on the Rights of the Child, ratified by almost every State, enshrines similar obligations.

While the contribution of some recent debt relief initiatives is acknowledged, the slow progress in implementing a number of key provisions of the Monterrey Consensus relating to external debt indicates that there is no room for complacency. Moreover, the Doha Conference will take place amidst the deepest financial crisis in decades, which threatens to dilute the gains of debt relief, with a strongly negative impact on the enjoyment of human rights. This underscores the urgency for renewed vigorous action on debt and is a reminder that economic policy-making and the enjoyment of human rights cannot be seen as separate issues, but rather as profoundly interconnected. In this context, the Independent Expert promotes the development of universally accepted voluntary standards to ensure that decisions taken by creditor and debtor countries do not compromise the ability of States to fulfill their human rights obligations.

The Independent Expert –in light of his mandate – welcomes the opportunity that the Doha Conference offers to bring much-needed attention to issues related to external debt and other international financial obligations in the context of the human rights commitments that States have undertaken. He wishes to bring to the attention of States the following issues and recommend that they are given proper attention in the Conference and negotiations leading up to it:

#### Expanded debt cancellation

The Independent Expert welcomes the continued implementation of recent debt relief initiatives. Reportedly, debt relief provided through the Heavily Indebted Poor Countries (HIPC) and Multilateral Debt Relief (MDR) initiatives amount to some US\$ 117 billion for the 33 countries that are past Decision Point. However, the Independent Expert notes with concern that, in spite of these initiatives, for a large number of low- and middle- income countries, large debt burdens continue to undermine their capacity to fulfil their obligations to protect and promote human rights.

Current cost estimates for the achievement of the Millennium Development Goals (MDGs) range from an extra \$30 billion to over \$100 billion per annum. In the view of the Independent Expert, the MDGs should be seen as interim targets towards ensuring full respect for all human rights, especially economic, social and cultural rights. It is distressing that States have not made significant progress to achieve the MDGs, and in this regard, the Independent Expert recalls that international initiatives in this area (including the MDRI and the Monterrey Consensus) linked debt relief to the achievement of the MDGs.

Further, high debt burdens are an obstacle not only in the low-income countries which have been the focus of debt relief programmes, but also in several middle-income countries that are not considered eligible for any of these programmes. This reality is not consistent with the Millennium Declaration's commitment to "deal comprehensively and effectively with the debt problems of low- and middle-income developing countries, through various national and international measures designed to make their debt sustainable in the long term."

#### The Debt Sustainability Framework (DSF)

Sustainability of debt should refer to the capacity of a country to service its debt without having to sacrifice the protection and promotion of fundamental human rights. The ultimate purpose of debt relief is not merely to achieve debt sustainability, but to enable a country to achieve a debt level consistent with protecting the human rights of its people. The level of debt payments a country can afford while still meeting the MDGs, and its human rights obligations, should clearly be considered in the analysis.

Sadly, to date it has been the resource limitations of donors, rather than a thorough assessment of the amounts needed by debtor countries to reach the MDGs and guarantee human rights that have guided the Bretton Woods Institutions in designing the Debt Sustainability Framework.

Debt sustainability assessments are based on export and growth projections that, even before the current adverse conditions in the global economy, are overoptimistic. The debt thresholds have been determined on the basis of an exercise that did not consider inability to fulfill basic human rights as a consequence of "debt distress."

Under the framework, debt sustainability assessments set a ceiling upon a country's ability to borrow. However, they provide no guidance on where borrowing countries should turn to obtain concessional funding if non-concessional funding is not available in quantities required to meet their funding shortfalls.

An indication of the seriousness of the situation is that, even accepting the rather tolerant parameters of the DSF, no more than nine out of the 23 HIPC countries that received full debt cancellation are considered as presenting a low risk of debt distress.

## Trade and debt

Human Rights Council resolution 7/4 requests the Independent Expert to especially pay attention to the interlinkages between debt and trade. Indeed, a debt level consistent with meeting human rights commitments cannot be maintained by debt relief measures alone. The evolution of HIPC beneficiaries after debt relief –whereby several of them saw their debts quickly rise again due to the plunge in prices of commodities they export— clearly shows the strong link between terms of trade and the process of debt accumulation. For instance, terms of trade for the Least Developed Countries and Sub-Saharan African countries declined on a sustained basis in the period 1994-2002, a dynamic central to their debt accumulation process in that period. While the last few years have seen a temporary improvement of terms of trade for developing countries in general, these have neither reached all developing countries, nor are they likely to be sustained in the current scenario of lower demand for commodities and the limited change in the export profiles of developing countries.

Measures to enhance the terms of trade for indebted countries, especially through diversification into exports with greater value and value-added, as well as measures to strengthen exports' contributions to public revenue, should be part and parcel of long-term debt sustainability. In turn, debt service payments should not be so high as to prevent the development of an export-investment nexus that can place the country on the path to greater prosperity and self-sufficiency in raising the standards of living of the population, and enhancing the enjoyment of human rights.

## Additionality

Debt relief has been, for the most part, reported as Official Development Assistance (ODA), rather than being additional to it. The Monterrey Consensus calls for resources provided for debt relief to not detract from ODA resources intended for developing countries. But the practice to date has been quite to the contrary. In order to assist highly indebted developing countries to fulfil their human rights commitments, debt relief must come with full additionality.

## Conditionality

Debt relief should not only be in amounts sufficient to enable the debtor to fulfill human rights. It is also necessary to ensure that the conditions attached to debt relief programmes do not negatively affect the enjoyment of human rights. It is clear that economic policy conditions can unduly impede countries' efforts towards the realization of human rights if based on one-size-fits-all macroeconomic and structural approaches. They could also be a factor that delays access to much needed resources, thereby slowing

progress towards the achievement of economic, social, and cultural rights. In the last six years, for instance, the average time between reaching Decision Point and Completion Point for HIPC countries has increased.

### Co-responsibility

The obligation of international cooperation in the realization of human rights is not well-served by a system that only holds the borrowing country responsible for dealing with unsustainable debt, while considering the creditor's contribution a matter of charity. The Monterrey Consensus defined the important principle that creditors and borrowing countries have a shared responsibility to prevent and resolve unsustainable debt situations.

However, the international community has made little progress since then in achieving a generally agreed, orderly and predictable framework for debt workouts that actually embodies this joint responsibility. Debt relief is still a matter left to ad hoc bodies, such as the Paris Club, composed of a self-selected group of public creditors, who act on a piecemeal, discretionary basis, and essentially pass judgment on their own claims. Impartial, independent decision-making bodies, offering both the creditor and debtor, as well as other stakeholders, an equal right to be heard, would be a more desirable option.

### Illegitimate debt

It is critical, as a key aspect of the co-responsibility of debtors and creditors, to develop generally agreed criteria for definition and treatment of illegitimate debts. In the absence of these criteria, the Independent Expert urges all multilateral, bilateral and commercial creditors to commit to defining appropriate and transparent criteria for the illegitimacy of debt on a voluntary basis, and to cancel such debts. In this regard, the decision by the Government of Norway to unilaterally and unconditionally cancel the debt claims against five developing countries arising from its ship export campaign – acknowledging its co-responsibility as creditor - is a laudable initiative and a useful example for other lenders. The Doha FFD Outcome Document should highlight the issue of payment of illegitimate debts, many of which were accrued by dictators who used the loans to undermine the human rights of their people.

### Conclusion

The Independent Expert reiterates a key conclusion of the International Symposium on Illegitimate External Debt held in Oslo, Norway, from 20-23 October 2008 that sovereign lending and borrowing extend beyond economics and finance to politics, law, justice and ethics. Consequently, it is important to promote reflection on the linkages between external debt and human rights, and to develop guidelines on responsible lending and borrowing.