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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**Effects of structural adjustment policies and foreign debt on the full enjoyment
of human rights, particularly economic, social and cultural rights**

**Report submitted by Mr. Bernards Mudho, independent expert on the effects
of structural adjustment policies and foreign debt on the full enjoyment of all
human rights, particularly economic, social and cultural rights**

Addendum

MISSION TO KYRGYZSTAN* **

* The summary is being circulated in all official languages. The report itself, contained in the annex to the summary, is being circulated in the language of submission and in Russian only.

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

Summary

At the invitation of the Government of Kyrgyzstan, the independent expert on the effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights undertook a country mission to Kyrgyzstan from 7 to 15 June 2004. In accordance with Commission resolution 2000/82, which established the mandate of the independent expert, the general objectives of the mission were to: (a) examine the effects of the burden of foreign debt and the policies adopted to face them on the capacity of the Government to adopt policies and programmes for the enjoyment of economic, social and cultural rights; (b) engage in dialogue with the Government, United Nations bodies and specialized agencies and the civil society in their efforts to secure these rights; (c) follow-up on relevant concluding observations and recommendations from the treaty bodies; and (d) recommend measures and actions that could be taken to alleviate such effects.

The mission of the independent expert to Kyrgyzstan has been informative and useful in developing an appreciation of emblematical challenges faced by a country in the process of dual transition to a democratic system of governance and to a market economy. The first and second sections of the report highlight these challenges and commendable efforts and important strides made by the Government in meeting them, in particular the National Poverty Reduction Strategy (NPRS).

Despite progress in macroeconomic reforms and the Paris Club debt restructuring in 2002, the country remains highly indebted. The third and fourth sections of the report explore links between the unsustainable level of debt and the fiscal constraints affecting the ability of the Government to allocate sufficient resources necessary for the enjoyment of economic, social and cultural rights during the early stage of transition. The fifth section of the report discusses the need for improving the monitoring and accountability mechanisms for the implementation of the NPRS to better integrate human rights principles and concerns.

The general finding of the independent expert is that there is clear political commitment by the Government to address challenges of transition, poverty, governance and human rights, as manifested by the NPRS and numerous laws, declarations and strategies adopted, including the ratification of, and reporting under, major international human rights treaties. Further efforts are needed, however, to translate these commitments into reality and to bring about improvement in the enjoyment of all human rights by the poor and the vulnerable.

The report concludes with several recommendations addressed to the Government and other parties:

(a) In recognition of the positive progress made, the international community should provide further support to Kyrgyzstan, in the form of another round of Paris Club debt relief expected in early 2005, and in the form of more assistance in grants terms so as not to negatively affect the debt sustainability strategy adopted by the Government;

(b) Human rights norms and principles such as equality and non-discrimination, participation and inclusion, and accountability and the rule of law, should guide and inform the implementation of the NPRS and other programmes at all stages. The independent expert commends the inclusive approach and participatory process adopted in the NPRS. The NPRS

should be further strengthened by clearly stipulating the obligations of the State under the international human rights treaties it ratified, and by elaborating on the means to implement them, linking with the NPRS objectives in all spheres;

(c) The independent expert is concerned about the deterioration of facilities and prevalence of informal payments in education and health sectors, which undermine the availability of and accessibility by the poor and the vulnerable to these services and the enjoyment of their rights to education and health. While welcoming the intention of the Government to increase expenditures on these sectors under the Medium Term Budget Framework (MTBF) for the period 2005-2007, more concrete measures and innovative approaches should be taken to better target these services to meet the needs of the most vulnerable segment of the population. Useful lessons could be drawn from community-based initiatives supported by the United Nations Development Programme and the United Nations Children's Fund;

(d) Monitoring and accountability framework should be further strengthened by improving the governance and human rights related indicator framework, and by greater disaggregation of data to capture gender, rural-urban and regional disparities and specific data according to vulnerable groups. Public expenditure management systems should be further improved to provide Government expenditure data in real time by sectors and by categories of beneficiaries for pro-poor spending;

(e) The independent expert encourages the Office of the Ombudsman to play a greater role in the independent monitoring and evaluation of the NPRS implementation from human rights perspectives.

Annex

**REPORT OF THE INDEPENDENT EXPERT ON THE EFFECTS OF
STRUCTURAL ADJUSTMENT POLICIES AND FOREIGN DEBT ON
THE FULL ENJOYMENT OF ALL HUMAN RIGHTS, PARTICULARLY
ECONOMIC, SOCIAL AND CULTURAL RIGHTS, BERNARDS MUDHO,
ON HIS MISSION TO KYRGYZSTAN (7-15 JUNE 2004)**

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Introduction

1. At the invitation of the Government of Kyrgyzstan, the independent expert on the effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights undertook a country mission to Kyrgyzstan from 7 to 15 June 2004. In accordance with Commission resolution 2000/82, which established the mandate of the independent expert, the general objectives of the mission were to: (a) examine the effects of the burden of foreign debt and the policies adopted to face them on the capacity of the Government to adopt policies and programmes for the enjoyment of economic, social and cultural rights; (b) engage in dialogue with the Government, United Nations bodies and specialized agencies and the civil society in their efforts to secure these rights; (c) follow-up on relevant concluding observations and recommendations from the treaty bodies; and (d) recommend measures and actions that could be taken to alleviate such effects.

2. In the context of his mandate, the independent expert also paid particular attention to the situation of HIV/AIDS in the country, bearing in mind Commission resolution 2003/21, in which the Commission urged States, international financial institutions and the private sector to take urgent measures to alleviate the debt problem of those developing countries particularly affected by HIV/AIDS, so that more financial resources could be released and used for health care, research and treatment of the population in affected countries.

3. The independent expert met with the First Deputy Minister of Finance, the Deputy Minister of Justice, the Deputy Minister of Health, the Deputy Chief Justice of the Constitutional Court and senior officials from the Ministry of Labour and Social Protection, the National Security Service and the Head of the Comprehensive Development Framework Secretariat in the Office of the President as well as with the Ombudsman.

4. The independent expert held briefings and substantive meetings with the United Nations Resident Coordinator/Resident Representative of the United Nations Development Programme (UNDP) and representatives of the United Nations Children's Fund (UNICEF), the United Nations Joint Programme on HIV/AIDS (UNAIDS), the United Nations Population Fund (UNFPA), the World Bank and the International Monetary Fund (IMF).

5. The independent expert held further meetings with representatives of academic institutions, non-governmental organizations and civil society groups relevant to his mandate, including the Legal Clinic Adilet, the Kyrgyz Committee on Human Rights and CASE Kyrgyzstan. The mission programme also included a field visit to Ak-Tuz, where he was received by the head of the local administration.

6. The independent expert wishes to thank the Government of Kyrgyzstan and all those organizations and individuals who provided valuable information, and in particular the United Nations Resident Coordinator for the assistance and support provided for the mission.

I. CHALLENGES OF TRANSITION

7. Following its independence in 1991, Kyrgyzstan embarked on an ambitious path of reform, both in terms of transition to a market economy and to a democratic society. As compared to other countries in the region, Kyrgyzstan is often characterized as an "island of

democracy”, with a parliament that has strong oppositions. Since its independence, the Government has taken a number of steps including land reform, decentralization, constitutional amendments that devolved more power to the Parliament, and the establishment of Ombudsman. Kyrgyzstan is also described as a country of non-governmental organizations (NGOs), with more than 4,000 registered NGOs. The processes of inclusive national dialogue initiated under the Comprehensive Development Framework and the National Poverty Reduction Strategy (NPRS) signal the direction towards participatory reform and further decentralizing decision-making and public services to the local levels.

8. In terms of its economy, the process of transition has left the country highly indebted. With the loss of Soviet subsidies which had accounted for 10 per cent of GDP and 30 per cent of the State budget prior to 1990, the country was obliged to resort to heavy external borrowing in the initial period of transition. Despite recent good economic performance and considerable progress in attaining macroeconomic stability, debt sustainability remains an outstanding issue for Kyrgyzstan and poses continuing challenges and implications for the ability of the Government to allocate resources needed in sectors that contribute to the realization of human rights, particularly economic, social and cultural rights.

9. One of the main features of the early period of transition was a significant increase in poverty following the closure of industries and the dissolution of agricultural collective farms. Still today, about half of the 5 million people in Kyrgyzstan live below the poverty line. Despite the high incidence of poverty, there has been some reduction in the poverty level in recent years, which the Government attributes to economic and social measures taken by the State in order to raise living standards.

10. Another challenge stemming from the transition process is the deterioration of social services, which has direct implications for the realization of economic, social and cultural rights. The social service networks inherited from the old Soviet system are relatively well developed but are slowly deteriorating. The current Government budget allows for little new investment for the rehabilitation and maintenance of the network, which had been previously heavily subsidized by the former Soviet Union. The NPRS discusses comprehensively the need for reforms in the education and health sectors and for additional budgetary allocation in these areas. More international support in grants terms is required to rehabilitate the deteriorating services in education, health and social security, for which significant reform is ongoing.

II. GOVERNMENT POLICIES AND PROGRAMMES FOR THE REALIZATION OF HUMAN RIGHTS, IN PARTICULAR ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Kyrgyzstan’s commitment to international human rights

11. Kyrgyzstan is party to a number of international treaties on human rights, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child. The protection of human rights is incorporated in the Constitution of the Kyrgyz Republic.

12. Article 16 of the Constitution provides that human rights and freedoms are recognized and guaranteed in accordance with universally accepted norms and principles of international treaties and agreements ratified by the Republic. Under the law of the country, all citizens of Kyrgyzstan are equally entitled to the protection of their rights and freedoms, whatever their national or social origin, sex, language, political or other beliefs, religion, place of abode, property status or other characteristics. The protection of rights and freedoms by the courts is guaranteed.
13. Article 12 of the Constitution provides that international treaties and other norms of international law that have been ratified shall be a constituent and directly applicable part of the legislation of Kyrgyzstan. Accordingly, procuratorial agencies, departmental monitoring bodies and the courts are all able to refer directly to provisions of international human rights conventions ratified by the State.
14. Kyrgyzstan has committed to abide to treaty procedures, including submitting periodic reports on the implementation of United Nations human rights treaties. With regard to the implementation of the International Covenant on Economic, Social and Cultural Rights, after acceding to the Covenant on 7 October 1994, Kyrgyzstan submitted its initial report (E/1990/5/Add.42) in May 1998, which was considered by the Committee on Economic, Social and Cultural Rights in August 2000. In its concluding observations (E/C.12/1/Add.49), the Committee recognized that the State party was confronted with common difficulties associated with countries in transition and expressed concerns about, inter alia, the high rate of poverty and the decrease in resources available to fund social insurance. The Committee urged the State party to continue to seek international financial and technical assistance, as provided for in articles 2, paragraph 1, and 23 of the Covenant, and to continue to direct resources to those most in need. The Committee also feels strongly that Kyrgyzstan should assess the impact of its economic reforms on the well-being of the population, keeping in mind its obligation to protect the vulnerable groups of society even under severe resource constraints, as stated in paragraph 12 of the Covenant. Kyrgyzstan's next report to the Committee is due on 30 June 2005. Kyrgyzstan also extended an invitation to the Special Representative of the Secretary-General on the situation of human rights defenders, who undertook a mission to the country in 2001.
15. In January 2002, the President issued a decree to launch the National Programme on Human Rights for the period 2002-2010, which provides basic directions for the State policy towards strengthening the efficiency of maintaining fundamental laws and freedom of the person, and developing statutory acts providing encouragement and development of effective realization of civil, political, economic, social, cultural and other rights and freedoms. The Government has also adopted, in 2002, the National Action Plan for Gender Equality 2002-2006, developed at the initiative of the National Council for Women, Family and Gender Development to define strategic directions of implementation of gender policy of the Kyrgyz Republic as an integral part of the Comprehensive Development Framework for the Kyrgyz Republic (CDF) until 2010.
16. While there is thus a clear commitment to human rights, many observers point out that much is to be done for the full implementation of treaties and conventions ratified. The Common Country Assessment of the United Nations in Kyrgyzstan notes that "the rights guaranteed by international instruments are still to move off the pages of official documents into people's lives".¹ It has become obvious that Kyrgyzstan, like other countries, needs an effective

human rights mechanism to safeguard protection and promotion as well as addressing violations on human rights. A landmark in the process of improving and institutionalizing human rights in Kyrgyzstan was the establishment of the Ombudsman Institution with the adoption of the Law on Ombudsman (Akyikatchi) by the Parliament, signed by the President in August 2002.

B. Government policies

17. The main features of the government programme contributing towards the realization of economic, social and cultural rights are contained in the National Poverty Reduction Strategy (NPRS). The NPRS has been derived from the Comprehensive Development Framework for the Kyrgyz Republic to 2010, entitled “The Kyrgyz Republic: New Development Prospects” and issued in May 2001, after a process of national dialogues supported by the World Bank.² The CDF has been developed in order to mobilize the efforts of all elements of the State and society to elaborate a vision for the country’s development goals and to implement social, political and economic development programmes. The CDF was also intended as a tool to coordinate the external assistance from donors and international organizations around the priorities defined in it.

18. Building on the earlier National Strategy for Sustainable Human Development 1997-2015,³ the CDF states its overarching goal as “to achieve political and social well-being, economic prosperity of the people of Kyrgyzstan, together with freedom, human dignity and equal opportunity for all”. The three basic pillars towards achieving this goal are: (a) effective and transparent State governance; (b) fair society providing human development and protection; and (c) sustainable economic growth and development.

19. While CDF provides general visions, medium-term priorities for the Government are defined in the NPRS, which was elaborated for the period 2003-2005 as the first stage of CDF implementation. The Strategy elaborates a set of specific actions, programmes, projects and studies, for the medium-term period up to the year 2005. Each of these measures has been assessed in terms of inputs, implementation mechanisms and time frames, as well as executing parties and indicators for progress monitoring. A system and mechanisms for ensuring quality management, coordination of all activities and effective monitoring and evaluation have been built-in into the Strategy.

20. The NPRS provides policy and measures to implement the three major development tasks envisaged in the CDF: (a) forming an effective State; (b) building a fair society; and (c) ensuring sustainable economic growth. All national resources will concentrate on the implementation of activities in the fight against poverty and the achievement of objective results on macro and micro levels, in order to foster people’s initiative so that all citizens of Kyrgyzstan can benefit from reforms. The activities will be implemented on the basis of the principles of partnership and participation of the State, the private sector, and civil society.

21. The NPRS is considered to be the fundamental element in the successful attainment of the overarching CDF goal. The NPRS identifies implementation of basic human rights and freedoms and development of democracy as key factors for the successful implementation of CDF and NPRS programmes. It is significant that the NPRS recognizes that the manifestation of poverty includes violation of human rights.

22. As a part of efforts under the CDF and NPRS goal of forming an effective State to achieve and ensure political stability in the country, and to increase the economic well-being of the Kyrgyz people and its social status by consolidating human and material resources, the Government adopted the National Strategy on Decentralization and Development of Local Self-Governance in the Kyrgyz Republic through the year of 2010 in December 2002. The objective of the National Strategy is to identify main directions, ways and methods of decentralizing State government and developing an efficient system of local self-governance as a necessary precondition for Kyrgyzstan to acquire qualities of a democratic State with the rule of law. In a related development, the President designated the year 2004 as the Year of Social Mobilization and Good Governance.

III. LINKING DEBT RELIEF TO POVERTY REDUCTION

A. Debt sustainability

23. Major obstacles to economic growth in Kyrgyzstan are the narrow economic base, vulnerability to external shocks and high external debt. Although Kyrgyzstan had zero external debt when it became independent, it accumulated a significant amount of debt during the initial period of transition. At the end of 2001, Kyrgyzstan's external debt stood at US\$ 1,678 million, equivalent to almost three times its exports and six times its revenues. About half of this debt was owed to the multilateral institutions, namely the International Development Association (IDA), the Asian Development Bank and IMF. It may also be noted that the level of Kyrgyzstan's external debt compared to exports and revenue well exceeds the threshold to be eligible for the World Bank's Heavily Indebted Poor Countries (HIPC) initiative.

24. In mid-2001, the Government launched a debt reduction strategy focused on tightening fiscal policy, reforming public finance and privatizing loss-making public enterprises, particularly in the telecommunications and energy sectors. These efforts were welcomed and supported by the international community and in March 2002, the Paris Club agreed to reduce the debt servicing due over 2002-2004 from US\$ 101 million to US\$ 5.6 million. This provided the much needed debt relief of US\$ 95 million, and freed resources required for the priority goals elaborated in NPRS.

25. However, the Paris Club treatment in 2002 had not changed the stock of debt even though the agreement included a goodwill clause, which allows for a potential stock operation in the future at concessional terms. Debt sustainability therefore remains an outstanding issue for Kyrgyzstan with its narrow economic base and high vulnerability to external shocks. Forty per cent of the country's export revenue comes from the Kumtor gold mine, whose reserve is expected to diminish in the near future.

26. The burden of debt servicing poses challenges and implications for the ability of the Government to allocate resources needed in sectors that contribute to the achievement of NPRS and the realization of human rights, particularly economic, social and cultural rights. Many of the interlocutors the independent expert met during the mission expressed the view that links exist between the burden of external debt and structural adjustment and their well-being and standard of living. However, few were able to substantiate this correlation.

B. Poverty and debt relief

27. In its first annual progress report on NPRS implementation in April 2004, the Government reported that the poverty level has been consistently falling, from 55.3 per cent in 1999 to 44.4 per cent in 2002 and 40.8 per cent in 2003.⁴ Substantial progress was reported in reducing the rural poverty, from 60 per cent in 1999 to 47 per cent in 2002. There was also a decline in urban poverty, although to a lesser degree. Still, the majority of the poor live in rural areas, accounting for 70 per cent of the total number of the poor.

28. It is worth noting that, despite the overall improvement in the poverty reduction, the level of extreme poverty remained the same (13.5 per cent in 2001 and 13.8 per cent in 2002). The decline of extreme poverty in rural areas from 15.6 per cent in 2001 to 14.7 per cent in 2002) was offset by a sharp increase in urban poverty (9.6 per cent in 2001 to 12.0 per cent in 2002). This is mainly due to the continued internal migration from rural to urban areas, particularly in Bishkek. The level of inequality in urban areas also increased during this period. In terms of access to basic services, the indicators show a slight deterioration in terms of basic education and access to clean drinking water. While the Government and the World Bank/IMF estimate that Kyrgyzstan is likely to achieve its targeted reduction in poverty to 39 per cent by 2005,⁵ the Government continues to face challenges in improving the targeting of its poverty reduction measures to cater for the most vulnerable segment of the society, including by improving the delivery of public and social services and generating employment opportunities.

29. There is little empirical evidence to support the argument that the Paris Club debt restructuring in 2002 has had any direct impact on the recent progress in poverty reduction, due to the lack of availability of categorized pro-poor expenditure data. Rather, poverty is a multifaceted phenomena requiring responses at different levels, including a combination of good policy measures undertaken by the Government and supported by the international community under the NPRS. Notwithstanding, it is obvious that the Paris Club debt restructuring brought about temporary improvement in the fiscal situation and State budget deficit, contributing to maintaining macroeconomic stability and social expenditure, thereby creating favourable conditions for poverty reduction.

30. One of the key elements of the NPRS measures is a budgetary policy aimed at reducing the budget deficit while increasing necessary social expenditures. The Government reported that the reduced payments on public debt as a result of the Paris Club debt restructuring enabled the Government to significantly increase current social expenditures from 8 per cent of GDP in 2001 to 10.1 per cent in 2002, as well as the Public Investment Programme (PIP) spending from 5.3 per cent of GDP in 2001 to 5.9 per cent in 2002.⁶ In coming years however, the Government would have to follow its debt reduction strategy, which would require curtailing of external borrowing and related PIP spending. As education and health-care related investment represent one quarter of PIP expenditure, it is critical that any further measures to rationalize public spending should be made in accordance with NPRS priorities and concomitant to keeping in view the obligations under the international treaties Kyrgyzstan has ratified, in particular the International Covenant on Economic, Social and Cultural Rights.

C. Medium-term budget framework 2005-2007

31. The Government estimates the overall financing requirement for the implementation of the NPRS for the period 2005-2010 at US\$ 900 million, on the assumption that the Paris Club would provide a further debt relief at concessional terms in 2005. In the Consultative Group meeting held in October 2002, donors pledged US\$ 700 million in support of the NPRS, of which about US\$ 500 million are being materialized.

32. In order to align State budget and donor assistance with the NPRS priorities, the Government introduced the Medium-term Budget Framework (MTBF) for the period 2005 to 2007. The MTBF defines State expenditure programmes in accordance with priority NPRS actions, and establishes ceilings on Government spending in order to maintain the macroeconomic stability and to reduce budget deficit.

33. Generally, the intention of the Government is to gradually curtail overall spending while increasing expenditures on social needs. As seen in the table below, major changes being introduced for the period 2004 to 2007 includes increases in the share of expenditures on education and health care, and in maintenance-related expenditures on PIP-financed infrastructures, cuts in State service expenditures (maintenance of the Government administration, defence and public order), and reduction in PIP loans. In the next section, the independent expert explores the impact of the debt burden and fiscal constraints on selected economic, social and cultural rights, and attempts to make some observations on the current sectoral reform efforts from human rights perspectives.

State expenditures in 2004-2007 (percentage of GDP)

Sector	2004	2005	2006	2007
	Expected	Forecasted		
Social services	15.4	15.9	16.3	16.5
Education	4.2	4.6	5.0	5.3
(of which investment expenditures)	0.3	0.4	0.7	0.8
Health care	2.0	2.1	2.3	2.4
(of which investment expenditures)	0.4	0.3	0.3	0.4
Social insurance and social security	7.6	7.6	7.5	7.5
Government services	1.0	1.0	0.9	0.8
Economic services	6.2	6.0	5.5	5.2
Agriculture	2.1	2.0	1.9	1.4
(of which investment expenditures)	1.6	1.4	1.0	0.9
Transport and communications	2.0	2.0	1.8	1.7
(of which investment expenditures)	1.1	1.0	1.1	0.9
Payment of interest on public debt	1.2	0.9	0.9	0.7
Total	27.4	27.2	26.8	26.1
(of which investment expenditures)	4.4	4.6	4.6	4.5

Source: Kyrgyz Republic, NPRS First Progress Report, p. 38.

IV. IMPACT OF FOREIGN DEBT AND STRUCTURAL ADJUSTMENT POLICIES ON THE REALIZATION OF SELECTED ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. The right to health

34. The Common Country Assessment by the United Nations pointed out that problems of governance, equity, efficiency, and capacity continue to challenge the health sector and the flow of funds into the health sector from the Social Fund continues to be irregular and below the level specified by law.⁷ When Kyrgyzstan became independent in 1991, the country inherited a health system that largely focused on specialized hospital care rather than on preventive and primary health-care services. In the years following independence, public resources available for health care collapsed with the withdrawal of subsidies from Moscow, and public spending on health steadily declined in relation to GDP. As a consequence, health facilities deteriorated and salaries of health staff declined in real terms. While previously health services were provided free of charge, informal payments by patients are a common practice today. This had had a particular impact on the poor and the vulnerable to enjoy their right to health, as well as for the general population, with the declining quality and the withdrawal of subsidized health and nutrition services previously available to them.

35. In recognition of the problems and challenges in the health sector, the Government launched in 1996 the MANAS health-care reform programme, aimed at a comprehensive reform of the health sector and to make more effective use of public and private resources. The reform has been implemented in the four major oblasts (regions) of Issyk-Kul, Chui, Talas and Naryn, aimed at moving the health system away from input-based traditional budgeting process based on maintaining existing structures towards incentive-based purchasing agreements based on outputs and population needs. The programme, based on the single payer system supported by the World Bank, pools resources from oblasts, cities and rayons (districts) and consolidates them into one system under the Mandatory Health Insurance Fund to purchase services on behalf of all local governments within the oblast. This allows greater efficiency in terms of reducing administrative costs and allows cross-subsidies to flow within the oblast. Health-care providers are paid for services on the basis of outputs, rather than on the basis of inputs (e.g. number of beds, etc), which forces the providers to rationalize health infrastructure and staffing to become more efficient.

36. In general, preliminary results in areas showed encouraging signs in areas where reforms have been piloted, with improvements for health indicators, increased availability of funding for staff salaries and medical supplies, as well as a decrease in informal payments.⁸ Sustainability of the reform process largely hinges upon the continuing increase of allocations in the State budget to the Insurance Fund and the extension of the reform programme to other parts of the country, particularly in large cities such as Bishkek where large hospitals are concentrated. While the MTBF forecasts the growth of health-related expenditures by 39 per cent during the period 2004-2007, there has been concern that the health reform process was undermined by the diversion of resources allocated to the Insurance Fund during the period 1996-2002 to pay pension arrears, which resulted in a resurgence of informal payment practices and consequent loss of user confidence. Another concern has been that the improvement in the transparency and

efficiency of health budgets has penalized the sector because seemingly new revenues from centralized payment and reduced numbers of building and staff have in some cases induced local governments to reallocate resources away from health to other priorities.⁹

37. Generally speaking, the independent expert believes that the reform process in the health sector is proceeding in the right direction and commends the efforts of the Government and support from the international community in facing the enormous challenges in reforming the health sector, which is essential for the well-being of the Kyrgyz people and their enjoyment of human rights. The independent expert also believes that the Government policies and strategies for the health sector in the NPRS would be further enhanced by the integration of human rights perspectives and principles. General comment No. 14 (2000) on the right to the highest attainable standard of health, adopted by the Committee on Economic, Social and Cultural Rights, as well as analytical reports of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, offer many useful frameworks for the consideration by policy makers, service providers and the international community supporting the efforts of the Government.

38. One such framework, based on paragraph 12 of general comment No. 14, would be that health services, goods and facilities must be: available in adequate numbers within the jurisdiction of a State; accessible geographically, economically (i.e., be affordable) and without discrimination; culturally acceptable to, for example, minorities and indigenous peoples; sensitive to gender and life-cycle requirements; respectful of confidentiality; scientifically and medically appropriate; and of good quality. In suggesting a framework for good practices on the right to health, the Special Rapporteur on the right to health adds to the list such dimensions as: promoting active and informed participation of individuals and groups, especially the vulnerable and disadvantaged, including those living in poverty, in relation to health policies, programmes and projects (example: village meetings to consider local health priorities and budgets); and establishing monitoring and accountability mechanisms that are effective, transparent and accessible (example: health ombudsman; health and human rights impact assessments) (A/58/427, para. 53).

39. Seen from this perspective, the independent expert would encourage the Government to focus on the identification of the poor and their varying needs and status in terms of access to health services, goods and facilities. One important dimension that the Government has begun addressing is to reduce the inequitable allocation of public spending on health. It is encouraging to note that the health sector reform programme has been expanded to cover large cities such as Bishkek and Osh where per capita spending on health is as much as two times higher than the rest of the country. Difficult challenges remain in restructuring large hospitals and the Sanitary Epidemiological Services to strengthen primary health care and to replace polyclinics by a network of family physicians at the primary level. In 2003, the Office of the Ombudsman conducted several independent monitoring and investigation of hospitals and health services, with the conclusion that while a co-payment system is being introduced, in reality many hospitals often had to accommodate poor patients on a preferential basis who had no means to make such payments.

40. As it is beyond the scope of the mandate or competence of the independent expert to make detailed observations or recommendations on sector-specific issues, he recommends the Government to cooperate with and seek advice from the Special Rapporteur on the right to health

and the Office of the United Nations High Commissioner for Human Rights as well as the United Nations country team in Kyrgyzstan in integrating human rights into the health sector reform process. However, he wishes to make one further observation from his field visit undertaken during the mission to the Ak-Tuz urban settlement in Chui region, as an illustration of the importance of promoting dialogue, participation and partnership in developing strategies for healthy lifestyles and community actions.

41. Ak-Tuz was once a prosperous mining town and an important centre of coalmining and heavy metal production during the Soviet era. Since the collapse of the Soviet Union, mining activities stopped and consequently, employment and all services, including water and heating for houses. Difficult life conditions and lack of economic activities forced people to leave the settlement and to look for better lives elsewhere. Today, in conditions of extreme poverty, only elderly, women and invalids live in Ak-Tuz settlement. The community is under serious environmental and health threats from the radioactive and hazardous mining wastes deposited around the town, in the region, on the banks of flood-prone rivers and at the foothills that are prone to mudslides or earthquakes.

42. For a long time, the community was not aware of the environmental and health threat, and no serious assessment of the situation had been made by the Government. Through the Local Initiative Facility for Urban Environment (LIFE) supported by UNDP, the community became active in political life and organized themselves to improve their living with modest resources available. In cooperation with local authorities and the central Government, five most poor and needy families (e.g., many children, absence of breadwinners, invalids etc.) were identified and chosen for the pilot project under which the beneficiaries received poultry, small cattle and goats to raise and to be distributed to the next group of beneficiaries. This programme, based on the ancient Kyrgyz tradition of increasing distribution to poor people by a chain system, is an innovative approach in increasing community participation for local development. The community was also able to receive assistance from the Ministry of Emergencies and Civil Defence for roofing material to rehabilitate some of the houses and buildings. The independent expert encourages the local community in continuing its activities, including under the LIFE programme, and combining them with raising more human rights awareness of the residents as holders of rights and the authorities as duty-bearers. Government and international support should be mobilized to improve access of the community to health services and to have a comprehensive environmental and health impact assessment, for the fulfilment of their right to health and the right to access to information.

B. The right to education

43. Similarly to the right to health, the right to education is both a human right in itself and an indispensable means of realizing other human rights. The Committee on Economic, Social and Cultural Rights stated, in its general comment No. 13 (1999):

“As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth.” (para. 1).

44. Accordingly, it is appropriate that the Government places access to quality education as one of the key NPRS priorities and promises expenditure increases for education in the MTBF. The Government has also elaborated on “An Education Development Concept until 2010”, which defines main development priorities as enduring accessibility and quality of education. Based on this concept and the CDF, the Government has enacted various legislations and elaborated programmes and strategies that are aimed at improving access to good quality education, including the “New Generation” State Programme for the Realization of Children’s Rights in the period up to 2010 which was elaborated in 2001 as a follow-up to the concluding observations of the Committee on the Rights of the Child on Kyrgyzstan’s initial report (CRC/C/15/Add.127).

45. Both the Committee on Economic, Social and Cultural Rights and the Special Rapporteur on the right to education define the interrelated and essential features that education in all its forms and at all levels shall exhibit as: (a) availability - functioning educational institutions and programmes should be available in sufficient quantity; (b) accessibility - educational institutions and programmes have to be accessible to everyone without discrimination, both in terms of physical accessibility and economic accessibility (affordability); (c) acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g., relevant, culturally appropriate and of good quality) to students and, in appropriate cases, to parents; and (d) adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.¹⁰ The independent expert would limit his observations on the first two elements of the right to education - availability and accessibility.

46. In terms of availability of education services, similarly to the situation of health services, the education sector in Kyrgyzstan is characterized by a relatively well developed infrastructure and quality as positive features inherited from the Soviet legacy. However, the decline in public expenditure as a result of transition has over the past decade, led to a serious deterioration in the quality of education in all but a few well-endowed urban schools represented by depleted stocks of textbooks and other educational materials, underpaid teachers and physical deterioration of schools.¹¹

47. In terms of accessibility without discrimination, the Constitution and other enactments provide that every minor has the right to free education in State general education establishments and that full-cycle general secondary education is compulsory and free, as described in Kyrgyzstan’s second periodic report (CRC/C/104/Add.4, paras. 256-258). In reality however, increasing reliance on formal and informal payments and contributions from parents to supplement the State budget to meet essential school needs has led to a rise in inequality, both in terms of access and quality. Children of poor families, particularly in rural areas where the majority of them live, face de facto discrimination in the sense that there are large differences in schooling conditions and educational outcomes among oblasts and between urban and rural schools. It is reported that many rural schools are dilapidated, often unheated in the winter and lack sanitation and drinking water facilities.

48. The NPRS and numerous government strategies and declarations have correctly recognized these challenges and outlined general policy and other measures necessary to address them. The independent expert also recognizes that many donors and international organizations have been supporting the efforts of the Government in the education sector, recognizing the

crucial role of education as an instrument of economic growth and poverty reduction. Some critics of the NPRS pointed out however that the document outlines many actions to be taken but do not prioritize them or provide operational guidance for the sequencing of actions. Even the MTBF and the progress report of the NPRS leave much to be desired with respect to prioritization of Government actions and sectoral budgeting.

49. The independent expert is encouraged by the intention of the Government to substantially increase education expenditures in the coming MTBF period. He ventures to suggest that in executing the NPRS in education and other sectors, the government programmes would benefit from further integration of human rights. This essentially requires that the realization of all human rights should be an explicit objective of the government and donor-supported programmes and that its implementation at all stages should be guided by human rights principles such as non-discrimination, equality and participation. Paying close attention to human rights dimensions often helps to reveal underlying causes of development challenges that require stronger political will and to find innovative solutions that could be implemented by making the maximum use of available resources. For example, a pioneering work supported by UNICEF has demonstrated the potential of community participation in education to improve both access and quality. As a result of refurbishment of 36 schools by community members in Naryn province, some 11,000 children in this deprived mountainous province now have access to better quality education. The community mobilization generated by this initiative led to the active participation of parents in a community-based education management information system for monitoring school enrolment, attendance and education quality. As a result, 46 village education groups and 5 district resource groups are now active in Naryn province.

50. UNICEF reported that: “Evaluations of the community-based education management information system have shown that capacity-building for service providers has to be matched by mobilization of families, young people and communities to demand and claim entitlements. The mobilization of local authorities, communities and families to use community resources to protect and realize children’s rights to education proved to be effective in reaching the unreached and facilitating the provision of quality schooling and social protection services.”¹²

C. The right to social security and the protection of vulnerable groups

51. Article 9 of the International Covenant on Economic, Social and Cultural Rights provides that States parties “recognize the right of everyone to social security, including social insurance”. Similar provisions on the right to social security are also found in other international instruments to which Kyrgyzstan is a party, such as the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (e) (iv)), the Convention on the Elimination of All Forms of Discrimination against Women (arts. 11 (e) and 14) and the Convention on the Rights of the Child (art. 26).

52. As a result of structural adjustment during the 1990s that required fiscal constraints, the social protection system in Kyrgyzstan had shifted away from explicit safety nets and direct transfer from the State and Social Fund budgets to quasi-fiscal subsidies, mainly in water, electricity and heating prices. Furthermore, the system had inherited the old Soviet incentives and privileges, which had defined groups eligible for benefits not entirely based on real economic and social needs (such as war veterans, people with “significant achievements” and “distinguished services”, etc.).

53. Therefore, the major priority under the NPRS in the sector has been to consolidate the social security system and to improve its targeting based on poverty reduction objectives. New legislations and several government resolutions have been adopted to better define target groups for assistance and to strengthen the Unified Monthly Benefits system that provides cash benefit to the poorest families. The Government has introduced an improved “social passport”, a social identity paper that determines the income level of beneficiaries and is used to calculate their real needs.

54. In a nutshell, the strategy of the Government is to make more resources available to the poor households in need, without much increasing the overall budget on social spending for the MTBF period. Better targeting of social support should result in the decrease of the overall number of benefit recipients, and would allow the Government to increase the level of the guaranteed minimum consumption level, which is used to calculate the size of social benefits.

55. The independent expert commends the progress in the reform of the social security system, and the increased allocation to the Unified Monthly Benefit system that directly benefits the poorest. Human rights have a particular concern about those who are disadvantaged, marginalized and living in poverty. Arising from human rights obligations relating to non-discrimination and equal treatment, States need to monitor and ensure that general and specific interventions reach the most vulnerable and marginal. In this context, the independent expert notes with interest that the Government has launched a monitoring effort in the form of an “audit” of beneficiaries that will be carried out by an independent local institution.

V. MONITORING AND ACCOUNTABILITY MECHANISMS

56. Governance reforms and strengthening the effectiveness and accountability of the State is a key pillar of the NPRS. It is also an important cross-cutting issue that underpins the success of other NPRS objectives and is crucial to promoting economic growth and building confidence with external partners and foreign investors, including to obtaining further debt restructuring with the Paris Club on concessional terms. Efforts to overhaul the public administration apparatus with functional reviews of civil services, constitutional amendments enacted to devolve powers from the President to other Government branches (the Jogorku Kenesh (Parliament), the Government, the judicial system and local self-government bodies), the adoption of the National Strategy on Decentralization and Development of Local Self-Government until 2010 and the declaration by the President to designate the year 2004 as the Year of Social Mobilization and Good Governance - all indicate a strong political will and commitment to build an effective and democratic State.

57. Delivering on these commitments made in the form of declarations, strategies and plans would be enhanced not only by additional support from the international community, but also by establishing appropriate monitoring mechanisms at national and local levels. The process of the NPRS implementation is coordinated by the National CDF Council supported by the CDF secretariat. The independent expert commends the inclusive approach adopted by the Government in the implementation of the NPRS, and notes with interest a number of events organized by the authorities, including electronic forums, to involve civil society in the implementation process, share information on the progress and to seek feedback on how the strategy may be modified to further poverty reduction objectives.¹³ It is also encouraging that the Government has undertaken a number of steps to address the issue of corruption, which is

among the major concerns of the citizens, donors and foreign investors. This includes the establishment of the National Council for Good Governance, which includes representatives of civil society, to advise the Government on developing and implementing concrete measures on forming and developing a good quality public administration system as an effective anti-corruption strategy.

58. It is also encouraging that based on the proposal of the President to promote a national idea of “Kyrgyzstan as the Country of Human Rights”, the Government has developed a national human rights programme and established the Democratic Security Council to coordinate the overall efforts to strengthen democracy in the country. Closer linkages should be promoted between these efforts to the overall NPRS implementation process with a view to further integrating human rights into the latter, as well as to the obligation of the Government to implement international human rights treaties and monitor its progress. In this context, the independent expert notes with interest the annual report of the Ombudsman in 2003 that contained, inter alia, complaints received with regard to economic, social and cultural rights as well as independent evaluations carried out by the Ombudsman’s Office on government policies and practices in the education and health sectors. The independent expert would thus encourage the Office of the Ombudsman to play a greater role in the independent monitoring and evaluation of the NPRS implementation from a human rights perspective.

59. The review by the independent expert and by any other body and mechanism would have been much facilitated if better public expenditure management systems had existed to provide Government expenditure data in real time by sectors and by categories of beneficiaries for pro-poor spending. This is an ongoing challenge that merits priority attention by the Government and the donor and international agencies.

60. Human rights principles and concerns should also inform the efforts to further improve NPRS indicators, in particular indicators related to governance, which remain underdeveloped. Particular attention will also need to be given to the implementation of obligations under international human rights treaties, including the submission of reports to treaty bodies, and to greater disaggregation of data to capture gender, rural-urban and regional disparities and specific data on vulnerable groups. The Government may wish to take note of the indicator framework developed for the Common Country Assessment and the United Nations Development Assistance Framework, in which some of these concerns have been addressed, and to seek advice and assistance from the United Nations country team, as appropriate.

VI. CONCLUSION AND RECOMMENDATIONS

61. The mission of the independent expert to Kyrgyzstan has been informative and useful in developing an appreciation of emblematical challenges faced by a country in the process of dual transition to a democratic system of governance and to a market economy. It is clear that Kyrgyzstan has made commendable efforts and taken important strides in meeting both these challenges.

62. Despite progress in macroeconomic reforms and the Paris Club debt restructuring in 2002, the country remains highly indebted. The review by the independent expert also

revealed evidence of links between the unsustainable level of debt and the fiscal constraints affecting the ability of the Government to allocate sufficient resources necessary for the enjoyment of economic, social and cultural rights during the early stage of transition.

63. At the same time, it is recognized that in recent years the Government has developed appropriate strategies and taken steps to ensure that the fiscal constraints do not have a negative impact on the ability of the Government to meet the social needs of the poor and to protect their enjoyment of basic human rights, particularly economic, social and cultural rights.

64. There is clear political commitment by the Government to address challenges of transition, poverty, governance and human rights, as manifested by the National Poverty Reduction Strategy and numerous laws, declarations and strategies adopted, including the ratification of and reporting under major international human rights treaties. Further efforts are needed, however, to translate these commitments into reality and to bring about improvement in the enjoyment of all human rights by the poor and the vulnerable.

65. Fully recognizing the formidable nature of these challenges and positive actions taken by the Government with the support of the international community, the independent expert respectfully submits the following recommendations to the Government of Kyrgyzstan and other concerned parties:

(a) In recognition of the positive progress made, the international community should provide further support to Kyrgyzstan, in the form of another round of Paris Club debt relief expected in early 2005, and in the form of more assistance in grants terms so as not to negatively affect the debt sustainability strategy adopted by the Government;

(b) Human rights norms and principles such as equality and non-discrimination, participation and inclusion, and accountability and the rule of law, should guide and inform the implementation of the NPRS and other programmes at all stages. The independent expert commends the inclusive approach and participatory process adopted in the NPRS. The NPRS should be further strengthened by clearly stipulating the obligations of the State under the international human rights treaties it ratified, and by elaborating on the means to implement them, linking with the NPRS objectives in all spheres;

(c) The independent expert is concerned about the deterioration of facilities and the prevalence of informal payments in the education and health sectors, which undermine the availability of and accessibility by the poor and the vulnerable to these services for the enjoyment of their rights to education and health. While welcoming the intention of the Government to increase expenditures on these sectors under the MTBF period 2005-2007, more concrete measures and innovative approaches should be taken to better target these services to meet the needs of the most vulnerable segment of the population. Useful lessons could be drawn from community-based initiatives supported by UNDP and UNICEF;

(d) Monitoring and accountability framework should be further strengthened by improving the framework of indicators on governance and human rights, and by greater disaggregation of data to capture gender, rural-urban and regional disparities and specific

data on vulnerable groups. Public expenditure management systems should be further improved to provide government expenditure data in real time by sectors and by categories of beneficiaries for pro-poor spending;

(e) The independent expert encourages the Office of the Ombudsman to play a greater role in the independent monitoring and evaluation of the NPRS implementation from human rights perspectives.

Notes

¹ United Nations in Kyrgyzstan, *Kyrgyz Republic: Common Country Assessment 2003*, p. 30.

² Kyrgyzstan was one of the original 13 pilot CDF countries, which expressed interest in participating in the CDF initiative launched by the World Bank in January 1999.
(<http://cdf.gov.kg/en/cdf>)

³ The Strategy addresses seven areas of development priority: (a) integration of society; (b) overcoming internal and external isolation; (c) overcoming the main threats to human security; (d) developing Kyrgyzstan's natural capacity; (e) developing Kyrgyzstan's human and social potential; (f) promoting a competitive economy; (g) promoting democratic governance.

⁴ Kyrgyz Republic, *National Poverty Reduction Strategy 2003-2005 (NPRS): First Progress Report*, April 2004.

⁵ IMF and the World Bank, "Kyrgyz Republic: Joint Staff Assessment of the Poverty Reduction Strategy Paper Annual Progress Report", 4 June 2004, p. 2.

⁶ Kyrgyz Republic, *National Poverty Reduction Strategy 2003-2005 (NPRS): First Progress Report*, April 2004, p. 10.

⁷ Op. cit. (note 1 above), p. 29.

⁸ UNICEF Kyrgyzstan, "Statement to the Committee on the United Nations Convention on the Rights of the Child", 8 June 2004.

⁹ United Nations, CCA, p. 29.

¹⁰ See general comment No. 13 (1999) on the right to education, para. 6, and E/CN.4/1999/9, para. 50.

¹¹ World Bank, *Kyrgyz Public Expenditure Review*, vol. I, pp. 43-44.

¹² UNICEF, Draft country programme document for Kyrgyzstan (E/ICEF/2004/P/L.14), para. 16.

¹³ See NPRS First Progress Report, pp. 43-44.
