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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,  
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,  
INCLUDING THE RIGHT TO DEVELOPMENT**

**Report of the independent expert on the effects of economic reform policies  
and foreign debt on the full enjoyment of all human rights, particularly  
economic, social and cultural rights, Bernards Andrew Nyamwaya Mudho**

## Summary

In the present report, the independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights particularly economic, social and cultural rights, Bernard Mudho, describes his recent activities, focusing on the challenges met in the preparation of the general guidelines requested by the Commission on Human Rights in its resolutions 2004/18 and 2005/19, to be eventually implemented by States and private and financial institutions in the decision-making and execution of debt repayments and structural reform programmes, including those arising from foreign debt relief. The aim of the guidelines is to guarantee that compliance with the commitments arising from foreign debt does not undermine the capacity of States to fulfil their obligations for the full realization of fundamental human rights.

In the introduction of the report, the independent expert briefly recalls the activities undertaken in 2007 in relation to the preparation of the draft general guidelines, such as the organization of an expert consultation, held on 9 and 10 July in Geneva, as well as the holding of annual consultations with the World Bank and the International Monetary Fund on 28 and 29 November in Washington, D.C. Mention is also made of his country mission to Burkina Faso and the report he submitted to the General Assembly and the annual report presented to the Human Rights Council in 2007.

The first part of the report describes what the key principles of the draft guidelines should be. In view of the disparities in conditions for each country and the difficulties in determining concrete indicators reflecting the realization of economic, social and cultural rights, the guidelines should be designed to encourage countries to elaborate flexible context-specific standards, benchmarks and indicators based on the core content or minimum human rights standards.

In addition, the concept and definition of debt sustainability play a major role in the discussions on the effects of foreign debt on human rights. The independent expert describes some of the proposed debt sustainability frameworks and briefly addresses their strengths and weaknesses, giving some orientations on the way forward. The main challenge identified in the report is the definition of the responsibility and obligations of stakeholders at the national and international levels in the design of a set of analytical tools. Such tools need to combine financial parameters, measurable human rights needs and poverty reduction objectives, with a focus on the Millennium Development Goals.

Finally, the independent expert provides a summary of the latest developments concerning the mandate and formulates some recommendations for its future. Economic reform and foreign debt measures have gradually become components of poverty reduction strategies. This situation raises a need for a new and multidimensional approach. He therefore recommends that the mandate be refocused on the subject of human rights and public finance. He also recommends that the new mandate-holder work in close collaboration with the Working Group on the Right to Development and its high-level task force in order to ensure synergy of their actions.

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## I. INTRODUCTION

1. Pursuant to resolution 2000/82, by which the Commission on Human Rights established his mandate and in accordance with resolution 5/1, by which the Human Rights Council extended the mandate, the independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of human rights, particularly economic, social and cultural rights, hereby submits his final report.
2. In its resolution 2000/82, the Commission requested the independent expert to pay particular attention to:
  - (a) The effects of foreign debt and the policies adopted to address 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;
  - (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.
3. 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, and to submit a final draft of general guidelines to the Commission at its sixty-second session. The purpose of the guidelines is to ensure that compliance with the commitments arising from foreign debt do not undermine the capacity of States to fulfil their obligations for the full realization by their citizenry of fundamental economic, social and cultural rights, as provided for in international human rights instruments.
4. Subsequently, by its decision 2/109, the Human Rights Council requested the United Nations High Commissioner for Human Rights to convene an expert consultation to contribute to the ongoing process of drafting the draft general guidelines and to invite international financial institutions, notably the World Bank and the International Monetary Fund (IMF), regional development banks, relevant United Nations agencies and national experts and stakeholders to contribute to the consultations.
5. The expert consultation was held on 9 and 10 July 2007, in Geneva. Its main objectives were:
  - (a) To provide an overall picture of how foreign debt and debt relief programmes and different kinds of economic reform policies affect the capacity of States to comply with human rights standards;

(b) To identify recommendations to States, international organizations and other stakeholders regarding possible policy elements to promote and protect human rights in developing countries while implementing debt and economic reform programmes.

6. The independent expert conducted his annual consultation with the World Bank and IMF on 28 and 29 November 2007, in Washington, D.C. He consulted with a wide range of interlocutors involved in human rights-related issues in both institutions. While the independent expert was updated on progress in the implementation of debt relief programmes and poverty reduction strategies supported by both institutions, in-depth discussions were held on the contents of the draft general guidelines. In particular, the independent expert exchanged views on the application of the poverty social impact analysis and on the roles of the inspection panel in the context of implementing economic reform programmes supported by the World Bank. The independent expert also held discussions with IMF staff on efforts to safeguard the poor population and social expenditure during economic reforms. The result of the consultation is reflected in the current draft of the general guidelines.

7. During the reporting period, the independent expert undertook a country mission to Burkina Faso from 23 to 27 April, the report on which is submitted as an addendum to the present report (A/HRC/7/9/Add.1). The independent expert wishes to thank the Government of Burkina Faso and, in particular, the Ministry for the Promotion of Human Rights for the assistance and support provided to the mission and its indispensable coordination role. He also wishes to thank the United Nations country team and all those organizations and individuals who provided valuable information.

8. In compliance with resolution 2005/19 of the Commission on Human Rights, the independent expert submitted a report to the General Assembly (A/62/212). The independent expert was gratified to have had that opportunity to inform the Third Committee of the Assembly about the ongoing process of drafting the general guidelines on a human rights-consistent design and implementation of economic reform policies and foreign debt programmes. His report focused, in particular, on the outcome and recommendations of the above-mentioned expert consultation in Geneva.

9. In his annual report for 2007 (A/HCR/4/10) submitted to the Council, the independent expert retraced the evolution of the mandate over past years and summarized main findings on the human rights impact of recent debt relief initiatives, underlying concepts of debt sustainability and economic reform policies frequently used in poverty reduction strategies. This work inspired the first draft of general guidelines, which was shared with the participants of the above-mentioned expert consultation of July 2007 as a basis for discussion. The present report builds on this earlier work. In particular, it contains an updated version of the key principles that inspire the draft guidelines, reflecting main findings of the mandate and essential comments made during the expert consultation, for the consideration of the Council. In the second part of the report, the independent expert provides general remarks on the nature of the mandate itself and gives suggestions on its possible future framework.

## II. KEY PRINCIPLES OF THE DRAFT GUIDELINES

### A. Minimum standards, core content and core obligations

10. The main objective of the draft general guidelines elaborated by the independent expert is to provide some indication on how economic reform policies and foreign debt schemes should be designed and implemented in order not to undermine States' obligations to ensure the full realization by their citizenry of fundamental economic, social and cultural rights. Consequently, policies related to economic reforms and foreign debt need to be developed based on the core content of these fundamental human rights.

11. Concrete thresholds reflecting the attainment of economic, social and cultural rights are not always available or measurable. The general comments of the Committee on Economic, Social and Cultural Rights provide some indication in this regard. Nonetheless, it is often not easy to extrapolate core content of the relevant rights from such an authoritative interpretation of the provisions of the relevant instruments in a concrete and measurable way. The essential drug list published by the World Health Organization, or the requirements concerning universal, free and mandatory primary education, are some of the concrete examples which help identify basic standards that any policy measures to facilitate economic reforms or to meet debt-related obligations must not undermine. In other areas, such as basic shelter or access to drinking water, minimum standards cannot be easily determined in a generalized way, as they often depend on the specific context in each country, including, for example, different climatic conditions.

12. While it is important that international norms continue to be further strengthened, for instance, through consideration of general comments and interpretation of the International Covenant on Economic, Social and Cultural Rights in the light of the new challenges associated with development (for example, HIV/AIDS and globalization), it is important to recognize that national conditions are so different that the minimum standards or core content of human rights to be safeguarded against the economic reforms and foreign debt burdens cannot be easily expressed as a universal international standard.

13. Therefore, the draft general guidelines are not intended to formulate a global definition of core content or to set some minimum standards to be observed by all countries. In fact, the guidelines are designed to encourage countries to elaborate their own context-specific standards, benchmarks and indicators. At the same time, such an exercise must of necessity be in line with the requirements of the International Covenant on Economic, Social and Cultural Rights, and should take into account the ongoing efforts being made by the Committee on Economic, Social and Cultural Rights to clarify and interpret requirements of the Covenant.

14. The identification of country-specific standards should also be a dynamic process. Regular reviews will have to be made in order to reflect changes in the country context to consider other useful guidance developed by human rights bodies. In this sense, the minimum norms at the country level may be determined within a fairly flexible framework. However, national minimum standards, within such a dynamic framework, should be defined regardless of the availability of resources and the recognition that economic, social and cultural rights are to be implemented progressively.

15. Given that such minimum standards and core content would be identified as dynamic and country-specific benchmarks, the guidelines would also highlight necessary steps towards the full realization of human rights. It should be noted that meeting the obligations corresponding to minimum standards is not enough to achieve the full realization of economic, social and cultural rights.

16. In this regard, the independent expert also recommends that the draft general guidelines should be used as a basis for developing more operational guidance, which will help States consider concrete criteria for the elaboration of national core content or minimum standards.

## **B. Debt sustainability**

17. The concept and definition of debt sustainability play a crucial role in discussions on the effects of foreign debt on human rights. Recognizing an unsustainable debt situation often triggers policy measures such as debt relief and increasing grant proportions in development assistance, which are expected to ensure a larger fiscal space for expenditures directly enhancing living conditions and livelihoods.

18. In 2005, the World Bank and IMF elaborated their improved analytical model on debt sustainability by tailoring it to a more country-specific analysis. Such an improved framework is also aimed at ensuring early detection of the risk of default and excessive debt burden. More specifically, this new analysis involves:

(a) A forecast on how a country's outstanding debt is likely to grow over time in relation to its ability to pay, taking into account the country's debt management policies and the performance of Government institutions related to debt service;

(b) An examination of how the outlook would change if reasonably expected shocks, such as a rise in oil prices, are taken into consideration;

(c) A final account, if the result of the above analysis indicates a possibly unsustainable situation.

19. However, the above model still does not go beyond the analysis of financial sustainability, as it concentrates on the analysis of the financial capacity to repay debt. In other words, the model alone falls short of assessing a country's ability to achieve its poverty reduction goals or meeting human rights obligations while servicing its foreign debt.

20. Many experts consider that debt sustainability assessments conducted by international financial institutions sometimes focus exclusively on the ability to service debt and on the risk of debt default, while considerations on human rights, for which these institutions do not have the necessary expertise, may not have to be integrated in this particular exercise. In that view, the assessment on whether a country has sufficient resources to finance expenditure to maintain minimum human rights standards would require a separate set of analytical tools. However, the existing debt-sustainability analytical framework could help identify the proportion of grant requirements, particularly for official development assistance. If human rights-related needs can be costed, the need for grants could be calculated by subtracting domestic fiscal resources - and

the amount of international assistance provided in the form of loans - from the costs for fulfilling human rights. Nonetheless, it must be noted that, in most cases, grants for the needed amount are not available.

21. Therefore, the capacity to pay should not be assessed by primary financial parameters alone; there is a need to take into account the cost of avoiding violation of international human rights obligations as well. A sustainability framework that does not consider human rights obligations would fail to indicate if a certain debt level, particularly over the long term, can be justified in the light of the international legal framework.

22. An alternative framework, based on the Millennium Development Goals, has been suggested by a number of non-governmental organizations. The key concept for this framework is net available revenue, which is an estimation of potential Government revenues, for example, 20 per cent of domestic income. While the income earned by the poorest part of the population would not count as potential source of Government revenue, the amount of grants provided in the forms of development cooperation is included. This framework also counts the estimated costs of fulfilling human rights obligations. However, as described above, there is currently no generally recognized methodology for human rights costing and this model concerns only some selected economic, social and cultural rights in the context of the Millennium Development Goals. Other fixed costs, such as maintaining public administration, police services and basic infrastructure, are added to this amount. Thus, net available revenue can be calculated by subtracting the total amount of such costs for maintaining the human rights standards from the total amount of potential or gross available revenue. This framework suggests that from 20 to 50 per cent of the net available revenue could reasonably be used for debt service. According to this framework, the foreign debt of 70 countries could be considered excessive and hence should be cancelled. This would reduce the number of borrowing countries to about 40.

23. Over the medium and long term, the rules and mechanisms of international public finance need to be further improved to take into account the international human rights regime and of innovative analytical tools on debt sustainability. Such requirements should then be binding for all stakeholders, including Government and private donors, as well as the borrowing countries.

### **C. Role of the Millennium Development Goals as interim targets**

24. The usefulness of the Millennium Development Goals as benchmarks or thresholds for implementing economic reform policies and debt management was frequently discussed during the preparation of the draft general guidelines.

25. The Millennium Development Goals and human rights are manifestly different in nature. The Goals are highly aggregated development targets, which do not take into account disparities between regions and population groups or possible discrimination and marginalization in a country. As targets, they can be delayed or modified over time. They are also not explicit enough on the accountability of Governments for their obligations to rights holders. Furthermore, they emphasize development outcomes but do not pay the same attention to the need for a participatory and transparent process, which is extremely important from a human rights perspective and as a practical strategy to achieve development outcomes.



26. However, there are significant relationships between economic and social rights obligations and the development issues and indicators dealt with at the centre of the Millennium Development Goals. Currently, the Goals are the most widely accepted operational reference framework regarding some of these problems; they provide internationally recognized targets, indicators and monitoring structures that allow, in some areas, broad quantification for the realization of economic and social rights and estimations of the related costs.

27. Against this backdrop, the draft guidelines suggest the need for a step-by-step approach. A first step would be to try to elaborate the above-mentioned national minimum standards and core content for each country. In doing so, countries may consider the Millennium Development Goals a transitional threshold. Secondly, countries analyse the coherence of their economic reform policies and debt management in the light of such minimum standards and core content.

28. Based on such an analysis, both creditors and borrowers should look into sustainability of the debt. One entry point of such discussion is to assess if a country is able to achieve the Millennium Development Goals on time while servicing its debt. The guidelines would then call on donors and creditors to redress this situation by renegotiating loan conditions, including a possibility of debt relief, or shifting development cooperation from loans to grants. The Multilateral Debt Relief Initiative was already explicitly designed to help heavily indebted poor countries to achieve the Millennium Development Goals.

#### **D. Responsibility of international financial institutions**

29. The Commission on Human Rights had requested the independent expert to draft guidelines to be followed by States and by private and public, national and international financial institutions. However, the discussion of the human rights obligations of international financing institutions, particularly the World Bank and IMF, has been controversial. IMF tends to argue that its articles of agreement do not make reference to human rights.

30. While it can be questioned whether or not international financial institutions are bound by human rights obligations as part of customary international law, it is undisputed that they are multi-State actors governed by their member States. States that are shareholders of international financial institutions are bound by international human rights law, as they are signatories and parties to human rights instruments. Enhancing coherence among multilateral institutions in relation to human rights principles would reduce the danger of providing conflicting policy advice and the need to face unacceptable trade-offs between macroeconomic requirements and human rights obligations. It would place the Governments of developing countries in a better position to uphold their international human rights obligations when negotiating with donors and creditors.

#### **E. Human rights impact assessments**

31. The draft guidelines emphasize that meeting the requirements of foreign debt servicing economic reforms needs to be balanced with human rights obligations. In fact, sound macroeconomic management, underpinned by the stability of basic commodity prices and sufficient fiscal space for public and social expenditures, should be conducive to enhanced enjoyment of human rights.

32. It is also true, however, that other economic policy choices or debt decisions can lead to different results, depending on the specific context of the respective countries. In this regard, general guidelines can only attempt to indicate key elements of reform measures which need to be looked at critically in assessing their consistency with the human rights obligations defined in a country-specific context. Accordingly, the guidelines emphasize the crucial role of human rights impact assessment as a decision-making tool.

33. Nevertheless, it must be noted that, to date, there are no well-established and generally accepted tools or methodologies for human rights impact assessment, particularly in the context of economic reform and foreign debt management. Future work on the guidelines should therefore include elaboration of such operational tools, which may be built upon the existing analytical and monitoring tools developed by States, international financial institutions, non-governmental organizations and human rights bodies.

### **III. REVIEW AND FUTURE OF THE MANDATE**

34. The Commission on Human Rights established the mandate of the independent expert in April 2000, against the backdrop of the negative effects on human rights observed as a result of structural adjustment programmes, particularly during the 1990s. At that time, economic reform measures in developing countries were usually implemented in accordance with the economic conditionality suggested, or in some cases imposed, by the international creditors, notably the World Bank and the IMF, as a prerequisite for new loan agreements or debt relief programmes.

35. In recent years, however, the situation has gradually changed to a limited extent. With the emergence of poverty reductions strategy processes, most economic reforms in developing countries are now designed and guided by more comprehensive poverty reduction strategies or national development plans. This has allowed a larger measure of country ownership and improved participation of stakeholders. Economic reforms led by the Governments themselves are, therefore, only indirectly influenced by debt considerations and pressure from creditors. Nevertheless, the linkages between debt burden, loan conditionality and economic reforms still exist; for example, a positive financial track record remains an important condition for granting debt relief. However, it has become more evident that economic reforms and foreign debt now tend to be identified as subsets of renewed and overarching poverty reduction strategies among other elements, such as development planning, social safety nets, anti-corruption, decentralization, trade liberalization and foreign direct investment. The rationale for examining foreign debt and economic reforms in terms of their impact on human rights within the same mandate has become less evident.

36. It should also be recognized that the impact of foreign debt and economic reform policies on human rights is felt across different dimensions and time frames. On the one hand, debt burden and debt relief operations have an indirect and longer-lasting influence on human rights through limited fiscal space, i.e., the available financial resources to finance human rights-related expenditure. On the other hand, economic reforms, such as the privatization of State-owned companies and the cutting of trade and agricultural subsidies can be the source of direct shocks to individual households and communities and result in the denial of the rights to work and to food and so on, in a relatively short period of time. In recent reports, and in the approach chosen for the draft general guidelines, the independent expert has attempted to take into consideration

these differences through a more holistic but strategic approach aimed at ensuring that appropriate fiscal space for the realization of human rights can be maintained over both the short and the long term.

37. In order to bring such a discussion forward, the Council may wish to consider refocusing the mandate on the same sphere of the impact of economic management on human rights. The experience gained to date shows that combining two distinct thematic focuses into one mandate has created ambiguity as to the area of intervention and has, in turn, led to a necessarily general approach to a variety of implicit aspects of the mandate. One possible way forward, which would be in line with the directions suggested by the draft general guidelines, therefore, could be to redefine the mandate in terms of human rights and public finance.

38. Such an approach would also allow a more structured view of debt-related issues as a part of the mandate. Work on the draft guidelines has shown that the impact of the foreign debt burden on the ability of States to comply with human rights obligations cannot be separated from other aspects of public finance. The impact of foreign debt, therefore, can continue to be addressed as part of this renewed but more focused mandate, which would look at public expenditure management through the lense of human rights principles.

39. The independent expert appointed by the Council would, therefore, be expected to possess great expertise in fiscal policies and aid programming, in addition to essential knowledge of international human rights norms and principles. He or she would thus be properly equipped to investigate the potential for improving public finance mechanisms and poverty reduction strategies at the country level. In particular, the expert could further review, revise and develop the draft general guidelines elaborated to date. In doing so, the new mandate-holder would, moreover, be expected to advise stakeholders by facilitating practical discussions on the tools which allow human rights-based decision-making, including:

- (a) Human rights impact assessments;
- (b) Quantification of minimum standards and identification of core contents beyond the Millennium Development Goals;
- (c) Human rights-based budgeting;
- (d) Social safety net programming as a means to mitigate the negative impact of reforms and privatization;
- (e) Government revenue and human rights (e.g. taxation, service fees, grant/loan proportion);
- (f) Enhanced accountability of international financial institutions by means of safeguarding provisions, or investigation mechanisms linked with advisory and lending decisions;
- (g) Participation of and consultation with stakeholders.

40. The mandate-holder should also work closely with the Working Group on the Right to Development and its high-level task force. The Working Group has been mandated to monitor and review progress made in the promotion and implementation of the right to development, which involves consideration of the many issues that also fall within the ambit of public finance. The new mandate-holder should take into account the plans of the Working Group in defining workplans and the focus of intervention in order to ensure complementarities.

41. The new mandate-holder should also call for greater engagement by the stakeholders, notably States, international financial institutions, other United Nations bodies and non-governmental organizations. For example, the World Bank and IMF have both developed expertise in the areas of social impact assessment and social policy and protection. It is important to acknowledge that efforts have been made by a variety of organizations and individuals to look into the impact of public finance on human rights. Seeking collective wisdom will be essential to produce recommendations, which can be accepted and implemented by the parties concerned. In this context, the consultation organized in July 2007 was extremely helpful in bringing together different viewpoints, and a similar mechanism should be contemplated to continue to support the work of the mandate.

#### IV. CONCLUSIONS AND RECOMMENDATIONS

42. **The independent expert is submitting to the Human Rights Council at its session the draft he has been working on for the general guidelines to be observed 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. They are aimed at ensuring that States' compliance with the commitments derived from foreign debt will not undermine their obligations to ensure the realization of fundamental economic, social and cultural rights for their citizenry, as provided for in international human rights instruments. The draft general guidelines reflect the independent expert's core recommendations concerning economic reform policy and foreign debt.**

43. **The independent expert encourages States to define country-specific minimum standards or core content in the areas of economic, social and cultural rights. Such standards must be coherent with the provisions of international human rights law, in particular the International Covenant on Economic, Social and Cultural Rights and take into account the relevant general comments of the Committee on Economic, Social and Cultural Rights. The existence of such standards would be an important step towards the implementation of the general guidelines.**

44. **Shareholders and member States of organizations such as the World Bank and IMF are bound by international human rights law. They should therefore review their own internal procedures and institutional set-ups, including their articles of agreement if necessary, in order to harmonize them with international human rights law. Integration of human rights obligations within the overall objectives of all multilateral organizations would reduce the risk of conflicting and contradictory policy advice to developing countries.**

45. With regard to the review of the mandate on the effects of economic reform policies and foreign debt on the full enjoyment of human rights, it is the considered opinion and recommendation of the independent expert that it is necessary to both redefine and rename the mandate with a view to achieving a more specific focus on economic management. The renewed and reformulated mandate would henceforth examine the impact of public finance management on the achievement of fundamental human rights. In essence, the thematic areas of foreign debt and international financial assistance should be repositioned as a part of more comprehensive public financial management. The central issue to be tackled would, therefore, be how to secure a sufficient fiscal space to respect human rights standards while receiving financial assistance with non-disabling repayment obligations.

46. The new mandate-holder charged with assisting the Council in examining the question of human rights and public finance could be invited to further review, revise and develop the draft general guidelines. Future work on the general guidelines could also include the development of analytical tools and operational guidance facilitating their implementation. Such tools would include human rights impact assessment, formulation of minimum standards and identification of core content, human rights-based budgeting and measures to strengthen the accountability of international financial institutions with regard to their international human rights obligations. Quantification of human rights obligations will remain a key problem in the link between public finance, including debt service, and human rights. Costing exercises would be an essential part of such analyses and advice on additional required fiscal space, debt relief, development aid or domestic revenues might be required.

47. Many of the issues regarding this mandate are also relevant to the right to development. Working relationships between the mandate-holder and the Working Group on the Right to Development and its high-level task force should be strengthened. The independent expert should take into account their work in order to ensure complementarity of their action. Moreover, the mandate should gain more support from the various stakeholders, notably States, international financial institutions, other United Nations bodies and non-governmental organizations.

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