

DEBT AND HUMAN RIGHTS

Consequences for
human rights of the debt
of the countries of the
South and the current
state of its treatment
within the United
Nations bodies

Part of a series of the
Human Rights
Programme of the
Europe - Third World
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CETIM

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War on terrorism and respect for human rights

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DEBT AND HUMAN RIGHTS

*Consequences for human rights of the debt of the countries
of the South and the current state of its treatment within the
United Nations bodies*

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**Part of a series of the Human Rights Programme
of the Europe - Third World Centre (CETIM)**

INTRODUCTION

When one speaks of foreign (or external) debt, one is referring to the indebtedness of those countries called “Third World” countries (or the South), particularly since the nineteen sixties. While the amount of the debt was US\$ 70 billion in 1970, in 35 years it has increased forty-fold to reach, in 2005, an intolerable level for these countries: US\$ 2,800 billion!¹ This figure includes both public and private debt, as well as bilateral and multilateral debt – and debt can mutate, changing “category” through “buy backs and sales of credits, the recovery of debts and their guarantees, defensive lending practices, the re-scheduling and the partial but conditional deferments, the misappropriations and evasions, the bribes and the fictitious registrations...”²

The causes of the indebtedness of the countries of the South are many. One could mention the attribution to newly independent countries of debt contracted by their colonial masters (African countries in particular) and the marketing efforts carried on in countries of the South by Western banks with a surplus of liquidities and in search of both secure investment opportunities and a high rate of return (high interest rates). To that could be added the granting of credit by the Bretton Woods institutions (the IMF and the World Bank) for promoting gigantic, ill conceived, unproductive and costly projects (“keys-in-hand” factories, infrastructure and dams, in particular). The subjugation of the countries of the Third World to the policies promoted by these institutions, supposedly for their development, has had disastrous consequences for their economies and for their populations (see below: structural adjustment policies). Corruption, the sale of armaments to the countries of the South and systematic and periodic crises at the world level have been other facets of their indebtedness.

The foreign debt of the countries of the South has a major influence on practically all areas of the life of their populations. It has been on the agenda of the international organizations for some four decades.

Although the international financial institutions may be willing to bet on the structural adjustment policies/programs (SAPs, Chapter I), the U.N. bodies have an entirely different view of the problem (Chapter III). Whatever the case, one thing is certain: the debt and the SAPs have a very harmful effect on human rights (Chapter II). Confronted with this situation, peoples and citizen movements have mobilized (Chapter IV).

¹ World Bank, *Global Development Finance*, 2007

² *Let's launch an enquiry into the debt! A manual on how to organize audits on Third World debts*, Geneva, CETIM/CADTM, 2006, page 9.

I. DEBT AND STRUCTURAL ADJUSTMENT PROGRAMS/POLICIES (SAPs)

The structural adjustment policies/programs (SAPs) are intimately linked to the question of the debt, for they were conceived by the IMF and World Bank and imposed upon the countries of the Third World officially to “react to the inequalities of the economy and in particular to the deficit in the balance of payments of various countries”,³ following the debt crisis at the beginning of the 1980s.

The substance of these policies/programs has scarcely changed over time and often is applied indiscriminately to countries, whatever their economic and social conditions: devaluation of the local currency, reduction of government expenditures for public services, elimination of price controls, limits on earnings, reduction of trade regulations and currency controls, privatizations, domestic credit restrictions, reduction of the role of the state in the economy, expansion of the export sector and decrease of imports.⁴

The independent expert of the Commission on Human Rights⁵ on the Effects of Structural Adjustment Policies on the Effective Enjoyment of Human Rights, Fantu Cheru, studied in depth the recipe of the Bretton Woods institutions and their arguments in his first report.⁶

For the independent expert, structural adjustment, which has furthered the neo-liberal counter-revolution, goes:

“beyond the simple imposition of a set of macroeconomic policies at the domestic level. It represents a political project, a conscious strategy of social transformation at the global level, primarily to make the world safe for transnational corporations. In short, structural adjustment programs (SAPs) serve as ‘a transmission-belt’ to facilitate the process of globalization, through liberalization, deregulation, and reducing the role of the State in national development.”⁷

In practice, and as acknowledged by the IMF, the primary objective of the SAPs is to assure repayment of the debt – with interest, of course – and the “viability” of that debt. In other words, the indebted countries must pay,

³ Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, *Report of the Secretary General*, E/CN.4/Sub.2/1995/10, 4 July 1995, §11: <http://daccessdds.un.org/doc/UNDOC/GEN/G95/128/78/PDF/G9512878.pdf>.

⁴ Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, *Realization of economic, social and cultural rights: Second progress report prepared by Mr. Danilo Türk, Special Rapporteur*, E/CN.4/Sub.2/1991/17, 18 July 1991, § 85, (hard copy only).

⁵ Replaced by the Human Right Council in 2006. V. the CETIM information bulletins N° 26, 27, 28.

⁶ Commission on Human Rights, *Report by the Independent Expert, Mr. Fantu Cheru, submitted in accordance with Commission decisions 1998/102 and 1997/103*, E/CN.4/1999/50, 24 February 1999: <http://www.hri.ca/fortherecord1999/documentation/commission/e-cn4-1999-50.htm>.

⁷ *Ibid.*, § 31.

regularly and regardless of cost, the service on the debt. Full repayment of the principal borrowed is a secondary – even undesirable – consideration, the idea being to assure a continual drain on the resources of the indebted countries and to keep these countries politically “on a leash” (see Chapter III). Moreover, several initiatives “in favor” of the poorest countries have been launched over the past twenty years by the IMF and World Bank or by the G-7 (now the G-8), all under various names, in order to assure the “viability” of the debt. Whether a structural adjustment facility (SAF), the Heavily Indebted Poor Countries (HIPC) Initiative, the Long Term Strategic Framework for Poverty Reduction, or Poverty Reduction and Growth Facility (PRGF, previously the Enhanced Structural Adjustment Facility or ESAF), they are all essentially SAPs and have the same thing in common: the conditions they impose from the outside.

II. EFFECTS OF THE DEBT AND STRUCTURAL ADJUSTMENT PROGRAMS ON HUMAN RIGHTS

After more than a quarter of a century of SAPs imposed on the countries of the South, a thoroughly detailed assessment of their disastrous consequences on human rights is possible. In point of fact, SAPs have caused or aggravated numerous violations of human rights, be they the right to self-determination, economic, social and cultural rights or civil and political rights.

A. The Right to Self-Determination

The major problem posed by SAPs is their conditions. If a heavily indebted country dared to refuse or to question any of these, it would risk being marginalized, indeed excluded from the international economic and financial markets, with all the consequences that that implies in an ever more interdependent world.

The SAPs are the drastic “remedies” at the social level that tend to suppress public services. To that must be added the economic orientations dictated by the Bretton Woods institutions, which deprive the countries in question of their sovereignty and, concomitantly, also deprive their populations of decision-making power over their present and their future. Thus, these countries find themselves unable (even allowing for their political will to do so) to honor their commitments regarding human rights, and in particular economic, social and cultural rights.

B. Economic, Social and Cultural Rights

The implementation of the SAPs triggers a chain of events as follows, events that all, in turn, translate into a lowering of the standard of living of the populations in question:

- the devaluation of the currency, generally, causes a rise in prices (imported products, domestically produced products using imported materials, followed by rents, land, transportation...);
- the privatization of public enterprises, often resulting in large scale lay-offs, thus depriving hundreds of thousands of persons of a living (e.g. Turkey in 2001), indeed tens of millions (China since joining the WTO), all accompanied by invasive unequal competition (destruction of the economic sector or the national social fabric outright);

- the privatization of land, which encourages the concentration of lands in the hands of the richest owners to the detriment of small family farmers and food sovereignty;
- a reduction of public expenditures for public services (education, health, housing, transportation...) and/or the introduction – or increase – of fees for the remaining services, which create disastrous situations for the populations concerned;
- economic, social and cultural development is included, given that decisions made in these areas are independent – partially or totally – of the governments in question and of their populations;
- an increase of poverty, inequality and unemployment;
- a degradation of working conditions and a severe weakening of trade unions;
- a decrease of tax revenues stemming from the general impoverishment of society and from tax breaks given to transnational corporations and to the rich.

This description is not at all exhaustive, but it illustrates the violations of economic, social and cultural rights that arise, or can arise, from the implementation of SAPs. The right to food, to water, to adequate housing, to education, to work, to join a trade union, to social security and to non-discrimination are among those most violated, and these violations threaten directly the right to life in the broadest sense.

C. Right to Development

It is obvious that the debt is a major obstacle, if not the major obstacle, to the development of the so-called Third World countries.⁸ In fact, since these peoples cannot take part in making the decisions that affect their future, cannot control their own natural resources, cannot assure basic public services for the needy... and since their resources (natural and those resulting from their work) are confiscated for debt repayment, they are victims of flagrant violations of the right to development and of other human rights listed in this chapter.

D. Right to Solidarity

In such a climate, it is disingenuous to speak of the right to solidarity for the implementation of SAPs is usually accompanied by discriminatory measures and by the progressive elimination of universal public services through privatization (for example with taxes/fees for education and medical care, including for the poorest). Further, privatization of such services imposes severe limits on any attempt at democratic monitoring and control over them, for

⁸ For example, Liberia's 2006 budget was US\$ 86 million whereas its foreign debt was US\$ 1.5 billion. V. the 13 November 2007 Eurodad information letter.

most basic factual information about their working thus becomes the property of the companies providing the services, hence unavailable to the general public.

E. Civil and Political Rights

The above described succession occurring with the implementation of SAPs very often triggers the legitimate revolt of the affected populations, confronted as they are not only with sporadic severe repression by the authorities but also with violations of most of their civil and political rights: right to life (in certain circumstances, the use of capital punishment, summary executions, torture leading sometimes to death, genocide), the right to freedom of association, the right to participate in the decision making processes that affect one's life and welfare, the right to information, the right to freedom of opinion and expression, the right to non-discrimination and to equality, the right to a fair trial, the right to privacy, the right to freedom of movement...

F. Right to a Healthy Environment

By emphasizing economic growth through the exporting of primary products (from mining, for example, and/or agricultural products from monoculture), SAPs not only aggravate the unbridled exploitation of these resources and products that causes irreversible damage to nature (pollution, impoverishment of soil, environmental imbalances), but also generate conflicts and threaten the survival of future generations.

G. Repression and Militarization of Society

Structural adjustment programs are very often accompanied by discriminatory measures and laws restraining basic freedoms and resulting in ferocious repression of the working classes that can lead to genocide. This obviously necessitates an army and/or oversize police forces – at the expense of social services – for use by governments against their own people.

Moreover, as the United Nations expert Danilo Türk has judiciously pointed out in his study of SAPs: “It is noteworthy that one element of national expenditure which is almost invariably not affected by programs of adjustment is military spending. This is in spite of the fact that per capita military expenditure in developing countries is greater than combined expenditure on health and education.”⁹

It is not unusual to find that the “good pupils” of the IMF/World Bank couple are repressive regimes or regimes ideologically close to such regimes.

⁹ Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, *Realization of economic, social and cultural rights: Second progress report prepared by Mr. Danilo Türk, Special Rapporteur*, E/CN.4/Sub.2/1991/17, 18 July 1991, § 87, (hard copy only).

For example, the World Bank refused all loans to France after the Second World War as long as the Communists participated in the national unity government. On the other hand, it granted a loan of US\$ 195 million to the Netherlands when the government was in the midst of a military offensive against the Indonesian nationalists. It did the same for Chile under Pinochet, which received loans after the coup d'état whereas the democratically elected government of Salvador Allende had been refused.¹⁰ Worse, the debt contracted by the Rwandan government between 1990 and 1994 “served primarily to finance the armed forces and the civil militias” that committed the genocide in this country, with the full knowledge of the creditors!¹¹

¹⁰ Eric Toussaint, *La finance contre les peuples: La bourse ou la vie*, CADTM/CETIM /SYLLEPSE, February 2004.

¹¹ Pierre Galand and Michel Chossudovsky, « L'usage de la dette extérieure du Rwanda (1990-1994) – La responsabilité des bailleurs de fonds », 1997/1998, <http://globalresearch.ca/articles/CHO403F.html>.

III. TREATMENT OF THE QUESTION OF THE DEBT AND OF SAPs BY UNITED NATIONS BODIES

For over two decades, various United Nations bodies have dealt with the question of the debt and of SAPs. The following discussion focuses on the treatment accorded to the question by the various human rights bodies.

A. The Sub-Commission for the Prevention of Discrimination and the Protection of Minorities

Already, in 1983, Raúl Ferrero, the Special Rapporteur on the new international economic order and the promotion of human rights of the Sub-Commission for the Prevention of Discrimination and the Protection of Minorities,¹² expressed his concern over the debt in the following terms: “The current situation regarding the external debt of the developing countries is extremely serious. Indeed, entire countries are on the verge of collapse.”¹³

He also dealt with its effect on human rights as well as on development. However, the first detailed study of the external debt of the countries of the South examining SAPs was written in 1991 by Danilo Türk,¹⁴ the Sub-Commission Special Rapporteur on the realization of economic, social and cultural rights cited above.¹⁵ In the framework of his study, Danilo Türk devoted his second progress report to an analysis of the effects of SAPs on the enjoyment of economic, social and cultural rights and the role of the international financial institutions, a report still relevant today.¹⁶

At that time, already, the conclusion of the Sub-Commission’s Special Rapporteur concerning the ideology of growth and adjustment policies was indisputable:

¹² This subsidiary body of the Commission on Human Rights took the name Sub-Commission for the Prevention of Discrimination and the Protection of Minorities in 1999. It was disbanded following the replacement of its parent body by the Human Rights Council in 2006 and was replaced in 2008 by a consultative committee of experts with a more limited mandate. V. the CETIM information bulletin of September 2007, N° 29.

¹³ Sub-Commission for the Prevention of Discrimination and the Protection of Minorities, *Study on the new international economic order and the promotion of human rights: Final report by Mr Raúl Ferrero (Peru)*, E/CN.4/Sub.2/1983/24, 2 August 1983, § 111 (hard copy only). V. also its addendum, E/CN.4/Sub.2/1983/24/Add.1/Rev.1, 18 November 1983, (hard copy only).

¹⁴ Recently, Danilo Türk was elected president of Slovenia.

¹⁵ V. resolutions 1988/33 of the Sub-Commission and 1989/12 and 1989/13 of the Commission (hard copy only).

¹⁶ Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, *Realization of economic, social and cultural rights: Second progress report prepared by Mr. Danilo Türk, Special Rapporteur*, E/CN.4/Sub.2/1991/17, 18 July 1991, (hard copy only).

*“Neither growth nor adjustment is invariably destructive. At the same time, neither of these economic processes can be guaranteed inevitably to promote justice, equality and ultimately the realization of economic, social and cultural rights.”*¹⁷

Analyzing the effects of SAPs on economic, social and cultural rights in keeping with his mandate (in particular the right to food, to health, to adequate housing, to work and to education), he concluded: “Structural adjustment programs continue to have a significant impact upon the overall realization of economic, social and cultural rights, both in terms of the ability of people to exercise these rights, and of the capability of Governments to fulfill and implement them.”¹⁸

While recalling the legal obligation of states regarding economic, social and cultural rights at the national, regional and international levels,¹⁹ he emphasized the failure of the IMF/World Bank couple regarding “their own institutional duties under international law”.²⁰

Following his recommendations, both the Sub-Commission and the Commission on Human Rights requested the Secretary General to draft “guidelines” for a dialogue between the human rights bodies and the international financial institutions.²¹

Presented to the forty-seventh Sub-Commission, the guidelines were approved by consensus on 24 August 1995 in the form of resolution 1995/32 (see Annex 2). In the same resolution, the Sub-Commission recommended that the Commission create a working group “to elaborate, on the basis of the preliminary set of basic policy guidelines on structural adjustment programs and economic, social and cultural rights... policy guidelines on the subject-matter.” (See below.)

Among the many other studies conducted by the Sub-Commission on to this subject, it worth mentioning in particular the recent one on globalization and human rights, which deals with the workings of the international financial institutions.

Conducted between 2003 and 2005 by the Sub-Commission’s Special Rapporteurs Deepika Udagama and J. Oloka-Onyango,²² this study severely criticized the Bretton Woods institutions, which, in their opinion, concentrated too much on macroeconomic factors and failed to incorporate into their own workings the methods of transparency, participation and good governance that they required of their member states.

¹⁷ Ibid., § 67.

¹⁸ Ibid., § 195.

¹⁹ Ibid., § 52a.

²⁰ Ibid., § 203.

²¹ V. Sub-Commission Resolutions 1991/27 and 1992/29 as well as Commission Resolutions 1993/14 and 1994/37 (hard copy only).

²² V. Sub-Commission Resolution 1999/8, 25 August 1999: http://ap.ohchr.org/documents/E/SUBCOM/resolutions/E-CN_4-SUB_2-RES-1999-8.doc.

The Special Rapporteurs requested an urgent reform of the rules regulating international trade, investment and finance, taking into account respect for, and promotion of, human rights by the main economic actors in the globalization process, while at the same time reaffirming the primacy of human rights over all other considerations of international law.²³

B. Human Rights Commission/Council

The former Commission on Human Rights, which regularly received the studies and resolutions of the Sub-Commission on the subject of debt and SAPs, approved (often by only one vote), the results of the work carried on by its subsidiary body.

Within this framework, the Commission adopted many resolutions in which it very often affirmed that:

*“the permanent solution to the foreign debt problem lies in the establishment of a just and equitable international economic order which guarantees the developing countries, inter alia, better market conditions and commodity prices, stabilization of exchange rates and interest rates, easier access to financial and capital markets, adequate flows of new financial resources and easier access to the technology of the developed countries”.*²⁴

It also affirmed that:

*“the exercise of the basic rights of the people of debtor countries to food, housing, clothing, employment, education, health services and a healthy environment cannot be subordinated to the implementation of structural adjustment policies and economic reforms arising from the debt”.*²⁵

In its concern to find a long-term solution to the problem of the debt, the Commission, in 1995, asked the Secretary-General to recommend a way of launching “a political dialogue between creditor and debtor countries in the United Nations system, based on the principle of shared responsibility”²⁶ For

²³ V. *the preliminary and final reports on Globalization and its impact on the full enjoyment of human rights*, E/CN.4/Sub.2/2000/13, 15 June 2000: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2000.13.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2000.13.En?Opendocument) and E/CN.4/Sub.2/2003/14, 25 June 2003: <http://daccessdds.un.org/doc/UNDOC/GEN/G03/147/84/PDF/G0314784.pdf>.

²⁴ Commission on Human Rights Resolution 1999/22, 23 April 1999, § 3: http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-1999-22.doc, adopted by 30 votes in favor (Bangladesh, Bhutan, Botswana, Cape-Verde, China, Cuba, Ecuador, Democratic Republic of the Congo, Guatemala, India, Indonesia, Liberia, Madagascar, Mauritius, Morocco, Mozambique, Nepal, Niger, Pakistan, Philippines, Qatar, Republic of Congo, Rwanda, Senegal, South Africa, Sri Lanka, Sudan, Tunisia, Uruguay and Venezuela), 15 against (Austria, Canada, Czech Republic, France, Germany, Ireland, Italy, Japan, Latvia, Luxembourg, Norway, Poland, Rumania, United Kingdom, United States) and 8 abstentions (Argentina, Chile, Colombia, El Salvador, Mexico, Peru, Russia and South Korea).

²⁵ *Ibid.*, § 5.

²⁶ Commission on Human Rights Resolution 1995/13, *Effects on the full enjoyment of human rights of the economic adjustment policies arising from foreign debt and, in particular, of the implementation of the Declaration on the Right to Development*, 25 February 1995, adopted by 33 votes in favor, 15 against and 4 abstentions in Commission on Human Rights, Report on the Fifty-First Session.

the Commission, “this dialogue should contribute to the initiation of an integral process aimed at restructuring the international economic order with the objective of achieving more equitable and fair relations among all nations of the world”²⁷ The next year, the Secretary-General presented a report containing the guidelines and principles of such a dialogue as well as the responsibilities of governments, at the national and international levels, and the duties of the international financial institutions.²⁸ (See Annex 1)

1. Working Group on SAPs

Having requested that the Secretary-General conduct high level consultations on the subjects of the debt and SAPs,²⁹ and following the recommendation of the Sub-Commission, the Commission decided in 1997 to create an open ended working group “to elaborate, on the basis of the preliminary set of basic policy guidelines on structural adjustment programs and economic, social and cultural rights contained in document E/CN.4/Sub.2/1995/10 and in close cooperation with the Committee on Economic, Social and Cultural Rights, policy guidelines on the subject-matter.”³⁰

During its brief life span, this working group was unable to fulfill its mandate owing to numerous difficulties. Before considering the reasons for this failure, it is worth looking at what the group did accomplish and its development.

Its first session was held from 3 to 7 March 1977 in Geneva, with the active participation of representatives of the IMF and the World Bank. It rapidly turned into a dialogue of the deaf.

In fact, the World Bank representative claimed that:

*“labor market flexibility was in the interest of the poor and that minimum wage legislation lead to reductions in who were employment [SIC]. He believed that there was a conflict of interest between those employed in the formal market and enjoyed union protection and others who did not. Hence, protection of the former would be at the expense of the latter.”*³¹

²⁷ Ibid.

²⁸ Human Rights Commission, Ways and means to carry out a political dialogue between creditor and debtor countries in the United Nations system, based on the principle of shared responsibility E/CN.4/1996/22, 5 February 1996: <http://documents-ddsny.un.org/doc/UNDOC/GEN/G96/104/87/pdf/G9610487.pdf>.

²⁹ Commission on Human Rights, inter alia, Resolutions 1993/12, 1994/11 and 1996/12.

³⁰ Commission on Human Rights Decision 1996/103, 11 April 1996: http://ap.ohchr.org/documents/E/CHR/decisions/E-CN_4-DEC-1996-103.doc, adopted by 34 votes in favor (Algeria, Angola, Bangladesh, Benin, Bhutan, Brazil, Cameroon, Chile, China, Colombia, Côte d'Ivoire, Cuba, Ecuador, Egypt, El Salvador, Ethiopia, Gabon, Guinea, India, Indonesia, Madagascar, Malaysia, Mali, Mauritania, Mexico, Nepal, Nicaragua, Pakistan, Peru, Philippines, Sri Lanka, Uganda, Venezuela, Zimbabwe), 16 against (Australia, Austria, Belarus, Bulgaria, Canada, Denmark, France, Germany, Hungary, Italy, Japan, Netherlands, Ukraine, Russia, United Kingdom, United States) and one abstention (South Korea).

³¹ Commission on Human Rights, Report of the open-ended working group on structural adjustment programs and economic, social and cultural rights, 10 March 1997, E/CN.4/1997/20, § 4: <http://daccess-ods.un.org/TMP/8004544.html>.

According to the representative of the IMF, the role of his institution was:
*“to foster fiscal consolidation; firm anti-inflationary policies, liberalization of financial sectors and pursuit of a realistic exchange rate; opening up of the economy to international trade, foreign capital and competition; price liberalization; and public enterprise reform.”*³²

Wanting to “update” the Secretary-General’s report on the preliminary set of basic policy guidelines on structural adjustment programs and economic, social and cultural rights, the working group entrusted the task to three regional groups, to wit Africa, Latin America and Asia. The West, for its part, in a sense, boycotted³³ the working group’s meeting.

In the document that the working presented, the Latin America group emphasized primarily the following elements as needing to figure in the principles: equal rights and self-determination; the indivisibility and interdependence of human rights and basic freedoms; international cooperation; sovereignty of states over natural resources; non-intervention in internal political affairs of a country.³⁴

The Asia group, which considered principles that should underlie national policies, insisted on the following points: the active participation of all elements of society in the planning, implementation and evaluation of strategies, policies and national economic and social development programs as well as their control and monitoring; equality of opportunity and of access to production resources; the protection and promotion of basic workers rights; equality of access to social services.³⁵

The Africa group, in its working document on “orientations for international action”, emphasized, inter alia, the following principles: no country may use or encourage the use of economic, political or any other measures to force another country to subordinate the exercise of its sovereign rights and to obtain advantages of any sort whatever; the granting of active aid to developing countries should be guaranteed by the entire international community without any conditions, political or military; the supplying of economic and technical aid, loans and the increase in foreign investment should not be subjected to any conditions that harm the interests of the state receiving them; each state has the right to regulate foreign investment; each state has the right to regulate and monitor the activities of transnational corporations within the limits of its national jurisdiction and to take measures to assure that these activities are in conformity with its laws, rules and regulations as well as in conformity with its economic and social policies.

The African group further emphasized: transnational corporations should not intervene in the domestic affairs of a host country; aid should not come

³² Ibid., § 15.

³³ Although the working group was open to all U.N. member states, only Germany, Netherlands, Portugal and Spain sent representatives. Ibid., § 5.

³⁴ Ibid., Annex I.

³⁵ Ibid.

with strings attached; the debt should not harm the constant improvement of conditions assuring the enjoyment of human rights; repayment of the debt should not be carried out at the expense of the debtor country population's fundamental right to food, adequate housing, clothing, work, health, and a healthy environment; there should be a significant reduction of the debt of the least developed countries, especially in Africa, as soon as possible.

At the end of its work, the working group recommended to the Commission an extension of its mandate and the appointment of an independent expert as soon as possible.³⁶

In keeping with the wishes of the working group, the Commission, during its fifty-third session, approved the extension of the mandate with the following stipulations:

“(a) to gather and analyze information on the efforts of structural adjustment programs on economic, social and cultural rights; and (b) to elaborate basic policy guidelines on structural adjustment programs and economic, social and cultural rights (a) to gather and analyze information on the efforts of structural adjustment programs on economic, social and cultural rights; and (b) to elaborate basic policy guidelines on structural adjustment programs and economic, social and cultural rights which could serve as a basis for a continued dialogue between human rights bodies and the international financial institutions, and to report to the Commission at its fifty-fourth session.”³⁷

By the same decision, the Commission requested its chair to appoint an independent expert “to study the effects of structural adjustment policies on economic, social and cultural rights”.

However, the appointment of an independent expert turned out to be fraught with difficulties and, for this reason, it paralyzed the work. At first, Ismail-Sabri Abdall (Egypt), although appointed in 1997, “resigned” for unexplained reasons, without ever having presented a report. Next, Fantu Cheru (United States and Ethiopia) was appointed in December 1998. Although the term accorded to him was short, he presented a fairly thorough report on the question³⁸ to the second session to the working group held from 1 to 3 March 1999. This report, similar to Danilo Türk's Sub-Commission study, constitutes one of the few analytical documents on this specific question presented to the

³⁶ Ibid.

³⁷ Commission on Human Rights, Decision 1997/103, 3 April 1997, adopted by 36 votes in favor (Algeria, Angola, Argentina, Bangladesh, Benin, Bhutan, Brazil, Cape-Verde, Chile, China, Colombia, Cuba, Dominican Republic, Egypt, El Salvador, Ecuador, Ethiopia, Gabon, Guinea, India, Indonesia, Madagascar, Malaysia, Mexico, Mozambique, Nepal, Nicaragua, Pakistan, Philippines, South Africa, South Korea, Sri Lanka, Uganda, Uruguay, Zaire, Zimbabwe) 13 against (Austria, Belarus, Bulgaria, Canada, France, Germany, Italy, Japan, Netherlands, Russia, Ukraine, United Kingdom, United States) et 3 abstentions (Czech Republic, Ireland, Denmark): http://ap.ohchr.org/documents/E/CHR/decisions/E-CN_4-DEC-1997-103.doc.

³⁸ Effects of structural adjustment policies on the full enjoyment of human rights, informal document, GE.99-11005. It was distributed only in English. An updated version of it was later translated and presented to the 55th session of the Commission, E/CN.4/1999/50, 24 February 1999: <http://www.hri.ca/forthecord1999/documentation/commission/e-cn4-1999-50.htm>.

United Nations human rights bodies. Among the independent expert's recommendations, one might note the cancellation of the debt of the most indebted countries and "a basic restructuring of world financial, monetary and trade systems".³⁹

Following considerable wrangling within the working group, only a very brief presentation of the above mentioned report and the recommendations of the group to the Commission were mentioned in the working group's final report,⁴⁰ whereas there had been significant and detailed discussions on the question.

Following the recommendations of its working group, the Commission not only extended the mandate of the group for a longer meeting period (two weeks), but also broadened the mandate of the independent expert by asking him to "(i) assist the working group in the fulfillment of its mandate, in particular by elaborating draft basic policy guidelines on structural adjustment policies; and (ii) monitor new developments, including 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, and to submit a revised report to the working group at its third session".⁴¹

The third session of the working group has never taken place owing to the lack of a chair! The chair of the second session (Lilia Bautista of the Philippines) resigned, and the search for a chair proved difficult. Although Pius Ikpefuan Ayewoh (Nigeria) was elected to this position in October 2001, he resigned without having presided over the group.

This situation is, for sure, not unrelated to the position of the countries of the North, which ferociously opposed dealing with the question within the Commission, arguing that this body was not the appropriate one [SIC] to deal with it and that the place to explore the subject was within the international financial institutions! Moreover, since then, the Commission never dealt with the "guidelines for a political dialogue between creditor and debtor countries in the United Nations system, based on the principle of shared responsibility" (See below).

³⁹ Ibid., §§ 122 and 127. V. also Chapter II.

⁴⁰ V. Report of the open-ended working group on structural adjustment programs and economic, social and cultural rights on its second session, E/CN.4/1999/51, 11 March 1999: www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/3327719ad83c808c8025674e00321706?Opendocument

⁴¹ Commission on Human Rights Decision 1999/194, 26 April 1999, adopted by voice vote of 30 in favor (Bangladesh, Bhutan, Botswana, Cape-Verde, China, Cuba, Democratic Republic of the Congo, Ecuador, Guatemala, India, Indonesia, Liberia, Madagascar, Mauritius, Morocco, Mozambique, Nepal, Niger, Pakistan, Philippines, Qatar, Republic of the Congo, Rwanda, Senegal, South Africa, Sudan, Sri Lanka, Tunisia, Uruguay, Venezuela), 15 against (Austria, Canada, Czech Republic, France, Germany, Ireland, Italy, Japan, Latvia, Luxembourg, Norway, Poland, Rumania, United Kingdom, United States) and 8 abstentions (Argentina, Chile, Colombia, El Salvador, Mexico, Peru, Russia, South Korea): http://ap.ohchr.org/documents/E/CHR/decisions/E-CN_4-DEC-1999-104.doc

It should be noted that parallel to the working group, the Commission had already appointed, for three years, a Special Rapporteur on the effects of foreign debt on the full enjoyment of economic, social and cultural rights.⁴² Moreover, as the Commission had undertaken a reform of its mechanisms, in the end, the two mandates (debt and SAPs) were merged. (See below.)

2. The Special Rapporteur and Independent Expert on Debt and SAPs

In 1998, the Commission on Human Rights appointed Reinaldo Figueredo (Venezuela) for a three-year mandate as Special Rapporteur on the effects of foreign debt on the full enjoyment of economic, social and cultural rights. During his mandate, he did not present a single report, nor did Fantu Cheru, the independent expert on structural adjustment policies.⁴³

In 2000, the Commission merged the two mandates under the title of 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, and appointed Fantu Cheru to this position.⁴⁴

En 2001, Fantu Cheru presented his last report before resigning from his post. In it, this high level academic continued to criticize relentlessly the policies of the IMF/World Bank couple.⁴⁵ In his opinion, the Strategic Framework for Poverty Reduction is nothing more than “a new form of structural adjustment”,⁴⁶ and, in the majority of the countries he had examined in his previous report,⁴⁷ “the broad macroeconomic objectives are inconsistent with the poverty reduction goals.”⁴⁸

The independent expert was replaced by Bernard Mudho (Kenya) in November 2001. Starting in 2003, he presented a dozen reports (annual and mission reports).⁴⁹ Since 2005, he has also been presenting his reports to the

⁴² Commission on Human Rights Resolution 1998/24, adopted by 27 votes to 16 with 9 abstentions: www.unhcr.ch/Huridocda/Huridoca.nsf/0/288f517abb1745df80256666003b71ef?Opendocument

⁴³ E/CN.4/2000/51, 14 January 2000: [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2000.51.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2000.51.En?Opendocument)

⁴⁴ Commission on Human Rights Resolution 2000/82, adopted by a vote of 30 in favor (Bangladesh, Bhutan, Botswana, Brazil, Burundi, China, Cuba, Ecuador, El Salvador, Guatemala, India, Indonesia, Madagascar, Mauritius, Morocco, Nepal, Niger, Nigeria, Pakistan, Philippines, Qatar, Republic of the Congo, Rwanda, Senegal, Sudan, Sri Lanka, Swaziland, Tunisia, Venezuela, Zambia), 15 against (Canada, Czech Republic, France, Germany, Italy, Japan, Latvia, Luxembourg, Norway, Poland, Rumania, South Korea, Spain, United Kingdom, United States) and 7 abstentions (Argentina, Chile, Colombia, Mexico, Peru, Russia, South Korea).

⁴⁵ Commission on Human Rights, The Highly Indebted Poor Countries (HIPC) Initiative: a human rights assessment of the Poverty Reduction Strategy Papers (PRSP) C/CN.4/21001/56, 18 January 2001: [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2001.56.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2001.56.En?Opendocument)

⁴⁶ *Ibid.*, §§ 21-35.

⁴⁷ Benin, Chad, Ghana, Kenya, Mozambique, Senegal, Tanzania, Uganda, Zambia.

⁴⁸ Note 45, § 24.

⁴⁹ V. http://ap.ohchr.org/documents/dpage_e.aspx?m=51.

United Nations General Assembly and, since 2006, to the Human Rights Council, the “successor” to the Commission on Human Rights.

In 2004, the Commission on Human Rights requested the independent expert “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 programs, including those arising from foreign debt relief, to ensure that compliance with the commitments derived from foreign debt will not undermine the obligations for the realization of fundamental economic, social and cultural rights, as provided for in the international human rights instruments”.⁵⁰

If the independent expert mentioned in his 2005 annual report “some elements for consideration in the development of proposed draft general guidelines”⁵¹, he has still not completed the task that the Commission entrusted to him. However, while requesting that the independent expert conduct broad consultations among the states, the international organizations, the United Nations funds and programs, the economic regional commissions, the regional and international financial institutions and the non-governmental organizations, the Commission decided to ask the High Commissioner for Human Rights to organize a expert seminar on the question “to contribute to the independent expert's work to finalize the draft general guidelines”.⁵² The seminar was held during the summer of 2007, and the independent expert was to present the general guidelines at the next session of the Human Rights Council.

Although the successive reports of Bernard Mudho contain interesting information and a regular monitoring of the evolution of the policies of the international financial institutions, it is deplorable that, contrary to his predecessor, who pleaded for the cancellation of the debt, he evokes the “viability” of the

⁵⁰ *Effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights*. Commission on Human Rights Resolution 2004/18, 16 April 2004: http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2004-18.doc, adopted by a vote of 29 in favor (Argentina, Bhutan, Brazil, Burkina Faso, China, Cuba, Dominican Republic, Egypt, Eritrea, Ethiopia, Gabon, Guatemala, Honduras, India, Indonesia, Mauritania, Nepal, Nigeria, Pakistan, Philippines, Republic of the Congo, Sierra Leone, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Uganda, Zimbabwe) 14 against (Australia, Austria, Croatia, France, Germany, Hungary, Ireland, Italy, Japan, Netherlands, South Korea, Sweden, United Kingdom, United States) and 10 abstentions (Armenia, Bahrain, Chili, Costa Rica, Mexico, Paraguay, Peru, Qatar, Saudi Arabia, Ukraine).

⁵¹ *Effects of structural adjustment policies and foreign debt on the full enjoyment of human rights, particularly economic, social and cultural rights*, E/CN.4/2005/42, 5 January 2005, §§ 28-52: <http://daccessdds.un.org/doc/UNDOC/GEN/G05/100/93/PDF/G0510093.pdf>.

⁵² *Effects of economic reform policies and foreign debt on the full enjoyment of all human rights*, Commission on Human Rights Resolution 2005/19, 14 April 2005, adopted by a vote of 33 in favor (Argentina, Bhutan, Brazil, Burkina Faso, China, Cuba, Dominican Republic, Egypt, Ecuador, Eritrea, Ethiopia, Gabon, Guatemala, Guinea, Honduras, India, Indonesia, Kenya, Malaysia, Mauritania, Nepal, Nigeria, Pakistan, Qatar, Republic of the Congo, Russia, Saudi Arabia, Sri Lanka, South Africa, Sudan, Swaziland, Togo, Zimbabwe), 14 against (Australia, Canada, Finland, France, Germany, Hungary, Ireland, Italy, Japan, Netherlands, Rumania, South Korea, United Kingdom, United States) and 6 abstentions (Armenia, Costa Rica, Mexico, Paraguay, Peru, Ukraine).

debt.⁵³ Yet, to ask the question of the viability of the debt without examining its genesis, without conducting accurate and independent audits on each of its elements, without following those elements in their transformations and various wanderings, would be a travesty of justice. When one looks at some of the figures, it is obvious that, taken overall, the Third World debt has been repaid several times over and that, considered in its details, most of the elements should be declared null and void, and those who are responsible for it subject to criminal prosecution.

Certain proposals of the independent expert are also deplorable. For example, in one of his recent reports,⁵⁴ he proposes debt swaps as an innovative solution that would allow debt relief. He has obviously forgotten that the financial milieu – noting that the repayment of the Third World debt was becoming unlikely – proposed debt swaps starting already in the 1980s. These instruments would allow a continuation of the culling of the debtor countries' wealth and the imposition of economic policies short-circuiting the exercise of national sovereignty. In fact, these instruments allow an extension of repayment deadlines in return for an increase in the interest rate.⁵⁵

3. Other Special Rapporteurs on Economic, Social and Cultural Rights

Several Special Rapporteurs of the Commission/Council on certain economic, social and cultural rights have, in their reports, evoked the harmful consequences of the debt and SAPs on the full enjoyment of economic, social and cultural rights and have several times criticized the policies of the IMF and the World Bank.

The **Special Rapporteur on the Right to Food** cited the cost of debt service as one of the main obstacles to the enjoyment of the right to food and denounced the privatizations imposed on the agricultural sector as well as on the supply of water, while emphasizing the duties of these institutions in the area of human rights. He also characterized as “schizophrenia” the contradiction within the United Nations “On the one hand, the United Nations agencies emphasize social justice and human rights... On the other hand, the Bretton Woods institutions, along with the Government of the United States of America and the World Trade Organization oppose in their practice the right to

⁵³ V. inter alia, Commission on Human Rights, *Report submitted by the independent Expert, Bernards Mudho*, E/CN.4/2005/42, 25 January 2005: http://ap.ohchr.org/documents/dpage_e.aspx?m=51 and *Report submitted by the independent Expert, Bernards Mudho*, E/CN.4/2006/46, 2 March 2006: http://ap.ohchr.org/documents/dpage_e.aspx?m=51

⁵⁴ Human Rights Council, *Report of the independent expert on the effect of economic reform policies and foreign debt on the full enjoyment of all human rights, Bernards Mudho*, A/HRC/4/10, 3 January 2007: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/100/60/PDF/G0710060.pdf>.

⁵⁵ *Let's launch an enquiry into the debt! A manual on how to organize audits on Third World debts*, op. cit., pp. 71-72.

food by means of the Washington Consensus, emphasizing liberalization, deregulation, privatization and the compression of State domestic budgets, a model which in many cases produces greater inequalities.”⁵⁶

The **Special Rapporteur on the Right to Adequate Housing** deplored the consequences of the budget cuts and austerity measures imposed by the IMF and the World Bank on access to housing, to land and to water, while calling on states to reconsider their policies with the international financial institutions in such as way as to respect their human rights commitments.⁵⁷

The first **Special Rapporteur on the Right to Education**, during her mandate (1998-2004) militated against the policies of the World Bank, the main international funding source in the area of education, which has always supported the introduction of school fees even in primary school. Moreover, for the Special Rapporteur, “the insertion of key human rights standards requires changes in the Bank’s operative rules”⁵⁸ She also pleaded for reducing the debt and increasing international financing for education with a view to “reversing retrogression regarding the right to education, especially in Africa and Central Asia”⁵⁹ In dealing with trade rights, which promote education as a

⁵⁶ V. Commission on Human Rights, *Report by the Special Rapporteur on the right to food*, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2000/10, E/CN.4/2001/53, 7 February 2001: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/f45ea4df67ecca98c1256a0300340453?Opendocument>; Commission on Human Rights, *Report by the Special Rapporteur on the right to food*, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2001/25, E/CN.4/2002/58, 10 January 2002: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/832c9dd3b2f32e68c1256b970054dc89/\\$FILE/G0210079.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/832c9dd3b2f32e68c1256b970054dc89/$FILE/G0210079.pdf); Commission on Human Rights, *Report submitted by the Special Rapporteur on the right to food*, Jean Ziegler, in accordance with Commission on Human Rights resolution 2002/25, E/CN.4/2003/54, 10 January 2003: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2003.54.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2003.54.En?Opendocument); Commission on Human Rights, *Report submitted by the Special Rapporteur on the right to food*, Jean Ziegler, in accordance with Commission on Human Rights resolution 2003/25, E/CN.4/2004/10, 9 February 2004: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2004.10.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2004.10.En); Commission on Human Rights, *Report of the Special Rapporteur on the right to food*, Jean Ziegler, E/CN.4/2005/47, 24 January 2005: <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/104/24/pdf/G0510424.pdf>; Commission on Human Rights, *Report of the Special Rapporteur on the right to food*, Jean Ziegler E/CN.4/2006/44, 16 March 1006: <http://daccessdds.un.org/doc/UNDOC/GEN/G06/118/82/PDF/G0611882.pdf>.

⁵⁷ V. Commission on Human Rights, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, Mr. Miloon Kothari submitted pursuant to Commission resolution 2000/9, E/CN.4/2001/51, 25 January 2001: www.unhchr.ch/Huridocda/Huridoca.nsf/0/e1da15286e4a955fc12569f40033acce?OpenDocument; Commission on Human Rights, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, Mr. Miloon Kothari, E/CN.4/2002/59, 1 March 2002: <http://daccessdds.un.org/doc/UNDOC/GEN/G02/111/29/PDF/G0211129.pdf>.

⁵⁸ Commission on Human Rights, *Annual report of the Special Rapporteur on the right to education*, Katarina Tomaševski, submitted in accordance with Commission on Human Rights resolution 2000/9 E/CN.4/2001/52, 11 January 2001, § 32: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2001.52.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2001.52.En?Opendocument).

⁵⁹ Commission on Human Rights, *Annual report of the Special Rapporteur on the right to education*, Katarina Tomaševski, submitted pursuant to Commission on Human Rights resolution 2001/29, E.CN.4/2002/60 § 17: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2002.60.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2002.60.En?Opendocument).

commercial service, the Special Rapporteur has repeatedly affirmed that the right to education is a human right, thus schooling should remain a public service.⁶⁰

C. The Committee on Economic, Social and Cultural Rights

Since its creation in 1985, the Committee on Economic, Social and Cultural Rights⁶¹ has been carrying on its work to clarify the scope of duties and responsibilities of the states parties for the implementation of the *International Covenant on Economic, Social and Cultural Rights* not only at the national but also at the international level. In so doing, the Committee adopts general comments on the provisions of the *Covenant*. Within this framework, the Committee often drafts clarifications on the duties and responsibilities of international actors such as the international organizations and the U.N. agencies.

In its General Comment 2,⁶² on Article 22 of the *Covenant*, which requires the contribution of all U.N. Bodies – “each within its field of competence” (§ 1) – to the implementation of the *Covenant*, the Committee reckoned that “this provision should be interpreted so as to include virtually all United Nations organs and agencies involved in any aspect of international development cooperation” (§ 2), including the IMF and the World Bank.

Emphasizing the principle of the indivisibility of all human rights (economic, social and cultural rights as well as civil and political rights), the Committee has further stated that “In negative terms this means that the international agencies should scrupulously avoid involvement in projects which, for example, involve the use of forced labor in contravention of international standards, or promote or reinforce discrimination against individuals or groups contrary to the provisions of the *Covenant*, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. In positive terms, it means that, wherever possible, the agencies should act as advocates of projects and approaches which contribute not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights.” (§ 6)

Regarding specifically the question of the debt, the Committee has emphasized that “international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights through, inter alia, international cooperation. In many situations, this might point to the need for major debt relief initiatives.” (§ 9)

⁶⁰ Ibid.

⁶¹ U.N. body entrusted with overseeing compliance by states parties with the *International Covenant on Economic, Social and Cultural Rights*.

⁶² Adopted 2 February 1990.

The Committee has reiterated this position in other general comments (for example on the right to food and the right to education).⁶³

Also, it is to be emphasized that the Committee has often recommended to states parties to the *Covenant*, lenders as well as well as borrowers, to take into account their duties as specified by the *Covenant* within the framework of their relations with the IMF and the World Bank.

To take an example, the Committee has recommended to the government of Algeria that “the State party’s obligations under the *Covenant* should be taken into account in all its negotiations with international financial institutions, such as the International Monetary Fund, the World Bank and the World Trade Organization, to ensure that economic, social and cultural rights are not undermined.”⁶⁴

Regarding France, to take a lender country which influences the decisions of the IMF and the World Bank, the Committee:

*“encourages the State party, as a member of international financial institutions, in particular the International Monetary Fund and the World Bank, to do all it can to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties to the Covenant, in particular the obligations contained in articles 21, 22 and 23 concerning international assistance and cooperation.”*⁶⁵

D. UNCTAD

In 1982, the United Nations Conference on Trade and Development (UNCTAD) set up a debt management program (the Debt Management Financial and Analysis System – DMFAS) that “aims to help governments to build their capacity to manage debt effectively”.⁶⁶ Since 2000, it has held a biannual conference on “debt management”.

In November 2007, UNCTAD organized in Geneva the sixth conference on “debt management”, which dealt with, among other subjects, the duties of lenders and “odious debt”. This question was the subject of a discussion during which Robert Howse, a professor of law at the University of Michigan (United States), participated and for which he presented a paper on the concept of “odious debt”.⁶⁷

⁶³ V. General Observation 12, The Right to Adequate Food, §41: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?OpenDocument) and General Observation 13, The right to education (article 13 of the *Covenant*, § 60: <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/pdf/G9946216.pdf..>

⁶⁴ Concluding Observations of the Committee on Economic, Social and Cultural Rights, Algeria, 30 November 2001, E/C.12/1/Add.71, §43: <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G01/464/63/pdf/G0146463.pdf>.

⁶⁵ Concluding observations of the Committee on Economic, Social and Cultural Rights, France, 30 November 2001, E/C.12/1/Add.72, § 32: <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G01/464/56/pdf/G0146456.pdf..>

⁶⁶ <http://r0.unctad.org/dmfas/docs/brief-en.pdf>.

⁶⁷ http://r0.unctad.org/dmfas/docs/DMconf07_papers/Howse.pdf.

Among the UNCTAD publications on this question, it is worth mentioning in particular the UNCTAD 2001 annual report, devoted to an analysis of the reform of the multilateral financial system.⁶⁸ In it, UNCTAD expresses regret that the question of the reform of the international finance architecture has been avoided since the collapse of the Bretton Woods system at the beginning of the 1970s.

The proposals mentioned in the report touch on the following areas:

“global rules and institutions governing international capital flows; the exchange rate system; orderly workouts for international debt; and the reform of the IMF, with special reference to surveillance, conditionality, the provision of international liquidity, and its potential function as lender of last resort. Implementation of any of these proposals would entail the creation of new international institutions and mechanisms as well as reform of the existing ones.”

UNCTAD specifies, however, that:

“If reforms to the existing financial structures are to be credible, they must provide for much greater collective influence from developing countries and embody a genuine spirit of cooperation among all countries.”

The report also includes a chapter “Crisis Management and Burden Sharing” in which UNCTAD suggests “restructuring the debt and a contribution from the private sector, in particular the international creditors”. Moreover, it recommends “(i) provisions for an automatic standstill on debt servicing that prevents a “grab race” for assets among the creditors; (ii) maintaining the debtor’s access to the working capital required for the continuation of its operations (i.e. lending into arrears); and (iii) an arrangement for the reorganization of the debtor’s assets and liabilities, including debt rollover, extension of existing loans, and debt write-off or conversion.”

E. The World Summit Conferences organized by the U.N.

Various U.N. bodies (especially ECOSOC and the General Assembly) have adopted numerous resolutions over the past two decades emphasizing the harmful consequences of the debt and the SAPs on the development of human rights. It would be excessive to list them all here, but one can mention the declarations – also numerous – adopted by the world summit conferences organized by the U.N. during which governments were represented at the highest level and committed themselves to taking the necessary measures concerning the debt and the SAPs.

The *Universal Declaration on the Eradication of Hunger and Malnutrition*⁶⁹ acknowledges that hunger and malnutrition are aggravated by “the heavy burdens imposed by external debt on the balance of payments of many developing countries” (§ 1 d).

⁶⁸ *Trade and Development Report 2001: Global Trends and Prospects/Reform of the International Finance Architecture*, 24 April 2001: http://www.unctad.org/en/docs/tdr2001_en.pdf.

⁶⁹ Adopted 16 November 1974 by the World Food Conference, in accordance with General Assembly Resolution 3347 (XXIX) of 17 December 1974: <http://www.unhcr.ch/html/menu3/b/69.htm>.

During the *World Food Summit*,⁷⁰ the heads of state and of government declared: “We are determined to make efforts to mobilize and optimize the allocation and utilization of technical and financial resources from all sources, including external debt relief for developing countries, to reinforce national actions to implement sustainable food security policies.”⁷¹

They also pledged that “governments, in cooperation with the international community and all actors of civil society, as well as international and private financing institutions will, as appropriate: Intensify the search for practical and effective solutions to debt problems of developing countries and support the recent initiatives of international financial institutions (International Monetary Fund and World Bank), to reduce the total external debt burden of Heavily Indebted Poor Countries.”⁷²

The *Rio Declaration on Environment and Development*⁷³ acknowledged the “importance of reducing foreign debt, particularly where it is aggravated by the net transfer of resources for the benefit of developed countries”. [Translation from § 9.a of the French text.]

The *Program for the Further Implementation of Agenda 21*⁷⁴ stated: “In many developing countries, the debt situation remains a major constraint on achieving sustainable development.” (§20) It further pointed out: “The external debt problem continues to hamper the efforts of developing countries to achieve sustainable development. To resolve the remaining debt problems of the heavily indebted poor countries, creditor and debtor countries and international financial institutions should continue their efforts to find effective, equitable, development-oriented and durable solutions to the debt problem, including debt relief in the form of debt rescheduling, debt

reduction, debt swaps and, as appropriate, debt cancellation, as well as grants and concessional flows that will help restore creditworthiness.” (§ 82)

In the *Copenhagen Declaration on Social Development*,⁷⁵ among the commitments made is: “Strive to ensure that international agreements relating to trade, investment, technology, debt and official development assistance are implemented in a manner that promotes social development”. (Commitment 1.k)

These commitments also include the search for “effective, development-oriented and durable solutions to external debt problems” for Africa and the least developed countries. (Commitment 7.c)

The United Nations General Assembly devoted to *the follow-up to the Copenhagen Summit*⁷⁶ noted:

⁷⁰ Held in Rome (Italy), 13-17 November 1996.

⁷¹ Rome Declaration on World Food Security, § 9: <http://www.fao.org/docrep/003/w3613e/w3613e00.htm>.

⁷² *Ibid.*, § 53, Objective 6.2.m.

⁷³ Adopted at the Earth Summit, Rio de Janeiro (Brazil), 3-14 June 1992.

⁷⁴ Adopted by the General Assembly at the Earth Summit +5 during its 19th special session, 23-28 June 1997.

⁷⁵ Adopted at the World Summit for Social Development, Copenhagen, 6-12 March 1995.

“The high debt burden has weakened the capacity of many Governments to service their increasing external debt and eroded resources available for social development. Inappropriate design of structural adjustment programs has weakened the management capacity of public institutions as well as the ability of Governments to respond to the social development needs of the weak and vulnerable in society and to provide adequate social services.” (Chapter II, § 2) Farther on, the theme of the debt recurs: “The external debt burden has drastically reduced resources available for social development. Furthermore, promises made to provide official development assistance to developing countries in general and the least developed countries in particular have not been fulfilled.” (Chapter II, § 34)

To resolve this, the General Assembly enjoined:

“the international community, particularly creditor and debtor countries and pertinent international financial institutions, to identify and implement development-oriented and durable solutions to external debt and debt-servicing problems of developing countries, which constitute an element affecting the development efforts and economic growth, inter alia, through debt relief, including the option of debt cancellation within the framework of official development assistance, and thereby strengthen the efforts of the Governments of such countries to attain the full realization of the economic, social and cultural rights of their people.” (Chapter III, § 6)

*The World Conference on Human Rights*⁷⁷ “called upon the international community to make all efforts to help alleviate the external debt burden of developing countries, in order to supplement the efforts of the Governments of such countries to attain the full realization of the economic, social and cultural rights of their people.” (§12)

The *Program of Action of the International Conference on Population and Development*,⁷⁸ in addressing the concerns of the developing countries, declared that efforts must be made to support these countries, in particular “by reducing the debt burden”. (Chapter III, § 22)

The *Declaration and Platform for Action of Beijing*⁷⁹ stated: “As a result of the debt burden and other economic difficulties, many developing countries have undertaken structural adjustment policies. Moreover, there are structural adjustment programs that have been poorly designed and implemented, with resulting detrimental effects on social development.” (§ 13)

The special session of the General Assembly devoted to *the Appraisal of Progress in the Implementation of the Platform for Action of Beijing*⁸⁰

⁷⁶ Geneva, 26 June to 1 July 2000. V. A/RES/S-24/2: <http://daccessdds.un.org/doc/UNDOC/GEN/N00/665/16/PDF/N0066516.pdf>.

⁷⁷ World Conference on Human Rights, Vienna (14-25 June 1993), Vienna Declaration and Program of Action: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument).

⁷⁸ Cairo (Egypt), 5-13 September 1994.

⁷⁹ Adopted at the Fourth World Conference on Women, Beijing (China), 4-15 September 1995.

⁸⁰ 5-9 June 2000. V. Report of the Ad Hoc Committee of the Whole of the twenty-third special session of the General Assembly, A/S-23/10/Rev.1: <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/546/61/pdf/N0054661.pdf>.

declared: “The impact of globalization and structural adjustment programs, the high costs of external debt servicing and declining terms of international trade in several developing countries have worsened the existing obstacles to development, aggravating the feminization of poverty.” (§37) It further declared that “the increasing debt burden faced by most developing countries is unsustainable and constitutes one of the principal obstacles to achieving progress in people-centered sustainable development and poverty eradication. For many developing countries, as well as countries with economies in transition, excessive debt servicing has severely constrained their capacity to promote social development and provide basic services and has affected full implementation of the Platform for Action.” (§ 38)

The *Millennium Declaration*⁸¹ called on the industrialized countries “to implement the enhanced program of debt relief for the heavily indebted poor countries without further delay and to agree to cancel all official bilateral debts of those countries in return for their making demonstrable commitments to poverty reduction.” (§15) It also called for “special measures to address the challenges of poverty eradication and sustainable development in Africa, including debt cancellation”. (§ 28)

The *World Summit for Sustainable Development*⁸² called for the international community to “reduce unsustainable debt burden through such actions as debt relief and, as appropriate, debt cancellation and other innovative mechanisms geared to comprehensively address the debt problems of developing countries, in particular the poorest and most heavily indebted ones... while recognizing that debtors and creditors must share responsibility for preventing and resolving unsustainable debt situations, and that external debt relief can play a key role in liberating resources that can then be directed towards activities consistent with attaining sustainable growth and development.” (§ 89)

The third *United Nations Conference on the Least Developed Countries*⁸³ dealt primarily with “the implementation of international support measures, particularly in the areas of official development assistance, debt, investment and trade” (§ 1.a.ii)

Although the Program of Action for the Least Developed Countries for the 2001-2010 decade adopted at the end of the conference⁸⁴ comports contradictory and disputable conclusions, it pleads for the cancellation of the debt and

⁸¹ Adopted by the United Nations General Assembly, 8 September 2000, A/RES/55/2: <http://www.un.org/millennium/declaration/ares552e.htm>.

⁸² Johannesburg (South Africa), 26 August to 4 September 2002. V. *Report of the World Summit on Sustainable Development*, A/CONF.199/20 & A/CONF.199/20/Corr.1: http://www.unctad.org/en/docs/aconf199d20&c1_en.pdf.

⁸³ Brussels (Belgium), 14-20 May 2001. V. *Implementation of the Program of Action for the Least Developed Countries for the 1990s*, A/RES/52/187, 4 February 1998: http://www.un.org/events/ldc3/prepcom/52_187.pdf.

⁸⁴ *Report of the Third United Nations Conference on the Least Developed Countries*, A/CONF.191/13, 20 September 2001: <http://www.unctad.org/en/docs/aconf191d13.en.pdf>.

transparency in the financial, monetary and trade systems at the international level. Following are several extracts:

“The external debt overhang in the majority of LDCs constitutes a serious obstacle to their development efforts and economic growth. Debt service takes up a large part of scarce budgetary resources that could be directed to productive and social areas, and the debt overhang harms the internal and external investment climate. The situation is aggravated further by effects of external financial turbulence, volatility of export earnings, and increases in the prices of essential imports. Since the Second UN Conference on LDCs, the total amount of LDCs’ debt has increased.” (§ 85)

“The serious debt problems of LDCs necessitate a comprehensive solution, including the full, speedy and effective implementation of the enhanced HIPC initiative and other debt relief measures, measures to address structural causes of indebtedness, and provision of ODA, with a view to ensuring that these countries do not fall back into arrears.” (§ 86)

“Also, LDCs will need to be effectively involved in areas such as aid coordination and debt relief.” (§ 21.c)

“Success in meeting the objectives of development and poverty eradication depends, inter alia, on good governance within each country. It also depends on good governance at the international level and on transparency in the financial, monetary and trading systems. We are committed to an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system. No effort will be spared to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development.” (§ 25)

“Action by LDCs and the development partners will be along the following lines... Making expeditious progress towards full cancellation, in the context of enhanced HIPC, of outstanding official bilateral debt owed by HIPC LDCs... Writing off multilateral debt in the context of the enhanced HIPC for LDCs that are HIPCs should be a high priority, and mobilizing sufficient resources for this purpose... Considering on a case by case basis debt relief measures for LDCs which are not HIPCs as an integral part of development processes... Encouraging creditors in a position to do so to consider a moratorium on debt service payments for LDCs in exceptional cases.” (§ 87.ii.c, e, f, h)

IV. PEOPLES' AND CITIZENS' MOBILIZATION AGAINST THE DEBT AND STRUCTURAL ADJUSTMENT POLICIES

The Third World debt is largely considered illegitimate and has already been paid back several times over. This is why the peoples of these countries have mobilized – very often at the risk of their lives – in various ways (street demonstrations, strikes, popular uprisings, according to the country and the region) to oppose further payment on the debt and the SAPs.⁸⁵

If their legitimate demands are often brutally repressed by the governments in power at the time, the fight of these peoples has not only allowed – in certain circumstances – to block or limit the austerity policies and privatizations of certain public sectors⁸⁶, but has also served to inspire the organization of social movements, to obtain audits of the debt (e.g. Brazil, Ecuador, Philippines...) ⁸⁷ and to extend solidarity into the countries of the North.

In fact, for some two decades the fight against the debt and the SAPs has been steadily internationalizing and has witnessed the emergence of organizations and networks such as the Committee for the Cancellation of the Third World Debt (CADTM).⁸⁸ With the support of the churches, it reached its highest point at the end of the 1990s with the Jubilee 2000 campaign, which called for the outright cancellation of the foreign debt of the Third World countries – a campaign that has remained without success so far.

Currently, it is encouraging to note that the fight against the debt is not anchored solely in the political arena but seems to be spreading in parallel into the legal field with campaigns conducted, in particular, by the CADTM and the Jubilee South. Moreover, the numerous organizations meeting in The Hague on 28 September 2005, declared:

“We pledge to redouble our efforts to force changes in South government policies that should lead to the repudiation of debts claimed from our countries. We view the realization of debt audits as fundamental steps in that regards.”

⁸⁵ V. inter alia *Les peuple entrent en résistance*, CETIM/CADTM/SYLEPPSE, Geneva, September 2000.

⁸⁶ V. note 10.

⁸⁷ V. note 2.

⁸⁸ The primary objective of the CADTM – its approach, so to speak – is the canceling of the public foreign debt of the countries of the Periphery (Third World and the former Soviet block) and the abandoning of SAPs by the IMF, the World Bank and the WTO – in other words, putting an end to the spiral of indebtedness and establishing fair, equitable and environmentally sustainable development models. V. <http://www.cadtm.org>.

Among the demands that the CETIM has been supporting for the past fifteen years within the U.N. bodies, the organization of an audit of the debt is a crucial point in determining not only the legitimate and illegitimate portions of the debt, but also the responsibility of the two parties (lenders and borrowers), necessary if the debt is to be cancelled. This process is indispensable if these countries are to break out of the spiral of indebtedness and if a repeat of this is to be avoided in the future.

It is with this aim that the CETIM, in collaboration with the CADTM, published *Let's launch an enquiry into the debt! A manual on how to organize audits on Third World debts*.⁸⁹ This manual provides particularly useful information and technical elements to help both social movements and citizen networks, as well as parliamentarians, lawyers, economists and others in their pursuit of the organization of audits. These audits should provide answers to many questions. What has happened to the money that was lent/borrowed? What were the conditions of the loans? How much was embezzled? What crimes were committed involving these loans?

⁸⁹ V. note 2.

CONCLUSION

Today, while the debt is generally acknowledged to be a major obstacle to the development of the countries of the South and to the implementation of economic, social and cultural rights, it threatens the economies of the North, too, and that threat has become reality several times in recent history.

International economic policies and decisions have a huge effect on the lives of everybody. Their effect is amplified in our times, given the ever increasing interdependence among the countries of the world. To deny this reality is to deny the right of peoples to take part in the making of the decisions that shape their lives.

The foreign debt of the countries of the South and the SAPs are an integral part of these policies and decisions.

Thus, how can one explain that there has been no progress whatsoever on this question whereas it has been on the international agenda for some four decades?

The crux of the matter is the position of the countries of the North and of the international financial institutions, which consists of “separating” social questions from economic ones. Worse, it excludes the economic questions as much as possible from the political arena, thus violating the basic principle of democracy, to wit participation by the people in the decision-making process.

This explains the antagonism between the international financial institutions, dominated by the governments of the North, and the U.N. human rights bodies, where the countries of the South are in the majority.

Faced with the intransigence of the North, which dominates the world, the peoples and citizens of the South are mobilizing to demand that light be shed on the origin of the debt and that accurate and independent audits be carried out. In this regard, the following specific proposals made by the CETIM to the Commission on Human Rights some dozen years ago still retain all their relevance:

“Before any repayment obligation and before the setting by the IMF of any ‘conditionality’, there must be audits on the legitimacy of the loans, on the identity and the responsibilities of the lenders and the borrowers and, concomitantly, on the money lent. These audits could be carried out by independent bodies such as the United Nations Commissions for Africa, for Latin America and for Asia.

“On the basis of the evidence gathered, for example within the framework of the Hague Tribunal, an independent et international jurisdictional commission should be set up to assess:

- *the share of responsibility of governments, banks and private business enterprises for the loans given;*
- *the origin of the money initially lent as well as the direction taken by that money as it disappeared.*

“The corruption runs in both directions. It is therefore appropriate to speak of imposing a moral order on the economy.

- *The funds of the rulers of indebted countries on deposit in foreign banks (a third, indeed, as much as two thirds of the total debt, according to certain studies), should be frozen. It should be incumbent upon them, then, to prove the legitimacy of their wealth.*
- *An investigation should be conducted into the tax breaks and other measures accorded to banks allowing them to cover their losses. The tax payers have a moral right to be informed about the real actions of the actors on the economic scene.*

On this basis, one could establish the 'legitimate' and, thus, 'public' portion of the debt and cancel it. As for the private creditors, in particular the major banks and, more and more, private business enterprises, which have so lightly given the loans and credit while trusting in the laws of the market, it is time that they accepted, logically, their share of the risk. And if the borrower is insolvent, this sharing of the risk implies that they write off the loans.”⁹⁰

⁹⁰ Written statement of the CETIM to the 50th Commission on Human Rights, E/CN.4/1994/NGO/16, 4 February 1994.

V. ANNEXES

Annexe 1

WAYS AND MEANS TO CARRY OUT A POLITICAL DIALOGUE BETWEEN CREDITOR AND DEBTOR COUNTRIES IN THE UNITED NATIONS SYSTEM, BASED ON THE PRINCIPLE OF SHARED RESPONSIBILITY⁹¹

Drafted following high level consultations among governments, international organizations, United Nations bodies and NGOs, the recommendations of the Secretary-General are divided into two parts:

I. a political dialogue between creditor and debtor countries within the United Nations system; II. shared responsibility.

I. A POLITICAL DIALOGUE BETWEEN CREDITOR COUNTRIES AND DEBTOR COUNTRIES WITHIN THE UNITED NATIONS SYSTEM

Based in particular on Article 1 of the United Nations Charter, which sets forth the purposes of the United Nations, and on Article 55, which defines the objectives of international economic and social cooperation, the first part is divided into two chapters: A) General principles upon which the conduct of the political dialogue between creditor countries and debtor countries should be based and B) Guidelines for the formulation of an equitable and durable solution to the problem of foreign debt. The following extracts are drawn from it.

A) General principles upon which the conduct of the political dialogue between creditor countries and debtor countries should be based

Political dialogue among States should be based on universally recognized principles on the conduct of international relations between States. Articles 2 and 55 of the Charter provide that peaceful and friendly relations among nations must be based on respect for the principle of sovereign equality and self-determination of peoples. (§ 15)

... Developing countries should participate on the basis of equality with other members of the international community in any prior consultations and decision-making in the reform of the world trade and monetary system; and developed countries should not take any unilateral decisions which directly or indirectly affect the social and economic development of developing countries. (§ 17)

⁹¹ Cf. E/CN.4/1996/22, 5 February 1996.

Respect for the principle of equal rights and self-determination of peoples clearly excludes any form of coercion. (§ 21)

B) Guidelines for the formulation of an equitable and durable solution to the problem of foreign debt

Any international agreement on an equitable and durable solution to the problem of foreign debt should be formulated in a manner that promotes both individual and collective rights and promotes overall development in developing countries and enables them to fully enjoy all human rights, in particular economic, social and cultural rights and the right to development. (§ 24)

The problem of foreign debt of developing countries is of an economic, political, social and historical nature and as such cannot be resolved through an exclusive focus on the technicalities of the debt problem alone but must involve a global approach. Any global agreement should address the problems relating to all categories of debt, bilateral as well as multilateral, commercial as well as public. While it should contain global measures to address the problem in its complexity and entirety, the agreement should, in particular, take into account the particular situation of the least developed countries (§ 26)

It is widely recognized that the problem of foreign debt cannot be resolved in isolation from the need for overall development, defined by the General Assembly in the Declaration on the Right to Development as "a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom." Hence, an equitable and durable solution to the problem of foreign debt of developing countries must be addressed within the framework of the realization of the right to development... (§ 30)

... d) Any foreign debt strategy must be designed not to hamper the steady improvement of conditions guaranteeing the enjoyment of human rights and must be intended, inter alia, to ensure that debtor developing countries achieve an adequate growth level to meet their social and economic needs and their development requirements; e) The alleviation of debt and debt-service burdens of developing countries with debt problems should take place in the framework of the realization of economic, social and cultural rights; f) The new strategies for solving the debt problem, of both official and private origin, require policies of economic adjustment accompanied by growth and development. It is essential, within those policies, to give priority consideration in their implementation to human conditions, including standards of living, health, food, education and employment of the population, especially among the most vulnerable and low-income groups; g) Debt payments should not take precedence over the basic rights of the people of debtor countries to food, shelter, clothing, employment, health services and a healthy environment; h) Measures for debt

reduction also need to be accompanied by vigorous efforts aimed at improving the international economic environment in order to facilitate the growth and development of developing countries. (§ 33)

... The following specific guidelines apply to short-term measures: a) Steps should be taken to implement additional debt-reduction measures, including further cancellation or reduction of part of the official debt or debt-service, and to adopt more urgent actions with regard to the commercial and multilateral debt owed by developing countries taking into account, in particular, the needs of debtor countries; b) Measures should be adopted to substantially reduce the bilateral debts of the least developed countries, in particular the countries of Africa, as soon as possible; c) Creditor countries and multilateral financial institutions should continue to extend concessional financial assistance in order to support the implementation by the developing countries of their economic reform programmes. (§ 34)

In addition to short-term or intermediate measures to alleviate or reduce the debt burden, any global agreement should also encompass long-term measures to prevent the recurrence of future debt crises. (§ 35)

... the political dialogue between creditor and debtor countries in the United Nations system should contribute to the initiation of an integral process aimed at restructuring the international economic order with the objective of achieving more equitable and fair relations among all nations of the world. (§ 36)

II. SHARED RESPONSIBILITY

Based on the United Nations Charter, the Charter of Rights and Duties of States and international human rights instruments such as the Declaration on the Right to Development, the second part comports three chapters: A) Responsibility of states at the national level; B) The duty of States to cooperate with each other at the international level; C) Duty of international financial institutions. The following extracts are drawn from it.

A) Responsibility of States at the national level

The global dimension and political character of the problem of foreign debt require that an equitable and durable solution to the debt crisis be sought through genuine political dialogue between creditor countries and debtor countries, based on the principle of shared responsibility. (§ 38)

The principle that States have primary responsibility for the creation of national and international conditions for the realization of human rights and the development of peoples and individuals has been incorporated in numerous international instruments and widely recognized by the international community. (§ 39)

... Every State has the primary responsibility to promote the economic, social and cultural development of its people. To this end, each State has the right and responsibility to choose its means and goals of development, fully to

mobilize and use its resources, to implement progressive economic and social reforms and to ensure the full participation of its people in the process and benefits of development. (§ 42).

B) The duty of States to cooperate with each other at the international level

That social progress and development are the shared concern and responsibility of all States is a fundamental principle first recognized in the Charter of the United Nations and reflected, in particular, in Articles 55 and 56. In Article 56, all Members of the United Nations pledge to take joint and separate action in cooperation with the Organization... (§ 44)

... States have the duty to cooperate with one another in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination based on such differences. (§ 45).

C) Duty of international financial institutions

The International Monetary Fund and the World Bank are international governmental institutions that are fully integrated into the United Nations system as a specialized agency established by governmental agreement in accordance with Article 57 of the Charter of the United Nations. As such, both institutions, like any other United Nations body or any other subject of international law, are bound by the Charter of the United Nations and have a duty to respect the postulates formulated in the Preamble to the Charter, the Purposes of the United Nations (Art.1), the principles governing the actions of the Organization and its Members (Art.2), the objectives of the Organization in the area of international economic and social cooperation (Arts. 55 and 56), specific provisions aimed at their realization and which are contained in the Charter as well as in other international instruments including, inter alia, the International Covenants on Human Rights, international conventions, including the international labour conventions, and resolutions and declarations of the United Nations. The international financial institutions are particularly bound by their own statutes both of which set out their objectives as being to achieve high levels of employment and real income worldwide. (§50)

... the institutions directly involved in designing, promoting and monitoring programmes of structural adjustment, such as the World Bank and IMF, are not exempt from considering the human rights implications of their work programmes. Although perhaps only implicitly, these institutions nevertheless have human rights obligations. While this argument remains subject to discussion within these institutions, it is premised on the following points: a) The World Bank and IMF are United Nations agencies (or at the very least United Nations 'affiliates'), which are consequently bound by the terms of the United Nations Charter, in particular the human rights clauses found in Articles 55 and 56; b) Both of these institutions, as well as others, maintain (whether they

say so or not) development-oriented portfolios. Human rights concerns have been increasingly incorporated in a broad range of development activities, such that in its resolution 1987/29 the Sub-Commission stated that 'policies aimed at sustainable development imply the integration of human rights in the development process'. The link between human rights and development has become inseparable; c) The leverage (both potentially and de facto) imposed by these agencies upon and within States is so extensive that human rights can be jeopardized or potentially enhanced in a number of ways; d) The human rights impact of policies pursued by these institutions have been addressed by various human rights organs of the United Nations, in particular the United Nations Committee on Economic, Social and Cultural Rights. (§ 51)

Annexe 2

PRELIMINARY SET OF BASIC POLICY GUIDELINES ON STRUCTURAL ADJUSTMENT PROGRAMMES AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS⁹²

The guidelines are based on the reports presented to the Commission and the Sub-Commission, in particular on the study carried out by Danilo Türk and on the international human rights instruments. They are also based on various United Nations resolutions and international conference conclusions. It should be emphasized that these last are the fruit of consensus and thus do not always reflect a coherent strategy. However, these guidelines contain the essential elements. Several extracts follow.

A) Principles

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter. (§ 39)

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights reaffirm the right of everyone to a social system and an international order under which economic, social, cultural, civil and political rights can be fully exercised. (§ 43)

... Social progress and development shall be founded on respect for the dignity and value of the human person and shall ensure the promotion of human rights and social justice. (§ 45)

Macroeconomic policies should not be separated from social objectives. (§ 47)

Development policies should aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting from the reform. (§ 48)

A people-centred approach to sustainable development requires the equitable and non-discriminatory distribution of the benefits of growth among social groups and countries and expanded access to productive resources. (§ 50)

Concepts of social justice should be taken as a basis for the preparation of national development plans and programmes, giving priority to problems relating to employment, education, health care, nutrition, housing, social welfare and the raising of standards of living. (§ 51)

The State cannot abandon its responsibility and submit to market forces. (§ 57)

⁹² Cf. *Report of the Secretary-General*, E/CN.4/Sub.2/1995/10, 4 July 1995.

The imposition of conditionalities, structural adjustment programmes, the burden of foreign debt and debt-servicing constitute obstacles to the realization of the right to development. States have a duty to cooperate with each other in ensuring development and eliminating obstacles to development. (§ 66)

States should realize their rights and duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and cooperation among all States, as well as to encourage the observance and realization of human rights. (§ 67)

The position of the developing countries in international trade should be improved through, inter alia, the achievement of favourable terms of trade and of equitable and remunerative prices. (§ 70)

B) Policy guidelines for action at the national level

States should include measures to ensure the promotion and protection of human rights in national legislation, policies and development programmes, using the International Covenant on Economic, Social and Cultural Rights as a framework for this purpose. When doing so, States should consider the desirability of drawing up a national action plan identifying steps to improve the situation of human rights, as well as to seek the participation of communities affected by the non-realization of these rights. (§ 73)

States should establish, whenever possible, appropriate judicial or administrative review mechanisms concerning economic, social and cultural rights. (§ 75)

1. Popular participation

Legislative and regulatory frameworks, institutional arrangements and consultative mechanisms should be established to ensure the effective participation of all the elements of society in the formulation, planning, implementation and evaluation of national strategies, policies and programmes of economic and social development, as well as in the monitoring and supervision of their implementation. (§ 76)

Measures should be adopted for an increasing rate of popular participation in the economic, social, cultural and political life of countries through national governmental bodies, non-governmental organizations, cooperatives, rural associations, workers' and employers' organizations and women's and youth organizations. (§ 77)

2. Equality of opportunity and access to productive resources

States should analyse policies and programmes, including those relating to macroeconomic stability, structural adjustment programmes, taxation, investments, employment, markets and all relevant sectors of the economy, with respect to their impact on poverty and inequality, employment, social development and assess their impact on family well-being and conditions, as well as their gender implications, and adjust them, as appropriate, to promote a

more equitable distribution of productive assets, wealth, opportunities, income and services. (§ 92).

States should establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate. (§ 104)

States should protect the traditional rights to land and other resources of pastoralists, fishery workers and nomadic and indigenous people, and strengthen land management in the areas of pastoral or nomadic activity, building on traditional communal practices, controlling encroachment by others, and developing improved systems of range management and access to water, markets, credit, animal production, veterinary services, health including health services, education and information. (§ 117)

3. Equality of opportunity and access to social services

Measures should be adopted aimed at the prevention of such an outflow of capital from developing countries as would be detrimental to their economic and social development. (§ 137)

Measures should be adopted to increase the effective and transparent utilization of public resources, reducing waste and combating corruption, and concentrating on the areas of greatest social need. Patterns of public spending should be analysed by States. Public spending must be consistent with the degree to which economic, social and cultural rights remain unrealized in a given country. (§ 138)

States should achieve universal access to quality education, with particular priority being given to primary and technical education, job training, combating illiteracy and eliminating gender disparities in access to, retention in, and support for, education. (§ 147)

States should ensure the provision of free health services to the whole population and of adequate preventive and curative facilities and welfare medical services accessible to all. (§ 151)

All Governments should pursue effective policies and legislation aimed at creating conditions for ensuring the full realization of the right to adequate housing of the entire population, taking into account the particularly negative impact on housing and living conditions that may result from the adoption of economic adjustment and other policies based exclusively upon the dictates of the free market. (§ 154)

C) Policy guidelines for action at the international level

1. Conditionality or any kind of external pressure or intervention in the internal or external affairs of a State

Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with

the will of its people, without outside interference, coercion or threat in any form whatsoever. (§ 159)

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. (§ 163)

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Such measures include economic pressure designed to influence the policy of another country or to obtain control of essential sectors of its national economy. Aid and technical assistance can serve to cloak interference in the domestic affairs of other States. Their use for that purpose would constitute a form of intervention. (§ 171)

Extension of active assistance to developing countries should be guaranteed by the whole international community, free of any political or military conditions. (§ 172)

Economic relations between countries, including trade relations, shall be based on respect for the principle of sovereign equality of States, self-determination of peoples, and non-interference in the internal affairs of other countries. (§ 177)

Food should not be used as a tool for political pressure. (§ 180)

Technical cooperation should not be used to impose models of economic development on a recipient country if those models do not fully take into account the policy framework and development strategies of that country. (§ 181)

Each State has the right to regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investments. (§ 182)

Every State has the right to regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State... (§ 183)

2. Availability of external resources

More appropriate conditions should be established for a balanced exchange of resources between North and South. There is a need for greater transfers internationally as well as a redirection of current resources. (§ 187)

3. Foreign debt

Any foreign debt strategy must be designed not to hamper the steady improvement of conditions guaranteeing the enjoyment of human rights and must

be intended, inter alia, to ensure that debtor developing countries achieve an adequate growth level to meet their social and economic needs and their development requirements. (§ 189)

The alleviation of debt and debt-service burdens of developing countries with debt problems should take place in the framework of the realization of economic, social and cultural rights. (§ 190)

Steps should be taken to implement additional debt-reduction measures, including further cancellation or reduction of part of the official debt or debt-service, and to adopt more urgent actions with regard to the commercial and multilateral debt owed by developing countries taking into account, in particular, the needs of debtor countries. (§ 193)

Measures should be adopted to substantially reduce the bilateral debts of the least developed countries, in particular the countries of Africa, as soon as possible. (§ 194) (...)

5. Transnational corporations

Developed countries should cooperate in ensuring that the activities of transnational corporations are in keeping with the economic and social objectives of the developing countries in which they operate. (§ 204)

States should eliminate all forms of foreign economic exploitation, particularly that practised by international monopolies, in order to enable the people of every country to enjoy in full the benefits of their national resources. (§ 205)

States should promote international agreements that address effectively issues of double taxation, as well as cross-border tax evasion, in accordance with the priorities and policies of the States concerned, while improving the efficiency and fairness of tax collection. (§ 207)

All efforts should be made to formulate, adopt and implement an international code of conduct for transnational corporations (...). (§ 208)

6. Development assistance

Technical, financial and material assistance, both bilateral and multilateral, should be provided to the developing countries, to the fullest possible extent and on favourable conditions, to facilitate the direct exploitation of their national resources and natural wealth by those countries with a view to enabling the peoples of those countries to benefit fully from their national resources. The coordination of international assistance should be improved for the achievement of the social objectives of national development plans. (§ 211)

7. Adjustment in developed countries

There is an urgent need for economic adjustment in the industrialized countries, which fully takes into account the international ramifications of domestic economic decision-making. (§ 221)

Developed countries should undertake an objective and critical examination of their present policies and make appropriate changes in such policies so

as to facilitate the expansion and diversification of imports from developing countries and thereby make possible international economic relations on a rational, just and equitable basis. (§ 223)

Industrialized countries, in particular, should take measures to change unsustainable consumption and production patterns. They should strive to: (a) promote efficiency in production processes and reduce wasteful consumption in the process of economic growth, taking into account the development needs of developing countries; (b) develop a domestic policy framework that will encourage a shift to more sustainable patterns of production and consumption; and (c) reinforce both values that encourage sustainable production and consumption patterns and policies that encourage the transfer of environmentally sound technologies to developing countries. (§ 224)

8. Military expenditure

All States should promote the achievement of general and complete disarmament under effective international control and utilize the resources released by effective disarmament measures for the economic and social development of countries, allocating a substantial portion of such resources as additional means for the development needs of developing countries. (§ 228)

9. International institutions

Measures should be taken to ensure coordination within the United Nations system in order to develop a comprehensive approach to developmental social welfare, including integrated and mutually supportive economic and social development policies, focused on the achievement of social justice. (§ 230)

Care should be taken to avoid dissociating the economic and monetary aspects of development from its social aspects and to enhance the dialogue between international social and humanitarian agencies and international institutions responsible for financial and trade questions. (§ 231)

The balance must be preserved between economic and social development. The concepts contained in the Declaration on the Right to Development must form, within their areas of competence, an integral part of the policies and programmes of all United Nations bodies and agencies, including the Bretton Woods institutions and the World Trade Organization. (§ 232)

States should ensure that there is greater coordination and more transparency in the collection and allocation of resources within the United Nations system. (§ 238)

States should ensure that international institutions function in a transparent, accountable and coordinated manner. They should, in particular, ensure greater transparency in the activities of international financial institutions and the strengthening of consultations between such institutions and the Governments of Member States. (§ 239)

Urgent and effective measures should be taken to review the lending policies of international financial institutions, taking into account the special

situation of each developing country, to suit urgent needs, and to improve the practices of these institutions in regard to, inter alia, development financing and international monetary problems. (§ 242)

All efforts should be made to reform the international monetary system... (§ 246)

... the World Bank should be sensitive to the pronouncements of the human rights bodies of the United Nations and should gradually incorporate human rights criteria in its work at all stages, including in project and policy lending, preparation of policy guidelines, as well as in project and policy appraisal, monitoring and assessment. (§ 247)

The international financial institutions should report periodically to the General Assembly and the Economic and Social Council on the social repercussions of their policies for the full enjoyment of economic, social and cultural rights in the developing countries. (§ 249)

Annexe 3

MAIN REFERENCE WEBSITES

South Centre: www.southcentre.org
United Nations Conference on Trade and Development: www.unctad.org
Economic and Social Council (ECOSOC): www.un.org/french/ecosoc
Office of the High Commissioner for Human Rights: www.ohchr.org
United Nations Research Institute for Social Development: www.unrisd.org
United Nations Development Programme: www.undp.org

ACTIVISTS' WEBSITES

Aktion Finanzplatz Schweiz: www.aktionfinanzplatz.ch
European Network on Debt and Development: www.eurodad.org
Freedom from Debt Coalition (Philippines): www.freedomfromdebtcoalition.org
Jubilee South: www.jubileesouth.org
Movimientos Indígenas y Sociales del Ecuador (llacta): www.llacta.org
Observatorio de la Deuda en la Globalización: www.observatoriodeuda.org
Pain Pour le Prochain: www.ppp.ch
¿Quién debe a Quién?: www.quiendebeaquiien.org
The Corner House: www.thecornerhouse.org.uk

OUR CLOSEST PARTNERS ON THIS SUBJECT

Committee for the Cancellation of the Third World Debt (CADTM)

Founded in Belgium on 15 March 19990, the Committee for the Abolition of Third World Debt (known by its French acronym, CADTM) is an international network composed of members and local committees based in Europe, Africa, Latin America and Asia. It acts in coordination with other organizations and movements working along the same lines (Jubilee South and other campaigns working for the cancellation of the debt and the elimination of structural adjustment policies/programs). Its primary work is planning radical alternatives aiming at the universal satisfaction of needs, liberties, and basic human rights. www.cadtm.org

International Debt Observatory

The International Debt Observatory came into being on 28 January 2005 at the World Social Forum in Porto Alegre in Brazil with the support of the CADTM and the Leftist Economists (EDI Argentina). The International Debt Observatory is a forum for the exchange of knowledge, analyses and research on the problem of the debt. Its purpose is to furnish to individuals and organizations studying the mechanism of indebtedness and/or pursuing an alternative to the domination of the great powers, accurate analyses in most of the fields related to the problem of the debt and a one-of-a-kind statistical data base. www.oid-ido.org

Jubilee South

Jubilee South is a network of debt campaigns, social movements, people's organizations, communities, NGOs and political formations. The Jubilee South network aims to develop and strengthen a global South movement on the debt. It has members from over 40 countries from the regions of Latin America and the Caribbean, Africa and Asia/Pacific, representing 85 anti-debt groups.

www.jubileesouth.org