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Effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky, submitted pursuant to Human Rights Council resolutions 25/16 and 31/11.

* A/71/150.

Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Summary

The present report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, includes two parts.

First, the Independent Expert provides an overview of the activities undertaken from August 2015 to July 2016. During that period, the Independent Expert submitted two thematic reports to the Human Rights Council at its thirty-first session in March 2016: a report covering the interrelationship between inequality and financial crises and their implications for the enjoyment of human rights; and his final study on illicit financial flows and human rights and the 2030 Agenda for Sustainable Development. He also presented reports on his visits to China and Greece and undertook an official visit to the European institutions in Brussels focusing on the impact of economic reform and austerity policies implemented in eurozone countries.

Second, the Independent Expert offers some reflections on a number of developments and issues of concern. He provides an overview on debt-related policy developments at the United Nations, including the outcomes of the third International Conference on Financing for Development and of the fourteenth United Nations Conference on Trade and Development, and the Basic Principles on Sovereign Debt Restructuring Processes. He also argues that past international debt relief initiatives have not been able to contribute in a sustainable way to improved human rights outcomes in heavily indebted poor countries, as debt relief, while important, would never have covered the necessary financial means. In addition, he underlines that a new global wave of austerity and debt vulnerabilities in many developing countries that challenges progress on human rights is again increasing, requiring more policy efforts to prevent and solve such crises. Finally, he argues that the current review of frameworks for debt sustainability analysis should be based on a more comprehensive understanding of debt sustainability, incorporating human rights and the social and environmental dimensions of sustainability. He concludes that a more robust and human rights-based framework for sovereign debt is needed in order to achieve the Sustainable Development Goals; that a new global wave of austerity policies and debt vulnerabilities affecting mainly developing countries challenges progress on human rights; and that, in addition to strengthening national resource mobilization, a holistic framework for debt relief remains essential to ensure that international efforts and support in attaining the Goals are not undermined by unsustainable debt.

His recommendations include, among others, establishing a reporting mechanism on debt restructurings; ensuring that monitoring mechanisms track progress on the Sustainable Development Goals, including government spending on the Goals and sectors relevant for the progressive realization of rights; and incorporating human rights obligations into frameworks for carrying out debt sustainability analysis.

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolutions 25/16 and 31/11, in which the Council requested the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, to report regularly to the Council and the General Assembly. The report provides an overview of the activities that the Independent Expert undertook between August 2015 and July 2016, followed by reflections on a number of recent developments that must be further highlighted and brought to the attention of the international community.

II. Activities by the Independent Expert

A. Thematic reports

2. Pursuant to Human Rights Council resolutions 25/9 and 25/16, the Independent Expert submitted two thematic reports to the thirty-first session of the Council.

3. First, he submitted a report on the interrelationship between inequality and financial crises and their implication for the enjoyment of human rights (A/HRC/31/60 and Add.1 and 2). In that report, the Independent Expert highlighted compelling evidence that economic inequality was both a result of, and a contributor to, economic crises. He argued that the extreme inequalities of today had significantly contributed to the emergence of financial crises. In the report, he also analysed how financial and sovereign debt crises had entrenched economic inequalities and how austerity measures adopted in response to them had pushed many individuals below minimum income levels.

4. The Independent Expert also highlighted how economic inequality was addressed in international human rights law. He argued that, while human rights law did not necessarily imply a perfectly equal distribution of income and wealth, it did require conditions in which rights could be fully exercised. As such, a certain level of redistribution was expected in order to guarantee individuals an equal enjoyment of the realization of their basic rights without resulting in discriminatory outcomes. The Independent Expert concluded his report with recommendations on addressing inequalities in order to prevent and respond to financial crises, including financial market regulation, minimum wages, progressive taxation and social protection floors. Moreover, structural adjustment programmes should be subjected to robust human rights impact assessments and not only oriented towards short-term fiscal targets to regain debt sustainability.

5. The Independent Expert's second thematic report focused on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development (A/HRC/31/61) pursuant to Human Rights Council resolution 28/5, adopted on 26 March 2015. The final study complemented the interim study of the Independent Expert (A/HRC/28/60 and Corr.1) by focusing in more detail on tax-related illicit financial flows, in particular on tax evasion and avoidance by transnational corporations.

6. The report outlined how illicit financial flows undermined the enjoyment of economic, social, cultural, civil and political rights and emphasized the need for: (a) due diligence and due process in the fight against illicit financial flows; (b) better protection of witnesses and whistle-blowers; and (c) incorporating human rights considerations into the return of stolen assets. It concluded with recommendations to specific stakeholders on how to operationalize the goal of curbing illicit financial flows within the post-2015 development agenda of the United Nations.

B. Country visits

7. During the reporting period, the Independent Expert sent new visit requests to Brazil, Ghana, Grenada and Panama. He reiterated his interest in visiting Jamaica, Tunisia, the United States of America and Zambia.

8. The Independent Expert presented his report to the Human Rights Council (A/HRC/31/60/Add.1) concerning his official visit to China to assess how its international lending contributes to the realization of human rights, in particular economic, social and cultural rights, in borrowing countries. The Independent Expert welcomed the leadership role taken by China in establishing two new multilateral development banks, namely the Asian Infrastructure Investment Bank in Beijing and the New Development Bank in Shanghai.

9. In his report, the Independent Expert noted that China had become a key player in providing funds for South-South cooperation and long-term financing for sustainable development to its partner countries. Development projects supported by Chinese financial institutions had brought benefits, but some projects had caused adverse environmental, social and human rights impacts on affected individuals and communities.

10. The Independent Expert underlined the need to strengthen the implementation of existing social and environmental credit guidelines in operational practices, improve consultation with affected individuals and communities and enhance the responsiveness of financial institutions to their concerns. That included ensuring that affected persons enjoyed effective remedies for potential human rights abuses. In addition, there was a need for more transparency.

11. Furthermore, in relation to foreign business ventures, he stressed the need for financial institutions funding such ventures to establish accessible operational-level grievance mechanisms and independent complaint mechanisms. He also called on the Government of China to adopt appropriate legislative and administrative measures to ensure the accountability and legal liability of Chinese companies and their foreign subsidiaries for potential human rights abuses.

12. The Independent Expert conducted an official visit to Greece in December 2015 to follow up on an earlier visit by his predecessor in April 2013 (see A/HRC/31/60/Add.2). After several years of adjustment policies, more than one million people in Greece still lived in extreme poverty, and unemployment, especially youth unemployment, had remained at unacceptably high levels. The Independent Expert expressed his regret that the human rights obligations of Greece and its international lenders towards rights-holders within the country continued to be sidelined, both in the design of adjustment policies and in the implementation of structural reforms.

13. The Independent Expert argued that Greece was in dire need of debt relief in order to trigger socially inclusive growth. Debt relief should be turned into an investment package to boost the real economy through public investment in infrastructure, research and education. He further argued that Greece needed a modern social welfare system that was just, efficient, sufficiently funded, targeted to those in need and protective of core social, economic and cultural rights in a comprehensive and non-discriminatory manner.

14. He recommended that the Government of Greece and its international lenders review their economic reform policies to ensure that they did not undermine human rights. For that purpose, a comprehensive human rights impact assessment should be undertaken. In his recommendations, the Independent Expert highlighted several measures to protect the unemployed, address gaps in the social protection system and restore universal access to public health care for people who had no social insurance coverage. He called upon European countries to increase their support for combating poverty and social exclusion within Greece and to provide human, technical and financial resources for food, health care and emergency housing of refugees.

15. The Independent Expert would like to thank the Governments of China and Greece for the frank and open dialogue and for their cooperation during his visits.

C. Visit to institutions of the European Union

16. From 30 May to 3 June 2016, the Independent Expert visited institutions of the European Union in Brussels to discuss human rights concerns related to economic adjustment policies and austerity measures implemented in European Union member States. Such reform policies are frequently implemented when financial support is provided to European Union member States, based on binding lending conditionalities by European Union institutions. The Independent Expert wishes to express his appreciation for the open dialogue and full cooperation of European Union institutions during his visit.

17. In his end-of mission statement,[1] the Independent Expert voiced his concern that recent austerity policies had undermined economic, social and labour rights within Europe. He expressed his worry that, in the aftermath of the financial crisis, poverty had risen, with about 121 million people in the European Union at risk of poverty or social exclusion, and expressed his regret that the European Union would be unlikely to reach by 2020 its own official target to reduce by 20 million the number of people at risk of poverty and social exclusion.

18. The Independent Expert highlighted that, while European Union member States were primarily responsible for adherence to their international human rights obligations, international institutions, including the European Union and its bodies and financial institutions, were not beyond the reach of international human rights law. He underscored that European Union institutions and bodies must, at an absolute minimum, respect the international human rights treaties to which all their member States had become a party when making policy recommendations or setting binding conditionalities for providing loans.

[1] Available from ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20057&LangID=E.

19. The Independent Expert welcomed the fact that the European Union had developed several tools to assess social and human rights impacts and was currently further developing guidelines for human rights impact assessments of international trade agreements. He expressed his regret, however, that internal macroeconomic policies did not explicitly use human rights standards as benchmarks against which economic reforms were assessed.

20. In his end-of-mission statement, the Independent Expert also underscored that past economic reform programmes should be evaluated according to whether they had ensured a fair and equal distribution of social adjustment burdens, and not only whether they had reduced budget deficits and restored debt sustainability or economic growth. Such evaluations should assess the extent to which reform programmes had protected economic and social rights and identify gaps to be addressed. Such assessments should inform recommendations, programme design and the financial or technical support provided by the European Union to its member States. A comprehensive report on his visit will be submitted to the thirty-fourth session of the Human Rights Council, to be held in March 2017.

D. Public statements

21. The Independent Expert exchanged views with Member States in bilateral meetings and through the communications procedures on issues brought to his attention. In addition, he issued several public statements on situations, which, in his view, required public attention.[2]

22. On 10 September 2015, the Independent Expert issued a statement in the wake of the adoption by the General Assembly of resolution 69/319, entitled "Basic Principles on Sovereign Debt Restructuring Processes", in which he welcomed the resolution as a positive step towards clarifying existing rules and principles of international law that applied to sovereign debt issues.

23. On 26 October 2015, 11 Special Rapporteurs and Independent Experts of the Human Rights Council submitted observations on the draft environmental and social framework of the future Asian Infrastructure Investment Bank. In their joint letter[3] the independent experts welcomed the steps taken by the Bank to establish mandatory environmental and social standards, but recommended that human rights should be more rigorously integrated within the proposed safeguard policies. The experts stressed that the Bank should aspire to become a bank of the twenty-first century governed by environmental, social and human rights policies reflecting current international standards. The initiative was coordinated by the Independent Expert, who had met the President-designate of the Asian Infrastructure Investment Bank, Jin Liqun, during his visit to China.

24. On 10 November 2015, in a joint statement with four Special Rapporteurs and Independent Experts of the Human Rights Council, the Independent Expert expressed support for a draft law in Argentina aiming to establish a truth commission on economic complicity to assess the role and responsibility of business people for violations that occurred in the country during the 1976-1983 dictatorship.

[2] All public statements of the Independent Expert, if not indicated otherwise, can be accessed from ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?SID=External_Debt.

[3] Available from ohchr.org/Documents/Issues/IEDebt/261015_Letter_AIIB.pdf.

25. On 8 March 2016, in a joint statement with another Independent Expert, the Independent Expert expressed concern at the implications of a proposed agreement between Argentina and hedge funds that had not participated in previous debt restructurings and had litigated against Argentina. The experts suggested that a human rights impact assessment should be undertaken to review the fiscal impacts of paying the vulture funds.[4]

26. On 8 April 2016, the Independent Expert issued a statement on the Panama Papers, in which he called upon the international community to urgently put an end to financial secrecy, and that the Panama Papers underscored the need for laws requiring public disclosure of beneficial ownership information in all countries. He warned that tax evasion and the flow of funds of illicit origin undermined justice and deprived governments of resources needed for the realization of economic, social and cultural rights.

27. On 15 June 2016, the Independent Expert expressed hope that core provisions of a Belgian law limiting vulture fund litigation would be preserved. The law, which was passed by the Belgian Parliament in 2015 to prevent vulture funds from significantly profiting from financial crises, has been challenged by a hedge fund before the Constitutional Court of Belgium.

28. On 12 July 2016, the Independent Expert and nine special procedures mandate holders stressed that the effective implementation of the 2030 Agenda for Sustainable Development depended upon its consistency with the overarching commitment to human rights. That included accountability, non-discrimination and equality (notably gender equality) and clear consideration of the primacy of States' human rights obligations.

III. Recent developments and issues of concern

A. International debt relief, the attainment of the Millennium Development Goals and lessons learned for the Sustainable Development Goals

29. As the target date for the Millennium Development Goals has passed, it is appropriate to reflect on what has been achieved in relation to target 8.D, "Deal comprehensively with the debt problems of developing countries", of Millennium Development Goal 8, and in relation to the improvement of human rights outcomes through international debt resolution and debt relief for developing countries.

30. In that context, a particular group of developing countries, heavily indebted poor countries, have been at the core of international debt relief efforts.[5] As of 2016, debt relief under the Heavily Indebted Poor Countries Initiative and the Multilateral Debt Relief Initiative is almost complete, and only 3 of 39 eligible countries — Eritrea, Somalia and the Sudan — have not yet received debt relief.

[4] Available from ohchr.org/Documents/Issues/IEDebt/IEArgentina8Mar2016_en.pdf.

[5] For an earlier assessment of progress on Millennium Development Goal 8, see also A/HRC/23/37, which is a report of the previous Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina.

31. A key aim of those initiatives was to reduce the debt stock in heavily indebted poor countries and free up public resources for poverty reduction expenditures. According to the International Monetary Fund (IMF), that has largely been achieved. In 2001, heavily indebted poor countries spent, on average, 6.5 per cent of their gross domestic product (GDP) on poverty reduction as defined in the Poverty Reduction Strategy Papers. By 2015, that figure had risen to 9.1 per cent of GDP. Debt service as a percentage of GDP was reduced from 3.1 per cent in 2001 to 1.5 per cent in 2015.[6]

32. The Independent Expert welcomes the progress achieved. However, he underlines that, for several reasons, international debt relief initiatives have not yet delivered a comprehensive and sustainable solution to debt problems in developing countries. In the following paragraphs, the Independent Expert discusses four challenges.

33. First, according to IMF projections as of March 2016, the debt service of heavily indebted poor countries is expected to again increase significantly over the coming years, both in nominal terms and in percentage of GDP, while poverty reduction expenditure is predicted to see hardly any increases, casting doubt as to whether most of those countries will have sufficient resources at their disposal to make progress towards attaining the Sustainable Development Goals.[6] According to IMF debt sustainability assessments as of April 2016, 8 of the 36 heavily indebted poor countries that received international debt relief are again at high risk of debt distress.[7] That underlines the limitations of one-time debt relief. As debt crises are reoccurring, the need for an improved mechanism that would ensure a fair, timely and more reliable process of debt restructuring or debt relief has remained.

34. Second, the Independent Expert observes that insufficient attention has been given to debt issues in several middle-income countries, including a number of small island developing States that did not qualify for international debt relief owing to their more advanced economic development.

35. Third, the Heavily Indebted Poor Countries Initiative and the Multilateral Debt Relief Initiative did not provide timely relief to heavily indebted countries. More could have been achieved with a mechanism that would have been able to deliver quicker results. In addition, countries had to meet several conditions to qualify for debt relief. Not all of those conditions were useful and some of them increased vulnerability to new crises (see, for example, A/HRC/23/37, paras. 42-44).

36. Finally, international debt relief was not able to free up sufficient resources to allow heavily indebted poor countries to make greater progress in attaining the Millennium Development Goals. The challenges those countries face are too large to ensure that debt relief alone could engender significant and sustainable advancements in the field of economic or social and cultural rights.

37. In 2006, the Millennium Project estimated that all low-income countries would need to annually invest $253 billion and invest $529 billion in 2015 to attain the Millennium Development Goals by 2015. The study estimated that low income countries would require, in 2006, $73 billion in external support to be able to attain

[6] See IMF, "Heavily Indebted Poor Countries (HIPC) Initiative and Multilateral Debt Relief Initiative (MDRI) — statistical update", annex III, p. 19. Available from imf.org/external/np/pp/eng/2016/031516.pdf.

[7] See imf.org/external/pubs/ft/dsa/dsalist.pdf.

the Goals.[8] However, debt relief was estimated to reach only about $6 billion for those countries in 2006, in other words less than 10 per cent of the estimations.[9] While cancelling all external debt of low-income countries would have significantly reduced the financial shortfall, debt relief alone would have not been sufficient to ensure the attainment of the Goals in low-income countries. It is therefore not surprising that despite debt relief, progress of heavily indebted poor countries in attaining the Goals has been modest.

38. According to IMF, the target "End poverty and hunger" was only met by 5 of 36 heavily-indebted poor countries that had received debt relief. About half of those, 18 countries, are considered to be "seriously off target"; that indicates that the respective international development goal will not even be met by 2030, unless a significant change occurs.[10]

39. With regard to heavily indebted countries that have received debt relief, there has been more progress in increasing the ratio of girls to boys in primary and secondary school enrolment: 12 heavily indebted poor countries reported that they had attained that target; however, none of the countries for which sufficient data was available appears to have met the Millennium Development Goal target to increase the primary school completion rate. Thirteen countries receiving debt relief met their goal to decrease child mortality, but nearly half of those countries are considered to be "seriously off target" in decreasing the infant mortality rate. More disappointingly, 27 countries are said to be "seriously off target" in decreasing the maternal mortality rate. While 15 have achieved increased access to an improved source of water, only 1 country (Honduras) is reported to have met the target to increase access to improved sanitation facilities. Most heavily indebted poor countries receiving debt relief (29 of 36 countries) are considered to be "seriously off target" in reaching that target.[10]

40. It is obvious that, despite international debt relief, heavily indebted poor countries continue to face many obstacles in attaining international development goals. Numerous reasons may explain the limited progress. Availability or non-availability of public funds may be only one explanation, as many structural factors intervene. As noted above, in the Independent Experts' views, unmet financing needs nevertheless played an important role: many heavily indebted poor countries simply lacked stable, reliable public revenues and external support of sufficient size that would have allowed greater progress.

41. The 2030 Agenda for Sustainable Development necessitates the mobilization of even larger financial resources. A study by Development Finance International and Oxfam suggests that the attainment of the Sustainable Development Goals would require at least $1.5 trillion extra in government spending a year.[11] That will be a challenge, as it has been estimated that government spending on the

[8] UN Millennium Project, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals* (New York, Earthscan, 2005), p. 249. Available from http://unmillennium project.org/reports/fullreport.htm.

[9] Ibid., p. 251.

[10] See IMF, "Heavily Indebted Poor Countries (HIPC) Initiative", table AI2, pp. 15-16.

[11] Development Finance International and Oxfam, "Financing the Sustainable Development Goals: lessons from government spending on the MDGs", May 2015. Available from governmentspendingwatch.org/images/pdfs/GSW_2015_Report/Financing-Sustainable-Development-Goals-Report-2015.pdf.

Millennium Development Goals had already fallen short of needs by one third from 2012 to 2014. The study, covering 66 developing countries, including several middle-income countries, argued that increased debt service had already significantly reduced available resources for public investment in sectors that were crucial to attaining the international development goals, such as agriculture; education; environment; health; social protection; water, sanitation and hygiene; and women's rights.

42. While overall government spending has increased significantly in developing countries, revenues have not followed suit. That has resulted in growing public deficits, stronger reliance on debt financing and a significant increase in debt service. According to data collected by Development Finance International and Oxfam, in 2013 debt service had already "crowded out" Millennium Development Goal spending in 21 of the 66 countries studied, and Goal-related government spending had not risen to the same degree as overall government expenditure: debt service absorbed 40 per cent of the increased government expenditure and only 25 per cent of additional resources were allocated to Millennium Development Goal sectors.[12] Twenty-one of the 66 assessed countries allocated more than 15 per cent of their budget to debt service, and 12 countries allocated more than 20 per cent. Six countries diverted more than one third of their public spending to debt service, with the highest debt service burdens occurring in Jamaica, Jordan and Sri Lanka.[13]

43. Looking forward to the implementation of the Sustainable Development Goals, those lessons will be essential, in particular the need to ensure systematic, comprehensive and reliable monitoring on how debt service costs might reduce the fiscal space available to governments and the allocation of public resources in sectors crucial for attaining the Goals. That would also require enhancing the transparency of public budgets to ensure that Goal-related expenditures can be better identified.

44. The Independent Expert wishes to highlight that the Sustainable Development Goals are more ambitious compared with the Millennium Development Goals, and require more funding and a stronger monitoring mechanism. While credit financing has an important role to play in attaining the Sustainable Development Goals, more care must be taken to ensure that debt obligations do not undermine progress in attaining those Goals. Furthermore, the Sustainable Development Goals cover only a fraction of the legally binding human rights obligations of States. Care must be taken that pouring resources into Goal implementation does not sidetrack ensuring adequate funds for the protection and fulfilment of all human rights.

B. Developments at the United Nations

45. States have made new commitments to address debt problems in the context of the third International Conference on Financing for Development, held in Addis Ababa from 13 to 16 July 2015, and through the adoption of the 2030 Agenda for Sustainable Development. The General Assembly adopted new Guiding Principles on Sovereign Debt Restructuring Processes in September 2015.

[12] Ibid., p. 3.
[13] Ibid., p. 14.

Addis Ababa Action Agenda

46. The third International Conference on Financing for Development resulted in the adoption of the Addis Ababa Action Agenda, setting out a joint commitment by States to finance the Sustainable Development Goals (see General Assembly resolution 69/313, annex). While the first paragraph of the Agenda includes a commitment to human rights and the right to development, the Independent Expert expressed his regret that human rights were not more vigorously incorporated into several of the substantive sections of the Agenda. That includes, for example, the section on debt and debt sustainability, which does not contain any explicit reference to human rights or to the guiding principles on foreign debt and human rights, which were endorsed in 2012 by the Human Rights Council.

47. In paragraph 93 of the Addis Ababa Action Agenda, States underlined that borrowing was an important tool for financing investment critical to achieving sustainable development, including the sustainable development goals. Acknowledging the substantial debt reduction in several low-income countries through international debt relief, the outcome document highlighted that many countries remained vulnerable to debt crises or were in the midst of crises, including a number of least developed countries, small island developing States and some developed States.

48. The Independent Expert observes that, as international debt relief efforts for heavily indebted poor countries have nearly come to an end, there is currently no internationally agreed framework for dealing with the unsustainable debt of developing countries, including middle-income countries, that would be available to provide solutions. While the Addis Ababa Action Agenda acknowledged that many States — not only low-income countries — required urgent solutions, States could only agree on a rather non-specific commitment, in paragraph 94, that they would "support the maintenance of debt sustainability in those countries that have received debt relief" and explore on a case-by-case basis initiatives to support non-heavily indebted poor countries with sound economic policies that face debt sustainability challenges.

49. In paragraph 97 of the Addis Ababa Action Agenda, States reiterated that debtors and creditors must work together to prevent and resolve unsustainable debt situations and took note of the principles on responsible sovereign lending and borrowing of the United Nations Conference on Trade and Development (UNCTAD). The formulation "we will work towards a global consensus on guidelines for debtor and creditor responsibilities in borrowing by and lending to sovereigns, building on existing initiatives" reflects, however, the limited consensus that has so far emerged in that field.

50. The same can be said in relation to debt restructuring processes. In the Addis Ababa Action Agenda, States affirmed the importance of timely, orderly, effective and fair debt restructurings negotiated in good faith, and expressed concern with non-cooperative creditors disrupting the timely completion of such restructurings. As a solution to that problem, the final text of the Agenda refers mainly to new standards for collective action clauses in government bond contracts proposed by the International Capital Market Association. While those new clauses will make it more difficult for non-cooperative creditors to block debt restructurings in the future, they do not provide a comprehensive and satisfactory solution to the

problem, including the problem of the existing stock of sovereign bonds that do not have those collective action clauses.

51. Overall, States acknowledged in the Addis Ababa Action Agenda various ongoing initiatives for solving or preventing debt crises, but largely failed to endorse more innovative and effective policy proposals or mechanisms. We are therefore entering a much more ambitious Sustainable Development Goal implementation process without a comprehensive framework that would facilitate debt crisis prevention and resolution.

52. What used to be target 8.D, "Deal comprehensively with the debt problems of developing countries", of Millennium Development Goal 8, became the broader target 17.4 of Sustainable Development Goal 17: "Assist developing countries in attaining long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief and debt restructuring, as appropriate, and address the external debt of highly indebted poor countries to reduce debt distress". To track progress on that target, the Inter-Agency and Expert Group on Sustainable Development Goal Indicators recommended an indicator measuring "debt service as a percentage of export of goods and services" (see E/CN.3/2016/2/Rev.1). As explained below, the Independent Expert holds the view that the methodology used to determine long-term debt sustainability in the 2030 Agenda for Sustainable Development should take into consideration the human rights obligations of States and the financing needs for attaining the 17 Sustainable Development Goals. Debt or debt service cannot be said to be sustainable if the amounts needed to pay back the debt would reduce the fiscal space of States so decisively that insufficient funds would remain to protect core economic, social and cultural rights or to ensure progress in attaining the Goals. Unfortunately, the proposed indicator will not be able to track whether that would be the case.

Basic Principles on Sovereign Debt Restructuring Processes

53. Over the last decades, a number of legal principles have emerged in sovereign debt restructuring practice that have been identified, systematized and consolidated[14] by the General Assembly in September 2015 when it adopted the Basic Principles on Sovereign Debt Restructuring Processes in its resolution 69/319. Based on the principles identified earlier by an UNCTAD working group,[15] the Basic Principles propose an incremental approach to sovereign debt workouts that relies on the continuous, progressive development of sovereign debt restructuring practice.

54. Of major importance is that the Basic Principles affirm explicitly that the principle of sustainability includes respect for human rights. Lenders and borrowers and other relevant stakeholders are now invited to further develop and improve their practices in line with the Principles.

55. One of the most important contributions of that incremental approach is to put law and legal theory at the centre of the debate on debt workouts that has in past

[14] See the forthcoming 2016 special issue of the *Yale Journal of International Law* in which a number of scholars reflect on the economic and legal implications of the Basic Principles on Sovereign Debt Restructuring Processes.

[15] UNCTAD, "Sovereign debt workouts: going forward. Roadmap and guide". Available from http://unctad.org/en/PublicationsLibrary/gdsddf2015misc1_en.pdf.

decades been dominated by economic thinking.[16] Law — human rights law, most prominently — matters in debt issues. For example, the scope and contents of the principle of debt sustainability, and the role of human rights law in contributing to the understanding of what level of debt can be considered as socially sustainable, might explain why holdout litigation encounters a robust policy response.[17] The need to incorporate human rights into existing frameworks for debt sustainability analysis is discussed in more detail below.

56. As the incremental approach implies a long-term continuous process of crystalizing, developing and improving practices based on legal principles, it also needs to draw lessons from practical experiences. Therefore, the General Assembly might consider setting up a data registry for debt restructurings and a reporting system on the implementation of the Basic Principles on Sovereign Debt Restructuring Processes. That system could mainly aimed at identifying best practices and mutual learning.

Fourteenth United Nations Conference on Trade and Development

57. The forthcoming outcome document of the fourteenth session of the United Nations Conference on Trade and Development, held in Nairobi from 17-22 July 2016, highlighted that there was scope for further work with a view to facilitating fair burden-sharing, improving predictability and promoting an orderly, timely and efficient restructuring that respected the principles of shared responsibility and was conducive to rapid restoration of public debt sustainability, while preserving access to financing resources under favourable conditions. The incremental approach based on legal principles seems to be in line with that diagnosis and legal strategy.

58. The Conference underlined the importance of public debt management to prevent and pre-empt financial and debt crises in order to address growing concerns about external debt sustainability and recognized the need for a central data registry covering information on debt restructurings, as suggested in the previous paragraphs.

59. The Independent Expert regrets that the outcome document did not mention the need for a debt workout mechanism and that the Conference was not able to agree on strengthening the mandate of UNCTAD, including in the field of taxation, tax avoidance and tax evasion, as States had committed to doing in paragraph 88 of the Addis Ababa Action Agenda.

C. New global wave of austerity and debt vulnerabilities challenging progress on human rights

60. Austerity measures implemented to reduce public debt in highly developed countries such as Greece, Iceland, Ireland, Latvia, the United Kingdom of Great Britain and Northern Ireland and other European countries have been a concern to

[16] Juan Pablo Bohoslavsky and Matthias Goldmann, "Guest editor's foreword", *Yale Journal of International Law*, 2016 (forthcoming).

[17] See Michael Riegner, "Legal content and consequences of sustainability as a principle in sovereign debt restructuring", and Bohoslavsky and Goldmann, "An incremental approach to sovereign debt restructuring: sovereign debt sustainability as a principle of public international law", *Yale Journal of International Law*, 2016 (forthcoming).

the Independent Expert and international human rights mechanisms, as such fiscal consolidation measures have the potential to undermine the enjoyment of economic and social rights.[18] However, that should not lead to the erroneous perception that debt vulnerabilities in developing countries have ceased to exist, or that austerity policies have been limited to the highly developed world.

61. On the contrary, based on IMF government spending projections, a new global wave of austerity policies is currently taking root in an effort to reduce budget deficits or keep public debt under control. Cutbacks of public expenditures are expected in 132 countries in 2016 and will hover around that level until 2020. On average, 45 high-income countries and 81 developing countries will be affected. According to a study co-published by the International Labour Organization (ILO), planned adjustment measures include the reduction or elimination of subsidies, including on fuel, agriculture and food products (in 132 countries); wage bill cuts/caps (in 130 countries); rationalizing and further targeting of safety nets (in 107 countries); pension reforms (in 105 countries); labour market reforms (in 89 countries) and health-care reforms (in 56 countries). East Asia and the Pacific, along with the Middle East and North Africa, are the regions forecasted to undergo the most severe cuts.[19]

62. The Independent Expert wishes to point out that, on 24 June 2016, the Committee on Economic, Social and Cultural Rights published a statement on "Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights".[20] The statement responded to the fact that States have frequently been unable to comply with their obligation to fully realize the rights enshrined in the Covenant owing to the adoption of fiscal consolidation programmes, including structural adjustment programmes and austerity programmes, as a condition for obtaining loans. Through the statement, the Committee intended to provide guidance to borrowing and lending States, as well as to international organizations and international financial institutions, as to the scope of their obligations under the Covenant in such situations.

63. In the statement, the Committee underlined that any conditions attached to a loan that would imply an obligation on a borrowing State to implement unjustifiable retrogressive measures in the area of economic, social and cultural rights would result in a violation of the Covenant. According to the Committee, both borrowing States and lenders were required to carry out human rights impact assessments prior to the provision of loans concerned, in order to ensure that the conditionalities did not disproportionately affect economic, social and cultural rights, and did not lead to discrimination. Retrogressive measures should only be taken if they were unavoidable, necessary and proportionate and if any other policy would be more detrimental to economic, social and cultural rights. They should furthermore only

[18] See, for example, the following reports by the Independent Expert and his predecessor: A/HRC/23/37/Add.1 (Latvia), A/HRC/25/50/Add.1 and A/HRC/31/60/Add.2 (Greece), and A/HRC/28/59/Add.1 (Iceland). See also reports of the United Nations High Commissioner for Human Rights (E/2013/82); the Independent Expert on the question of human rights and extreme poverty (A/HRC/17/34 and A/HRC/17/34/Add.2 (Ireland)); and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (A/HRC/25/54/Add.2 (United Kingdom)).

[19] See Isabel Ortiz et al., *The Decade of Adjustment: A Review of Austerity Trends 2010-2020 in 187 Countries* (Geneva, ILO, 2015), p. iii.

[20] Available from ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx.

remain in place as they were necessary, not result in discrimination and mitigate inequalities, ensure that the rights of disadvantaged and marginalized individuals and groups were not disproportionately affected and not affect the minimum core content of the rights protected under the Covenant.

64. The Independent Expert welcomes the statement of the Committee clarifying further the obligations of borrowing States and lenders under the International Covenant on Economic, Social and Cultural Rights. He also notes that the statement confirmed several key principles contained in the guiding principles on foreign debt and human rights.

65. The Independent Expert would like to indicate that he is planning to develop more detailed practical guidance on how borrowing States and lenders, including international financial institutions, could undertake meaningful and robust human rights impact assessments based on existing international human rights standards and the principles outlined in the recent statement of the Committee.

66. While tools for conducting human rights impact assessments have increased, there is still a lack of practical guidance with regard to how to carry out ex ante human rights impact assessments of structural adjustment and financial consolidation policies. Such guidance would be helpful for a larger audience, including officials in public and international financial institutions, national human rights institutions or members of civil society organizations. There is evidence that human rights harm caused by economic reform policies can be avoided, or at least significantly reduced, by using a policy design based on human rights principles and effective monitoring and accountability mechanisms.

67. Overall, external debt levels of developing and transitional economies have displayed a rising long-term trend. With the exception of Africa, where a larger number of heavily indebted poor countries benefited from debt reduction programmes, all other regions in 2013 exhibited a significantly higher debt stock than in the 1990s. While nominal debt levels have risen sharply since the 2008 global financial crisis, the ratio of external debt to gross national income (GNI) declined from the late 1990s to 2008. However, that trend has come to a halt. South Asian, Latin American and transitional economies in particular have resorted to increased private borrowing.[21] A recent UNCTAD report on debt dynamics and development finance in Africa noted that "while Africa's current external debt ratios currently appear manageable, their rapid growth in several countries is a concern and requires action if a recurrence of the African debt crisis of the late 1980s and the 1990s is to be avoided".[22]

68. As of April 2016, debt sustainability analyses carried out by IMF and the World Bank in 67 low-income countries show that 3 countries were in debt distress (Grenada, the Sudan and Zimbabwe), 15 countries were at high risk of debt distress, while 26 countries were considered to be at moderate risk and 13 countries were at low risk.[23] Between April 2015 and April 2016 the proportion of developing countries at low risk of debt distress shrank from 30 per cent to 22 per cent, while

[21] *Trade and Development Report 2015* (United Nations publication, Sales No. E.15.II.D.4) pp. 120-130.

[22] *Economic Development in Africa Report 2016: Debt Dynamics and Development Finance in Africa* (United Nations publication, Sales No. E.16.II.D.3), p. 2.

[23] See imf.org/external/Pubs/ft/dsa/DSAlist.pdf (list as at 7 April 2016).

more countries have been classified to be at moderate or high risk of debt distress.[24] A report monitoring, on an annual basis, the indebtedness in developing countries, including emerging economies, found critical debt problems in 108 countries. The assessment along five different debt indicators found 234 negative changes and just 127 positive changes for the entire set of countries monitored.[25]

69. New debt sustainability analyses carried out in relation to Cameroon and Dominica reclassified them from moderate to high risk of debt distress. In the case of Dominica, the negative development can to a large extent be attributed to Storm Erika at the end of August 2015, which generated losses amounting to 96 per cent of the island's annual GDP.[26] Dominica did not benefit from debt relief under the new IMF Catastrophe Containment and Relief Trust, as only developing nations that have been impacted by natural disasters deemed to exceed more than 100 per cent of GDP can qualify for debt relief.

70. From 2006 to 2014, lending to low-income countries more than tripled. Reduced bilateral lending by countries that are part of the Organization for Economic Cooperation and Development was compensated by loans from emerging market-country creditors, such as Brazil, China and India, and by increased lending on international capital markets. In middle-income countries, more expensive market-based financing was accessed. In 1995, concessional financing had a share of about 25 per cent of the debt portfolio in middle-income countries; such loans today account for less than 10 per cent.[27]

71. Bonds have become a preferred avenue for development financing. From 2004 to 2013, 23 additional countries started to use bonds for the first time, and the share of developing countries' external long-term debt in the form of public and publicly guaranteed bonds reached 41.5 per cent in 2014.[28] Recently, bonds have increasingly been issued by developing countries to cover recurrent expenditures or compensate for reduced revenues from commodity exports. While the diversification of developing financing and increased access to capital markets can be seen as a positive development, risks have increased.

72. A number of developing economies could encounter growing difficulties in servicing their debts over the coming years, as historically low interest rates in the United States are likely to be gradually increased over the next few years, while export opportunities to developed countries remain subdued. The rapid rise of external private debt runs the danger of repeating a pattern seen prior to the Latin American crisis of the 1980s and the Asian crisis of the 1990s, with private liabilities ending up on public sector balance sheets.

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[24] See http://erlassjahr.de/allgemein/ueberschuldungsrisiken-in-armen-laendern-steigen-dramatisch-iwf/ (in German).

[25] *Schuldenreport 2016*, p. 16. Available from http://erlassjahr.de/wordpress/wp-content/uploads/2016/03/Schuldenreport-2016.pdf (in German).

[26] IMF, Country Report No. 16/244, Dominica, "Statement by Mr. James Haley, Executive Director for Dominica, and Messrs. Michael McGrath, Alternate Executive Director, and Niall Feerick, Advisor to the Executive Director", p. 70. Available from imf.org/external/pubs/ft/scr/2016/cr16244.pdf.

[27] *Schuldenreport 2016*, p. 21.

[28] Anastasia Guscina, Guilherme Pedras and Gabriel Presciuttini, "First-time international bond issuance — new opportunities and emerging risks", IMF working paper 14/127, p. 4. Available from imf.org/external/pubs/ft/wp/2014/wp14127.pdf; World Bank, *International Debt Statistics 2016* (Washington, D.C.), p. 19.

73. Interest rates are currently at historical lows, but that may change. A significant change in interest rates may cut off countries from future credit supply and pose significant challenges for rolling over maturating public debt. In addition, the experience of the past few decades shows that debt financing can reverse suddenly, sometimes as a result of contagion, and trigger external debt crises. Steep currency depreciations, banking difficulties, corporate bankruptcies and job losses can quickly follow, prompting public sector interventions to contain the crises, such as bailouts, emergency financing and countercyclical measures. It is from that sequence that external debt crises often turn into crises in public finances.

74. Small island developing States are one group of developing countries that appear at particular risk of debt distress. Many of those countries have economies that are not very diversified, have been exposed to natural disasters and are particularly vulnerable to the impacts of global climate change. In 2013, debt ratios of small island developing States stood, on average, at 64.3 per cent compared with 34.4 per cent for developing countries as a whole. In the Caribbean, debt ratios are higher still. As many Caribbean countries are classified as middle-income countries, they do not have access to concessional finance. Public debt levels amounted on average to above 70 per cent of GDP in 2014 and their total debt service payments averaged 25 per cent of government revenue between 2011 and 2014.[29] High debt ratios and debt servicing commitments have resulted in the inability of those economies to employ countercyclical fiscal policy and strengthen social safety nets, impairing progress in the realization of economic, social and cultural rights.

75. The Independent Expert therefore supports proposals to address the unsustainable debt burden of small island developing States through, inter alia, climate adaptation swaps that would facilitate investment in climate adaptation initiatives and green industries and strengthen the resilience of those countries against natural disasters. For the Caribbean region, the Economic Commission for Latin America and the Caribbean has proposed that the Green Climate Fund would be used to finance a gradual write-down of 100 per cent of the Caribbean small island developing States' multilateral debt stock held at various multilateral institutions, as well as their bilateral debt.[30]

76. During the past few years, commodity-exporting developing nations have, in particular, been affected by the sudden fall of commodity prices. Prices for main export products of developing countries, such as agriculture and food products, minerals and metals and fuels, have fallen significantly since 2011 (see A/70/188). Overall primary commodity prices lost half their value from 2011 to early 2016 and it is difficult to predict whether they will recover soon.[31]

77. In addition, currencies of developing countries have depreciated compared with the United States dollar. While that may boost exports, it results in an increase of the external debt burden that must be paid back in foreign currencies. Solving

[29] Economic Commission for Latin America and the Caribbean, "Proposal on debt and climate adaptation swaps: a strategy for growth and economic transformation of Caribbean economies", 12 April 2016, p. 8. Available from http://repositorio.cepal.org/bitstream/handle/11362/40253/LCCARL492_en.pdf?sequence=1&isAllowed=y.

[30] Ibid., p. 4.

[31] IMF, All Primary Commodity Index. The index stood in 2011 at 192 points but reached a historic low of 86.4 points during the first quarter of 2016. Data available from imf.org/external/np/res/commod/Table1a.pdf.

debt problems through export-led growth may in many instances not be a viable strategy, and fail in particular in a context of low commodity prices.

78. There are also substantial risks related to an increasing trend towards domestic debt and off-balance-sheet debt. While financial markets in more developing countries have maturated to provide loans in national currency to domestic borrowers, such debt, held predominately by national banking systems, may become a liability if it cannot be repaid and result in substantial losses for banks and in banking collapses. The predominant policy choice in Europe or during the South-East Asian financial crisis in the late 1990s has been to bail out banks with large injections of money from external creditors, turning domestic debt into public and external debt. The risk remains if adequate self-insurance mechanisms are lacking, so that costs for failed banks are borne by the financial sector itself.[32]

79. Another core feature of the expanding domestic bond markets is the large presence of foreign investors in those markets, which may raise complications for debt restructurings: external and domestic debt are no longer clearly separable, in terms of their holders, currency denomination and legal governance frameworks.

80. Finally, governments have increasingly used public-private partnerships to finance infrastructure and other projects that traditionally were fully financed from public budgets. Those public-private partnerships usually cause debt-like liabilities for governments, since guarantees are usually provided to the private investors. Public-private partnerships allow governments to implement additional projects, while their costs do not appear in the current budget. Because they are off-budget, they can also be used to sideline statutory debt ceilings. In addition, they do not always appear to be more cost-effective than traditional ways of providing infrastructure and public services. The result is that many countries have more quasi-public debt than official data suggest.[33]

81. Overall the risk that debt crises will reoccur, and cause lost decades of development and undermine the realization of economic, social and cultural rights, has not disappeared.

D. Integrating human rights into debt sustainability analyses

82. Debt sustainability analyses have an important value as an early warning tool for the prevention of debt crises and are intended to ensure more responsible behaviour of borrowers and lenders. However, those analyses are currently still overwhelmingly based on a very narrow understanding of sustainability, focusing primarily on the ability of a country to pay back its public debt without having to resort to exceptional financing. According to IMF and the World Bank, debt can be regarded as sustainable if the debt can be served and would not require a major future correction in the balance of income and expenditure.[34]

[32] Bodo Ellmers, “The evolving nature of developing country debt and solutions for change” (Brussels, Eurodad, 2016).

[33] Ibid., p.11 and María José Romero, “What lies beneath? A critical assessment of PPPs and their impact on sustainable development” (Brussels, Eurodad, 2015).

[34] See, for example, IMF, “Modernizing the framework for fiscal policy and public debt sustainability analysis”, p. 6. Available from imf.org/external/np/pp/eng/2011/080511.pdf.

83. Along those lines, debt can be considered "sustainable" as long as the State is able to serve the debt, even when at the same time significant parts of its population are starving; have no access to essential public health care, adequate housing, free primary schooling or clean drinking water and sanitation; or the State lacks the means to pay a reasonable number of public servants to ensure the functioning of public institutions, justice and the rule of law. The financial resources required for a State to be able to sustain or fulfil core human rights obligations are currently not considered when debt sustainability analyses are carried out. The result is that sometimes a much higher stock of public debt or a high level of debt service payments may be considered "sustainable" even if the State fails to comply with its core human rights obligations because it lacks the financial means to ensure their realization.

84. A more comprehensive definition of debt sustainability incorporates economic, social and environmental sustainability, meaning that debt sustainability is only achieved when debt service does not entail intolerable sacrifices for the well-being of society, does not lead to violations of economic and social rights and does not prevent the attainment of international development goals.[35]

85. Proposals for such a comprehensive understanding of debt sustainability had already surfaced in the late 1980s in discussions regarding international debt relief for highly indebted poor countries, when arguments for a "human development" or "poverty" approach towards debt sustainability were presented.[36] In 2002, during the International Conference on Financing for Development in Monterrey, Mexico, Member States expressed their commitment to that idea in paragraph 49 of the Monterrey Consensus on Financing for Development, stating that "future reviews of debt sustainability should also bear in mind the impact of debt relief on progress towards the achievement of the development goals contained in the Millennium Declaration".

86. In 2005, Kofi Annan, then Secretary-General of the United Nations, proposed in his report entitled "In larger freedom: towards development, security and human rights for all" that debt sustainability should be redefined as "the level of debt that allows a country to achieve the Millennium Development Goals and reach 2015 without an increase in debt ratios" (see A/59/2005, para. 54).

87. The Basic Principles on Sovereign Debt Restructuring Processes, adopted by the General Assembly in its resolution 69/319 in September 2015, explicitly affirm that the principle of sustainability should include respect for human rights. Furthermore, target 17.4 of Sustainable Development Goal 17 stresses the need for achieving "long-term debt sustainability", indicating that long-term economic benefits from investing into social security, educational or public health-care systems should be taken into account. Achieving long-term debt sustainability is part of the broader 2030 Agenda for Sustainable Development and should also be understood in that context. The 2030 Agenda aims to balance the three dimensions

[35] UNCTAD, "Sovereign debt workouts".

[36] See, for example, Henry Northover, Karen Joyner and David Woodward, "A human development approach to debt relief for the world's poor", Catholic Agency for Overseas Development, September 1998; European Network on Debt and Development, "Putting poverty reduction first: why a poverty approach to debt sustainability must be adopted", October 2001; and Coopération internationale pour le développement et la solidarité, "The new World Bank/IMF debt sustainability framework: a human development assessment", April 2006.

of sustainable development (economic, social and environmental) and includes the realization of human rights for all. It would therefore be timely to improve tools and methods for carrying out debt sustainability analyses to ensure that they incorporate in a more holistic manner the social and environmental dimensions of sustainability, including human rights.

88. IMF and the World Bank employ a relatively sophisticated methodology for conducting debt sustainability analyses for low-income countries and so-called market access countries, which has been revised and updated regularly to improve predictions, but so far has failed to incorporate social, environmental or human rights dimensions of sustainability.[37] Analyses currently conducted by IMF/World Bank seek to determine if a country's overall debt level would be too big to be serviceable in the future under a given set of assumptions, which includes projected fiscal and GDP growth paths. Depending upon the assumptions made, a different picture may emerge as to whether or not a country may be at risk of debt distress.

89. Formally, IMF lending is conditional upon restoration of debt sustainability, which can mean debt relief through debt restructuring or the implementation of adjustment programmes, although recently the IMF lending framework has been relaxed, partly in order to be able to lend to countries such as Greece and Ukraine that are struggling with debt levels that have widely been considered as unsustainable. It is now possible to lend to States that have undergone debt "reprofiling", which means that it is sufficient to change the payment terms of the existing debt even if the country has lost market access and its debt is only assessed to be "sustainaable but not with a high probability".[38]

90. Debt sustainability analyses are used to determinate the scope of possible IMF lending to countries facing financial stability difficulties, and they inform the mix of grants and concessional lending by the World Bank to low-income countries. In addition, they provide indications to bilateral and private lenders about the repayment capacity of a given country.

91. While international financial institutions have undertaken some analysis of the extent debt financing or debt relief may have contributed to the achievement of poverty reduction spending and the Millennium Development Goals,[39] there has to date been no deeper reflection by international financial institutions on how debt sustainability analyses should and could incorporate into their methodology human rights considerations or the financing needs for internationally agreed development goals.

92. It is the view of the Independent Expert that debt cannot be called "sustainable" if the social and human rights dimension of sustainability is ignored. Projections of repayment capacities of borrowing States need to ensure that the obligations of States to guarantee core economic, social and cultural rights to their population can be fulfilled.

[37] See IMF fact sheet, "The joint IMF-World Bank debt sustainability framework for low-income countries", 7 April 2016, available from imf.org/external/np/exr/facts/jdsf.htm; and IMF, "Staff guidance note for public debt sustainability analysis in market-access countries", 9 May 2013, available from imf.org/external/np/pp/eng/2013/050913.pdf.

[38] See IMF, "The Fund's lending framework and sovereign debt: further considerations", 9April 2015. Available from imf.org/external/np/pp/eng/2015/040915.pdf.

[39] For the latest updated assessment by IMF, see IMF, "Heavily Indebted Poor Countries (HIPC) Initiative".

93. Even on mere economic grounds, one can make a strong argument for a more comprehensive concept of debt sustainability that factors in human rights, as it is commonly accepted that properly functioning social security nets and well-functioning educational and health systems are essential to ensure long-term economic growth and development. Current debt sustainability analyses ignore potential returns from investment in human and social capital (such as spending on primary/secondary education, health and social protection), which are vital to sustained growth in the longer run. Therefore, while current frameworks for debt sustainability analyses can be viewed as a good starting point for analysis, they should be enhanced by accounting for both social and economic returns.[40]

94. The current review of the joint IMF/World Bank Debt Sustainability Framework for Low-Income Countries, initially introduced in 2005 and revised in 2012, would, in the Independent Expert's view, provide opportunities to ensure improvements. For that purpose, the Independent Expert recommends that the following issues be considered:

(a) Debt sustainability assessments should take into consideration the fiscal space needed to guarantee and ensure core economic, social and cultural rights. Rather than judging debt sustainability only on the ability to pay, analyses should also assess whether the level of debt and debt service might prevent meeting basic entitlements of rights-holders, as outlined in international human rights law;

(b) Debt sustainability assessments should also take into consideration the fiscal space States need for attaining the internationally agreed Sustainable Development Goals, including Goal 10 on reducing inequalities within and among countries. That exercise should be done, in particular, in the context of debt restructuring and cancellation in order to ensure that the domestic public resources necessary in each country for the financing of the Goals and the enjoyment of human rights are ring-fenced and can no longer be diverted to finance debt service. Civil society organizations and international organizations had already started to develop methodologies for such debt sustainability assessments after the adoption of the Millennium Development Goals;[41]

(c) There is a need to enhance the reliability of predictions and stress tests. Past experience shows that debt sustainability analyses were sometimes unreliable[42] and sometimes based on assumptions of future economic growth that were not always justified;

(d) Finally, it should be considered whether debt sustainability assessments should not be carried out by a body that is independent of creditors and debtors. IMF and the World Bank are both significant lenders and therefore have conflicts of interest. They may have incentives to be overtly positive regarding the debt prospects of countries that diligently implement their policy advice, while making more negative projections for countries that, in their view, ignore their advice.

[40] For such an argument see Isabel Ortiz et al., *Fiscal Space for Social Protection: Options to Expand Social Investments in 187 Countries* (Geneva, ILO, 2015), p. 42.

[41] See for example, papers published on that issue in collaboration with the United Nations Development Programme, available from undp.org/content/undp/en/home/librarypage/mdg.html?q=debt.

[42] See, for example, J. Schumacher and B. Weder di Mauro, "Diagnosing Greek debt sustainability: why is it so hard?" *Brookings Papers on Economic Activity*, September 2015.

IV. Conclusions and recommendations

95. **In the Independent Expert's view, the international community has entered into a much more ambitious process of implementing the Sustainable Development Goals without an accompanying robust and human rights-based framework for responsible lending and borrowing and for debt workouts that would adequately and effectively respond to increased debt vulnerabilities in many countries.**

96. **Progress on rooting out poverty, hunger and preventable diseases should not be undermined by elevated debt service costs. However, the number of countries planning to reduce public spending in rights-relevant sectors, such as public health care and social security and pension systems, has increased. More worrisome is the fact that a new wave of austerity policies will not only affect highly developed countries. Debt service obligations are once again reducing the fiscal space for the realization of binding international human rights standards in several developing countries, and also the right to development.**

97. **Falling commodity prices, the depreciation of currencies of developing countries against the United States dollar and an unprecedented boom of bond issuances by developing countries have increased the risk of debt distress. Interest hikes in international financial markets, increasing levels of domestic debt and off-balance-sheet liabilities could easily trigger a new wave of debt crises in developing countries if borrowers and lenders do not resort to more responsible behaviour.**

98. **While past international debt relief for heavily indebted countries has contributed to increased spending on poverty reduction, international debt relief has not been able to spill over into more sustainable progress in the realization of economic, social and cultural rights or the attainment of international development goals. Debt relief alone, while important, has been insufficient to cover the overall financing needs of those countries to make more significant progress in terms of human rights. In addition to strengthening national resource mobilization, a holistic framework for debt relief remains essential to ensure that international efforts and support in attaining the Sustainable Development Goals are not undermined by unsustainable debt.**

99. **The Independent Expert recommends that States; United Nations bodies, agencies and entities; and international financial institutions:**

(a) **Set up a database on debt restructurings and a reporting system for implementing the Basic Principles on Sovereign Debt Restructuring Processes. The system should mainly aim at identifying good practices and at enhancing mutual learning based on experiences from different debt restructuring processes;**

(b) **Ensure that monitoring mechanisms of the United Nations track government spending on Sustainable Development Goals and spending on sectors relevant to the realization of economic, social and cultural rights in all countries. The monitoring mechanisms should also track how much government spending is devoted to public debt service. That will also require**

enhancing the transparency of public budgets to ensure that Goal-related expenditures can be better identified on a regular basis;

(c) **Implement the Basic Principles on Sovereign Debt Restructuring Processes, the Principles on Promoting Responsible Sovereign Lending and Borrowing of UNCTAD and the guiding principles on foreign debt and human rights, which reconcile debt obligations with human rights (see also A/70/275, paras. 33-60);**

(d) **Strengthen the competencies of financial supervisors and national auditing authorities to monitor adherence to principles of responsible borrowing and lending and sanction irresponsible borrowing and lending, with a view to protecting the use of available resources for the implementation of economic, social and cultural rights;**

(e) **Increase the transparency of public lending and borrowing through public debt registers, including registers that cover contingent liabilities such as loans to State-owned enterprises and government guarantees provided to public-private partnerships;**

(f) **Incorporate human rights obligations, including social and environmental sustainability standards, into official frameworks for carrying out debt sustainability analyses to ensure that debt service does not undermine the enjoyment of human rights and the attainment of the Sustainable Development Goals.**