

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

Regional Consultations on the Draft General Guidelines on Foreign Debt and Human Rights

BACKGROUND PAPER

INTRODUCTION

In resolution 2004/18 of 16 April 2004, the Commission on Human Rights requested the Independent Expert on economic reform policies “to draft general guidelines to be followed by States and by private and public, national and international financial institutions in the decision-making and execution of debt repayments and structural reform programmes, including those arising from foreign debt relief, 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, and to present a preliminary draft on this matter to the Commission at its sixty-first session and a final draft at the sixty-second session of the Commission.”

By its decision 2/109, the Human Rights Council requested the Office of the United Nations Higher Commissioner for Human Rights (OHCHR) to convene an expert consultation for the purpose of contributing to the process of drafting the general Guidelines. The consultation was expected to provide: (a) an overall picture of how foreign debt and debt relief programmes, as well as different kinds of economic reform programme, impact on the capacity of States to comply with human rights standards; and (b) identify suggestions on possible recommendations to States, international organizations and other stakeholders regarding possible policy elements to promote and protect human rights in developing countries while implementing debt and economic reform programmes”.

Following the expert consultation aforementioned, the Independent Expert informally presented a preliminary draft of the guidelines to the Human Rights Council at its session in March 2008. The Guidelines, which are voluntary in character, include:

- guidelines on foreign debt relating to, inter alia, a new debt sustainability framework which takes into account the impact of debt service on a country’s ability to fulfil its international human rights obligations; debt relief operations guided by human rights considerations; and loan contraction and monitoring; and
- guidelines on economic reform policies calling for, inter alia, a human rights-based approach to poverty reduction strategies; trade negotiations and policy based on economic and social impact assessments (including an analysis of potential impact on human rights); and structural reforms guided by international human rights obligations; and transparent, responsible, accountable and participatory government.

In his report to the Council (A/HRC/7/9), the Independent Expert stated that the Guidelines required further work and consultations.

In its resolution 7/4 of 27 March 2008, the Council redefined the mandate of the Independent Expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights and renamed it “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”. The Council

requested the current mandate holder to continue work on the development of the draft Guidelines with a view to presenting an update thereon to the Council in 2010. It further called upon the independent expert “to seek the views and suggestions of States, international organizations, United Nations agencies, funds and programmes, regional economic commissions, international and regional financial institutions and non-government organizations on the draft general guidelines.”

THE REGIONAL CONSULTATIONS

In keeping with Council resolution 7/4 and decision 12/119 of 12 October 2009, the Independent Expert is holding a consultation in each of the following regions: Latin America and the Caribbean – June 2010, Africa –November 2010, Asia/Pacific – January 2011 and Europe/North America and Central Asia – June 2011. An expert session will be held in Geneva in November 2011 and a final intergovernmental consultation in February 2012 to discuss the revised draft of the guidelines. The purpose of the consultations is to seek the views of various stakeholders from the public sector, private sector, civil society and academia, on the form and content of the guidelines with a view to improving them. The consultations bring together regionally representative, multidisciplinary groups including experts from States, UN agencies, funds and programmes, regional economic commissions, UN treaty bodies, working groups and special procedures related to economic, social and cultural rights and the right to development, international and regional financial and trade institutions, the private sector, civil society and academia.

Each regional consultation takes place over two days. The first day of each consultation sets the context by focusing broadly on key human rights principles relating to foreign debt, creditor policies on debt, debt relief, structural reforms, the impact of these policies on the capacity of States to fulfil their human rights obligations, and the roles and responsibilities of creditors and debtors. Discussions during the second day focus on the form and content of the Guidelines drawing on the discussions from the first day. While the preliminary draft form the basis of the discussions, the consultations examine a number of key issues including:

- The key human rights and international legal principles that should underpin the Guidelines.
- The impact of economic reform policy prescriptions and debt relief operations on the ability of States to design and implement national development policies and programmes and to fulfil their human rights obligations.
- The elements or principles that sovereign loan agreements should contain to ensure that these agreements do not contribute to the violation of human rights or constrain the fulfilment of human rights obligations by borrower States.
- Elements of a new, enhanced debt sustainability framework (based on the principle of shared responsibility of creditors and debtors for preventing and resolving unsustainable debt situations as underscored in the Monterrey Consensus) which includes an assessment of the impact of debt burdens on the realisation of human rights and the achievement of development objectives.
- The need for human rights impact assessments before loan contraction.
- Measures to safeguard gains from debt relief.
- Mechanisms for public audits of debt and lending portfolios.
- The impact of trade liberalisation on the capacity of States to fulfil their human rights obligations and how to ensure coherence of national and international financial and trade policies.

- How to promote transparency and accountability in loan contraction and use of loan funds as well as effective debt management.
- The role of Parliaments and civil society in holding Governments to account for debt and economic reform policies that may contribute to human rights violations.

It should be noted that the above list of issues is not exhaustive. Consequently, other issues considered relevant to the context may be raised during the discussions. A more detailed programme will be made available in advance of each consultation.

Participants are requested to read the current Draft General Guidelines together with resolution 7/4 of the Council, both of which are available on the website of the mandate at: <http://www2.ohchr.org/english/issues/development/debt/index.htm> in advance.

During each session, 3-4 panellists will make brief presentations, followed by an open discussion. In order to maximise the time available for discussion, participants are encouraged to make **written submissions in advance** of each regional consultation. These submissions should be sent (**preferably by e-mail**) at the address below. All submissions will be treated as public and will be published on the website of the Independent Expert unless the author/s clearly indicate/s to the contrary.

The outcomes of these consultations, along with a planned global electronic consultation, will provide feedback on the priorities and issues that should be considered when the Guidelines are prepared. The preparation of the Guidelines will commence after the regional consultations. The draft version will be reviewed through a participatory process in the expert seminar to be held in Geneva in November 2011 and the intergovernmental consultation in February 2012. Participants will be invited to review the draft and propose improvements to make the Guidelines more effective. A final draft of the Guidelines will be submitted to the Human Rights Council for review and endorsement.

Please note that the budget for the consultations is limited and as such OHCHR is not in a position to fund participation of all participants.

For further information, please contact:

Mr. Jamshid Gazyev or Ms. Brenda Vukovic
OHCHR – Palais Wilson
United Nations Office at Geneva
CH-1211 Geneva 10
Switzerland
Tel: +41 (0)22 917 9183
Tel: +41 (0)22 917 9861
Fax: +41 (0)22 917 90 06
E-mail: ieforeigndebt@ohchr.org