

Distr.  
RESTRICTED

A/HRC/7/CRP.2  
4 March 2008

ENGLISH ONLY

HUMAN RIGHTS COUNCIL  
Seventh session  
Agenda Item 3

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

**Independent expert on the effects of economic reform policies and foreign debt  
on the full enjoyment of all human rights, Bernard's Mudho**

**Draft General Guidelines**  
*Unedited version*

General context

1. In its resolution 2004/18 of 16 April 2004 the Commission on Human Rights requested the independent expert, “in the discharge of his mandate, to draft general guidelines to be followed by States and by private and public, national and international financial institutions in the decision-making and execution of debt repayments and structural reform programmes, including those arising from foreign debt relief, 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”.

2. The state obligations to which the resolution refers are set out most comprehensively in the International Covenant on Economic, Social and Cultural Rights (ICESCR), but also in other UN human rights treaties, such as the International Convention of the Elimination of all Forms of Racial Discrimination, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women. The ICESCR specifies the obligations of State parties to “take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of [their] available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures” (art. 2(1))

3. While some aspects of economic, social and cultural rights may only be achieved progressively, the ICESCR imposes immediate obligation on States parties to guarantee that economic, social and cultural rights can be enjoyed without discrimination, to ensure availability of accessible mechanisms of redress, and to take

concrete and targeted steps to move as expeditiously as possible towards the full realization of these rights.<sup>1</sup>

4. What constitutes “all appropriate means” to be employed in order to realise the rights of the Covenant must be decided within the particular context of each state and with regards to the right considered. However, in identifying “appropriate means”, States should be guided by the standards and norms of the ICESCR and other human rights treaties. In particular, States must respect the principle of equality and non-discrimination, and give priority to vulnerable and marginalized groups.

5. In order to use all available resources “to the maximum extent”, States must ensure the efficient utilization of these resources and identify cost-effective and targeted options in case of financial constraints. Moreover, at all times, States must guarantee that all persons within their jurisdiction enjoy at least basic levels of all rights.

6. In this context it should be recalled that certain obligations, in particular those relating to legislative measures and the prohibition of discrimination can be implemented at no or relatively low costs.

The rights guaranteed by the Covenant include:

- The right to work, including the right to earn one’s living by doing the work which is freely chosen or accepted, the right to just and favourable conditions of work, including fair and equal remuneration; the right to safe and healthy working conditions and the right to form and join trade unions
- The right to social security, including social insurance
- The rights to protection and assistance to the family and children
- The right to an adequate standard of living, including the rights to adequate food and to adequate housing.

---

<sup>1</sup> The General Comments of the Committee on Economic, Social and Cultural Rights provide more specific guidance on the nature and scope of right under the ICESCR.  
<http://www.ohchr.org/english/bodies/cescr/comments.htm>

- The right to the highest attainable standard of physical and mental health. The Covenant specifies that steps have to be taken to realize this right include measures for the reduction of infant mortality and for the healthy development of children, improvement in environmental and industrial hygiene, prevention and treatment of diseases, and the creation of conditions which would ensure medical attention for those who are sick.
- The right to education, including the right to free and compulsory primary education for everyone and to higher education, which shall be made equally accessible to all. Each country that does not already have free primary education must undertake to work out and adopt within two years of signing the Covenant a detailed plan of action for the progressive implementation of this right.
- The right to take part in cultural life, to enjoy benefits of scientific progress and the right to protection of intellectual property rights.

*Character of the guidelines*

7. While the above mentioned human rights obligations are legally binding on all State parties, the following proposed guidelines are voluntary by their nature. The acknowledgement and voluntary adoption of the guidelines by the inter-governmental bodies which are governed by the States, are also required. The international financial institutions, in particular, should help promote State member's compliance with their human rights obligation, although promotion of human rights agenda per se may not be perceived as part of the scope of their mandates. They take into account the right to self-determination and sovereign equality of all states, including the right to choose their own means and goals of development.

8. The guidelines, while being guided by the principle of the indivisibility and interdependence of all human rights, specifically focus on ESCR, and intend to serve as a reminder of the implications debt and economic reform policies might have on the protection and implementation of these rights. On the one hand, many elements of current economic reform and foreign debt measures are necessary to comply with human rights obligation of states, such as, in the context of the right to work, the

obligation to “adopt policies and techniques to achieve steady economic, social and cultural development and full and productive employment”<sup>2</sup>; on the other hand, there is a strong need to safeguard the rights of people in debtor developing countries and countries under economic reforms, particularly the poor and the vulnerable, consistent with a recent Commission on Human Rights resolution emphasizing 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 debt”.<sup>3</sup>

9. The present guidelines intend to identify policy elements that combine the human rights opportunities of loan programmes and economic reform with protection needs. They are based on the principle that individual human rights cannot be made the object of policy trade offs.

10. In many economic reform and debt related policy areas concrete advice would require a clear definition of a “minimum ESCR standard” or “core human rights content” that economic reform or foreign debt policy must not undermine. Unfortunately, these thresholds are not always available. Rather than proposing “minimum standards” to be reached by all countries the present guidelines encourage states to elaborate own context-specific standards, benchmarks and indicators that should be regularly reviewed and updated. The following general recommendations can therefore only indicate adequate steps towards human rights consistent policy, they are not meant to define an absolute level that should be reached. In this context it should also be noted that core obligations correspond to a minimum requirement; they do not mean full realisation of economic, social and cultural rights.

### **Guidelines on foreign debt**

---

<sup>2</sup> ICESCR Article 6: [http://www.unhcr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhcr.ch/html/menu3/b/a_ceschr.htm)

<sup>3</sup> Commission on Human Rights resolution 2000/82, para. 6.

11. Human rights principles should not only guide the objectives and outcomes, but also the decision and implementation process of debt related policy. Debt relief agreements and new loan arrangements must be formulated in a transparent way, with relevant information made available in a timely manner, and with the knowledge of the public, with legislative frameworks, institutional arrangements and mechanisms for consultation and accountability being established.

*Guidelines for a new debt sustainability framework*

12. The detection of an “unsustainable debt situation” is usually at the origin of debt relief operations. Debt sustainability analysis can also constitute a forward looking “early warning system” for future debt distress, and might thus influence borrowing- and lending decisions.

13. Future debt sustainability frameworks should consider an enhanced definition of debt sustainability: They should not be limited to the financial ability to service and pay back loans, but should also take into account the impact of debt service on a country’s ability to fulfil its obligations under international Human Rights law, including specific provisions on economic, social and cultural rights.

14. As there is currently no internationally accepted methodology to quantify financial needs related to progressive realisation of all human rights, each concerned country should undertake to develop own objectives, benchmarks and indicators allowing to estimate the resources needed. These country-specific objectives have to be built on and have to be coherent with the provisions of international human rights law, in particular the international covenant on Economic, Social and Cultural rights and relating general comments of the Committee on Economic, Social and Cultural Rights. Foreign debt should consequently be considered unsustainable by all national and international stakeholders if a country is not able to service its debt and comply with these human rights obligations.

15. From an operational point of view, it is recommended to establish domestic peer review mechanisms, including parliaments and civil society, which could complement current creditor and government driven debt sustainability analysis with

alternative local views. In the longer run, these mechanisms could help define and permanently update the above mentioned concrete, operational and country specific objectives, indicators and thresholds. The result of this work should progressively be integrated in a new debt sustainability framework.

16. The Millennium Development Goals (MDG) and human rights are different in nature. MDGs are highly aggregated development targets that do not take disparities between regions and population groups or possible discrimination and marginalisation within a country into account. Moreover, MDGs define development outcomes but do not make mention of a participatory and transparent process which is extremely important from a human rights perspective. However, there are significant overlaps between economic and social rights obligations and indicators, and the problems which are in the centre of MDGs. Currently, MDGs, complemented by a country-specific Poverty Reduction Strategy, are the most widely accepted operational reference framework regarding some of these problems: they dispose of internationally recognized targets, indicators and monitoring structures that allow, in some areas, broad estimations of related costs.

17. During a transitional period and until the above mentioned country-specific objectives, benchmarks and indicators become available, creditors and borrowers could consider a debt situation unsustainable if a country is not able to service its debt and achieve the MDGs on time, despite a focus of government resources on MDGs. It must, however, be kept in mind that the achievement of MDGs does not equal realisation of economic, social and cultural rights, and that the transitory use of MDGs in this context is only an imperfect substitute.<sup>4</sup>

#### *Guidelines for debt relief operations*

---

<sup>4</sup> The CESCR General comment 1, paragraph 6 emphasizes the need to provide a basis to "... effectively evaluate the extent to which progress has been made towards the realization of the obligations contained in the Covenant. For this purpose, it may be useful for States to identify specific benchmarks or goals against which their performance in a given area can be assessed. Thus, for example, it is generally agreed that it is important to set specific goals with respect to the reduction of infant mortality, the extent of vaccination of children, the intake of calories per person, the number of persons per health-care provider, etc. In many of these areas, global benchmarks are of limited use, whereas national or other more specific benchmarks can provide an extremely valuable indication of progress."

18. Debt relief operations have the objective to provide beneficiary states with additional fiscal space enabling these countries to channel additional resources towards poverty reduction and human rights related objectives. Other instruments in the arena of international development cooperation machinery/mechanisms, such as general or targeted budget support, might serve the same purpose and it is, therefore, important that the human rights impacts of all these instruments are considered simultaneously.

19. As the realization of the full potential impact on human rights depend on the overall size of this additional fiscal space and its efficient use, a practice in which the debt cancellation or relief replaces parts of the official development assistance allocations by developed countries and international financing institutions ought to be discouraged. It is crucial that resources for debt relief are additional to already agreed forms of development aid, so that their positive effect is not offset by a reduction in traditional bilateral or multilateral aid programmes.<sup>5</sup>

20. Debt relief decisions should be guided first and foremost by the sustainability considerations described earlier. Relief operations should only be subjected to conditionality whose impact promotes the objective of the relief operation itself, i.e. in general the reestablishment of a sustainable debt situation and the creation of fiscal space enabling a better achievement of development and human rights objectives.

21. Borrowers and creditors have a shared responsibility in particular with regards to illegitimate debt and its cancellation. All creditors to poor developing countries, multilateral, bilateral or commercial should elaborate, individually or jointly and on a voluntary basis, own transparent criteria for illegitimacy of debt. These criteria could e.g. apply to loans accorded primarily in the interest of the creditor country, especially so, if the profitability of the corresponding investment turns out to be significantly below initial estimations. The criteria could also include loan agreements that were

---

<sup>5</sup> However, the present guidelines do not include an analysis or recommendation whether additional donor funding should best be implemented through debt relief or other forms of development aid, but focuses on the question how debt relief operations, once decided, should be designed in order to be in conformity with human rights principles.

not decided in a fair way or for an objective that is not in conformity with human rights principles. Such illegitimate or odious debt should then be considered for immediate cancellation.

Guidelines for new loan agreements:

22. Creditors and poor country borrowers have a shared responsibility with regards to new loans and the sustainability of future overall debt burden. This joint responsibility to prevent and resolve unsustainable debt situations is also a centre piece of the Monterrey Consensus.

23. Joint responsibility extends to the impact of loans on the human rights situation, and to the role that conditionality attached to loans plays in ensuring or impeding access to human rights. Forward looking debt sustainability analysis, as described earlier, should systematically guide lending and borrowing decisions as a tool to prevent future situations of debt crisis.

24. Before any new loan agreements are signed, borrowers and creditors should assess and consider the economic and social impact of debt service obligations, including cost-benefit analysis. Such assessments should include explicit reference to the impact on State obligations regarding economic, social and cultural rights. Obligations arising from new loan agreements should not impair the institutional and financial capacity of indebted States to meet the Economic, Social and Cultural Rights of their peoples or to respond effectively to any disasters or crises that might affect them.

25. Joint responsibility extends to the viability of individual loans including cost-effectiveness and transparent use of resources. Non concessional loans to poor developing countries should only be granted for productive purposes, i.e. the investments or projects financed through them should generate the economic benefits allowing to service and repay the debt. In all other cases, highly concessional loans or grant should be considered.

26. New loan agreements with poor developing countries should consider innovative and flexible debt service mechanisms such as linking the debt service to the pace of economic growth and social development in the concerned country or to other relevant development indicators. Safeguard clauses stipulating a conversion of loans into grants in case of certain external shocks could also be considered.

27. The international community should agree on common lending principles in cases of potentially unsustainable debt situations. Within these principles, all creditors to poor countries should commit themselves to grant debt relief, consider debt swaps or, at a minimum, to shift their financial cooperation mix towards highly concessional loans or grants whenever a human rights inspired and forward looking debt sustainability analysis shows a risk of debt unsustainability due to external shocks. In this context debt sustainability analysis should also be used to estimate the minimum share of development assistance to the concerned country that should take the form of grants. As suggested earlier, MDGs could be used as reference framework during a transitional period, but their shortcomings as a tool with regards to human rights obligations should be kept in mind.

28. Borrower countries should not accept non-concessional loans if a human rights inspired analysis indicates a serious risk of debt sustainability.

29. Lack of debt management capacity has often been identified as a major element leading to unsustainable debt. Consequently, new loan agreements should be coupled with technical support services, where necessary and requested, that would facilitate the strengthening of the national budgeting processes and debt management capacity. The creation of national debt management offices should be envisaged in this context, and supported by creditors.

30. Both negotiations of envisaged agreements between borrowing governments and creditors as well as their subsequent implementation should be made transparent and open to public scrutiny. Transparency and government accountability reduce opportunities for misuse of public funds and accumulation of illegitimate or odious debt. Debtor countries should consider setting up national public debt committees,

including representatives from Government, Parliament and civil society, which would assess the conformity of loans with the countries development objectives; and give corresponding recommendations to the Government.

31. The performance of each debt agreement should be jointly monitored by the creditor and debtor in order to allow for an adaptation of debt service conditions if necessary. A corresponding mechanism should already be foreseen within the loan agreements. As a general principle, loan agreements with poor countries should include an obligation of both parties to jointly review loan conditions when the debt situation shows signs of unsustainability in the sense described above, or when the profitability of a loan financed project or investment falls below initial joint forecasts. Creditors should accept in this context responsibility for the quality of lending advice given to debtors.

Guidelines for efficient use of policy space

32. Debt relief provides borrowing countries with additional policy space. Subsequently it is the full responsibility of borrowers to use this additional space in conformity with their human rights obligations. Resources provided under debt relief initiatives should be used in a manner that fully takes into account the interests of the poor and should be fully compatible with all other pertinent obligations assumed under international human rights instruments. State obligations regarding economic, social and cultural rights should be the main guiding objective with regards to this additional fiscal space.

33. As outlined in the earlier paragraphs on a human rights inspired debt sustainability framework, MDGs could be considered a transitory target. The same applies to the use of MDG as a target for the use of fiscal space. However, MDGs should be replaced as soon as possible by adequate, country specific objectives, benchmarks and indicators reflecting human rights obligations.

34. In order to ensure that the objective of a human rights consistent use of policy space is attained, human rights principles and considerations should be integrated

into the overall cycle of national budgeting processes including participation by stakeholders in decision making and oversight by the legislature.

### **Guidelines on economic reform policies**

#### **General principles**

35. Economic reforms in developing countries should generally be designed and implemented within the overall framework of comprehensive and genuinely country-owned development policies and strategies including, where appropriate, Poverty Reduction Strategy Papers (PRSPs), with full participation of all stakeholders, in particular from sectors potentially negatively affected by the envisaged measures. The process and the outcome of elaborating poverty reduction strategies should be human rights based and the strategy should identify the fulfilment of human rights obligations as a key objective. The relationship between poverty reduction objectives and a country's human rights obligations should be made explicit within poverty reduction strategies.

36. The definition of national ESCR "core content", based upon the ICESCR and its general comments would provide an important tool for the specification of anti poverty objectives. The full realisation of all human rights should serve as a strategic objective and the poverty reduction strategy should be put in a perspective of progressive realisation of these rights.

37. The implementation of every economic policy element should always be preceded by an in-depth economic, social and cultural rights impact assessments, including full and consistent application of Poverty and Social Impact Assessment (PSIA) developed by the World Bank and IMF, taking into account the particular situation of the concerned country set against its human rights obligations. Where economic and social impact assessments or sustainability impact assessments are undertaken, their scope should be widened to include human rights. These assessments should include broad consultation of human rights associations and other

civil society groups. The results of these assessments should be transparent and allow for an open discussion.

38. The impact and efficiency of economic reform policy elements on human rights should be permanently monitored in a participatory way in order to allow adaptations as and when necessary.

39. In the context of economic reform, formal accountability mechanisms towards domestic rights holders are often not sufficiently developed. Negotiations with international partners regarding economic reform elements, including trade, should be transparent and open to public scrutiny. Where necessary, the capacity of right holders to effectively claim their rights has to be part of any economic reform process. In the same context, the roles of parliaments in economic reform, including the PRSP processes should be strengthened.

40. It should be kept in mind that not all state obligations regarding economic, social and cultural rights obligations require significant financial resources to be implemented. Also, States parties have the obligation to ensure an efficient use of resources and to identify cost-effective -options in case of resource constraints. With regard to some aspect of economic, social and cultural rights, the pace of progress towards their full realization may partly depend on international cooperation. This fact is acknowledged by the International Covenant on Economic Social and Cultural Rights (ICESCR) which specifically refers to international assistance and cooperation in the context for the duties of states to take steps to the maximum of its available resources towards the realization of economic, social and cultural rights.

41. The extend to which economic policy reform may promote or run counter to a country's human rights obligations under the ICESCR or other human rights treaties is currently absent from policy considerations of most international financing institutions. However, IFI shareholder countries are bound by international human rights law and they should undertake to harmonize the institutions' articles of agreement with international human rights requirements. Any economic policy advice or loan conditionality should be assessed with regards to its possible impact on the

respective countries' ability to comply with its human rights obligations. IFI policy advice should promote progressive realisation and exclude retrogression of a country's human rights standards.

Macroeconomic stabilisation:

42. Broad macroeconomic stability lays the basis for economic growth which in turn can contribute to the reduction of poverty and the achievement of human rights. Macroeconomic instability can have a negative impact on human rights, and particularly on vulnerable groups and segments of the population. While it should be kept in mind that economic growth does only contribute to development and achievement human rights if accompanied by adequate policies, the creation of a domestic environment that enables growth, including the encouragement of savings and investment, should be one key objective of macroeconomic policy. Elements promoting equality, such as a progressive taxation system and cutback of subsidies that do not serve the interests of the poor should form an integral part of such growth-enabling environments.

43. Economic policy reform often requires difficult trade-offs, e.g. between the positive impacts of price stability and the positive impact of extended public (social) expenditure, both conducive to a better achievement of human rights objectives. Such policy orientations cannot be taken on the basis of generalized recommendations. Stability benchmarks should therefore be individually defined for each county as a result of a sound human rights impact assessment. This assessment should be guided by the overall objective of a maximum contribution to human rights obligations. In general, macroeconomic policy should not be separated from social objectives.

44. Existing basic social programmes and expenditures, in particular those benefiting the poor and vulnerable groups of society, must be protected from budgetary reduction resulting from economic reform programmes and/or the need to repay debts.

Trade:

45. Trade reforms in developing countries are generally undertaken in the context of bilateral, regional or multilateral trade negotiations or agreements. The following recommendations extend to trade negotiations as well as to trade reforms themselves.

46. Trade negotiations are generally undertaken by individual countries or groups of countries that are bound by international human rights law. Therefore, Human rights obligations should play a major role when preparing trade negotiation positions.

47. In order to make trade related measures compatible with human rights objectives, trade negotiations and -policy should be based on sound economic and social impact assessments, including an analysis of the potential impact on a country's human rights obligations in these areas. The timetable of trade negotiations should make adequate provisions for the time needed to conclude comprehensive impact assessments.

48. With regards to industrialised or advanced developing states, these assessments should consider the impact of domestic policies such as export- or production subsidies on the human rights situation of trade partner countries. The human rights impact of potential erosion of trade preferences of the poorest countries should also be part of the assessment.

49. In vulnerable developing countries the assessments should consist of a sector-by-sector and if necessary product-by-product examination of potential liberalisation effects on domestic economic sectors, the balance of payment, employment and public finance. Any liberalisation decision should be based on this impact assessment and designed and sequenced with a view to maximizing its development impact and to protect and improve the human rights situation. The same should extend to the trade related question of intellectual property rights. Areas such as the possible negative impact of better export opportunities of agricultural goods on the domestic right to food should be given special attention.

50. While an impact assessment might suggest a range of sectors for which a swift trade liberalisation would be an advantage, other economic sectors should be given adequate transition periods allowing local producers to adapt to the new context, to progressively improve their competitiveness, and for government support in this transition period. The impact assessment should also provide information on a certain range of strategic goods and services that should be excluded from liberalisation in the long term. Such exclusions should be allowed by international trade rules whenever market mechanisms in the particular context of a given country are likely to inhibit the access of the population, or parts of it, to goods and services having an effect on the enjoyment of fundamental contents of human rights, such as access to drinking water, primary health and education services. The human rights impact of long term exclusions should however be reviewed periodically.

51. When taking a decision for trade liberalisation within an economic reform program, the potentially significant impact on public finance should be considered, as many poor developing countries rely on customs duties as major source of government revenue. The likelihood and possible extent of a “fiscal gap”, created through a loss of customs revenues should be carefully assessed. While fiscal gaps are transitional, if trade reform has been designed carefully (as they are ultimately compensated by increased trade flows, higher economic growth and other factors) they tend to have temporary negative impact on the government’s ability to comply with human rights obligations. The concerned country and the international community have, in this case, the obligation to jointly secure human rights related expenditure, e.g. through simultaneous tax and trade reforms and / or compensatory development aid.

52. In order to protect ECSR more efficiently, trade agreements between countries of different economic and commercial potential should be asymmetric, i.e. they should reflect the different needs of the two partners in terms of market protection and transition periods.

53. Agreements of trade liberalisation between poor countries and industrialized or advanced developing countries should include adequate aid packages designed to address the supply side constraints and help strengthening the competitiveness of domestic sectors during liberalisation transition periods. Aid programming should take human rights requirements into account. This applies in particular to a strengthening of productive capacities of vulnerable groups. International assistance should also be provided with regards to safety nets and mechanisms for vulnerable groups who would potentially be affected by reform-induced shocks.

54. The environment for business, in particular the legal and administrative framework set by government policy is an important element determining the scope of subsequent investment and trade decisions of the private sector. While the establishment of a stable and transparent environment conducive to investment and trade is the primary responsibility of governments, the international community should play a supporting role in that process through development cooperation measures.

55. WTO member states should envisage to allow more differentiation and graduation possibilities between different types of developing countries within the world trade system. The development- and human rights impact of a given trade rule often depends on the concrete production- and external trade structure of a developing country. More favourable treatment and market access should be granted not only to LDCs but also to less advanced non-LDCs, based on objective criteria, which should not only include poverty indicators but also the countries' needs regarding their capacity to comply with its human rights obligations.

#### *Social Sector Reform*

56. Investment in human resources should be a key objective of economic reform policies. Structural reforms impacting economic, social and cultural rights, especially health and education reforms, should be guided by the international human rights obligations concerned countries have undertaken. Currently, most economic reform programmes are only partly coherent with these obligations, in particular regarding an

affordable access to health and education services for all. Health reform often foresees the introduction of free primary (essentially preventive) health care, while suggesting general user contributions for curative measures. The objective of education reform is in general the introduction of free primary education only.

57. In this context it has to be noted that user fees tend to be an obstacle to the full enjoyment of human rights in these two sectors and reform programmes should, therefore, take into account the obligation for a progressive abolition of fees and other charges, particularly to ensure that low-income or marginalized sectors of the society have access to these services. The creation of conditions to assure to all medical service and medical attention, and the obligation to progressively introduce free education at primary, secondary and higher level should be included as an objective in long term reform agendas. In this context, the promotion and facilitation of free secondary and higher education as human rights requirement should not be underestimated. Besides the individual rights of the respective rights holders, it has to be recognized that sustainable economic and social development requires a significant share of the population with higher education.

58. Subsidies can be an important tool to ensure equal and non-discriminatory access to economic and social rights such as health and education. Subsidies in the education sector could include learning material, school meals, etc and should be targeted towards the most vulnerable groups. Better targeting of subsidies is required, as generalised subsidies tend to accrue disproportionately to the rich.

### Privatisation

59. The privatisation of state enterprises, including public services may in some instances improve the quantity and quality of available goods and services as well as lower their prices. In the case of goods and services related to economic, social and cultural rights (e.g. access to drinking water) their privatisation should only be pursued when this would improve the availability and accessibility (including affordability) of those services. When taking such privatisation decisions, states have

the responsibility to ensure that adequate legislative and regulatory frameworks as well as monitoring capacities are in place, in order to ensure that human rights standards are respected by private providers, and that appropriate mechanisms for redress exist. States remain primarily responsible to ensure that action of private enterprises does not undermine human rights obligations.

60. If and where necessary, regulatory capacities of states should be strengthened before the privatisation process is launched, in order to enable the state to comply with its obligation to protect right holders against the violation of their economic, social and cultural rights. International partners should consider to support capacity building measures in this sense.

61. In cases where privatisation of public enterprises are envisaged, the decision should not be based on narrow economic considerations, but on a sound analysis of all functions that the concerned enterprise serves, in particular with regards to access of vulnerable groups to human rights related goods and services. This detailed assessment should consider the advantages of different forms of ownership, including public, private and mixed forms, based on each country's set of social, economic, political and cultural circumstances. In the case of basic services, such analysis should be guided by the objective to best ensure the provision of affordable quality services to all segments of the population.

62. Foreign loans and other international assistance should not be tied to any pre-conditions regarding a specific type of ownership of key enterprises.

### Governance

63. Good governance is essential for sustainable development. The Commission on Human Rights has recognized in its decision 2000/64 that "transparent, responsible, accountable and participatory government, responsive to the needs and aspirations of the people, is the foundation on which good governance rests, and that such a foundation is a sine qua non for the promotion of human rights".

64. Efforts included in economic reform programmes should have as their main objective the development of an efficient public sector that delivers quality public services related to a state's human rights obligations to all segments of the population, and in particular to the most vulnerable and traditionally discriminated sectors of society. Public sector reform should be based on an assessment of the appropriate role and size of the public sector, an appropriate system for setting performance objectives and pay structure that allows attracting, retaining and motivating qualified staff.

65. Governance is particularly important with regards to the efficient use of available resources for public expenditure, in conformity with human rights principles and obligations. Public finance management, budgeting and foreign aid programming processes can be improved by strengthening institutions. Such mechanisms should be integrated, preferentially through an enhanced utilisation of budget support as a development cooperation tool, or at least be linked by a common policy framework, such as a poverty reduction strategy. Human rights obligations and rights based processes should be made explicit within poverty reductions strategies and consequently guide both the budgeting and aid programming processes.

-----