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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**Implementation of existing human rights norms and standards
in the context of the fight against extreme poverty**

**Preliminary working paper submitted by José Bengoa, coordinator
of the ad hoc group of experts, submitted in accordance with
Sub-Commission resolution 2002/13***

* The annex is being circulated in the language of submission only.

Executive summary

The present report was prepared pursuant to resolution 2002/13 of the Sub-Commission on the Promotion and Protection of Human Rights, which requested an ad hoc group of experts coordinated by José Bengoa to submit a working paper on the need to develop guiding principles on the implementation of existing human rights norms and standards in the context of the fight against extreme poverty. The working paper is to be submitted in three stages: a preliminary stage (fifty-fifth session), an interim stage (fifty-sixth session) and the final stage (fifty-seventh session). The present document is a preliminary working paper, which includes some clarification on the integral link between human rights and poverty, including extreme poverty. The preliminary working paper also proposes for consideration by the Sub-Commission the underlying principles of a conceptual framework for the elaboration of guiding principles on existing human rights norms and standards in the context of the fight against poverty, including extreme poverty.

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I. INTRODUCTION

1. Since 1998, the Commission on Human Rights has considered the need to develop a new text on “human rights and extreme poverty”. From 1998 to 2001 the Commission consulted with the independent expert on extreme poverty and a group of experts on the need to develop a draft declaration on human rights and extreme poverty; both reacted positively. The Commission in resolution 2001/31 requested the Sub-Commission “to consider the need to develop ... guiding principles on the implementation of existing human rights norms and standards in the context of the fight against extreme poverty and to report to the Commission”. At the request of the Sub-Commission (resolution 2001/8), four experts from different geographical areas, Sérgio Paulo Pinheiro, Yozo Yokota, El Hadji Guissé and José Bengoa, prepared a joint working paper on the subject. In resolution 2002/13, the Sub-Commission further requested Julia-Antoanella Motoc, Asbjørn Eide, Mr. Yokota, Mr. Guissé and Mr. Bengoa, as coordinator, to prepare, without financial implications, a joint working paper in three stages: a preliminary stage (fifty-fifth session), an interim stage (fifty-sixth session) and the final stage (fifty-seventh session).

2. The author of the present preliminary working paper is the coordinator of the ad hoc group of experts. The paper suggests a conceptual framework for the elaboration of an international text on human rights and poverty, including extreme poverty, that may inform the drafting of the joint working paper in its subsequent stages.

II. TOWARDS A CONCEPTUAL FRAMEWORK FOR THE ELABORATION OF GUIDING PRINCIPLES ON THE IMPLEMENTATION OF EXISTING HUMAN RIGHTS NORMS AND STANDARDS IN THE CONTEXT OF THE FIGHT AGAINST POVERTY, INCLUDING EXTREME POVERTY

A. Issues and alternatives

3. Before proposing a conceptual framework for the elaboration of the guiding principles, several issues relating to the nature, scope and approach of the guiding principles should be discussed.

1. The nature of the text

4. While the initial mandate of the Commission requested the members of the Sub-Commission to consider the need to develop a “declaration” on human rights and extreme poverty, the present mandate requests the ad hoc group of experts to explore the need to develop “guiding principles on the implementation of existing human rights norms and standards in the context of the fight against extreme poverty”. The new mandate permits addressing demands by various development actors, requesting guidance on how to implement a human rights approach to poverty reduction in concrete terms, and moving to the realm of operationalization of human rights norms and standards.

5. The guiding principles should be accessible to policy-makers and help them to integrate human rights into international and national poverty reduction policies and strategies.

2. The focus of the text: extreme poverty or poverty?

6. The addition of “extreme” does indeed establish a ranking between degrees of poverty. In his first report to the General Assembly on human rights and extreme poverty, the Secretary-General stated: “The General Assembly has used different terms to identify different forms of poverty. According to resolution 53/198 of 15 December 1998 on the implementation of the first United Nations Decade for the Eradication of Poverty (1997-2006), the Assembly established two distinct goals: to eradicate extreme poverty and to reduce substantially overall poverty in the world. While a distinction between overall poverty and extreme poverty is made in terms of achievable objectives, this does not mean that there are two different types of poverty. Overall and extreme poverty are different in degree but are the same in terms of causes and consequences, and therefore require similar remedies” (A/57/369, para. 2).

7. For the same reasons, the coordinator of the ad hoc group of experts suggests considering both poverty and extreme poverty without making any conceptual distinction between them.

3. A holistic approach to poverty reduction

8. The coordinator of the ad hoc group of experts believes that the guiding principles should take a holistic approach to poverty reduction. However, the guiding principles may not address all aspects of human rights with equal emphasis, because they should be formulated for the specific context of poverty reduction, which is only a part of the broader human rights agenda. The rationale for the choice of rights, the relative emphasis placed on different rights and the targets, indicators and strategies that may be found in the guiding principles should be understood in this context.

9. The choice of human rights that may be addressed in the guiding principles should be based on a judgement as to which rights are most relevant to the context of poverty. This judgement may in turn be guided by the understanding that human rights can be relevant to poverty in different ways. Of special significance in the context of poverty reduction are rights that have either constitutive or instrumental relevance.

10. The coordinator of the ad hoc group of experts further believes that a selection of rights for the specific context of poverty reduction is consistent with a holistic approach and with the principles of universality, indivisibility and interdependence of human rights.

The principle of universality

11. Universality implies that every individual is endowed with human rights by virtue of being human. It means that human rights must be the same everywhere and for everyone. It ensures that the dignity and the worth of the human life is universally respected and protected against actions that interfere with human well-being. The obligations that follow for the relevant duty-holders are also universally applicable in all contexts. Having said that, it is perfectly possible to envisage a situation where the constituent rights and the targeted outcomes in a rights-based poverty reduction process are not exactly similar, or have the same priority, in any two countries that may or may not have similar social, cultural and economic contexts. This is

because, in addition to the context (which is important), the relative priority accorded to the realization of the various human rights depends on the availability of resources and also on the process that translates public opinion into a policy and strategy for implementation.

The principle of indivisibility

12. The principle of indivisibility requires that improvements in the realization of any one human right cannot be achieved at the expense of any other right. For instance, attainments in the right to education cannot be deemed socially valuable, or even acceptable, if they are achieved at the expense of improvements in the realization of the right to health or to freedom of expression. More generally, improvements in the realization of economic, social and cultural rights cannot be achieved at the expense of a deterioration in the realization of civil and political rights.

13. Although poverty may seem to concern mainly economic, social and cultural rights, the human rights framework highlights the fact that the enjoyment of these rights cannot take place at the expense of the enjoyment of civil and political rights. A human rights approach to poverty reduction is thus holistic in nature, encompassing civil and political rights as well as economic, social and cultural rights.

The principle of interdependence

14. Similarly, the principle of the interdependence of human rights makes it necessary that improvements in the realization of any one human right are a function of the realization of all, or at least some, of the other human rights, whatever the context. Thus, for instance, it is futile to talk of the right to information in the absence of a certain minimal realization of the right to education; it is meaningless to talk of the right to work when there are violations of the rights to participate and to have equal access to the public service and to be considered as an equal, whatever one's race, colour, sex, language, or religion.

15. The principle of the interdependence of human rights does not demand that poverty be defined by reference to all the rights set out in the International Bill of Human Rights, but it does demand an inclusive strategy for addressing poverty. While poverty may be defined by reference to a limited range of human rights - which will vary from one society to another, although empirical evidence suggests that some rights will be common to all - an effective anti-poverty strategy will certainly have to address a much wider range of human rights. This is because human rights can be relevant to poverty in multiple ways.

4. Collaboration with partners and the need to avoid duplication

16. Important theoretical contributions have been made in the last two decades to developing human rights approaches to poverty reduction, in particular within the Commission, the Sub-Commission and the United Nations treaty bodies. In particular, these contributions informed the elaboration of Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategy, developed by the Office of the High Commissioner for Human Rights following a request by the Committee on Economic, Social and Cultural Rights in 2001. The conceptual framework within which the draft guidelines were built is contained in the report of the Secretary-General referred to above.

17. Broad consultations should be conducted with various actors engaged in poverty work, such as Governments, civil society, in particular the poor and their communities, the World Bank, the International Monetary Fund, the United Nations system, donors, the private sector and academics.

18. In particular, the work of the ad hoc group of experts should be informed by the results of the piloting of the draft guidelines and by activities on poverty and human rights undertaken by the United Nations Development Programme through various programmes.¹ Seminars convened by the United Nations Educational, Scientific and Cultural Organization on a multidisciplinary rights-based approach to poverty reduction, including the participation of philosophers, human rights experts, economists, anthropologists and historians, is also relevant. Other agencies such as the United Nations Children's Fund, the Food and Agricultural Organization, the International Labour Organization, the United Nations Population Fund and the World Health Organization are also developing relevant work.

19. The conceptual relevance of the draft guidelines makes the use of the content of this document self-evident.² Therefore, the coordinator proposes a conceptual framework for the elaboration of the guiding principles that derives from the content of the draft guidelines.

**B. Proposed conceptual framework for the elaboration of
guiding principles on existing human rights norms
and standards in the context of the fight against
poverty, including extreme poverty**

20. In our day-to-day life, we tend to use the word "poor" in many diverse ways. For example, we might refer to the "poor chap" who has narrowly missed a lottery jackpot, or to the "poor old man" who has no heir to bequeath his vast wealth to, and so on. The common element in all these cases is some kind of deprivation that evokes the description "poor". However, when poverty is discussed as a social problem, the concept has a much more restricted domain because of its well-established link with deprivation caused by economic constraints.

21. These considerations suggest that we need a definition of poverty that refers to the non-fulfilment of human rights, but without de-linking it from the constraint of economic resources. It is argued below that Amartya Sen's capability approach provides a concept of poverty that satisfies these twin requirements. The capability approach has already inspired a significant broadening of the concept of poverty - replacing a narrow focus on low income with a multidimensional view of poverty. Most of the current discussions of poverty in academic circles, as well as in international organizations such as the World Bank and the United Nations agencies that deal with poverty, draw upon this approach either explicitly or implicitly. As a rule, these discussions do not use the language of rights. But a little reflection shows that there exists a natural transition from capabilities to rights. Most human rights are concerned with the human person's rights to certain fundamental freedoms, including the freedoms to avoid hunger, disease and illiteracy. And the capability approach requires that the "goodness" of social arrangements be judged in terms of the flourishing of human freedoms. The focus on human freedom is thus the common element that links the two approaches. Looking at poverty from the perspective of capability should, therefore, provide a bridge for crossing over from poverty to human rights.

1. The capability approach to poverty

22. To see the relevance of capability for understanding poverty, we may begin by noting that the defining feature of a poor person is that she has very restricted opportunities to pursue her well-being. Poverty can thus be seen as low levels of capability, or, as Sen puts it, “the failure of basic capabilities to reach certain minimally acceptable levels”.³ Several properties of this concept of poverty are worth noting.

23. First, not all kinds of capability failure would count as poverty. Since poverty denotes an extreme form of deprivation, only those capability failures would count as poverty that are deemed to be basic in some order of priority. Different communities may of course have different orders of priority and hence a different idea of what would qualify as “basic” capabilities.

24. Second, once poverty is seen to consist in the failure of a range of basic capabilities, it immediately becomes a multidimensional concept. Poverty can no longer be defined unidimensionally as a lack of adequate income, as has traditionally been done. It is nonetheless important to acknowledge that the concept of income - more generally, command over economic resources - does play an important role in defining poverty.

25. Several clarifications should, however, be made at this point so as to avoid misunderstanding. First, while the concept of poverty does have an irreducible economic connotation, the relevant concept here is not low income but the broader concept of *inadequate command over economic resources*, of which inadequate personal income is only one possible source. Other sources include insufficient command over publicly provided goods and services, inadequate access to communally owned and managed resources, inadequate command over resources that are made available through formal and informal networks of mutual support, and so on. If a person’s lack of command over any of these resources plays a role in precipitating basic capability failures, she would be counted as poor.

26. Second, the recognition that poverty has an irreducible economic connotation does not necessarily imply primacy of economic factors in the causation of poverty. For example, when discrimination based on gender, ethnicity or any other ground denies a person access to health-care resources, the resulting ill-health is clearly a case of capability failure that should count as poverty because the lack of access to resources has played a role. But causal primacy in this case lies in the sociocultural practices as well as the political-legal frameworks that permit discrimination against particular individuals or groups; lack of command over resources plays merely a mediating role.

27. The capability approach defines poverty as the absence or inadequate realization of certain basic freedoms, such as the freedoms to avoid hunger, disease, illiteracy, and so on. The reason why the conception of poverty is concerned with basic freedoms is that these are recognized as being fundamentally valuable for minimal human dignity. But the concern for human dignity also motivates the human rights approach, which postulates that people have inalienable rights to these freedoms. If someone has failed to acquire these freedoms, then obviously her rights to these freedoms have not been realized. Therefore, poverty can be defined equivalently as either the failure of basic freedoms - from the perspective of capabilities, or the non-fulfilment of rights to those freedoms - from the perspective of human rights.

2. Human rights approach to poverty reduction

28. The essential idea underlying the adoption of a human rights approach to poverty reduction is that policies and institutions for poverty reduction should be based explicitly on the norms and values set out in the international law of human rights. Underpinned by universally recognized moral values and reinforced by legal obligations, international human rights provide a compelling normative framework for the formulation of national and international policies, including poverty reduction strategies.

29. One reason why this framework is compelling in the context of poverty reduction is that the norms and values enshrined in it have the potential to empower the poor and make policy-makers accountable. The human rights approach to poverty reduction is essentially about empowerment and accountability.

30. The most fundamental way in which empowerment and accountability occurs is through the introduction of the concept of rights itself. Once this concept is introduced into the context of policy-making, the rationale of poverty reduction no longer derives merely from the fact that the poor have needs but also from the fact that they have rights - entitlements that give rise to legal obligations on the part of others. Poverty reduction then becomes more than charity, more than a moral obligation - it becomes a legal obligation. This recognition of the existence of legal entitlements of the poor and legal obligations of others towards them is the first step towards empowerment and accountability.

31. The salient features of a human rights approach include the following principles: explicit linkage to national and international human rights norms, standards and principles, empowerment and participation, accountability, non-discrimination and equality, and progressive realization. The annex explores in detail the content of these principles.

3. Added value of a human rights approach to poverty reduction

32. These basic human rights principles compel policy-makers to focus on the most vulnerable and disadvantaged, those who are often excluded by "average progress". Whatever method is used to identify the poor, the human rights approach demands that it be guided by a number of special considerations. First, the objective of the exercise should not merely be to come up with a number, such as the proportion of poor people in the population, but to know who these people are. Thus, it is necessary to identify specific groups - in terms of various characteristics, such as gender, geographical location, ethnicity, religion, age or occupation - in which poverty is entrenched so that the problem of poverty can be addressed at as disaggregated a level as possible. Second, special efforts will be needed to identify those among the poor who are especially deprived (e.g. women) and vulnerable (e.g. people living with HIV/AIDS). When resource constraints call for the setting of priorities, it is the entitlement of these groups that merits prior attention.

33. In other words, the implementation of the principles listed above (see also the annex) makes the process of the identification of the poor - the first essential step in the elaboration of a poverty reduction strategy - unique.

34. In general terms, the added value of a human rights approach to poverty reduction can be summarized as follows:

(a) Explicit linkage to national and international human rights norms, standards and principles provides a compelling normative framework for the design, implementation, monitoring and review of anti-poverty policies and strategies. This has significant implications for States as well as for those responsible for policies and programmes that impact on States. All parties need to recognize States' national and international human rights commitments as a central part of the normative foundation for the design and implementation of poverty reduction policies and strategies;

(b) Human rights enhance empowerment and participation by granting poor individuals and communities entitlements that give rise to legal obligation on others. These principles also ensure that country ownership is not being interpreted narrowly. Anti-poverty policies and strategies have to be owned by all relevant stakeholders within the country, including the poor. This can only be possible, however, when all stakeholders, including the poor, participate effectively in all stages of the process;

(c) Human rights raise the level of accountability of the various stakeholders involved in the design, implementation, monitoring and review of anti-poverty policies and strategies. The human rights approach to poverty reduction emphasizes obligations and requires that all duty-holders, including States and intergovernmental organizations, are held to account for their conduct in relation to international human rights;

(d) The twin principles of non-discrimination and equality prevent poor people from being disadvantaged or socially excluded on various grounds, such as race, gender, religion, location, occupation and age. They help to ensure that the relevant measures give proper attention to (i) those sectors (e.g. health) and subsectors (e.g. primary health care) that have particular relevance to pro-poor policies; and (ii) the particular situation of vulnerable, marginal, disadvantaged and socially excluded individuals and groups;

(e) The principle of progressive realization means that many human rights will be realized progressively and are subject to the availability of resources. Accordingly, the precise obligations arising from some human rights vary over time in relation to the same State (progressive realization) and from one State to another (because of differing resource availability). The recognition of a time dimension and the need for prioritization are common features of all approaches to policy-making. The distinctiveness of the human rights approach is that it imposes certain conditions on these features, so that the pursuit of human rights is not reduced to mere rhetoric in the name of progressive realization.

III. AN ENABLING ENVIRONMENT FOR POVERTY REDUCTION: ASSISTANCE AND COOPERATION

35. The conceptual framework proposed in chapter II cannot be implemented without a fair and equitable enabling environment for poverty reduction. This requires the implementation of assistance and cooperation based on global equity and shared responsibility at both the national and international level.

36. At the international level, the Millennium Declaration repeatedly affirms the twin principles of global equity and shared responsibility. One of the Millennium Development Goals (MDGs) is to “develop a global partnership for development”. More specifically, the Declaration makes a commitment to “an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system”. There is now universal recognition that effective poverty reduction demands international action.⁴

37. Access to aid, debt relief, markets, substantial and affordable capital flows, as well as stability in the global economy have an impact on the options open to policy-makers as they formulate and implement poverty reduction policies and strategies. In international human rights law, the principles of global equity and shared responsibility are also reflected in the notion of international assistance and cooperation.

38. There are many references to the duty of international assistance and cooperation in the context of human rights. According to article 22 of the Universal Declaration of Human Rights: “Everyone ... is entitled to realization, through national effort and international cooperation ... of the economic, social and cultural rights indispensable for his dignity and free development of his personality.” The International Covenant on Economic, Social and Cultural Rights refers to international assistance and cooperation, or similar formulations, in five articles, and the right has found more recent expression in another binding treaty, the Convention on the Rights of the Child. International assistance and cooperation may be regarded as one element of the more extensive right to development which was affirmed in the Vienna Declaration and Programme of Action (1993). More recently, 147 heads of State and Government - 191 nations in total - recognized explicitly in the Millennium Declaration the link between the realization of the right to development and poverty reduction, and committed themselves to make “the right to development a reality for everyone” and to free “the entire human race from want”.

39. The parameters of the duty of international assistance and cooperation in international human rights law are not yet clearly drawn. However, in principle, it requires that all those in a position to assist should, first, refrain from acts that make it more difficult for the poor to realize their human rights and, second, take measures to remove obstacles that impede the poor’s realization of their human rights. Thus, international assistance and cooperation should not be understood as encompassing only financial and technical assistance: it also includes an obligation to work actively towards equitable multilateral trading, investment and financial systems that are conducive to the reduction and elimination of poverty.

IV. RECOMMENDATIONS

40. **The coordinator suggests the following recommendations for consideration by the ad hoc group of experts and the Sub-Commission:**

(a) **To conduct broad consultations on the basis of the conceptual framework proposed in chapter II, section B and detailed in the annex to the present report, and seek collaboration with various actors involved in the work on poverty reduction;**

(b) To review its programme of work as contained in document E/CN.4/Sub.2/2002/15 in the light of existing and ongoing initiatives that aim at clarifying the relationship between human rights and poverty, including extreme poverty, and providing development practitioners with operational guidance on how to integrate human rights into anti-poverty policies and strategies;

(c) To submit an interim joint working paper to the Sub-Commission at its fifty-sixth session on the need to develop guiding principles, building on the above-mentioned conceptual framework and, if appropriate, to identify its specific points.

41. The interim joint working paper to be submitted to the Sub-Commission at its fifty-sixth session may consider the following:

(a) The need to focus on the relationship between human rights and both overall poverty and extreme poverty without making any conceptual distinction between them;

(b) The adoption of a holistic approach to poverty reduction with due respect for the principles of universality, indivisibility and interdependence of human rights.

Notes

¹ See also UNDP, *Poverty Reduction and Human Rights, a Practice Note*, March 2003.

² Ibid.

³ A. Sen, *Inequality Re-examined*, 1992, p. 109.

⁴ As the UNDP *Human Development Report 2000* puts it: "Human rights and human development cannot be realized universally without stronger international action, especially to support disadvantaged people and countries to offset growing global inequalities and marginalization." It continues: "Aid, debt relief, access to markets, access to private financial flows and stability in the global economy are all needed for the full realization of rights in the poorest and least developed countries." UNDP *Human Development Report 2000*, p. 12. The World Bank's *World Development Report (2000/2001)* makes the point in similar terms: "There are many areas that require international action - especially by industrial countries - to ensure gains to poor countries and to poor people within the developing world. An increased focus on debt relief and the associated move to make development cooperation through aid more effective are part of the story. Of equal importance are actions in other areas - trade, vaccines, closing the digital and knowledge divides - that can enhance the opportunity, empowerment, and security of poor people." World Bank, *World Development Report 2000/2001: Attacking Poverty*, p. 11.

Annex

The underlying principles of a conceptual framework for the elaboration of guiding principles on existing human rights norms and standards in the context of the fight against poverty, including extreme poverty

I. EXPLICIT LINKAGE TO NATIONAL AND INTERNATIONAL HUMAN RIGHTS NORMS, STANDARDS AND PRINCIPLES

1. While the documents directed at poverty reduction are not legal instruments, their design, implementation, monitoring and review ought to be consistent with, and informed by, the State's national and international human rights commitments for two reasons: (i) this will enhance the strategy's effectiveness; (ii) otherwise some features of the strategy may be unlawful.
2. This has significant implications for States as well as for those responsible for policies and programmes that impact on States. All parties need to recognize States' national and international human rights commitments as a central part of the normative foundation for the design and implementation of poverty reduction strategies.
3. When beginning to prepare, implement, monitor or review a poverty reduction strategy, it would be desirable for the State to look at the following:
 - (a) National human rights law and practice in its jurisdiction, for example human rights provisions from the constitution, bill of rights, anti-discrimination laws and freedom of information legislation, as well as the main human rights case law;
 - (b) The international and regional human rights treaties, including relevant ILO conventions and the UNESCO Convention against Discrimination in Education, it has ratified;
 - (c) Other important international human rights instruments such as the Universal Declaration of Human Rights;
 - (d) Commitments entered into at recent world conferences insofar as they bear upon human rights, including the United Nations Millennium Declaration (2000).
4. Given its responsibility to ensure that its human rights commitments inform the design, implementation, monitoring and review of its poverty reduction strategy, a State should seek to ensure that:
 - (a) Its human rights commitments are expressly referred to in the poverty reduction strategy;
 - (b) Those responsible for designing and implementing the poverty reduction strategy receive basic human rights training so that they are familiar with the State's human rights commitments and their implications;
 - (c) Individuals are appointed with particular responsibility for ensuring that the State's human rights commitments are taken into account throughout the design and implementation of the poverty reduction strategy (e.g. departmental human rights officers);

(d) Processes are designed, and put in place, to ensure that the State's human rights commitments receive due attention throughout the design and implementation of the poverty reduction strategy (e.g. arrangements to secure the preparation and scrutiny of ex ante and ex post human rights impact assessments).

5. Because the relevance of a State's human rights framework is not confined to the State itself, all those responsible for policies and programmes that impact upon a State should:

(a) Ensure that they do not make it more difficult for the State to implement its human rights commitments to individuals and groups within its jurisdiction;

(b) Use their best endeavours, within their mandates, to help a State fulfil its national and international human rights commitments.

II. PARTICIPATION AND EMPOWERMENT

6. As States have primary responsibility for fulfilling the human rights of the people living in their respective jurisdiction, it follows that any poverty reduction strategy must be a country-driven process. Country ownership should thus be an essential attribute of the design and implementation of any poverty reduction policies and strategies.

7. However, country ownership should not be interpreted narrowly. The strategy has to be owned by all relevant stakeholders within the country, including the poor. This can only be possible, however, when all stakeholders, including the poor, participate effectively in all stages of the process.

8. Active and informed participation by the poor is not only consistent with, but also demanded by, the human rights approach because the international human rights normative framework affirms the right to take part in the conduct of public affairs.

9. One may distinguish four stages of participation: preference revelation; policy choice; implementation; and monitoring, assessment and accountability.

10. The stage of preference revelation is the initial stage of any process of policy formulation. Before policies can be formulated, people need to express what their preferences are, i.e. what objectives they want to achieve.

11. The stage of policy choice refers to the stage at which policies are formulated and decisions taken regarding the allocation of resources among alternative uses. As different patterns of resource allocation will serve the interests of different groups of people differently, a conflict of interest is inherent in any process of policy formulation. In whose favour this conflict is resolved depends very much on who can participate effectively in the process. Traditionally, the poor are left out, as they do not possess enough political or financial power to make their interests count. The aim of a human rights approach is to alter this situation, by creating a legal-institutional framework in which the poor can participate effectively in policy formulation.

12. The point is not that the poor should take part in all the technical deliberations that underlie policy formulation. But they must be allowed to take part in the process of setting priorities and benchmarks that will guide such deliberations. In practice, this means that when

alternative policy options are being explored by experts, the implications of these options for the interests of various population groups need to be made transparent to the general public, including the poor, so that they can have an opportunity to argue for the options that serve their interests best.

13. Although the implementation of policies is primarily the responsibility of the executive arm of the State, opportunities should be created to enable the poor to exercise their right to participate in the implementation stage as well. Such opportunities are more likely to arise in community-level activities, which in turn are more likely to flourish within an institutional framework of representative local government. Decentralization of government and a deepening of democracy are therefore essential components of the human rights approach to poverty reduction.

14. The final stage of participation is the stage of monitoring and assessment of the success or failure of policies so that the State and other duty-bearers can be held accountable for their obligations. It is an essential feature of the human rights approach that the people who are affected by policies are able to participate in monitoring and assessing their success or failure and then take part in the procedures for holding the duty-bearers accountable. Appropriate institutional arrangements are needed for such participation to be possible.

15. It is not enough for the poor merely to participate in decision-making processes; they should be able to participate effectively. In order to ensure this, two sets of preconditions have to be satisfied.

16. First, while the practice of democracy is an essential precondition for the enjoyment of the right to participate, electoral democracy is not all that is needed. Devising specific mechanisms and detailed institutional arrangements through which the poor can effectively participate at different stages of decision-making is an essential component of the human rights approach to poverty reduction.

17. The second precondition is empowerment of the poor themselves so as to make their participation effective. In part, this empowerment will depend on the realization of a minimum degree of economic security without which the poor are unlikely to be able to resist established structures that perpetuate their poverty. Capacity-building activities are also essential in order to empower the poor. Human rights education can play an effective role in this process.

18. In addition, however, empowerment requires simultaneous efforts to promote a range of other human rights. For example, if the poor are to be empowered to participate meaningfully in the conduct of public affairs, they should be free to organize without restriction (right of association), to meet without impediment (right of assembly), to say what they want to without intimidation (freedom of expression) and to know the relevant facts (right to information). Furthermore, poor people should be allowed to receive support from sympathetic civil society organizations (including the media) that might be willing to champion their cause. For this to be possible, a legal and institutional framework needs to be created in which an independent civil society can flourish.

III. ACCOUNTABILITY

19. An accountability procedure depends on, but goes beyond, monitoring. It is a mechanism or device by which duty-bearers are answerable for their acts or omissions in relation to their duties. An accountability procedure provides right-holders with an opportunity to understand how duty-bearers have discharged, or failed to discharge, their obligations, and it also provides duty-bearers with an opportunity to explain their conduct. While accountability implies some form of remedy and reparation, it does not necessarily imply punishment.

20. Broadly speaking, there are four categories of accountability mechanism:

- Judicial, e.g. judicial review of executive acts and omissions;
- Quasi-judicial, e.g. ombuds institutions, international human rights treaty bodies;
- Administrative, e.g. the preparation, publication and scrutiny of human rights impact assessments;
- Political, e.g. parliamentary processes.

21. In some cases, the same institution performs both a monitoring and an accountability function. In other cases, one institution monitors and another institution provides an accountability procedure.

22. In the context of poverty reduction, monitoring and accountability procedures present a unique challenge. In some cases, existing procedures, such as current local government and judicial processes, may provide suitable monitoring and accountability mechanisms. In most cases, however, existing procedures will not be adequate. Usually, to secure the active and informed participation of the poor, existing procedures will have to be either reformed or supplemented by additional monitoring and accountability arrangements. In the context of poverty reduction, all duty-bearers are encouraged to devise, in close collaboration with the poor, innovative and non-formal monitoring and accountability mechanisms that secure the active and informed participation of the poor.

23. The form and mix of monitoring and accountability procedures will vary from one duty-bearer to another. However, all duty-bearers must ensure that, in relation to the discharge of their obligations, there are accessible, transparent and effective monitoring and accountability procedures.

24. Under international law, the State is the principal duty-bearer with respect to the human rights of the people living within its jurisdiction. However, the international community at large also has a responsibility to help realize universal human rights. Thus, monitoring and accountability procedures should not only extend to States, but also to global actors - such as the donor community, intergovernmental organizations, international NGOs and multinational companies - whose actions bear upon the enjoyment of human rights in any country.

1. Monitoring and accountability of States

25. The duty of the State with regard to any human right is of three kinds: to respect, to protect, and to fulfil. The duty to fulfil in turn has two components - to facilitate and to provide. The human rights approach to poverty reduction demands that appropriate monitoring and accountability procedures be established in respect of all of these elements.

26. States' obligations are usually subject to both internal and external monitoring and accountability procedures.

Internal procedures

27. As the people's representatives, parliaments and parliamentary committees should be enabled to play an important monitoring role. In many cases, this will call for enhancement of the power of parliament - for example to require the Government to disclose necessary information to, and subject itself to scrutiny by, parliamentary committees. In addition, this will often require educating parliamentarians about the intricacies of planning and budgetary processes.

28. Decentralization and democratization of local-level governance will also be needed to enable the people, especially the poor, to monitor the activities of Government that have an immediate and direct effect on the realization of their human rights.

29. A legal framework should be created within which civil society organizations can perform an independent monitoring role. In particular, immediate steps should be taken to realize a set of interrelated rights, such as the rights to information, free speech and association, without which independent monitoring will not be possible.

30. Accountability mechanisms should provide remedies for human rights violations. Individuals not only have a right to enjoy the various substantive human rights that their Governments have accepted, but also a procedural right to an effective remedy before a domestic body in case their human rights have been violated.

31. A remedy is only effective if the respective domestic authority has the competence to grant reparation to the victim of a human rights violation. There are various types of possible reparation depending on the seriousness of the violation and the particular circumstances of the case, such as full restitution, compensation, rehabilitation, apologies and other forms of satisfaction, general guarantees of non-repetition and, in exceptional cases, punishment of the individual perpetrators.

32. The right to an effective domestic remedy does not necessarily require a judicial procedure. States have an obligation to ensure that any person claiming a remedy should have his or her right determined by a competent judicial, administrative or legislative authority, or any other competent authority provided for by the legal system of the State. In addition, the competent authorities should enforce such remedies when granted.

External procedures

33. By ratifying human rights treaties, States parties have agreed to make themselves answerable to treaty bodies, thereby subjecting themselves to a form of external monitoring and accountability. States parties have treaty obligations to comply with the relevant procedures provided for in the treaties, such as reporting, complaints and inquiry procedures. States also have obligations to cooperate with other external monitoring and accountability mechanisms, such as the special procedures established by the Commission on Human Rights.

34. External monitoring and accountability procedures are subsidiary to the equivalent internal procedures. For example, victims of a human rights violation can only submit an individual complaint to an international treaty body after they have exhausted all effective and available domestic remedies. Similarly, the reporting system can only be effective if Governments prepare their State reports in a transparent and participatory process involving all relevant domestic civil society actors before submitting the report to the respective international treaty body.

2. Monitoring and accountability of global actors

35. The general observations already made concerning monitoring and accountability procedures apply equally to global actors, such as the donor community, intergovernmental organizations, international NGOs and multinational companies.

36. Actions of the international community, for example, in the spheres of trade, aid, migration and private capital inflow, will have an impact on the options open to a State as it formulates and implements its poverty reduction strategy. These actions should conform to the global actors' human rights responsibilities.

37. Crucially, all global actors should ensure that there are accessible, transparent and effective monitoring and accountability procedures in relation to their poverty reduction policies and human rights responsibilities. These procedures should secure the active and informed participation of the poor.

38. If global actors fail to establish appropriate monitoring and accountability mechanisms in relation to their poverty reduction and human rights responsibilities, others should take steps to do so.

39. The activities of multinational companies, which may have a significant impact on poverty reduction and human rights in the States in which they operate, raise important monitoring and accountability issues.

40. First, multinational companies themselves should establish accessible, transparent and effective monitoring and accountability procedures in relation to their poverty reduction and human rights responsibilities.

41. Second, the State in which a company with overseas operations is headquartered has a responsibility to take reasonable measures to ensure that the overseas operations are respectful of the international human rights obligations of both the home and host State. This responsibility of the State should be subject to accessible, transparent and effective monitoring and accountability procedures.

42. Third, a host State has a responsibility to ensure that multinational companies operating in its jurisdiction conform to the national and international human rights obligations of that State. Accordingly, there should be monitoring and accountability mechanisms in relation to the host State's obligation to regulate the conduct of such multinational companies

IV. EQUALITY AND NON-DISCRIMINATION

43. The right to equality and the principle of non-discrimination are among the most fundamental elements of international human rights law. The right to equality guarantees, first and foremost, that all persons are equal before the law, which means that the law should be formulated in general terms applicable to every human being and enforced in an equal manner. Secondly, all persons are entitled to equal protection of the law against arbitrary and discriminatory treatment including by private actors. While only some treaties explicitly include a definition, it is generally accepted that the principle of non-discrimination prohibits any "distinction, exclusion, restriction or preference having the purpose or effect of impairing or nullifying the enjoyment of human rights". In this regard, the law should prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability and health status, including HIV/AIDS, age, sexual orientation or other status.

44. The poor are usually victims of discrimination on various grounds such as birth, property, national and social origin, race, colour, gender and religion. Depending on the particular circumstances of each society, poverty may affect primarily members of certain socially disadvantaged classes, or of certain ethnic or religious groups, women, elderly people or indigenous persons, but in most cases poverty is aggravated by some sort of discrimination. If Governments are responsible for such discrimination, they are under an obligation immediately to prohibit and cease all discriminatory laws and practices. If discriminatory attitudes are caused by traditions among the population (that are usually deeply rooted), Governments are to adopt and enforce laws prohibiting any discrimination by private actors. In both cases, Governments should, in addition, take special measures to afford effective protection to their most vulnerable, discriminated and socially excluded groups, including the poor, against discrimination by governmental authorities as well as by private actors.

45. Inequalities and discrimination may assume various forms, including explicit legal inequalities in status and entitlements, deeply rooted social distinctions and exclusions, and policies of indirect discrimination. It is therefore important to look at the effects rather than the intentions of measures and laws. For example, while there might be no intention to discriminate against women when the term "breadwinner" is included in social security law, if the practical application of this term primarily disadvantages women, it may constitute indirect discrimination on the grounds of sex (see *Broeks v. Netherlands* Communication No. 1721984, A/42/40, (1987).

46. Not every distinction constitutes discrimination since it might be based on reasonable and objective criteria, and aimed to achieve a purpose which is legitimate under international human rights instruments. A law or policy that was originally considered reasonable might now be acknowledged as discriminatory because of changing social values reflected in universal human rights norms. As societies gradually became more gender- and ethnicity-sensitive, they also tend to become more poverty-sensitive. Whereas poverty might have been regarded in earlier times as a kind of “natural phenomenon”, it is looked upon today as a social phenomenon aggravated by discrimination, which in turn requires corresponding anti-discrimination or even affirmative action by Governments. A human rights approach to poverty provides the necessary tools for identifying the roots of poverty that lie in discriminatory practices and for developing appropriate strategies to deal with them.

47. As discrimination may cause poverty, poverty also causes discrimination. In addition to their race, colour, gender or social origin, the poor are also subject to discriminatory attitudes by governmental authorities and private actors because they are poor. The twin principles of equality and non-discrimination require States to take special measures to prohibit discrimination against the poor and to provide them with equal and effective protection against discrimination. As the poor are among the most vulnerable groups in every society, the design and implementation of a poverty reduction strategy should take into account the special needs of the poor not to be discriminated against, according to the particular circumstances of the society concerned. Given that the most common discriminatory practices deny poor people equal access to fundamental services and human rights such as the rights to food, education, health or justice, the respective State obligations, targets, indicators and strategies will be dealt with in the relevant sections below.

V. PROGRESSIVE REALIZATION OF A NUMBER OF HUMAN RIGHTS

48. Poverty is so deeply entrenched in many societies that it is unrealistic to hope that even with the best of intentions it can be eliminated in a very short time. Equally, one must accept the reality that it may not be possible to fulfil all human rights immediately. Since the realization of most human rights is at least partly constrained by the availability of scarce resources, and since this constraint cannot be eliminated overnight, the human rights approach explicitly allows for progressive realization of a number of rights.

49. The idea of progressive realization has two major strategic implications. First, it allows for a time dimension in the strategy for human rights fulfilment by recognizing that full realization of human rights may have to occur in a progressive manner over a period of time. Second, it allows for setting priorities among different rights at any point in time since the constraint of resources may not permit a strategy to pursue all rights simultaneously with equal vigour.

50. The recognition of a time dimension and the need for prioritization are common features of all approaches to policy-making. The distinctiveness of the human rights approach is that it imposes certain conditions on these features, so that the pursuit of human rights is not reduced to mere rhetoric in the name of progressive realization.

51. The recognition of a time dimension is accompanied by certain conditions aimed at ensuring that the State does not take it as a licence either to defer or to relax the efforts needed to realize human rights.

52. First, it is generally accepted that, where there is a serious commitment to poverty reduction, rapid progress towards the realization of many human rights can be made even within the existing resource constraint. This will often be true of “respect” obligations with regard to most rights, which require political will more than economic resources. Even for “protect” and “fulfil” obligations, which would typically be more dependent on resources, it may be possible to make rapid progress by improving the efficiency of resource use - for example, by scaling down expenditure on unproductive activities, and by reducing spending on activities whose benefit goes disproportionately to the rich.

53. Second, to the extent that the realization of human rights may be contingent on a gradual expansion in the availability of resources, initial steps should be taken to fulfil the rights as expeditiously as possible by developing and implementing a time-bound plan of action. The plan must spell out when and how the State hopes to arrive at the realization of rights.

54. Third, the plan should include a series of intermediate - preferably annual - targets. As the realization of human rights may take some considerable time, possibly extending well beyond the immediate term of a Government in power, it is with regard to these intermediate targets (or benchmarks) rather than the final target of full realization that the State will have to be held accountable.

55. Fourth, as a prerequisite of setting targets, there is a need to identify some indicators in terms of which targets will be set. In practice, a bundle of indicators will be needed for each human right, and they should be specified separately, at levels that are as disaggregated as possible, for each subgroup of the poor population. Realistic time-bound targets will have to be set in relation to each indicator so as to serve as benchmarks.

56. With regard to prioritization, the human rights approach does not in itself offer any hard and fast rule, but it does impose certain conditions on the process and substance of prioritization.

57. The process of setting priorities must involve effective participation of all stakeholders, including the poor. Value judgements will inevitably enter the process of setting priorities, but the rights-based approach demands that they should do so in an inclusive and equitable manner. This implies that the process of resource allocation must permit all segments of society, especially the poor, to express their value judgements with regard to priorities. It also implies that just institutional mechanisms must be put in place so that potentially conflicting value judgements can be reconciled in a fair and equitable manner.

58. The substance of prioritization should be guided by the following principles. First, no human right can be given precedence over others on the ground of intrinsic merit, because from the human rights perspective all rights are equally valuable. However, different rights can still be given priority at different stages of progressive realization on practical grounds. For example, a country may decide to give priority to a right that has remained especially under-realized

compared with others, to a right whose fulfilment is expected to act as a catalyst towards the fulfilment of other rights, or to a right which a country may feel especially well equipped to deal with first in view of its tradition, experience and so on.

59. Second, while allocating more resources to the rights that have been accorded priority at any given point in time, care should be taken to ensure that the rest of the rights maintain at least their initial level of realization. This restriction follows from the principle of non-retrogression of rights - no right can be deliberately allowed to suffer an absolute decline in its level of realization.

60. Third, notwithstanding the recognition of resource constraint, the international human rights system specifies some core obligations that require States to ensure, with immediate effect, certain minimum levels of enjoyment of various human rights. For example, a State has a core obligation, derived from the rights to life, food and health, to ensure that all individuals within its jurisdiction are free from starvation. These core obligations are to be treated as binding constraints - i.e. no trade-offs are permitted with regard to them.
