



经济及社会理事会

Distr.
GENERAL

E/CN.4/Sub.2/2003/17
16 June 2003
CHINESE
Original: ENGLISH

人权委员会
增进和保护人权小组委员会
第五十五届会议
临时议程项目 4

经济、社会和文化权利

在同赤贫作斗争方面执行现行人权准则和标准

特设专家组协调人何塞·本戈亚先生根据小组委员会

第 2002/13 号决议提交的初步工作文件 *

内 容 提 要

本文件根据增进和保护人权小组委员会第 2002/13 号决议编写，该决议请由何塞·本戈亚先生负责协调的特设专家组就需要拟订关于在同赤贫作斗争方面执行现行人权准则和标准的指导原则一事提交一份工作文件。该工作文件将分三个阶段提交：初步阶段(第五十五届会议)，中间阶段(第五十六届会议)和最后阶段(第五十七届会议)。本文件为初步工作文件，对人权与贫困包括赤贫的内在联系作了一些阐述。这份初步工作文件还提出了拟订关于在同贫困包括赤贫作斗争方面执行现行人权准则和标准的指导原则所需的概念框架的基本原则，供小组委员会审议。

* 附件仅以提交语文分发。

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一、导 言

1. 人权委员会从 1998 年起开始考虑需要拟订一项“人权与赤贫”新案文这一问题。1998 至 2001 年，委员会就需要拟订一项人权与赤贫宣言草案问题征求了赤贫问题独立专家和一个专家组的意见，这两者都作出了积极反应。委员会第 2001/31 号决议请小组委员会“考虑是否有必要……拟订关于在同赤贫作斗争方面执行现行人权准则和标准的指导原则，并向委员会提交报告”。应小组委员会的请求(即 2001/8 号决议)，四位来自不同地理区域的专家，保罗·塞尔吉奥·皮涅伊罗先生、横田洋三先生、哈吉·吉塞先生和何塞·本戈亚先生编写了一份有关这一问题的联合工作文件。在第 2002/13 号决议中，小组委员会进一步请尤利亚-安托阿尼拉·莫托克女士、阿斯比约恩·艾德先生、横田洋三先生、哈吉·吉塞先生和本戈亚先生(担任协调人)在不涉及经费问题的前提下，分三个阶段编写一份联合工作文件：初步阶段(第五十五届会议)，中期阶段(第五十六届会议)和最后阶段(第五十七届会议)。

2. 本初步工作文件的编写者是特设专家组协调人。这份文件就拟订一项有关人权与贫困包括赤贫的国际案文提出了一个概念框架，该框架可为最后阶段的联合工作文件的起草提供参考。

二、拟订关于在同贫困包括赤贫作斗争方面 执行现行人权准则和标准的指导原则 所需的概念框架探讨

A. 问题和办法

3. 在提出拟订指导原则所需的概念框架之前，应当讨论一下一些与指导原则的性质、范围及采取的途径相关的问题。

1. 案文的性质

4. 委员会最初的授权请小组委员会考虑需要拟订一项人权与赤贫“宣言”一事，而目前的授权则请特设专家小组探讨需要拟订“关于在同赤贫作斗争方面执行现行人权准则和标准的指导原则”问题。按这项新的授权，可以述及各个发展行为

者的要求，请求就如何切实采用基于人权的方式处理减贫问题提出指导意见，并且可以转向实施人权准则和标准这一领域。

5. 这些指导原则应当能够为决策者所用，并且帮助决策者将人权纳入国际和国家减贫政策和战略。

2. 案文关注的重点：赤贫还是贫困？

6. “赤贫”一词的采用的确使贫困的程度有了区分。在提交大会关于人权与赤贫问题的首次报告中，秘书长说：“大会曾用不同的词语鉴别各种不同形式的贫困。在 1998 年 12 月 15 日关于第一个联合国消灭贫穷十年(1997-2006)的实施情况的第 53/198 号决议里，大会订定两个明确目标：消灭赤贫和大幅度减轻世界总体贫穷状况。虽然在可实现目标上区分了总体贫穷与赤贫，但这并不表示有两种不同类型的贫穷。整体贫穷与赤贫只是程度上的不同，其原因及后果是一样的，所以需要类似的解决方法”(A/57/369, 第 2 段)。

7. 出于同样的理由，特设专家组协调人建议在不从概念上对两者作任何区分的前提下研究贫困与赤贫问题。

3. 从整体入手对待减贫问题

8. 特设专家组协调人认为，指导原则应当从整体入手对待减贫问题。不过，指导原则并不能对人权的所有方面都给予同等程度的重视，因为这些原则应当为减贫这项特定任务而制定，而减贫只是广泛的人权议程中的一部分。因此，对于指导原则选择权利的依据，对不同的权利给予的相对不同的重视，以及指导原则可能列出的目标、指标及战略，应当联系这一背景加以理解。

9. 选择可能在指导原则中述及的人权，应当依据关于哪些权利与减贫最为相关作出判断。此种判断转而又可以这一理解为指导，即人权可以不同方式与贫困相联。在减贫方面具有特殊意义的，是那些在构成上或手段上具有相关性的权利。

10. 特设专家组协调人进一步认为，为减贫这项特定任务而选择一些权利，符合从整体入手的做法，也符合人权的普遍性、不可分割性和相互依赖性原则。

普遍性原则

11. 普遍性意味着每个人因属于人类而生来享有人权。它意味着人权在每个地方对每个人都必须是相同的。这项原则要求人的尊严和人的生命的价值受到普遍尊重和保护，不受任何干涉人类福利的行为的损害。由此产生的相关的承担义务者的义务也在所有情况下都普遍适用。不过，完全可以设想这样一种情形：在任何两个可能具有或者不一定具有类似的社会、文化及经济状况的国家，一个基于权利的减贫进程中的要素权利和结果指标并不完全相似，或者并不具有相同的优先事项。这是因为，除了状况(这一点很重要)以外，各项人权的落实方面所确定的相对优先事项取决于资源的备有情况，还取决于将舆论转化为有待执行的政策和战略的进程。

不可分割性原则

12. 不可分割性原则要求的是：任何一项人权的落实都不能以牺牲任何其它权利为代价。例如，受教育权的落实如果以牺牲健康权或言论自由权落实情况的改善为代价，就不能被视为具有社会价值，甚至不能被视为可以接受。总的来说，经济、社会、文化权利的落实状况的改善不能以公民权利和政治权利落实状况的恶化为代价。

13. 虽然贫困看来可能主要与经济、社会及文化权利有关，但人权框架突出这一点：这些权利的享有不能以牺牲公民权利和政治权利的享有为代价。因此，以注重人权的方式对待减贫实际上是指从整体入手处理问题，此种方式不仅涵盖经济、社会及文化权利，而且也涵盖公民权利和政治权利。

相互依赖性原则

14. 类似的一点是，依据人权的相互依赖性原则，任何一项人权的落实状况的改善必然关系到所有或至少某些其它人权的落实，不论所涉具体情况如何。例如，如果受教育的权利得不到某种起码的落实，那么谈论知情权也是徒劳无益的；如果参与权以及不论种族、肤色、性别、语言或宗教，人人都能平等参加公务和被视为拥有平等地位的权利遭受侵犯，那么谈论工作权也是毫无意义的。

15. 人权的相互依赖性原则并不要求参照《国际人权宪章》阐明的所有权利界定贫困，但这项原则的确要求采用一项包容性战略处理贫困问题。尽管可以参照一些有限的人权对贫困加以界定——这些权利在各社会不尽相同，虽然经验证据表明，某些权利对所有社会都将是共同的——但一项切实有效的除贫战略自然必须涉及更为广泛的人权。这是因为人权可以在许多方面与贫困相关。

4. 与伙伴的合作和避免重叠的必要性

16. 过去 20 年中，有关方面在制定处理减贫问题的注重人权的方式方面作出了重要的理论贡献，这些贡献尤其来自委员会、小组委员会和联合国条约机构。突出的一点是，在这些贡献基础上，拟订了《准则草案：以注重人权的方式制定减贫战略》。该准则草案是人权事务高级专员办事处应经济、社会、文化权利委员会的请求于 2001 年拟订的。《准则草案》所依据的概念框架载于上述秘书长的报告。

17. 应当与政府、公民社会特别是贫困者及其社区、世界银行、货币基金、联合国系统、捐助界、私营部门以及学术界人士等从事减贫工作的各方行为者进行广泛协商。

18. 具体来说，特设专家组的工作应当了解上述准则草案的试行结果以及开发署通过各项方案开展的减贫和人权活动的情况。¹ 教科文组织举行的由哲学家、人权专家、经济学家、人类学家以及历史学家等参加的以多学科注重权利方式对待减贫问题研讨会，也与这项工作相关。其它机构，如儿童基金会、粮农组织、劳工组织、人口基金以及卫生组织等，也在开展相关的工作。

19. 上述准则草案的概念上的相关性使得本文件内容的用处不言自明²。所以，协调人从该准则草案的内容出发提出了拟订指导原则所需的一个概念框架。

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

² 同上。

B. 拟订关于同贫困包括赤贫作斗争方面的
现行人权准则和标准的指导原则
所需的概念框架建议

20. 在我们的日常生活中，我们往往会以多种不同方式使用“贫穷”(“poor”)一词。例如，我们会把差一点就中彩票头奖的人称为“倒霉的家伙”(“poor chap”)，或者把拥有大量财富却无人可以遗赠的人称为“可怜的老人”(“poor old man”)，等等。所有这些情形中的一个共同因素是某种缺失，这种缺失致使人们使用“poor”一词。不过，当人们将贫困作为一个社会问题加以讨论时，这一概念的范围就要狭窄得多，因为它与经济制约因素造成的缺失密切相关。

21. 基于这些考虑，我们需要一个提到人权未能落实这一点，但同时又与经济资源的制约因素挂钩的贫困的定义。下文认为，Amartya Sen 的能力方式(capability approach)提供了一个能够满足这两个要求的贫困概念。这种能力方式使得贫困概念的范围被明显拓宽——它用从多个方面看待贫困的做法取代了仅仅把眼光停留在低收入方面的做法。学术界以及诸如世界银行和联合国机构等国际组织目前进行的有关贫困问题的讨论，多数都直接或间接借助这一方法。通常，这些讨论并不使用与权利相关的措辞。但只要稍微思考一下就能发现，存在着一种从能力到权利的自然转换。多数人权涉及人类享有某些基本自由，包括免于饥饿、疾病和文盲的权利。能力方式主张从人的自由是否兴盛的角度来评判社会安排的“善良程度”。因而，注重人的自由是将这两种方法联系在一起的一个共同点。所以，从能力角度探讨贫困问题应当能够为从贫困向人权的跨越提供便利。

1. 以能力方式看待贫困

22. 要认识能力在理解贫困方面的作用，我们首先可以提及的是：贫困者的一个显著特点是他谋求福利的机会非常有限。因而，可以将贫困视为低层次的能力，或者用 Sen 的话说，贫困是指“缺乏达到某种起码的可接受程度的基本能力”。³ 在这方面，值得提及的是这一贫困概念的几个特点。

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

23. 首先，并非所有的能力缺乏都能算作贫困。因为贫困指的是一种极端形式的匮乏，因此，只有那些在某种优先顺序中被视为基本要素的能力的缺乏方可算作贫困。不同社会自然会有不同的优先顺序，因而对何为“基本”能力有着不同的看法。

24. 其次，一旦贫困被视为源自一系列基本能力的缺乏，它就随即成为一个涉及多个方面的概念。贫困不再像以往那样被简单地界定为缺乏足够的收入。不过，有必要承认，收入概念——或者笼统地说对经济资源的支配权——的确在界定贫困方面起着重要作用。

25. 为了避免误解，应当在目前作一些说明。首先，尽管贫困概念的确有着不能削减的经济内涵，但这里涉及的概念并不是低收入，而是对经济资源的支配权不充分这一涉及面更广的概念，个人收入不足只是其中的一个可能方面。其它方面有：对公共机构提供的货物和服务的支配权不充分，对共有和共同管理的资源的利用不充分，对通过正规和非正规互助网络提供的资源的支配权不充分，等等。如果一个人对任何此类资源的支配权的缺乏是造成基本能力缺乏的一个因素，该人就可被视为贫困者。

26. 其次，承认贫困有着不可削减的经济内涵，并不一定意味着经济因素在造成贫困方面起着重要作用。例如，如果一个人由于基于性别、种族或任何其它理由的歧视而无法利用卫生保健资源，那么由此造成的健康状况差的结果显然属于一种应当算作贫困的能力缺乏情况，因为无法利用资源这一点起了作用。但是，造成这种情况的首要根源在于社会文化做法以及允许对某些个人或群体实行歧视的政治法律框架，缺乏对资源的支配权只是起了一种中介促成作用。

27. 能力方式将贫困界定为缺乏某些基本自由(例如免于饥饿、疾病、文盲等)或这些自由落实得不够充分。贫困概念之所以注重基本自由，是因为这些自由被确认为对人类起码的尊严至关重要。但是对人类尊严的关注也促成了注重人权的方式的提出，此种方式认为，人类拥有享有这些自由的不可剥夺的权利。如果有人未能获得这些自由，那么显然他享有这些自由的权利就没有得到落实。所以，可以同等地将贫困界定为或是缺乏基本自由——从能力角度看待，或是享有这些自由的权利未能得到落实——从人权角度看待。

2. 以注重人权的方式对待减贫

28. 采用注重人权的方式对待减贫所依据的基本思想是：减贫政策和机构应当明确以国际人权法阐明的准则和价值为基础。国际人权以普遍承认的道德价值观为基础，并且以法律义务为保障，为制定国家和国际政策包括减贫战略提供了一个十分合理的规范框架。

29. 必须在减贫方面使用这一框架的一个理由，是该框架所载的准则和价值观能够扶持贫困者，并使决策者担当起责任。以注重人权的方式对待减贫主要涉及扶持和责任。

30. 使扶持和责任得到落实的最基本的方式，是提出权利概念本身。一旦将此种概念纳入决策过程，减贫的依据就不再仅仅源自贫困者有某些需求这一点，还源自贫困者拥有权利这一点，这些权利引起其它人承担的法律义务。这样，减贫就超出了慈善和道德义务的范围，成为一种法律义务。这种对贫困者的合法权利和他人对贫困者负有的法律义务的确认，是朝向扶持和责任方面迈出的第一步。

31. 注重人权的方式的突出特点包括以下几项原则：明确与国家和国际人权准则、标准和原则挂钩；扶持和参与；责任；不歧视和平等；逐步落实。本文附件将详细探讨这些原则的内容。

3. 以注重人权的方式对待减贫做法的附加价值

32. 这些基本的人权原则迫使决策者关注最为脆弱、处于最为不利地位的人员，这些人往往无法享受“一般进展”的益处。不论用何种方法确定贫困者，注重人权的方式要求此种方式基于一些特殊的考虑。首先，这一做法的目的不应当仅仅提出一个数字，例如贫困者在人口中的比例等，而是应当知道这些人是谁。因此，有必要按性别、地点、种族、宗教、年龄或职业等特性确定贫困现象根深蒂固的特定全体，以便在尽可能分类的层面上处理贫困问题。其次，将需要作出特别努力，找出贫困者中特别孤立无援的人(例如妇女)和特别脆弱的人(例如感染艾滋病毒/艾滋病的人)。在由于资源制约因素而需要确定优先事项的情况下，有必要优先关注这些群体的权利。

33. 换句话说,上面所列原则(还请见附件)的执行使得确定贫困者工作——拟订减贫战略的第一个关键步骤——变得十分独特。

34. 总的来说,以注重人权的方式对待减贫的附加价值可以归纳如下:

- (a) **明确与国家和国际人权准则、标准及原则挂钩**,提供了一个制定、执行、监测和审查除贫政策和战略的合理的规范框架。这对各国和主管对各国具有影响的政策和方案的机构有着相当大的影响。所有当事方都需要将各国的国内和国际人权承诺视为制定和执行减贫政策和战略的规范性基础的一个中心部分;
- (b) **人权通过赋予贫困个人和群体引起对其它人的法律义务的权利来加强扶持和参与**。这些原则还要求不对国家掌控权作狭义解释。除贫政策和战略须由包括贫困者在内的国内所有相关的利害关系方负责掌控。然而,只有在包括贫困者在内的所有利害关系方都切实参与这一进程的所有阶段的情况下,才能做到这一点;
- (c) **人权提高了参与制定、执行、监测和审查除贫政策和战略的各个利害关系方的责任程度**。以注重人权的方式对待减贫的做法强调责任,并要求包括国家和政府间组织在内的所有承担责任者对其与国际人权相关的行为负责;
- (d) **不歧视和平等**这两项原则可以防止贫困者因种族、性别、宗教、地点、职业和年龄等各种原因而处于不利地位或在社会中遭到排斥。这两项原则有助于确保相关措施恰当关注(一)与扶贫政策特别相关的部门(如卫生部门)和分部门(如初级卫生保健部门);以及(二)弱势、边缘、处于不利地位和社会上遭到排斥的个人及群体的特殊状况;
- (e) **逐步落实原则**是指许多人权将逐步并根据资源的备有情况得到落实。据此,某些人权引起的确切义务对同一国而言会逐渐有所不同(逐步落实),而且在各国之间也不尽相同(由于资源的备有情况不同)。承认时间因素和需要排定优先顺序,是不论用何种方式进行决策所具有的共同特点。注重人权的方式的独特之处,在于它对这些特点规定了某些条件,从而使谋求人权不至于以逐步落实为名而仅仅停留在口头上。

三、减贫的扶持环境：援助与合作

35. 没有公正和公平的减贫扶持环境，就无法落实第二章提出的概念框架。这就要求在国家和国际两级以全球公平和分担责任为基础开展援助与合作活动。

36. 在国际一级，《千年宣言》多次申明全球公平和分担责任这两项原则。《千年发展目标》之一，是“逐步建立全球发展伙伴关系”。具体而言，《宣言》承诺建立一个“开放、公平、基于规则、可预测及非歧视的多边贸易和金融体系”。人们现在普遍认识到，要切实有效地减贫，就需要采取国际行动。⁴

37. 获得援助、享受债务减免、市场准入、获取和利用大量负担得起的资本，以及全球经济稳定等，对决策者制定和执行减贫政策和战略之时可利用的办法产生着影响。在国际人权法中，全球公平和分担责任的原则也体现在国际援助与合作概念中。

38. 人权方面的国际援助与合作义务在多处得到提及。《世界人权宣言》第二十二条规定：“每个人……有权享受他的个人尊严和人格的自由发展所必需的经济、社会和文化方面各种权利的实现，这种实现是通过国家努力和国际合作……”《经济、社会、文化权利国际公约》在五个条款中提到国际援助与合作或载有类似的提法；最近的另一项具有约束力的条约即《儿童权利公约》也对这项权利作了规定。国际援助与合作可被视为在《维也纳宣言和行动纲领》(1993)中申明的发展权这项更为广泛的权利的一个组成部分。最近，147个国家元首和政府首脑——共有191个

⁴ 开发署《2000年人类发展报告》指出：“不采取更加有力的国际行动，就不能普遍落实人权和实现人类发展，采取此种行动尤其是为了支持处于不利地位的国家和人民，国家抵消越来越严重的全球不平等和边缘化现象。”该报告还说：“为了使最贫困和最不发达国家充分落实各项权利，援助、债务减免、市场准入、获取和利用个人资金以及稳定全球经济等不可或缺。”开发署《2000年人类发展报告》，p.12。世界银行《世界发展报告》(2000-1)提出了类似的看法：“需要在许多领域采取国际行动，特别是需要工业国家采取行动，以便确保发展中世界的穷国和贫困者获得益处。更多地关注债务减免，以及采取相关步骤使以援助方式进行的发展合作更为有效，是此类行动中的一部分。贸易、疫苗、缩小数字和知识鸿沟等方面的行动同样十分重要，这些行动能够增加贫困者的机会，进一步扶持贫困者，并增强贫困者的安全。”世界银行，《2000/2001年世界发展报告：同贫困作斗争》，p.11。

国家——在《千年宣言》中明确承认落实发展权与减贫这两者的联系，承诺使“人人都能享有发展权”，并且使“全人类都免于匮乏”。

39. 国际人权法中的国际援助与合作义务的范围尚未得到明确规定。不过，原则上，这要求：所有能够提供援助者都应当首先不作出使贫困者更加难以落实其人权的行爲，其次采取措施消除阻碍贫困者落实其人权的障碍。因此，国际援助与合作不应当理解为仅涵盖资金和技术援助，此种援助与合作还包括作出积极努力，逐步建立有助于减轻并铲除贫困的公平的多边贸易、投资及金融体系的义务。

四、建 议

40. 协调人提出以下建议供特设专家组和小组委员会审议：

- (a) 在本文件第二章 B 节提出并在附件中得到详述的概念框架基础上进行广泛磋商，并设法与从事减贫工作的各个行为者进行合作；
- (b) 根据现有和仍在进行的行动审查 E/CN.4/Sub.2/2002/15 号文件所载的工作方案，这些活动的目的是澄清人权与贫困包括赤贫的关系，并向发展行为者提供关于如何将人权纳入除贫政策和战略的业务指导意见；
- (c) 在上述概念框架基础上就需要拟订指导原则一事向小组委员会五十六届会议提交中期联合工作文件，并酌情列出具体要点。

41. 这份将提交小组委员会第五十六届会议的中期联合工作文件可以研究以下两个问题：

- (a) 有必要注重人权与总体贫困和赤贫之间的关系，不对总体贫困和赤贫作任何概念上的区分；
- (b) 采用从整体入手的方式对待减贫，恰当尊重人权的普遍性、不可分割性和相互依赖性原则。

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.

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.

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