



Asamblea General

Consejo de Derechos Humanos 20º período de sesiones Tema 3 de la agenda Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Informe del Experto independiente sobre las consecuencias de la deuda externa y las obligaciones financieras internacionales conexas de los Estados para el pleno goce de todos los derechos humanos, sobre todo los derechos económicos, sociales y culturales, Cephas Lumina

Adición

Misión a la República Democrática del Congo * **

Resumen

El Experto independiente sobre las consecuencias de la deuda externa y las obligaciones financieras internacionales conexas de los Estados para el pleno goce de todos los derechos humanos, sobre todo los derechos económicos, sociales y culturales, visitó la República Democrática del Congo del 25 de julio al 5 de agosto de 2011. El principal objetivo de la misión era evaluar la forma en que la carga de la deuda externa del país afectaba la capacidad del Gobierno de crear las condiciones necesarias para la realización de todos los derechos humanos, particularmente los derechos económicos, sociales y culturales, y de avanzar hacia los Objetivos de Desarrollo del Milenio. El Experto independiente también estudió los efectos de la recesión económica mundial en la carga de la deuda del país, así como la repercusión de los litigios con los acreedores comerciales en el alivio de la deuda, los derechos humanos y el desarrollo.

La República Democrática del Congo ha logrado importantes progresos socioeconómicos desde 2001. En 2010, el país alcanzó la culminación de la Iniciativa para la reducción de la deuda de los países pobres muy endeudados, con lo cual obtuvo acceso a un alivio de la deuda que debería reducir considerablemente su deuda externa (estimada en 13.100 millones de dólares en 2009) y ofrecer un espacio fiscal para el gasto en reducción de la pobreza. A pesar de haber aumentado el gasto destinado a reducir la pobreza, el acceso a los servicios básicos es insuficiente, y el costo y la calidad de los servicios siguen siendo motivo de preocupación.

El país se enfrenta asimismo a diversas dificultades críticas en materia de desarrollo, en particular a problemas fundamentales posteriores al conflicto como la reconstrucción y rehabilitación de su dilapidada infraestructura socioeconómica, la inestable situación en materia de seguridad en varias partes del país, la falta de transparencia y de rendición de cuentas en la gestión de las finanzas públicas, una corrupción generalizada y la movilización ineficaz de los recursos internos. Al mismo tiempo, sigue enfrentándose a un elevado riesgo de caer en una situación crítica causada por el sobreendeudamiento. A menos que se les haga frente, estos problemas seguirán menoscabando la agenda de desarrollo del país.

Anexo

[English and French only]

Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, on his mission to the Democratic Republic of the Congo (25 July – 5 August 2011)

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I. Introduction

1. In the present report, the Independent Expert presents the findings of his official visit to the Democratic Republic of the Congo, from 25 July to 5 August 2011. The purpose of the mission was (a) to assess the impact of the country's external debt burden on the capacity of the Government to create the necessary conditions for the realization of all human rights, especially economic, social and cultural rights, and to progress towards the Millennium Development Goals; (b) to explore the impact of the global economic recession on the country's external debt burden; and (c) to evaluate the impact of commercial creditor litigation against the country on debt relief, the realization of human rights and development.

2. The Independent Expert met with senior Government officials, including the Deputy Prime Minister in charge of Social Affairs, the Minister for Justice and Human Rights, the Deputy Minister for Finance, the Minister for Health, the Minister for Social Affairs and the Governor of Katanga. He also met with representatives of the country's bilateral and multilateral development partners, including the World Bank, the African Development Bank, and countries with representation in the Democratic Republic of the Congo. Furthermore, he held round-table meetings with civil society organizations in Kinshasa and Lubumbashi. The Independent Expert delivered a public lecture at the University of Lubumbashi on the negative impact of vulture funds on human rights and development. He regrets that, despite several attempts, he was unable to meet members of the National Assembly committees responsible for public finance and social affairs or representatives of the International Monetary Fund (IMF) in the country.

3. The Independent Expert is grateful to the Government of the Democratic Republic of the Congo for its invitation and cooperation. He is also thankful to the United Nations Joint Human Rights Office for its support and interest in his visit, and to all those that met with him.

II. Political and economic context

A. Overview

4. The Democratic Republic of the Congo (formerly Zaire), a country with vast natural resources, has recently emerged from several decades of dictatorship and armed conflict. For most of the period since independence from Belgium in 1960, the country was ruled by Mobutu Sese Seko, who usurped power in a military coup in 1965. Mobutu's rule was epitomized by economic mismanagement, pervasive corruption, embezzlement of the country's resources and repression.

In May 1997, the Alliance of the Democratic Forces for the Liberation of Congo-Zaire, led by Laurent Desire Kabila, ousted the Mobutu regime. In 1998, war broke out again with a rebel movement against Kabila.

In August 1999, the Security Council authorized the deployment of United Nations military liaison personnel to the country. In November, the Council adopted resolution 1279 (1999), in which it affirmed that the previously authorized United Nations personnel would constitute the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC). Subsequently, the

Council adopted a number of resolutions to strengthen MONUC and its mandate.

In 2001, Laurent Kabila was assassinated by one of his own bodyguards and was succeeded by his son, Joseph. In December 2002, a peace agreement signed in South Africa by the Government of the Democratic Republic of the Congo, the Congolese Democratic Rally, the Movement for Congolese Liberation and representatives of the unarmed political groups called for a transitional Government, to be headed by President Kabila and four vice-presidents.

In July 2006, the country held its first democratic election in four decades. In October, President Kabila won the second round of presidential elections.

Since 2001, there has been progress in moving the country from political instability and armed conflict to relative stability, in most regions of the country. Nevertheless, the presence of armed groups in the eastern part of the country remains a key source of instability and a significant challenge to the Government's development plans. Moreover, socio-economic conditions remain desperate following years of armed conflict, which exacted an enormous human cost and the destruction of the country's infrastructure. Consequently, although endowed with vast natural resources, the country's per capita income and human development indicators remain among the lowest in the world.

B.External debt

As at the end of the 2008, the total public and publicly guaranteed external debt of the Democratic Republic of the Congo was estimated at \$13.1 billion, equivalent to 93 per cent of GDP, 150 per cent of exports and 502 per cent of Government revenues, ratios that pointed to a "high level of debt distress". Of the \$13.1 billion, \$7.1 billion was owed to bilateral creditors, \$4.4 billion to multilateral institutions and \$1.5 billion to commercial creditors. Arrears were estimated at \$3.3 billion, of which \$1.5 billion was owed to Paris Club creditors. Debt servicing amounted to 25 percent of total expenditure.

The total external debt stock was projected to fall to \$5.4 billion in 2011 and to rise to \$6.4 billion and \$7.8 billion in 2012 and 2014, respectively. In 2008, debt service payments were estimated at \$891 million, but were projected to fall to \$346.6 million in 2011 before rising to \$430.4 million in 2012.

The bulk of the country's external debt was contracted before 1990, when Mobutu was President and a significant proportion of the funds that flowed into the country were embezzled by his Government. Arrears constitute a considerable proportion of the debt stock.

In 1970, the total external debt was \$346 million. At the time of Mobutu's ousting in 1997, the country's total debt stock stood at \$12.3 billion; in 1998, it was \$13.187 billion. During the 1970s, a number of loans were extended by IMF, the World Bank and other creditors for projects that were neither assessed for their feasibility nor properly planned. Most of these projects failed, leaving the country with massive debts to be repaid by the citizens of the country who derived no benefit from them. Furthermore, creditors extended loans to the Mobutu regime with full knowledge of its pervasive corruption, extravagance and repression because of its strategic importance in the Cold War and because of the perception that there were no viable alternatives to Mobutu. The absence of constitutional safeguards made it easy to borrow irresponsibly and for projects that had no developmental benefit and failed to generate resources necessary to service external debts.

In 1982, Erwin Blumenthal, the resident representative of IMF in the Democratic Republic of the Congo, reported that there was "no, I repeat no, chance on the horizon for Zaire's numerous creditors to get their money back ... Mobutu and his government show no concern about the question of paying off loans and the public debt ... [There] was and there still is, one sole obstacle that negates all prospect: the corruption of the team in power." Despite this warning and widespread knowledge of its corruption, IMF lent the Mobutu regime over \$600 million in the early 1980s, while the World Bank provided \$650 million. Western Governments lent over \$3 billion over the same period.

Although the Democratic Republic of the Congo is today the world's poorest country, its creditors have never acknowledged that its debt should be cancelled because of their irresponsible behaviour or that it is odious. The Independent Expert calls upon the country's creditors to unconditionally cancel what remains of the Mobutu era debt and, in this way, afford the people of the Democratic Republic of the Congo an opportunity to make a fresh start and to consolidate the stability that the country has achieved after decades of economic mismanagement and plunder of its resources. Creditors can accept shared responsibility for mistakes made in the past. In 2006, Norway cancelled \$80 million worth of debt owed by five developing countries, thereby acknowledging that it "shared responsibility" for these debts.

In July 2003, the Democratic Republic of the Congo reached the decision point under the Heavily Indebted Poor Countries (HIPC) Initiative, thereby qualifying for interim debt relief. In November 2003, the Paris Club creditors agreed to reschedule the country's debt under Cologne flow terms. According to IMF, the amount of debt relief committed at the decision point was \$6.3 billion in present value terms calculated as at December 2002. This relief represented an overall reduction of 80.2 per cent in present value of all public and publicly-guaranteed external debt as at end December 2002 after traditional debt relief.

In June 2006, however, IMF suspended interim assistance when the Poverty Reduction and Growth Facility programme "went off track". The Paris Club also discontinued its interim debt relief and only resumed it in February 2010, following IMF approval, in December 2009, of a new poverty reduction and growth facility arrangement that allowed the Democratic Republic of the Congo to draw \$551 million over three years, provided that the Government implemented the fiscal and economic reforms supported by the facility. According to the Government, the macroeconomic programme went off track because "the momentum of the reform proved difficult to sustain on account of the continued conflict in the eastern provinces and the preparations for the first national election in 40 years."

From 2003 to 2009, the Democratic Republic of the Congo received interim debt relief of \$1.3 billion (approximately \$187 million

per year). During the same period, poverty reduction expenditure rose from 4 per cent to 18 per cent of total national spending.

In June 2010, the country reached the HIPC Initiative completion point, thereby gaining access to \$12.3 billion in debt relief: \$11.1 billion under the HIPC Initiative and \$1.2 billion under the Multilateral Debt Relief Initiative. Of this, \$491 million was to be provided by IMF, \$1,832 million from the International Development Association, and the balance from bilateral and commercial creditors.

Under the Multilateral Debt Relief Initiative, the International Development Association would provide debt relief by cancelling the country's debt service obligations for credits disbursed before the end of 2003 and still outstanding at the end of September 2010, averaging debt service savings of \$28.4 million per year until 2043. The African Development Bank would provide relief amounting to \$162.8 million in nominal terms beginning from completion point. This amount is based on debt disbursements as of 31 December 2004 and still outstanding on 1 July 2010, providing savings of \$3.9 million per year until 2053.

In February 2010, the Paris Club announced that it would cancel or reschedule almost half of the \$6.9 billion owed by the Democratic Republic of the Congo. The restructuring agreement covered \$3 billion, of which \$1.3 billion would be cancelled and \$1.7 billion rescheduled. In addition, the Paris Club deferred all debt service payments by the country until July 2012 owing to the "exceptional circumstances of the Government's inability to service its debt". Nonetheless, the Independent Expert is of the view that the rescheduling of the country's debt service obligations does not resolve the debt crisis; it merely postpones the problem. In addition, given the historical circumstances surrounding the build up of the country's external debt, and in particular the odious nature of most of it, it is important that creditors fully acknowledge their role in the build-up of the debt and unconditionally cancel the remaining debt. This proposal is fully consistent with the principle of shared responsibility of creditors and debtors for preventing and resolving unsustainable debt situations, which is enshrined in the Monterrey Consensus. The Independent Expert also encourages the Government and its partners to commit fully to the responsible financing framework proposed by the United Nations Conference on Trade and Development, as well as the proposed guiding principles on foreign debt and human rights.

According to IMF, full delivery of HIPC Initiative debt relief, additional bilateral assistance beyond debt relief under that Initiative and the Multilateral Debt Relief Initiative at the completion "would reduce the DRC's external debt burden significantly". Thus, the ratio of present value of debt-to-exports at the end of December 2010 would fall to 57.5 per cent after delivery of Multilateral Debt Relief Initiative assistance; this ratio is predicted to increase until end December 2013 mainly owing to new borrowing. IMF estimated, the present value of external debt at the end of 2010 at \$3.7 billion, and that this would rise to \$4.9 billion in 2011 and \$5.9 billion in 2012.

It is estimated that debt relief reduced debt servicing to 2.9 per cent of goods and services exports in 2010 (from 21.2 per cent in 2009) and to approximately 1 per cent in 2011. External debt service after full debt relief was estimated at \$216.2 million for 2010, \$92.3 million in 2011 and \$107.4 million in 2012. According to the Government, however, the projected service payments for 2011 amounted to \$159.3 million. These contradictions underscore the need for an audit of the country's public debt.

The resources freed up by HIPC Initiative debt relief are meant to be spent on poverty reduction. According to IMF, however, in 2003, spending on health, education and agriculture was "extremely modest". In the period from 2003 to 2009, the Democratic Republic of the Congo received interim debt relief of \$1.3 billion (approximately \$187 million per year), while on average non-security priority spending increased. In 2003, the country received \$90 million of debt relief, while its expenditure on health, education, and agriculture and rural development was \$22.4 million. In 2009, debt relief amounted to \$376 million and total expenditure was \$374 million: \$63.3 million (or 3 per cent of the budget) was allocated to health, \$225.4 million (10.8 per cent) to education and 85.3 million (4.1 per cent) to agriculture and rural development. As a share of total Government expenditure, spending on health, education and agriculture rose from 4 per cent in 2003 to 18 per cent in 2008 and 2009. These figures suggest that the use of budgetary savings from HIPC-related debt relief for poverty-related expenditure increased in the period 2003-2009.

Owing to the lack of up-to-date information, however, it is difficult to ascertain the gains from debt relief in monetary terms. According to some of the country's development partners, although debt relief provided to the country amounted to \$12.3 billion in 2010, in reality the fiscal space afforded by debt relief amounted to about \$300 million. The reason for this is that the country had long been unable to service its debt, and the relief provided included loans that were not being repaid. Consequently, the size of the budget has not increased as much as one would expect. In addition, most creditors have continued to record debt relief as official development assistance (ODA), inflating aid figures and thereby presenting an incorrect picture of the amount of actual aid that can contribute to poverty reduction. Significantly, debt relief has not been accompanied by fresh additional ODA.

What remains unclear, however, is how the amount of \$300 million has been allocated to basic social services. Government officials indicated that it would only be possible to make this assessment once the 2012 budget, the first since the country reached Heavily Indebted Poor Country completion point, has been finalized.

Notwithstanding the lack of information concerning the actual gains from debt relief, the Independent Expert considers that, in line with the aim of debt relief, the fiscal space provided by debt relief should be directed to poverty alleviation and the establishment of conditions for the realization of human rights, particularly economic, social and cultural rights (such as education, health and water). In this connection, he emphasizes that the International Covenant on Economic, Social and Cultural Rights, to which the Democratic Republic of the Congo is a party, imposes an obligation on the State to use the maximum of its available resources for the realization of the human rights elaborated in the Covenant.

It is important to underscore that debt relief has not been delivered exclusively in the form of debt cancellation; rather, most relief has been delivered through debt service reduction, restructuring of arrears, moratoriums on interest and rescheduling of arrears. This does not necessarily free up new money, because the country has had limited capacity to repay its debts.

C. Debt sustainability

In 2009, IMF and the World Bank estimated that all of the country's debt burden indicators would deteriorate significantly that year

owing to declines in GDP, exports and Government revenue in the wake of the global economic recession and the decline in world commodity prices. The joint IMF/World Bank debt sustainability analysis concluded that the Democratic Republic of the Congo remained in debt distress and that “even after HIPC/DRI debt relief, the external debt outlook would be vulnerable to adverse shocks”. In 2010, IMF reported that the country “would continue to face a high risk of debt distress after receiving debt relief from all creditors under the enhanced HIPC Initiative and MDRI”, and that “the [present value] of external debt-to-GDP indicator breaches the policy-dependent threshold in the baseline scenario and the external debt outlook is vulnerable to adverse shocks”. However, it attributed the breach to “a public guarantee on external borrowing to finance public infrastructure projects under the [Sino-Congolese cooperation agreement]” and argued that, “without the guarantee, all indicators would remain well below their respective thresholds” and the risks to debt sustainability manageable. IMF noted, however, that “the future evolution of these indicators is highly uncertain and will depend on several factors, particularly economic growth and the terms of new external financing”. As the global recession has demonstrated, the country is highly vulnerable to external shocks; there is therefore a need for its development partners to provide grants or concessional loans in order to prevent the build-up of unsustainable debt.

As indicated in previous reports, the Independent Expert considers that the IMF/World Bank debt sustainability analyses have severe shortcomings, including the fact that they are based on over-optimistic assumptions. More particularly, he is concerned that these analyses fail to take into account other demands on public resources, including those required for the realization of the Millennium Development Goals and social investment.

The Independent Expert welcomes the Government’s commitment to pursue a “cautious external borrowing strategy” and to seek foreign loans on highly concessional loans with a minimum grant element of 35 per cent. He urges the country’s development partners to provide grants.

III. Legal and policy frameworks on human rights, debt and development

A. Human rights obligations

The Constitution of the Democratic Republic of the Congo reaffirms the adherence of the State to the Universal Declaration of Human Rights, the African Charter on Human and Peoples’ Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and other international human rights instruments. Title II of the Constitution (which has three chapters devoted to human rights and one to the duties of the citizen) provides for human rights, fundamental liberties and the duties of the citizen and the State. Chapter 1 guarantees a number of civil and political rights, including equality and equal protection of the law (art. 12); non-discrimination (art. 13); equality and non-discrimination against women (art. 15); life, physical integrity and free development of personality, and the prohibition of slavery, cruel, inhumane and degrading treatment, and forced or compulsory labour (art. 16); personal liberty (art. 17); due process (arts. 18-21); freedom of thought, conscience and religion (art. 22); freedom of expression (art. 23); freedom of information (art. 24); freedom of peaceful assembly (art. 25); freedom of demonstration (art. 26); right to submit petitions to public authorities (art. 27); inviolability of domicile (art. 29); freedom of movement (art. 30); privacy (art. 31) and asylum (art. 33).

Chapter 2 enshrines a number of economic, social and cultural rights, including the rights to property (art. 34); work, equitable and satisfactory pay and social protection (art. 36); freedom of association (art. 37); to establish or belong to trade unions (art. 38); to strike (art. 39); to marry a person of the opposite sex (art. 40); education, including free and compulsory primary education in public institutions (arts. 43 and 45); culture and intellectual property (art. 46); health and food security (art. 47); and decent housing, access to drinking water and electric energy (art. 48). There are also provisions for the protection of the young and the elderly.

In chapter 3, the Constitution guarantees a number of collective rights, including the rights to national and international peace and security (art. 52) and to a healthy environment favourable to development (art. 53). Articles 56 to 58 contain provisions that are designed to ensure that the country’s wealth benefits its people. Article 56 provides that any action or convention that deprives the nation, individuals or legal entities of their natural resources constitutes the crime of “pillage”. This provision is a potentially useful one, given that the country has suffered and continues to suffer from illegal exploitation of its natural resources. Article 58 provides for the right to national wealth and the duty of the State to redistribute wealth equitably and to safeguard the right to development.

These constitutional guarantees are complemented by the standards in the core international human rights treaties to which the State is a party.

B. Human rights institutions

Article 150 of the Constitution provides that the courts are the guarantors of the fundamental rights and civil liberties of citizens. Nonetheless, there are concerns about the ability of the courts to enforce the rights enshrined in the Constitution effectively. According to reports and information received by the Independent Expert during his mission, the country’s judicial sector is largely underresourced, corrupt and inefficient.

37. The Independent Expert is concerned about the lack of a national institution for the promotion and protection of human rights in conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

38. During his visit, the Independent Expert was informed of a bill on a national human rights commission currently before the National Assembly for discussion and adoption. The Independent Expert urges the Government to ensure that the bill provides for a national institution that is fully compliant with the Paris Principles.

C. Legal provisions and policy on public debt

39. Although the Constitution contains a number of provisions relating to public finance management, there is no specific law governing loan negotiation, debt contraction or the management and use of loan funds. According to article 122 of the Constitution, public finances, public loans and the financial commitments of the State, and public monetary and fiscal matters all fall under the legislative branch of Government; in other words, Parliament is meant to play a legislative role in public financial management. This role is, however, largely confined to adoption of the annual budget of the State. Although article 131 gives the National Assembly an oversight role, it appears that this role is limited.

Article 177 establishes an audit office (*Cour des comptes*) subject to the authority of the National Assembly, with responsibility for controlling the conditions for the management of public finances. Article 181 provides for the establishment of a national trust for equal development (*Caisse nationale de péréquation*) to finance public investment projects and programmes in order to address the problem of uneven development among the provinces.

In terms of Decree No. 09/61 of 3 December 2009, responsibility for the analysis and management of the country's public debt, including external debt, lies with the Directorate for Public Debt Management (*Direction générale de la dette publique*), an agency within the Ministry of Finance. The decree does not, however, provide for a role for Parliament in public debt management. Furthermore, although the Directorate is meant to produce biannual statistical bulletins and quarterly forecasts of public debt service, it was unable to provide the Independent Expert with up-to-date information on the country's debt stock and debt service obligations. In the absence of up-to-date information released in a timely fashion, it is difficult for the Government to manage its debt properly or to be held accountable. The Independent Expert urges the Government to make a greater effort to address this problem.

The Independent Expert encourages the Government to include provisions on public debt in the Constitution and to enact comprehensive legislation on debt.

D. National development policy

43. In February 2007, the National Assembly approved a five-year development programme known as *cinq chantiers*. The programme, based on the poverty reduction and growth strategy paper adopted in 2006, focuses on five pillars: (a) to promote peace and good governance; (b) to consolidate macroeconomic stability and promote economic growth; (c) to improve access to social services; (d) to combat HIV/AIDS; and (e) to promote a dynamic community. The strategy aims to align the poverty reduction strategy paper with the prospect of attaining the Millennium Development Goals.

44. The Government also has a long-term development strategy, known as *Vision 26/25*, which envisages building a society of hope based on (a) national unity and territorial integrity; (b) security, justice, equality and the rule of law; (c) work, wealth, prosperity and sustainable development; and (d) peace and national solidarity. The Vision aims to help the country progress towards human development and the Millennium Development Goals. In addition, the Government has adopted sectoral development strategies. On 18 March 2010, the Council of Ministers adopted the Basic Education Strategy, together with a plan of action. The strategy is aimed at ensuring more equitable and sustainable access to basic education of acceptable quality.

45. On 31 March 2010, the Ministry of Health and its development partners adopted a national health sector strategy and a national health development plan for the period 2011-2015. The strategy focuses on, inter alia, the revitalization of health zones, the strengthening of Government ownership and leadership, the development of human resources, and health financing reform. The overarching objective of the plan, which also serves as the common framework for the Government and its partners in the realization of the Millennium Development Goals, is to contribute to the improvement of the general health status of the population and the containment of epidemics and contagious diseases, while the sector objective is to ensure the population's access to primary health care, with a special focus on vulnerable groups.

IV. Impact of debt on human rights and development

A. External debt and human rights

46. It is widely accepted that excessive external debt burdens can have an adverse effect on the enjoyment of human rights, particularly economic, social and cultural rights, as well as on human development. As indicated above, a significant proportion of the national budget of the Democratic Republic of the Congo is spent on debt service. Although the attainment of the completion point under the Heavily Indebted Poor Countries Initiative and anticipated debt relief has raised a high level of expectation in the country, it is yet unclear how the debt relief savings will translate into improved general living standards.

47. Nevertheless, based on the examples of other countries that have benefitted from international debt relief (such as Bolivia (Plurinational State of), Malawi, Uganda, the United Republic of Tanzania, and Zambia), and provided they are properly invested, it can be argued that the gains from debt relief can contribute to the establishment of conditions necessary for the realization of human rights, such as education, health, water and sanitation.

B. Millennium Development Goals

48. Poor quality or almost non-existent statistical data undermine efforts to assess and monitor the Millennium Development Goals and their indicators. Nonetheless, reports and anecdotal information provided by the Government indicate that the country has made some progress on health and education, but progress on the Goals for reducing extreme poverty and hunger, gender equality and the fight against HIV/AIDS, malaria and other diseases remains insufficient. The country is unlikely to achieve most of the Goals by the target date.

The percentage of the national budget allocated to education rose from 5 per cent in 2001 to 11.17 per cent in 2008, although this remains well below the 20 per cent allocation advocated by the Global Campaign for Education. Net primary school enrolment

increased to 62 per cent in 2007 (from 52 per cent in 2001). In September 2010, the Government introduced free primary schooling for the first three years throughout the country, except in Kinshasa and Lubumbashi.

The effective delivery of quality education has been hampered by several factors, including poor infrastructure, shortage of human and financial resources, underqualified teachers, poor salaries (which are irregularly paid), widespread corruption, lack of transparency and poor management of funds. An additional factor is the division of responsibility for education among a number of ministries, leading to lack of coordination and dispersal of already low levels of expertise. Educational planning is also hampered by deficits in the baseline data about the present state of the education system. Poor management of education funds makes it difficult to mobilize international support.

As a share of total expenditures, Government spending on health increased from 1 per cent (\$5.8 million) in 2003 to 3 per cent (\$63.3 million) in 2009. The reason for such modest increases is that the Government has been forced to spend more on security owing to the instability in the eastern part of the country. Nevertheless, this expenditure is insufficient for a country the size of the Democratic Republic of the Congo.

With help from its development partners, the Government is trying to increase access to the basic water supply and to sanitation. The World Bank has launched an urban water programme (Projet d'eau en milieu urbain) to reform Regideso, the State water company. The Independent Expert is concerned, however, that if these reforms entail privatization and the introduction of user fees, access to water for most of the population, especially the poorest, may be limited.

53. In comparison with other countries in the region, the Democratic Republic of the Congo fares poorly in human development terms: it is ranked 187 out of 187 countries; its gross national income per capita is \$280 (regional average is \$1,966); the under-5 mortality rate is 199 per 1,000 live births (regional average is 127); the maternal mortality ratio is 670 per 100,000 live births (regional average is 620); life expectancy at birth is 48.4 years (the regional average is 54.4 years); 71.3 per cent of the population live beneath the poverty line (with 46.5 per cent of the population living in extreme poverty); 55.5 per cent lack access to safe water; and 62 per cent lack access to improved sanitation.

C. Vulture funds, debt relief, human rights and development

54. The Democratic Republic of the Congo currently faces a number of lawsuits from commercial creditors (commonly termed “vulture funds” or “distressed debt funds”) that have purchased its debt at significant discounts and then aggressively sought to recover amounts that are vastly in excess of what they paid for the debt. The Government does not seem to have a complete picture of the debts involved; however, one of the most widely publicized cases is that involving FG Hemisphere Associates LLC (now FG Capital Management). The debt in question arose from a 1980s agreement for the construction of energy infrastructure by Yugoslavian company Energoinvest DD. The project was financed through a credit provided by Energoinvest to the State-owned electricity company (Société nationale d'électricité) and guaranteed by the Government, both of which defaulted on repayments. In accordance with the agreement, the matter was referred to arbitration by the International Chamber of Commerce, which the Democratic Republic of the Congo did not attend. In 2003, two arbitral awards were granted in favour of Energoinvest for a total of \$39 million, including 9 per cent interest and the cost of arbitration. In 2004 and 2005, the United States District Court for the District of Columbia confirmed the awards. Energoinvest then sold its interests in the arbitral awards and judgements to FG Hemisphere. Since 2005, FG Hemisphere has sued the Democratic Republic of the Congo for more than \$100 million in the Bahamas, Europe, Hong Kong, South Africa, Australia and the United States of America in a bid to enforce the arbitral awards.

Apart from FG Hemisphere, two other vulture funds – Themis Capital and Des Moines Investment Ltd – have filed suits against the Democratic Republic of the Congo and its Central Bank to recover approximately \$74 million in principal and interest allegedly owing to them under a refinancing and credit agreement dated 31 March 1980.

By forcing such an impoverished country to divert its scarce resources from social investment and poverty reduction programmes, vulture funds are undermining the core objectives of international debt relief efforts. They are also undermining the country's development and the capacity of its Government to create the conditions for the realization of human rights, particularly economic, social and cultural rights.

The Independent Expert is concerned that the Government does not have the capacity to respond effectively to the claims of the vulture funds owing due to the weakness of State institutions and the inadequacy of information concerning vulture fund claims. In particular, there appears to be a lack of coordination between the Ministry of Justice and other relevant State entities, including the Directorate for Public Debt Management. In order to be able to effectively resist the claims of vulture funds, the Government needs a comprehensive picture of the country's external debt, including amounts and entities involved, and must ensure proper sharing of information between relevant Government departments.

Additionally, there is a need for more robust international action to curb the predatory activities of vulture funds. The Independent Expert notes that some of the country's creditors (notably the Paris Club) have resolved not to sell sovereign debts to third parties. Such political declarations are, however, insufficient; legislative action (similar to that adopted in the United Kingdom in 2010) is required to deal with the problem. As the Independent Expert has underlined on previous occasions, it is illogical for sovereign creditors to grant debt relief while allowing vulture funds to use their courts to recover excessive amounts from impoverished countries.

Lastly, the Independent Expert notes that there is nothing that legally prevents vulture funds from seeking to recover payments for debts owed by poor countries. Nevertheless, he considers that the odious nature of many of the debts incurred by the country may make it unethical or even illegal to seek repayment.

V. International assistance and cooperation

A. Development partners

60. According to the Organization for Economic Cooperation and Development, net ODA to the Democratic Republic of the Congo amounted to \$2.3 billion in 2009 and \$3.4 billion in 2010. Of this amount, a large proportion was devoted to debt relief, while the balance was devoted to humanitarian relief, health and population, and education.

The country's multilateral development partners include the World Bank, IMF, the African Development Bank and the United Nations. In 2011, the African Development Bank had a portfolio of \$696.88 million, devoted to infrastructure (72.2 per cent), agriculture and rural development (14.1 per cent), social sectors (9.1 per cent) and multi-sectoral activities (4.6 per cent). The World Bank has a portfolio of \$2.9 billion, focusing on infrastructure (60 per cent), human development (20 per cent) and governance (20 per cent). The governance aspect of the Bank's portfolio is mainly concerned with improving economic governance and the business climate.

United Nations assistance to the country is provided through the United Nations Development Assistance Framework (2008-2012), which identifies good governance, pro-poor growth, basic social services and HIV/AIDS as priority areas for the Organization's intervention. United Nations agencies and programmes also provide technical assistance in several areas, including transitional justice (OHCHR), anti-corruption (the United Nations Development Programme (UNDP)), literacy programmes for the military (United Nations Educational, Scientific and Cultural Organization) and immunization (United Nations Children's Fund).

The country also has partnerships with emerging countries, including Brazil, China, India and the Republic of Korea. China is involved in several economic sectors and projects as part of a long-term cooperation agreement with the Government, whereby China builds infrastructure in exchange for mining concessions. It is also assisting with major projects in education (two universities), health (31 hospitals and 145 health clinics), water supply, electricity and rural development, funded in the period 2009-2010 by grants amounting to CNY 140 million, interest-free loans (CNY 150 million) and soft loans. The latter consists of CNY 2.348 billion (including CNY 490 million to upgrade telecommunications and CNY 1.758 billion to build a national optic fibre network).

India is providing low-interest credit lines over a period of at least 25 years, together with capacity-building. It is also providing training and university scholarships. Development assistance from Brazil and the Republic of Korea focuses on technology transfer and provision of training and university scholarships.

Emerging partners generally attach no sensitive conditions to aid, such as good governance, privatization and trade liberalization, which are typically imposed by "traditional" partners and focus on neglected sectors. Moreover, these partnerships, which subcontract to local firms, have produced significant benefits, including employment, cheaper consumer goods and technology transfer. These are investments desperately needed in a country ravaged by more than 30 years of economic decline, political instability and armed conflict.

The multiplicity of development partners poses a challenge for aid coordination. Nonetheless, it is unclear which Government department is responsible for aid coordination. In June 2009, a high-level forum on aid effectiveness adopted the Kinshasa agenda, which provides for better coordination of resources provided by international development partners. The agenda also called on the Government to take certain measures, including the formulation of a policy on the management of external resources and reforms in the areas of public procurement, decentralization, the public sector, the fight against corruption, and accountability.

B. Foreign investors

67. In recent years, the Democratic Republic of the Congo has attracted large volumes of foreign direct investment (FDI), particularly in the extractive industries sector. Numerous concerns have, however, been raised about the lack of transparency in the negotiation and signing of agreements relating to these investments, as well as with regard to the failure to properly assess Congolese assets prior to deals and the lack of real benefit to the Congolese people. One notable example is the Tenke Fungurume Mining SARL project, a joint venture between Freeport-McMoRan Copper and Gold Inc. (United States, 57.75 per cent), Lundin Mining Corporation (Canada, 24.75 per cent) and the Congolese State-owned company, Gecamines (17.5 per cent). The project contract was signed in July 2005 (during the country's transition period) after a hasty and mostly opaque negotiation process. In July 2007, when the contract was being reviewed by an inter-ministerial commission established by the Government to "examine partnership contracts and their impact on the recovery of these companies and national development, to propose, if necessary, modalities for their revision with a view to correcting any imbalances and related faults", the European Investment Bank extended a EUR 100 million loan for the project. Such irresponsible investment casts doubts on the Bank's professed commitment to the Extractive Industries Transparency Initiative, which aims to strengthen transparency and accountability in the extractives sector. The commission reviewed more than 60 contracts signed between private companies and the State or State-owned enterprises, and recommended that some contracts (including that of the project) be renegotiated. It is unclear, however, whether the Government has implemented the recommendations of the commission.

During the Independent Expert's visit, a number of non-governmental organizations and development partners also raised concerns about the lack of transparency concerning foreign investment projects. Moreover, studies have documented cases of non-compliance by some foreign investors with the country's labour laws and international labour standards in Katanga, and cases of child labour in the mining industry in Katanga, Kivu and Kasai.

The Independent Expert welcomes the new measures taken by the Government to increase transparency in the management of public resources, including through the publication of future mining, forestry and oil sector concessions, production sharing agreements and partnership contracts within 60 days of signature. He considers that the transparency of existing and future contracts is essential to combating corruption and protecting the interests of the Congolese people. He therefore urges the Government to implement these measures fully.

Unless the benefits of foreign investments are shared fairly by the Congolese people, the country's development will be undermined. The Independent Expert therefore commends the provincial administration of Katanga for its decision to raise the minimum wage in the mining sector from \$20 to \$100. He urges the Government and its partners to do more to ensure that the activities of foreign investment firms do not violate international human rights and labour standards. This requires the adoption and enforcement of appropriate legislative frameworks informed by, inter alia, such international standards as the Guiding Principles on Business and Human Rights.

C.Non-governmental organizations

71. International non-governmental organizations have played an important role in providing humanitarian assistance and demanding transparency and accountability, particularly with regard to foreign investment projects. For example, in March 2007, a coalition of more than 100 international and Congolese organizations launched an appeal calling upon the new Government and its partners to ensure that the Congolese population derived its fair share of income from the exploitation of the country's natural resources. In response, the Government established the above-mentioned inter-ministerial commission.

VI. Main challenges

The Democratic Republic of the Congo has made important progress in restoring political and macroeconomic stability since 2001. Nonetheless, the country faces a number of critical development challenges.

According to a recent report, the country faces "possibly the most daunting infrastructure challenge" in Africa. The conflict has seriously damaged the infrastructure, thereby undermining the country's economic and human development. Although much progress has been made since the return of peace in 2003, the country faces a challenge in mobilizing resources for the development of new infrastructure. It is estimated that the country will require about \$5.3 billion per year until 2015 to rebuild its infrastructure. This problem is compounded by the large size of the country, low population density, extensive forest lands and numerous rivers.

The security situation in the east of the country remains fragile, despite peacekeeping efforts. In 2008 and early 2009, this situation led to greater security expenditure, which placed immense pressure on the scarce national budgetary resources. A more secure environment is a prerequisite for the rule of law, enjoyment of human rights and the realization of sustainable development.

Corruption was a pervasive feature of the Mobutu regime and contributed to the build-up of the country's external debt and underdevelopment. It remains widespread in the country, and a key obstacle to sustainable development. To its credit, the Government acknowledges the problem and has ratified the United Nations Convention against Corruption, promulgated the Anti-Corruption Law (No. 5/006), adopted a "zero-tolerance" policy on corruption and established an anti-corruption institution. Despite these efforts, corruption remains widespread, largely because it became ingrained in all sectors of private and public life during the Mobutu era and became very difficult to root out. The country's development partners (including UNDP) are currently implementing a capacity-building programme to strengthen the anti-corruption institution, which is perceived to be weak and ineffective. The Independent Expert welcomes this initiative and urges the Government to increase its efforts to fight corruption.

According to IMF, there is a lack of transparency and accountability in public financial management, manifested in the circumvention of budgetary procedures and ineffective budget controls, that have resulted in reduced fiscal discipline and accountability. Lack of transparency renders it difficult to assess how public debt is being contracted and on what terms. The Independent Expert encourages the Government to take measures to strengthen public financial management and to improve accountability in the use of public resources, including by strengthening the oversight role of Parliament and non-governmental organizations through enabling legislation.

Effective domestic resource mobilization is critical to ensuring debt sustainability and avoiding over-reliance on external aid. This is only possible, however, in circumstances where the public service is well managed, corruption is robustly addressed and salaries are paid on a regular basis. Measures to address the country's economic challenges should also take into account the specific vulnerabilities of the poorest members of the population.

The narrow tax base poses significant challenges for domestic resource mobilization. The Independent Expert notes that the Government is taking measures to broaden the tax base; these include the introduction of a value added tax, reform of the tax administration department dealing with large companies, and rationalization of the tax regime applicable to transnational corporations. Nonetheless, he considers that tax reforms (particularly regressive taxes) designed to contribute to domestic resource mobilization should not result in further impoverishment of the Congolese people.

The Constitution establishes the principle of revenue-sharing between the central Government and the provinces, with the latter retaining 40 per cent. The purpose of this arrangement is to improve the quality of public services at the local level. During his visit, however, the Independent Expert was informed that the arrangement had not been implemented, leaving the provinces with scant resources to invest in the provision of social services. The Independent Expert urges the Government to endeavour to implement this constitutional arrangement fully in order to enhance the capacity of provincial administrations.

The above-mentioned challenges can only be addressed through a concerted effort of the Government and its development partners.

VII. Conclusions and recommendations

The Democratic Republic of the Congo has made important socio-economic progress since 2001, as demonstrated by the political transition to a democratically elected Government and improvements in living standards. Nevertheless, socio-economic conditions remain dire, the country's infrastructure is dilapidated, and its external debt remains unsustainable. Despite an increase in poverty reduction spending, access to basic services remains insufficient and the cost and quality

of services a concern.

The attainment of completion point of the Heavily Indebted Poor Countries Initiative has given the country access to debt relief amounting to \$12.3 billion. Debt relief alone, however, is insufficient to put the country on the path of sustainable development. The country's high dependence on mineral exports, lower development partner support, the unresolved security situation in parts of the country, less concessional terms of external financing and weak implementation capacity could all compound the country's external debt situation and undermine its development prospects. The extent to which additional resources – particularly grants, non-concessional financing, FDI and export revenues – will be available will therefore be critical to ensuring that the country stays on the path of sustainable development.

The country's burden of odious and unpayable external debt underscores key shortcomings of the global economic system and, in particular, raises concerns about the failure of creditors to acknowledge their share of responsibility for the development of the country's debt crisis and to design debt relief mechanisms that respond in a fair and equitable manner to the crisis.

On the basis of the above findings, the Independent Expert makes the recommendations below, addressed to the Government of the Democratic Republic of the Congo and to its development partners.

A. Government of the Democratic Republic of the Congo

The Independent Expert recommends that the Government:

Consider adopting a national human rights action plan, as recommended in the Vienna Declaration and Programme of Action, to inform the design and implementation of its development strategies; such an approach would enhance the effectiveness of national development strategies and contribute to sustainable results;

Take steps to establish a national human rights institution that conforms fully to the Paris Principles; in this regard, it should avail itself of the technical assistance of OHCHR and of its development partners;

Take immediate measures to strengthen its efforts to combat corruption, including by ensuring that the anti-corruption institution is independent and allocated sufficient national budgetary resources to ensure its effective functioning;

Increase its efforts to address the security situation in the east of the country. A more secure environment is a prerequisite for the rule of law, the enjoyment of human rights and sustainable development;

Maintain a cautious external borrowing strategy and adhere fully to its commitment to seek grants and concessional financing for infrastructure development;

Implement the resource-sharing arrangement provided for under the Constitution to improve the capacity of provincial governments to deliver public services;

Undertake a comprehensive, transparent and participatory debt audit in order to ensure an accurate picture of the country's debt; such an audit would be an important step in establishing an effective public debt management system and ensuring transparent public debt management;

Strengthen oversight mechanisms for public finances, use of public resources and foreign investment contracts by, inter alia, adopting legislation to guarantee access to information and to ensure the availability and accessibility of accurate, comprehensive and current information on these issues;

Consider including detailed provisions on public debt in the Constitution and/or adopting detailed legislation on public debt; examples in this regard can be found in the constitutional provisions adopted in Ecuador and Uganda, and in legislation adopted in Viet Nam;

When implementing measures to address the country's economic challenges, pay attention to the specific vulnerabilities of the poorest and marginalized in order to fully safeguard their rights. In particular, the Government should ensure that public enterprise reform (including through privatization) and its efforts to broaden the tax base do not compromise the enjoyment of all human rights, particularly economic, social and cultural rights. In the event of privatization, it should implement social programmes to assist redundant public enterprise employees;

In line with the objectives of international debt relief, ensure that the fiscal space provided by debt relief, however limited, is directed towards poverty reduction and the realization of basic rights to, inter alia, health, education, housing, water and sanitation. Additionally, it should use the fiscal space provided by debt relief in a transparent and accountable manner to ensure that the benefits of debt relief are shared by all through improved access to basic public services on an equal basis.

B. Development partners

86. The Independent Expert recommends that development partners:

Continue to support the Government's development efforts, including progress towards the Millennium Development Goals, by providing grants or concessional financing;

Support the Government in its efforts to develop a national human rights action plan and to establish a national human rights institution in conformity with the Paris Principles;

Scrupulously avoid providing finance with intrusive policy conditions that may undermine the country's national development strategies and the realization of human rights, particularly economic, social and cultural rights;

Where applicable, acknowledge their share of responsibility for the country's debt burden and unconditionally cancel debts that a comprehensive, transparent and participatory public debt audit would find to be odious;

With regard to, in particular, IMF and the World Bank, ensure that their debt sustainability analyses take into account the other demands on the Government's financial resources, particularly those needed for social investment and the achievement of the Millennium Development Goals;

Commit to help the country to regulate the activities of foreign investors and to regulate corporations of which they are the States of nationality in order to ensure that the activities of such corporations are consistent with international human rights standards, including the Guiding Principles on Business and Human Rights;

Support Government efforts to enhance the capacity of non-governmental organizations to contribute to the country's development more effectively.