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WTO: CONFRONTING A CRISIS OF PUBLIC PERCEPTION ON TRIPS

Last year, when the United Nations Commission on Human Rights in Geneva passed a resolution on TRIPS - Trade-Related Intellectual Property Rights, just a block down the road at the World Trade Organization, there was an expression of "surprise" at the "lack of consultation." This year, as the issue of access to essential medicines heats up, fuelled in particular by the South African court case (where the government has been blocked since 3 years by 39 pharmaceutical companies from implementing a law it passed in public health interest), the WTO has decided to react. At a forthcoming meeting of the TRIPS Council in two months from now, there will be a "discussion" on the issues of TRIPS, patents and access to medicines.

Someshwar Singh

On 5th April, 2001, the WTO TRIPS Council heard a proposal by the Africa Group of developing countries to convene a Special Session of the Council on "the crisis arising from the effects of patents on prices and affordability of pharmaceutical drugs." Though there has been unanimous support for the proposal, countries clearly do not see eye to eye on where exactly the focus must be. While the precise agenda is being sorted out, it is understood that the two broad areas of focus would be: to clarify and interpret the application of the relevant provisions of the TRIPS agreement; and to examine the relationship between the TRIPS agreement and affordable access to life-saving drugs.

Brazil, which is fighting a case in the WTO brought by the United States under TRIPS and relating to the production of medicines, observed that the WTO was "sadly late to discuss this issue." While noting that intellectual property rights are "only part of the discussion in this area," Brazil said, "Given that the exclusive rights provided by IPRs do not exist in a vacuum and must serve a social purpose, Members must ensure that nothing in the TRIPS agreement will prevent countries from implementing sound health policies."

The question of the "flexibility" that the TRIPS agreement provides through its safeguards also came in for particular reference. "One of the most important questions we should ask ourselves is: can we *actually* make use of those flexibilities?," said the Brazilian statement. The Malaysian representative, speaking on behalf of ASEAN, while proposing specific issues, also talked of "whether there is a need for further flexibilities under the TRIPS."

The following is the statement by Zimbabwe on behalf of the Africa group:

"Let me preface these remarks by stating categorically that through the following proposal the Africa Group neither intends to be accusatory nor deliberately provocative. Our intention is to bring into this Council an issue that has aroused public interest and is being actively debated outside this organisation, but one which we cannot afford to ignore especially given the need to clarify the role of intellectual property rights protection in dealing with pandemics such as the one

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caused by AIDS and other life threatening diseases. The issues raised in this debate range from the recognition of the importance of providing incentives for R&D in the development of new and effective pharmaceutical products, to the question of affordable access to such products by people in need, especially those in developing countries. Within the context of this public debate, affordable access is linked to prices/pricing and patent protection is linked to exclusive and monopoly rights which at times lead to uncompetitive practices. Mr. Chairman, the narrative that precedes our proposal reflects the nature and content of this public interest and debate.

It is important to note that this public interest has been aroused by the extremely high prices of some medicines, including those needed to treat serious and life-threatening diseases. The most outstanding current example is the high cost of drug treatment for AIDS. It has been asserted that the cost being charged is many times above the cost of production, including investment into research and development. Although medicines for AIDS is the obvious example, there are also many other cases of the prices of patented medicines for other diseases being way beyond the reach of millions of people, especially in the developing countries.

Previous to TRIPS, countries were able to decide themselves whether or not to exclude pharmaceutical products from patentability, and many countries had chosen to do so on the ground that medicines are essential

products required by their people to save lives, treat diseases and promote health. Although the TRIPS Agreement allows developing countries the flexibility to apply patents in ways that still enable the protection of the health of their people, recent legal challenges by the pharmaceutical industry and some Members in national law and the WTO DSU (Dispute Settlement Understanding) have highlighted lack of legal clarity on the interpretation and/or application of the relevant provisions of the TRIPS Agreement. Moreover, attempts have been made by some developed countries through bilateral and regional arrangements to get developing countries to apply TRIPS-plus measures, or to forgo their rights.

All this has further aroused public interest and led to the conclusion, in some quarters, that patents have enabled drug companies to raise prices of their products far above the levels that can be afforded by a great number of people. Further, it is argued that contrary to the principles and objectives of the TRIPS Agreement, the present model of intellectual property rights protection is too heavily tilted in favour of right holders and against the public interest. In the same manner, patent protection is seen, whether rightly or wrongly, as shielding drug firms from competition from other firms and other products.

Mr Chairman, a human tragedy of mind-boggling dimensions and emergency proportions is now at hand. In some African countries, more than a quarter of the adult population has HIV, and life

expectancy in these countries is projected to decline dramatically in the next ten years. Besides AIDS, the death toll is also unacceptably high, as annually, 11 million people (most of them from developing countries) are dying from preventable and treatable infectious diseases.

As the recent upsurge of public feelings and even public outrage over AIDS medicines has shown, there is now a crisis of public perception about the IPR system and about the role of TRIPS which is leading to a crisis of legitimacy for TRIPS. Whilst this storm is raging outside the WTO, and legitimately so, we as Members inside the WTO cannot shut our eyes and ears. Each of us, from developing and developed countries, must respond, and respond adequately and appropriately. It is for this reason that the Africa Group wishes to table a proposal at the June session of the TRIPS Council, for the convening of a Special Session of the TRIPS Council preferably before the summer break, to address the issues relating to TRIPS, patents and access to medicines. Given the importance and urgency of this matter we have deliberately avoided to raise it under Article 71.1 and we shall insist that this be so, in order to ensure a speedy resolution of this crisis. We anticipate that the outcome of this special session will feed into the preparatory process of the fourth ministerial conference. We look forward to the support of members in this noble endeavour.

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Finally, we wish to reiterate that this initiative is in no way meant to undermine or to discourage investment into Research and Development for new drugs. Given the highly mutative nature of the AIDS virus as well as the resistance to conventional drugs by some new strains of STDs and other diseases, the case for continued and intensified R&D into new pharmaceutical products cannot be overstated. Our challenge is to address the question of affordable access to drugs in a manner that is fair and equitable to all stake-holders; a way that seeks to avoid the abuse of patent protection through recourse to uncompetitive practices; a way that seeks to provide legal clarity in the interpretation and application of the relevant TRIPS provisions which allow the adoption of certain measures to enable the protection of health; indeed, a way that seeks to realise the objectives and principles of the TRIPS Agreement; and to restore confidence in a rules-based multilateral trading system."

According to the representative of the United States, the emphasis on TRIPS has been "overdone,"

and a "comprehensive programme" is needed, which includes such areas as infrastructure and education.

Indeed, according to the World Health Organization, access depends on four factors - referred to as the 'four legs of the access table'. It is having the right product, affordable prices, sustainable financing and reliable health systems. If any one leg of the table is fixed without fixing the other legs, then there is a problem.

The meeting in Norway on Access to Drugs, jointly organized by the WHO and the WTO (8-11 April, 2001) focused only on two legs - affordability and financing. To a larger extent, the meeting focused on the issue of pricing, precisely because that is the area where the operation of the WTO and the priorities of WHO come together most directly.

The pharmaceutical lobby, for its part, has its own set of problems. In a briefing to the Geneva press on 4th April, Dr. Harvey Bale, Director General of the International Pharmaceutical Manufacturers Association spoke of intellectual property as "another variable" for the industry, other relevant is-

ues being regulation, insurance system, and information on pharmaceuticals. Dr. Bale criticised governments for not doing their part in promoting access via health infrastructure.

While the AIDS pandemic in particular has had the attention of even the United Nations Security Council, the world needs to prepare for further surprises, warns Dr. Bale. "We better have a system that is still in place at the end of day when this debate is over, for the next plague. When the AIDS battle is finally finished, it is not the end of a fight against infectious diseases. Since 1975, there have been 25 new infectious diseases discovered, including AIDS, lime disease and the ebola virus. What is going to be the new AIDS pandemic after AIDS?"

Though there may be great disorder under the sun, for the Special Session of the WTO TRIPS Council in June, it would perhaps suffice to establish, as pointed out by one of the Member governments, that WTO is not part of the problem and that it can provide solutions. It is expected that the ministerial meeting in November in Doha, Qatar, will have something to say on the issue as well.

UNEP DEFENDS IPCC SCIENCE THAT US QUESTIONS

Geneva, 30 March (SDN) -- The United Nations Environment Programme has defended the findings of the Intergovernmental Panel on Climate Change (IPCC) as the United States has questioned the science of global warming and the Kyoto Protocol which is the mechanism agreed by nations in 1997 for tackling climate change.

"The IPCC has provided the world community with first class assessments of the soaring tem-

peratures the world is facing, the devastating impacts of these rises and the ways in which we can try and avoid the worst effects of global warming," said Klaus Toepfer, the Executive Director of UNEP.

"I would ask those countries with any lingering doubts about the science of global warming to come forward, to tell us areas where they believe the science is incomplete, so the IPCC can address those concerns," he added.

"Its future work will also be vital. Our scientific knowledge on global warming has advanced considerably since Kyoto. We now know climate change is real and the hand of humankind in this warming is becoming clearer and clearer," he said.

"Indeed, averting climate change offers real opportunities to develop new technologies and markets rather than damaging prosperity," said Mr Toepfer.

HUMAN RIGHTS IMPACTS OF ECONOMIC GLOBALISATION

For the first time, at the current session of the Human Rights Commission in Geneva, four experts assigned to look into critical areas such as Food, Education, Housing and Debt and structural adjustment, got together to take a look at how economic globalization was affecting their area of concern. The four experts who took part in that discussion on 4th April, 2001 were Ms. Katarina Tomasevki (Croatia), Special Rapporteur on education; Prof. Fantu Cheru (USA), Independent expert on Structural adjustment policies and foreign debt; Mr. Jean Ziegler (Switzerland), Special Rapporteur on Right to food; and Mr. Miloon Kothari, Special Rapporteur on Adequate housing. The following are extracts from that discussion.

Education (Ms. Katarina Tomasevki)

There are three important questions I would like to address: Who is doing the globalising? What is being globalised? And, where does that leave the people? Then see what the most likely impacts are and the possible remedies.

With respect to who is doing the globalising, I would like to make two points. In relation to the first, all of you must have seen photographs of meetings of G7 annual meetings or the six-monthly meetings of the World Bank and the IMF and I am sure you have not failed to notice one thing - they are all men. There is a significant point there. I am not advocating gender mainstreaming, though it is a part of my mandate, it is quite crucial from the perspective of particularly social rights. There is a great deal of interest. Nordic tradition is the shortest one to explain, having in the parliament and in government, 40 per cent of women. I am willing to take a bet with any of you that the process of globalisation would look fundamentally different if 40 per cent of decision-makers were women. So, I think that male face of who is doing the globalising is crucially important.

The second point has to do with the extra-legal nature of G7. It does not have any status whatsoever, nor does it have any rules for decision making. And obviously, the accountability of elected leaders in their countries is to members of the G7 themselves - which means

that we have, at the level of who is doing the globalising, a very unique, completely new institutional panorama which has, almost certainly, purposefully been done - to exempt it from the reach of any type of law. From the view point of recognising and respecting human rights, this is crucial. We know that human rights are derived from the rule of law. Nobody can have rights without corresponding responsibilities. So, these two points -- the male face and this strange institutional structure of who is doing the globalising -- seem to me to be particularly pertinent.

Moving on to the second question of what is being globalised, they are **capital, goods and services**. These are supposed to flow freely, bringing in the third question immediately, where does that leave the people? The people then have to be subsumed under capital, or goods or services. The term human capital is used increasingly, and my own professional position is that it is detrimental for human rights.

I have thus far got the support of a single economist but quite an influential one. His name is Amartya Sen, familiar to many of you. He is the sole voice thus far from the world of economics, saying people are not capital, they are not resources, they are people. Which means that here we have a crucial conceptual twist to fight for and to win - namely, that people should not be subsumed under capital. To the implication on education, I'll come back later.

Coming to the free flow of **goods**, are people goods today? Unfortunately, the answer is yes. Trafficking in people is rampant. If we thought that we had abolished slavery years ago, we know today how wrong we were. People are being traded as domestic servants, as prostitutes, people are being traded as also foreign workers, which means that nowadays we do have a desperate necessity to go back to International Labour Organisation's slogan - namely, 'labour is not a commodity' because we can now see what globalisation does. Labour is traded as if it were not attached to people, meaning that we can even have governments to government agreements where an umpteen number of labourers are being placed in a country to labour and then being shipped back again.

With respect to **services**, trade in services is reaching two faces of globalisation. One of them is everything relating to computers and computerisation, which is, and I do want to draw your attention to, an elite business. Less than 5 per cent of humanity has access to computers. So, if are talking about globalisation of computerisation, we have to be aware of the fact that we are talking about a tiny privileged minority, less than 5 per cent of humanity, which means that 95 per cent is excluded - from internet, websites and modern technology. So, effectively, when we are talking about globalisation, we are not talking about humanity, we are talking about one small fraction.

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Trade in services is obviously affecting education and any other traded service - legal or illegal. We have, again, the spread of elite business, lots of travel tourism services, a great deal of escort services which are being provided. Almost everybody who sees advertisements of escort services pretends not to notice that quite often what we are talking about is prostitution and trafficking in people. This means that if we look now into subsuming people either under capital or goods or services, we will find lots of negative examples, which tell us that people have become objects of all sorts of policies and measures for globalisation which means that they are not treated as subjects of rights.

So, let me try now to highlight just a couple of implications in the area of education by, again, asking three crucial questions. What does globalisation mean to the right to education? What does it mean for rights in education? And, what does it mean for our ability to attain, promote, and enhance human rights through education?

Relating to the right to education, the situation is reaching, probably, the proportions of a global catastrophe, namely 95 per cent of humanity which is left out of what we call the process of globalisation - technology, computers, flow of information etc. A grand majority of them do not have education as a right any longer. Which means, that one impact of globalisation is that people as such, as subjects of rights, or as embodiment of labour, which used to be perceived as one of obvious values and assets, today does not count for much.

I mentioned capital goods and services, I have not mentioned labour as being something that is today being globalised. So, obviously, not having a claim in terms of having a right to education leaves the bulk of community outside of being able to assert a

claim against their own government or their own international community - which is a huge retrogression. Education is becoming increasingly, a service which is traded both domestically and internationally, in terms of not becoming a right but rather, becoming the object of balance between demand and supply.

A child's right to education, today, is not being exercised by most children in the world. Their ability to gain access to education depends on their luck of being born in countries - there are still a few countries that guarantee a right to education as an entitlement - so, it is luck not a right. The same is true for those born outside these few countries, into wealthy families of caring parents who will purchase education for them.

Relating to human rights in education, one clear implication of subsuming the sector of education under globalisation, treating it as a tradable service, is that education as such is not promoting human rights. It is not teaching the young generation to co-operate, but rather to compete - which means no equal opportunity for children with disabilities, no equal opportunities for slow learners because the purpose of education is to enhance competitiveness.

What does that mean finally on attaining human rights through education? There is a very direct and a very negative effect for human rights and all other voluntary work. Young people today, in most countries, are finishing their university education heavily indebted. They are not free people. They have to start earning money - lots of money - and fast, to be able to pay their debt which means that theoretically or practically, we cannot ask them to do human rights work. In terms of being able to rely on human rights commitment, the new generation is in a situation much worse than from where my

generation started, and also without any right of being able to blame, fifteen years from now, if young people do not exhibit human rights commitment, it will be our fault.

Housing (Mr. Miloon Kothari)

The area of economic globalisation looks at the impact of trade, investment finance, structural adjustment and debt on different rights. In the context of housing, the issue of debt and structural adjustment, quite a lot of work has been done in terms of the constraining of states' capacities which have affected the budgetary allocation to housing. In fact, there has been a decrease in social spending on housing, particularly in states that have adopted structural adjustment policies and that are in the process of debt repayment. This has had significant impact on people's inability to access services and other areas related to housing.

Looking at the state of land markets in developing countries, it is clear that the forces at play are creating a situation of increasing "commodification" of housing and land. This effectively means it is being more and more dealt with in the private sphere, through private sector policies, through more interventions of transnational corporations and of international financial institutions. This is very much a momentum away from the human rights approach.

India, for example, adopted a new economic policy of liberalisation in 1991 and came under structural adjustment program run essentially by the International Monetary Fund. This coincided with a move in the country for more decentralisation and constitutional amendments that called for decentralisation at local levels and more authority and power

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given to local municipalities in both urban and rural areas. What has happened as a result of these trends is that local authorities are now being forced more and more to obtain finance on their own and the only way they can do that is through selling land and the conversion of land from residential to commercial purposes. So it is more profitable for local municipalities to convert land to commercial use for shopping centres - than to upgrade slum settlements.

We can see that there is very clearly influence from global forces. The example is not typical of India. It is happening in many other countries. In India it has coincided with judgements from Indian courts that have been essentially anti-slum dwellers. So, local authorities and city authorities are using these judgements as an excuse to displace slum-dwellers.

There is also a tendency globally, for "user fees" on water, sanitation and electricity services, and in many situations they are levied on people who have barely enough money to survive and this is creating another problem. This is again a trend which is contrary to human rights principles, which actually call for subsidies in these areas.

I also want to flag one area which is of increasing concern, related to housing and very much related to health and education, which is the current negotiations going on at the World Trade Organisation on the General Agreement on Trade and Services (GATS). There are some very disturbing developments there because GATS is calling for sectors such as health, education, water services and transportation to effectively be privatised and to be handed over to the transnational corporations. GATS is calling for the subsidies that states normally give or allocate for public services

and social programmes to be handed over directly to trans-national corporations. There is a clause on national treatment in WTO agreements but in GATS, this national treatment clause is being extended to both procurement and subsidies. So when you look at the kind of state obligations that emerge from GATS, it conflicts directly with the obligation that states have to provide, respect and protect - the right to adequate housing.

There is another agreement, FTAA (Free Trade Agreement of the Americas), which is bringing in some similar things and this is an area which we have to watch. The Human Rights Committee has to be much more vigilant and point out the conflicts. And states have to take a strong stand for the primacy of meeting human rights obligations.

Right to Food (Mr. Jean Ziegler)

It is clear that free trade will never feed the world. Because of the rapidly spreading globalisation of markets and the emergence of powerful transnational oligarchies, the normative power of states has been degenerating at an increasing pace. Civil society, and the social movements that take place in civil society, are the best hope for filling in the moral vacuum left by the waning influence of states. The international community should make it a matter of priority that states be able to provide the poorest families with local seed and land for family vegetable gardens, that daily school meals be extended to all needy children and meal vouchers be introduced in compulsory schools, and that basic foods be state-subsidised and food tickets be issued to the most deprived. The Commission should make it clear that the term "food" also covers the nutritional aspects of drinking water.

About 826 million people are chronically undernourished, most suffering from what the Food and Agricultural Organisation calls "extreme hunger" - their daily intake of calories is well below the minimum required for survival. Each year, 36 million people die, directly or indirectly, as a result of nutritional deficiencies. Undernourishment and hunger almost invariably has severe impacts on human beings, such as the underdevelopment of brain cells in babies and blindness caused by Vitamin A deficiency. Chronic hunger and serious malnutrition could also be a hereditary curse: every year, tens of millions of seriously undernourished mothers gave birth to tens of millions of seriously affected babies. Those babies are referred to as "born crucified".

Foreign Debt & Structural Adjustment (Prof. Fantu Cheru)

In the process of globalisation, or the emergence of "business civilisation," we are witnessing a tremendous growth in the structural power of capital. But there is very little corresponding responsibility for global justice. So, there are two contradictory tendencies. The question for us is where does the affected population go to claim rights and justice in a transnational economy where there is no transitional state to regulate this transnational economy. So, it is a kind of law of the jungle we are living in, trying to find some mechanisms to balance these forces.

One of the impacts of globalisation, certainly, has been on the role of the state in national development. The state no longer primarily acts as the buffer against the world economy like in 1930s. Today, basically the state plays an integral role in facilitating the movement of capital across national borders. The state is like a traffic

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cop - out there, facilitating global movement of capital, not people. So, globalisation encompasses contradictory tendencies with varying degrees of pressure on the nature and characteristics of state, national economies, and societies. So, when we look at globalisation, we need to look at how does it impact the state? How does it impact society? How does it impact the economy? It would have different outcomes.

Indeed, liberalisation may have fostered economic growth over the past decade or more. It may have also raised inequalities and a decline in living standards, even in the richer and advanced countries. I have lived in Washington and if you want to come and see Bantu standards, you do not have to go to the old South Africa, come and look at the contradictions to see these islands of isolation.

Structural adjustment, in the early part of the eighties, certainly dealt with issues of managing national economies, particularly in the context of indebted countries focused primarily on the issue of debt services. But, after 1989, the pattern of policy reform changed. It goes beyond simple imposition of macro-economic policy at the domestic level. For me, it represents a political project, a conscious decision of social transformation at the global level to make the world safe for transnational co-operation. As simple as that. In short, whether we call it structural adjustment or policy reform, it serves basically as a transmission belt to facilitate the process of globalisation through liberalisation, deregulation, decentralisation, reducing the role of the state in national development. In a sense, the policy reform goes beyond simple fixing. Several components of the policy reform, you cannot disagree, are essential. But in what context? To achieve what objective? We have to have

globalisation for whom? These are the critical tendencies where we see contradictions.

In my mandate, I looked at the last twenty years of how the policies have affected the role of the state; how the policy has affected the nature and characteristic of national economies; the nature of societies, who is being left out and who is being included. There is a kind of discrepancy it leaves at the national and global level. The evidence, of course, shows that despite a continuing effort to reform, there has been increasing unemployment, dramatic increases in poverty rates, falls in real wages, widening income disparities.

But there has also been the undermining of local production capacities in many developing countries. Even if you look at the budgetary component of policy reform, particularly the issues of budget cuts, this has basically jeopardised fundamental rights - the right to food, education, health, the right to housing and shelter. There are even other areas - collective bargaining, for instance, has been affected as countries compete to open up their economies in the hope that they can share in the global production pattern. So macroeconomic reform such as pricing policies, budget management and tax reforms, these are essential components but under what context? Do they lead us to the desired result of bringing social justice?

While there widespread recognition on the need to integrate macro-economic and social policy, there is still a tendency to design macro policy with the focus on market based criteria with indicators and then, to add on social policies that are focused on non-market criteria. Even if you look into the activities of the World Bank, the social component has expanded. There is no question about it. But it

is an add on and the question is how do you bring macro policy to inform social policy rather than an add on. So the question is to push to the limit, to say how do we create a kind of macro-economic policy into which more gender and social sensitive policies are embedded. That is the disconnect. This always leads to a situation where social and human development takes a back seat to financial concerns at the end of the day. So, there is recognition of it but we have not been able to put the two together. Maybe we have to create new generation of new economists, uncontaminated by a variety of other disciplines.

Desired social objectives such as equity, provisioning of needs, ought to be central to macro-economic policy. I really thought the whole poverty strategy paper would finalise it and we finally got an opportunity to get it right. I still have not given up on that process because what it does is set out the social issues and the macro-economic growth orientation issue. It emphasise country ownership a great deal as well as people participation - that there has got to be significant civil society involvement to come out with a national social economic compact. So in principle, it is there. At the present moment we can actually build up more bridges, more space. But the trend is actually to reverse the clock. I do see a great deal of connectedness in the mandates of Katarina and Miloon because we are looking at the whole process of macro-policies, how is it envisaged, how does it actually impact the role of the state, the nature of the economy but also the role of society. This "business civilisation" is unsustainable if we look at globalisation from below, what we call resistance to globalisation. People are not just going to sit down and "surrender."

FOOT-DRAGGING ON FOREIGN DEBT

For the upcoming conference on Financing for Development, the resolution of the debt crisis is an important theme. The issue of the onerous debt burden of developing countries was also a constant concern during the current session of the Human Rights Commission during its consideration of economic, social and cultural rights. The following article presents a snapshot of the progress made during the one and a half years since G7 leaders announced their debt initiative in Cologne. It also evaluates the actual working of the PRSP process, which is supposed to incorporate poverty reduction goals in the structural adjustment process. The article is based on an oral presentation by Professor Fantu Cheru, independent expert on the effects of structural adjustment and foreign debt to the 57th Session of the Commission on Human Rights in Geneva on 2 April, 2001.

Last year, Mr. Reinaldo Figueredo and myself submitted a joint report which focused on the HIPC initiative, debt relief and social investment in countries severely affected by the HIV/AIDS epidemic as well as the central American countries devastated by Hurricane Mitch. In that report, we tried to provide advice to creditor countries on how they might go about redirecting debt relief resources towards critical social programs in indebted countries.

A year and half has passed since the G-7 governments announced a major debt relief initiative at their 1999 annual meeting in Cologne, Germany. At the time, many debt-relief advocates, including the Jubilee 2000 movement, welcomed the Enhanced HIPC initiative as a major step by the World Bank and the IMF to find a lasting solution to the debt problem of poor countries.

The central element of the Enhanced HIPC Initiative were the proposals to grant larger reductions of the total accumulated debt, quicker reductions in debt-service payments, the relaxation of stringent qualification criteria, and most importantly, to place poverty reduction at the center of an enhanced HIPC framework.

The report before you for consideration examines the steps, which have been taken since 1999 in granting debt relief to qualifying countries, and critically examines

the PRSP process. The report is based on a careful analysis of 9 of the 19 Interim Poverty Strategy Papers (I-PRSP) presented to the IMF and the World Bank Board for their consideration as of September 2000. The nine Interim PRSPs are all from Africa although a cursory review of the I-PRSP of Honduras has also been made. At the time of this writing, there were only three fully completed PRSPs: Uganda, Burkina Faso and Bolivia that the expert has extensively consulted.

I. WHY SO MUCH HYPE FOR SO LITTLE RELIEF?

In launching the enhanced HIPC (HIPC II), a total of \$90 billion in debt service was promised for 33 poor countries, with the cost to creditors estimated at just \$27 billion, primarily due to heavy discounting of the loans and the advantage of purchasing the debt today as opposed to having it accrue interest over the length of the loan.

The pledge made by the G-7 governments at the Cologne summit in the summer of 1999 to grant deeper debt relief had fallen short of its goals. The incremental, step-by-step approach has delivered some relief only to 20 countries by December 2000-the final month of the Jubilee campaign, but debt relief at the

pace and depth required has yet to happen. Moreover, only a token relaxation of the stringent qualification criteria has been made. This incremental approach costs lives by denying governments the resources they needed to combat the spread of HIV/AIDS epidemic, reduce poverty and fight illiteracy. The UN Secretary-General, Kofi Annan, expressed these sentiments early this year in his report to the fifty-fifth session of the UN General Assembly.

A recent report by Oxfam concluded that the annual budget savings for most countries receiving HIPC debt relief would be modest. Some countries-including Senegal, Tanzania and Zambia-will emerge from the HIPC debt relief process in the perverse position of paying more in debt servicing. Debt payment will continue to absorb a disproportionately large share of government revenue, amounting to more than 15 per cent in six countries and to over 40 per cent in Zambia, Cameroon and Malawi.

Despite good intentions, the enhanced initiative is experiencing a number of problems. These include the following:

(a) Inadequate funding:

Both multilateral and bilateral creditors were expected to provide the estimated \$28 billion (in net

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present value terms) to finance the debt relief program. Of this amount, four multilateral creditors—the World Bank, IMF, the Africa Development Bank and the Inter-American Development Bank are expected to provide about \$14 billion; bilaterals about \$13.2 billion, and commercial creditors the rest. Commitments from bilateral creditors have mostly come from Paris Club creditors, many of whom have written off significant amounts of bilateral debt beyond their assistance under HIPC.

The main reasons for the deflated expectations about financing the initiative relate to the politics of budget appropriations in the principal donor countries. Legislators and parliamentarians in donor countries have been reluctant to approve additional debt relief resources above and beyond annual appropriations for bilateral aid. This is particularly difficult in many Western capitals where opposition to foreign aid is growing.

Moreover, many creditors, especially the regional development banks and smaller regional multilateral institutions are having difficulty securing the funds required to cover their share of financing for the HIPC Trust Fund. With respect to the African Development Bank and the Inter-American Development Bank, the rules governing these institutions set a ceiling on the amount of their resources that can be allotted for debt-relief purposes for fear of undermining their financial integrity.

In addition to the four multilateral institutions, there are also 23 relatively unknown and smaller regional multilateral institutions, such as the East African Development Bank (Kampala, Uganda) and the Central American Bank for Economic Integration (Tegucigalpa, Honduras) that are expected to participate in the

financing of the HIPC initiative. While these region-based multilateral institutions support the initiative's goal, they have been unwilling to fully fund their contribution from their own resources because of concern that such action would threaten their financial integrity.

Because of these reasons, the HIPC trust fund remains severely under-funded. Unless the G-7 governments agree to fund the entire debt relief initiative through the sale of IMF gold and a small portion of the annual profits of the World Bank for a specified period of time, the whole project is likely to come to a halt by early next year.

(b) Stringent qualification criteria

Inadequate funding for debt relief is just one of the problems associated with the enhanced HIPC initiative. Unrealistic IMF conditions that eligible countries must comply with in order to receive debt relief have been the second most pernicious problem. Although there is no clear evidence that shows that the IMF and World Bank are directly dictating policies to HIPC countries, governments know by experience what the two powerful institutions expect from them. Stringent macroeconomic goals (normally found in conventional structural adjustment programs) are prominently featured in the ten Interim Poverty Reduction Strategy Papers (I-PRSPs) reviewed for this report, as countries try to send a clear signal to the IMF in order to trigger interim support.

(c) HIPC does not address non-Paris Club debt

Besides the funding crisis, the enhanced HIPC initiative as it is currently constituted is inadequate since **it does not address debts that are owed by HIPC countries**

to non-Paris Club creditors and which have not been rescheduled or serviced at all for a long period of time. Consequently, the debt-sustainability ratio for these debtor countries is misleading, since the actual debt situation of these countries is worse than is apparent.

II. THE POVERTY STRATEGY PAPERS (PRSP): A NEW FORM OF STRUCTURAL ADJUSTMENT

Let me now return my attention to the PRSP process. HIPC countries are required to produce a PRSP before they can seek new program support from the IMF or the World Bank. The Boards of the IMF and Bank accept a PRSP on the basis of a coherent policy strategy, which will be assessed jointly by the Bank and Fund staff in terms of its objectives and policy content. Further, the Boards are required to review the extent to which governments have consulted with civil society and how governance issues will be addressed.

The Interim PRSP is intended as a road map to prepare full PRSP and as a bridge between the long-term PRSP objectives and a country's short-term needs for financing and debt relief. The I-PRSP paves the way for the country to qualify for its "decision point which is followed by an interim support (or loan) to the government from the IMF's Poverty Reduction and Growth Facility. Under the enhanced HIPC framework, the 'completion point' is an additional point of leverage to influence policies. Most countries will be required to complete at least a year of performance after a full PRSP has been prepared in order to qualify for debt- stock reduction. The PRSP will also be establishing the framework for all new concessional assistance from the IFIs.

In preparing the PRSP,
(continued on next page)

governments are expected to show clearly the links between macroeconomic policies and agreed international social development goals to be reached by 2015. In addition, the I-PRSP document should articulate the proposed use of the incremental resources for poverty reduction. The I-PRSP contains the following:

- The government's commitment to poverty reduction and the main elements of its poverty strategy;
- Commitments to a timeline and a consultative process by which the full PRSP will be formulated with the IMF, World Bank, and other creditors and donors;
- A three-year macro-economic framework and policy matrix, which focuses on reducing poverty through faster growth (see Appendix B for a sample of policy matrix). The matrix is basically a list of policy conditions (114 in the case of Tanzania).

Our examination of the eight Interim PRSPs (I-PRSP) and one full PRSP from Africa shows tremendous unevenness in the quality of these documents. The include the following:

- The quality of the poverty reduction strategies and the level of civil society participation are being compromised by the unrealistic time frame set for meeting the initiative.
- Excessive numbers of policy prescriptions, or conditions, are dominant features of many of the papers reviewed. For example, Tanzania's policy matrix, 2000-2002, which was appended to the I-PRSP by the Fund and the Bank lists approximately 157 policies that the government must implement during this time period. In addition,

there are more than 20 policy conditions linked to debt relief, ten policy conditions linked to the World Bank's Country Assistance Strategy, and additional conditions linked to IMF and World Bank-financed structural adjustment loans;

- Benin's interim PRSP, which also included a policy matrix, contains about 111 conditions, which the government must implement. Exactly how debt relief will be used is barely touched upon in the PRSP I except to say that priority will be given to social services when allocating external assistance.

- The lack of gender-disaggregated data is a general problem for all the PRSPs reviewed for this report except for Kenya.

- None of the I-PRSPs attempt to integrate major international human rights principles—namely the Convention on the Rights of the Child, the Covenant on Economic, Social and Cultural Rights; and a number of ILO labor conventions;

- All nine papers reviewed emphasised the importance of transparency and fiscal accountability and improving the access of the poor to public services. Yet, all the papers are silent on how transparency and accountability can be achieved when 'kleptocratic' elites preside over the implementation of poverty strategy frameworks. The links between the rule of law and economic justice are not sufficiently or realistically addressed. Transparency and accountability are not, alone, going to lead to economic justice. The anti-corruption measures are one element. Many governments in poor country simply don't have a commitment to help the poor.

- Only the PRSPs for Ghana, Kenya and Tanzania have explicitly

noted the linkage between their poverty reduction priorities and the International Development goals for 2015. This will be done through re-prioritization of existing budget.

- The Kenya and Ghana I-PRSPs introduce new issues, such as governance, anti-corruption, etc.

- In the majority of countries examined the broad macroeconomic objectives are inconsistent with the poverty reduction goals. The same conclusion was reached by a recent report from the US General Accounting Office, which pointed out, that there is a tension between the desire to deliver debt relief quickly and the need to ensure that a proper poverty reduction framework is in place. Only Uganda's PRSP is firmly anchored in the government's comprehensive Poverty Eradication Action Plan first developed in 1997 and revised to take into account new poverty data, detailed sector plans and direct consultation with the poor. But this process took more than two-and-half years to complete. Civil society is presently involved in monitoring its implementation.

What explains this disconnect between macroeconomic components of the interim PRSPs and the poverty reduction goals? The answer is to be found in the unequal power relations between indebted countries and the institutions that manage the HIPC process—namely, the IMF and the World Bank. What is obvious from our analysis is that countries have tried to read too much into the minds of the and the World.

While countries should be encouraged and supported to adopt sensible policies that make good economic and political sense, IMF-supported programs remain stringent, inflexible, and in some instances very punitive, leaving very little room for countries to

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manoeuvre. The ESAF programs in their reincarnated form (now renamed Poverty Reduction and Growth Facility) remain firmly focused on macroeconomic and financial concerns. There is no indication of how the PRSPs complement the macroeconomic emphasis of the PRGF .

Citizens' participation has not been transparent

The PRSPs are supposed to be country-driven, prepared and developed transparently with broad participation of civil society. Noting the exception of Uganda's full PRSP, citizen participation in the preparation of the I-PRSPs has not been extensive and transparent in several of the countries reviewed. While civil society groups have been invited to participate extensively in discussions on the social policy-planning component of the I-PRSP, they have effectively been excluded when it comes to discussions on the content of macroeconomic policy choices. In Ghana, Tanzania and Kenya, for example, the contents of the policy matrix were never made public during the national consultations.

In others, the consultations were all done in a rushed manner, not allowing for true dialogue, discussion and debate. As a result, many civil society groups feel cheated by both the government and donors, especially the World Bank, which has been emphasising the importance of civil society participation in the PRSP preparation and approval process. The politics of managing this discord between government and civil society will remain unless the process is made more open and transparent. **The PRSP is not a 'homegrown' process unless civil society really feels it has effectively participated in the design and decisionmaking of the PRSP from the beginning to the end.**

Given these problems, the decision to make debt relief conditional on the preparation of full-fledged Poverty Reduction papers is unrealistic. Since the outcome of national consultation during the preparation of the full PRSP is uncertain, *it is advisable to delink debt relief from the PRSP process* so that resources can be directed toward poverty programs without any further delay. But great care must be taken to ensure that debt relief funds are not used for corruption purposes.

Despite these criticisms, the PRSP process does have potential as a tool that developing countries can use to implement genuinely country-owned and participatory poverty reduction strategies. The Bank and Fund can play an important role in this process, but only if they are able to change their approach to conditionality and macroeconomic reform. **While both institutions increasingly recognize the need to link macroeconomic policies to broad social development goals, there is still a tendency to design macroeconomic policy with a focus on market-based criteria and financial concerns. This tendency always leads to a situation where social and human development and equity concerns take a back seat to financial consideration. Desired social and human rights objectives, such as equity, provisioning of needs, etc., need to be central to macro-economic policymaking if we are to advance a people-centered development or rights-based approach to development.**

RECOMMENDATIONS: THE WAY FORWARD

The under-funding of the HIPC initiative, the unnecessary delay in granting immediate relief provide sufficient reason for creditor

governments and institutions to revisit the whole issue once again. To expedite debt relief, the following measures are recommended:

(a) **De-link HIPC debt relief from the PRSP process.** Real national ownership of poverty reduction frameworks can only happen if the threat of 'conditionality' by the IMF and the World Bank is removed from the backs of vulnerable governments. Linking debt relief to the preparation of the PRSP removes the 'autonomy' of countries to come up with a framework that clearly makes the connection between macroeconomic policies and poverty reduction goals explicitly. **This requires time, research, and exhaustive consultation with broad sectors of their populations.** The only condition should be that countries receiving debt relief establish an independent entity, like Uganda's Poverty Reduction Action Plan, to channel freed resources toward social development.

(b) The World Bank and IMF should not be given the exclusive role as overseers of poverty reduction programs in poor countries. Other UN agencies, such as UNDP, UNICEF, UNCTAD and ILO should be brought into the process.

(c) Recalling the report of the Secretary-General on the subject, efforts must be made to open up new rounds of talks to come up with a lasting solution to the crushing debt burden of many poor countries. The new rounds of talks should start with a clear commitment that all debts owed by the HIPC countries will be written off with no conditions; and that the list of eligible countries should be expanded to include countries that previously failed to enter the HIPC process because they failed to submit to IMF conditions on time.

PAY DAMAGES FOR WIND-BLOWN GM SEEDS, SAYS CANADIAN COURT

Geneva, 2 April (South Development News) -- A Canadian judge has ordered a farmer to pay Monsanto thousands of dollars for violating the Gene Giant's monopoly patent on genetically modified canola seed, which had blown into his fields, according to information by the Canada-based RAFI-Rural Advancement Foundation International.

The court action, of 29 March 2001, has dealt a crushing blow to Farmers' Rights, says RAFI. Percy Schmeiser, a third generation Saskatchewan farmer has filed a counter-suit against Monsanto, but his family faces enormous legal costs that cannot be sustained without outside assistance.

Under Canadian patent law, as in the US and many other industrialised countries, it is illegal for farmers to re-use patented seed, or to grow Monsanto's GM seed without signing a licensing agreement.

If the Gene Giants and US Trade Representatives get their way, every nation in the world will be forced to adopt patent laws that make seed saving illegal, says RAFI. "The ruling against Schmeiser establishes an even more dangerous precedent because it means that farmers can be forced to pay royalties on GM seeds found on their land, even if they didn't buy the seeds, or benefit from them."

Percy Schmeiser did not buy Monsanto's patented seed, nor did he obtain the seed illegally. Pollen from genetically engineered canola seeds blew onto his land from neighbouring farms. (Percy Schmeiser's neighbours and an estimated 40% of farmers in Western Canada grow GM canola).

Monsanto's GM canola genes invaded Schmeiser's farm without his consent. Shortly thereafter, Monsanto's "gene police" invaded his farm and took seed samples without his permission. Percy Schmeiser was a victim of genetic pollution from GM crops - but the court says he must now pay Monsanto \$10,000 for licensing fees and up to \$75,000 in profits from his 1998 crop. "It's like saying that Monsanto's technology is spreading a sexually transmitted disease but everyone else has to wear a condom," RAFI observed.

Although Monsanto disavowed "suicide seeds" in the wake of international public protest, the company has routinely employed Draconian measures to prevent farmers from re-using patented seed, including the use of private police to root out seed-saving farmers, and toll-free hotlines to encourage rural residents to snitch on their farm neighbours, says the RAFI report.

Monsanto has reportedly threatened to "vigorously prosecute" hundreds of cases against seed saving farmers, but

Schmeiser's was the first major case to reach the courts. Schmeiser courageously decided to fight back and speak out against "biosefdom."

Monsanto (acquired by Pharmacia last year) is the world's premiere Biotech giant. The court ruling has far-reaching implications for farming communities around the world, RAFI maintains. Last year, Monsanto's GM seed technology was planted on 41.6 million hectares (103 million acres) worldwide. That means Monsanto accounted for 94% of the global area sown to genetically modified seeds in 2000. (Total worldwide area = 44.2 million hectares or 109.2 million acres.)

North American farmers grew three-quarters of the world's commercial GM crops last year, and now they're showing signs of biotech battle fatigue, RAFI adds. Illegal traces of Aventis' StarLink maize (unapproved for human consumption) have disrupted grain markets and jeopardised exports. Unsold stockpiles of US maize are at their highest level since GM crops were commercialised. The US government announced last month that it would spend \$20 million in taxpayer money to bail out the biotech industry, by purchasing maize seed that was contaminated with Aventis' StarLink genes. To add insult to injury, the federal bailout is using money that would normally go to disaster relief for farmers, Rafi added.



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