# New Development

# Debt Relief in 1999: Only One Step on a Long Journey


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> *[P]eople need human rights and democracy, and poor people need them most of all. They need them to protect themselves against exploitation, and to insist on a model of development which is not based on crude numbers, but takes account of life as it is actually lived by ordinary people.*
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> —U.N. Secretary-General Kofi Annan[1]

According to a top official in the Clinton Administration, the 1999 Enhanced Heavily Indebted Poor Countries Initiative, set forth by the world's Group of Seven (G7) leading industrialized nations[2] in Cologne, Germany in June 1999, would have "an enormous impact on poorer countries, perhaps more than any other single action taken by the developed countries at any time."[3] A United Nations Special Rapporteur on the effects of foreign debt on the full enjoyment of economic, social, and cultural rights and an independent expert on structural adjustment had a markedly different opinion of the same initiative: "As it stands

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1. Kofi Annan, Address to the Annual Convention of the American Association of Magazine Publishers and Editors (Oct. 19, 1998), *in Press Release: Secretary-General Calls United Nations Tailor-made Forum for Collective Effort to Address Global Financial Crisis*, U.N. Doc. SG/SM/6759 (1998), *available at* <http://www.un.org/Docs/SG/quotable/6759.htm>.

2. The G7 nations are Britain, Canada, France, Germany, Italy, Japan, and the United States.

3. Roger Cohen, *An Agreement on Debt Relief for Poor Lands*, N.Y. TIMES, June 19, 1999, at A1 (quoting President Bill Clinton's national security advisor, Sandy Berger).

now, [this] initiative is grossly inadequate . . . ."[4] Despite their sharply contrasting views, these commentators would doubtless all agree on the gravity of the subject of the initiative: the large debts that many impoverished developing countries owe to wealthy countries and international financial institutions (IFIs).

2 Indeed, while the world's poorest countries spend tens to hundreds of millions of dollars—and in several cases, over one billion dollars—annually servicing their debts, large segments of their populations remain without access to minimal health care, education, nutrition, clean water, adequate shelter, and other human needs. Under the International Covenant on Economic, Social and Cultural Rights (ICESCR),[5] States Parties are legally obligated to guarantee access to minimum essential levels of these basic human rights,[6] and to use all available resources to progressively achieve full enjoyment of such rights for all.[7] By continuing to insist that poor States use their scarce resources for debt service payments, rather than for improved access to health care, education, food, and basic shelter for their impoverished populations, the international community becomes complicit in the wide-scale violation of human rights.

3 In Part I of this New Development, I describe the magnitude of the debt problem and explain its connection to a multitude of human rights violations. Part II provides a brief overview of initiatives that the more developed nations have undertaken in response to the debt. I then turn in Part III to some of the practical effects and human rights consequences of a 1996 debt relief plan, the Heavily Indebted Poor Countries (HIPC) Initiative, upon which the 1999 initiative introduced above was based. These observations will attest to the ability of debt relief to serve as a tool central to improving human rights when the relief is part of a larger strategy to reduce poverty.

4 Part IV explores the 1999 Enhanced HIPC Initiative. I discuss how it works, how it links debt relief to poverty reduction, and how much of a difference it is likely to have. I conclude that it is only one step

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4. Reinaldo Figueredo & Fantu Cheru, *Debt Relief and Social Investment: Linking The Heavily Indebted Poor Countries (HIPC) Initiative to the HIV/AIDS Epidemic in Africa, Post-Hurricane Mitch Reconstruction in Honduras and Nicaragua, and the Worst Forms of Child Labour Convention, 1999 (Convention No. 182) of the International Labour Organization*, U.N. ESCOR, 56th Sess., Annex, Agenda Item 10, U.N. Doc. E/CN.4/2000/51, para. 4 (2000), *available at* <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/42e49accdf28dd7c802568950055f30b?Opendocument> [hereinafter Joint Report on Debt Relief and Social Investment]. The Special Rapporteur was Reinaldo Figueredo, and Fantu Cheru was the independent expert.

5. *See* International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, 6 I.L.M. 360 (1966) [hereinafter ICESCR].

6. *See The Nature of States Parties Obligations (art. 2, para.1)*, U.N. ESCOR, Comm. on Econ., Soc. and Cultural Rts, 5th Sess., Supp. No. 3, at 83, para. 10, U.N. Doc. E/1991/23 (1990), *available at* <http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/94bdbaf59b43a424c12563ed0052b664?Opendocument> [hereinafter General Comment No. 3].

7. *See* ICESCR, *supra* note 5, art. 2.

forward along a long road; it is not the leap ahead that the program's promoters claim it to be. The amount of debt it meaningfully relieves will prove relatively small, better than nothing but far from a panacea for the human rights violations that are facilitated by heavy debt obligations. Accordingly, in Part V I suggest steps that the more developed and the developing nations could take to help enable debt relief to live up to its potential to strengthen human rights.

## I. THE CONNECTION BETWEEN DEBT, DEBT RELIEF, AND HUMAN RIGHTS

In 1996, the World Bank and International Monetary Fund (IMF) formulated a debt relief plan, in which it deemed a set of nations the Heavily Indebted Poor Countries (HIPCs). Mostly located in Africa, these forty countries face a particularly crushing debt burden.[8] They owe foreign creditors, mostly wealthy nations and international financial institutions, a total of about $207 billion,[9] up from $55 billion

8. As of April 2000, the HIPC countries were: Angola, Benin, Bolivia, Burkina Faso, Burma (Myanmar), Burundi, Cameroon, Central African Republic, Chad, Republic of Congo, Côte d'Ivoire, Democratic Republic of the Congo, Ethiopia, Ghana, Guinea, Guinea-Bissau, Guyana, Honduras, Kenya, Lao People's Democratic Republic, Liberia, Madagascar, Mali, Malawi, Mauritania, Mozambique, Nicaragua, Niger, Rwanda, São Tomé and Principe, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Uganda, Vietnam, Yemen, and Zambia. *See* World Bank, *HIPC Countries* (visited May 5, 2000) <http://www.worldbank.org/hipc/about/map/map.html>.

Initially there were 41 HIPC countries; both the number and composition of countries involved in the HIPC debt relief program has fluctuated slightly. They are indeed all very impoverished and heavily indebted nations, but they are not the only ones. Jubilee 2000, the debt relief movement that had called on wealthy creditors to fully forgive the debt of many highly indebted impoverished countries by the new millennium and continues to call for that full debt relief, identifies 52 such countries, whose debts total $354 billion. *See* Jubilee 2000 Coalition, *Ten Questions About Jubilee 2000* (visited Apr. 4, 2000) <http://www.jubilee2000uk.org/faq.html> [hereinafter Jubilee 2000 Coalition, *Ten Questions*]. All told, by 1997, developing nations had an external debt of nearly $2 trillion. *See* Shridath Ramphal, *Debt Has a Child's Face*, *in* UNICEF, THE PROGRESS OF NATIONS 1999, at 26, 32 (1999), *available at* <http://www.unicef.org/pon99/pon99_5.pdf>. The debts began to grow rapidly in the late 1970s, when rising interest rates and oil prices, and falling commodity prices, impeded the ability of many countries to repay debts incurred during heavy borrowing earlier in the 1970s. Rarely did the borrowed money actually go to improving the lives of ordinary people, and the governments that borrowed the money were, by and large, corrupt and undemocratic. *See id.* at 28.

9. *See* Kevin Morrison, Overseas Dev. Council, *ODC Issue Brief: Understanding Debt Relief* (visited Apr. 4, 2000) <http://www.odc.org/commentary/ibaug99.html>. These countries owed foreign creditors $221 billion in 1998, of which $61 billion was owed to multilateral creditors. *See* Joint Report on Debt Relief and Social Investment, *supra* note 4. Jubilee 2000 reports that of the $354 billion that the 52 countries the Coalition believes are in urgent need of debt relief, about half is owed to multilateral creditors, 40 percent to bilateral creditors, and 10 percent to private creditors. *See* Jubilee 2000 Coalition, *Ten Questions*, *supra* note 8. The World Bank estimates that the cost of the 1999 debt relief initiative could be more than $28 billion, to be approximately evenly divided between bilateral and multilateral creditors. *See* World Bank, *The HIPC Debt Initiative* (visited Apr. 4, 2000) <http://www.worldbank.org/hipc/about/hipcbr/hipcbr.htm> [hereinafter World Bank, *HIPC Initiative*].

in 1980 and $183 million in 1990.[10] Although much of this debt burden goes unpaid, the annual debt service paid by these nations is nonetheless crippling. The magnitude of the human impact of the debt payments is best captured in a single estimate made by the United Nations Development Programme (UNDP) in its *Human Development Report 1997*: "Relieved of their annual debt repayments, the severely indebted countries could use the funds for investments [in human development objectives] that in Africa alone would save the lives of about 21 million children by 2000 . . . ."[11] The year 2000 is here. Most of those children are not.

6 As this number implies, many of the world's poorest countries are spending large portions of their budgets—money that could have been spent on social services to benefit their people—on debt service payments to wealthy nations and international financial institutions. The forty HIPC countries were spending a total of about $8.6 billion per year servicing their debts as the 1990s drew to a close.[12] In 1997/98, for example, Tanzania spent $189.2 million on debt service payments, more than it spent on either education ($163.4 million) or health care ($65.8 million).[13] In 1998, Zambia spent over sixty-nine percent more on debt service than it spent on health and education combined.[14] Mauritania also spent more on debt service in 1998 ($87.8 million) than on health and education combined ($67 million), and almost five times more than on health care alone ($17.4 million).[15] Mozambique's government spending reads only slightly differently, as that country spent four times more on debt service than on health care, and twice as much on debt service as on education.[16] These cases are more the rule than the

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10. *See* UNDP, *Overview of Human Development Report 1997* (visited Apr. 4, 2000) <http://www.undp.org/hdro/e97over.htm>. An estimate reported elsewhere is that if debt service payments were re-directed to human needs in seven poor countries, the lives of 3 million children could be saved over the course of seven years. *See Tanzania: Will Debt Relief Bring About Expected Relief?*, AFR. NEWS, Feb. 14, 2000, *available in* LEXIS, News Library, Africa News File.

11. UNDP, HUMAN DEVELOPMENT REPORT 1997, at 93 (1997).

12. *See* Adam Jones & Lea Paterson, *Why Do the Poor Still Pay the Rich?*, TIMES (London), Apr. 14, 2000, sec. II, at 36. For more statistics on total annual debt service payments by the HIPC countries, see World Bank, *Debt Service Paid* (visited Apr. 24, 2000) <http://www.worldbank.org/hipc/about/debt-table/ii2_1_.pdf>.

13. *See* IMF & INT'L DEV. ASS'N, TANZANIA: PRELIMINARY DOCUMENT ON THE INITIATIVE FOR THE HEAVILY INDEBTED POOR COUNTRIES (HIPC INITIATIVE) 10 tbl. 6 (1999), *available at* <http://www.worldbank.org/hipc/country-cases/tanzania/Tanzania_FIN.pdf> [hereinafter IMF & INT'L DEV. ASS'N, TANZANIA].

14. *See* Singy Hanyona, *Zambia: Zambia's Debt Situation*, AFR. NEWS, Jan. 6, 2000, *available in* LEXIS, News Library, Africa News File.

15. *See* IMF & INT'L DEV. ASS'N, MAURITANIA: DECISION POINT DOCUMENT UNDER THE ENHANCED HEAVILY INDEBTED POOR COUNTRIES (HIPC) INITIATIVE 16 box 4 (2000), *available at* <http://www.worldbank.org/hipc/Mauritania.pdf>.

16. Mozambique spent $159 million on debt service payments in 1998. *See* WORLD BANK, MOZAMBIQUE AT A GLANCE 2 (1999), *available at* <http://www.worldbank.org/data/countrydata/aag/moz_aag.pdf>. In the same year, Mozambique spent about $40 million on health care. *See* IMF & INT'L DEV. ASS'N, REPUBLIC OF MOZAMBIQUE: INITIATIVE FOR HEAVILY INDEBTED POOR COUNTRIES (HIPC) COMPLETION POINT DOCUMENT para. 15

exception.[17]

Both the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, recognized as part of the International Bill of Rights, guarantee the rights to adequate food, clothing, and shelter;[18] the right to medical care and to good health;[19] the right to education, including free and compulsory primary education;[20] and the right to special care and assistance for children.[21] 7

By ratifying the Convention on the Rights of the Child, virtually every country in the world has recognized "that every child has the inherent right to life," and that States "shall ensure to the maximum extent possible the survival and development of the child."[22] The Convention also requires States to "strive to ensure that no child is deprived of his or her right of access to . . . health care services" and recognizes "the right of the child to the enjoyment of the highest attainable standard of health."[23] In order to realize this right, States "shall take appropriate measures" to, *inter alia*, reduce infant and childhood mortality and "[t]o combat disease and malnutrition" through, among other measures, the "provision of adequate nutritious foods and clean drinking-water."[24] 8

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(1999), *available at* <http://www.worldbank.org/hipc/country-cases/mozambique/mozcompl.pdf>, and $80 million on education, *see id.* para. 12.

17. A 1998 UNDP and UNICEF survey covering 27 developing countries, many of which were HIPC countries, found that the governments of only ten spent more on basic social services (basic education, basic health care, safe water and sanitation provision, family planning, and nutrition) than on debt service. Most figures were from 1996 and 1997. *See* UNDP, DEBT AND SUSTAINABLE HUMAN DEVELOPMENT 14 (Technical Advisory Paper No. 4, 1999), *this section available at* <http://magnet.undp.org/Docs/efa/techpaper4/section2.pdf>; *see also* Ramphal, *supra* note 8, at 32.

18. *See* Universal Declaration of Human Rights, Dec. 10, 1948, art. 25(1), G.A. res. 217A (III), U.N. Doc A/810, at 71 [hereinafter Universal Declaration]; ICESCR, *supra* note 5, art. 11(1), (2).

19. *See* Universal Declaration, *supra* note 18, art. 25(1); ICESCR, *supra* note 5, art. 12(1).

20. *See* Universal Declaration, *supra* note 18, art. 26(1); ICESCR, *supra* note 5, art. 13.

21. *See* Universal Declaration, *supra* note 18, art. 25(2); ICESCR, *supra* note 5, art. 10(3).

22. Convention on the Rights of the Child, Nov. 20, 1989, art. 6(1), (2), G.A. Res. 44/25, U.N. GAOR, 47th Sess., 61st mtg., Supp. No. 49, at 166, U.N. Doc. A/RES/44/49 (1989), *reprinted in* 28 I.L.M. 1448 (1989). Every country in the world except for Somalia and the United States has ratified the Convention. *See* United Nations Treaty Collection, *Status of Multilateral Treaties Deposited with the Secretary General: Convention on the Rights of the Child* (visited Apr. 5, 2000) <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty15.asp> (password required). *See also* Steven Lee Myers, *Agreement Bars Using Children as Soldiers*, N.Y. TIMES, Jan. 22, 2000, at A8.

23. Convention on the Rights of the Child, *supra* note 22, art. 24(1).

24. *See id.* art. 24(2). The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights guarantees the "right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being," the right to adequate nutrition, the right to free and compulsory primary education, and special protection for children. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural

What obligations do States have with respect to these rights? The most comprehensive account of States' obligations is found in the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, adopted in 1997 by a group of international law experts.[25] These Guidelines underscore that State obligations to economic, social, and cultural rights are the same as State obligations to civil and political rights: "the obligations to respect, protect and fulfil[l]."[26] Thus, States may not negatively interfere with people's enjoyment of economic, social, and cultural rights, States must prevent violations of such rights by third parties, and States must take appropriate legislative, judicial,

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Rights, Nov. 17, 1988, arts. 10, 12, 13(3)(a), 16, O.A.S.T.S. No. 69, *reprinted in* 28 I.L.M. 156 (1989) (entered into force Nov. 16, 1999), *available at* <http://www.oas.org/en/prog/juridico/english/Treaties/a-52.html>. The African Charter on the Rights and Welfare of the Child guarantees children the right to life, the right to education "with a view to achieving the full realization of this right [including] . . . free and compulsory basic education," and the "best attainable state of physical, mental and spiritual health," with states taking measures, *inter alia*, to provide health care for all children and "adequate nutrition and safe drinking water." African Charter on the Rights and Welfare of the Child, July 11, 1990, arts. 5, 11, 14, OAU Doc. CAB/LEG/24.9/49 (1990), *reprinted in* 1 AFR. Y.B. INT'L L. 295 (1993), *available at* <http://www.unhcr.ch/refworld/refworld/legal/instrume/children/afr_e.htm>. Article 2 of the first Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms provides: "No person shall be denied the right to education." Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Mar. 20, 1952, art. 2, 213 U.N.T.S. 262, *available at* <http://www.coe.fr/eng/legaltxt/9e.htm>. The European Social Charter guarantees the right to protection of health and special social and economic protection for mothers and children. *See* European Social Charter, Oct. 18, 1961, arts. 11, 17, 529 U.N.T.S. 89, *available at* <http://www.coe.fr/eng/legaltxt/35e.htm>. For more on the right to food, see Philip Alston, *International Law and the Human Right to Food*, *in* THE RIGHT TO FOOD 9, 19–49 (Philip Alston & Katarina Tomaševski eds., 1984) (discussing the right to food as it exists in the ICESCR and other treaties).

25. *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, *in* INT'L COMM'N OF JURISTS, ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A COMPILATION OF ESSENTIAL DOCUMENTS 79 para. 6 (1997), *reprinted in* 20 HUM. RTS. Q. 691 (1998), *available at* <http://www.press.jhu.edu/journals/human_rights_quarterly/v020/20.3intl_comm.html> [hereinafter *Maastricht Guidelines*]. These Guidelines were adopted unanimously by a group of over 30 international experts at a January 1997 meeting in the Netherlands. They reflect their understanding of how international law has evolved since the adoption in 1986 of the Limburg Principles on the Implementation of the ICESCR, considered an authoritative guide of State obligations under the ICESR. *See Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, U.N. GAOR, Hum. Rts. Comm., 43rd Sess., Annex, U.N. Doc. E/CN.4/1987/17 (1987), *reprinted in* 9 HUM. RTS. Q. 122 (1987).

26. *Maastricht Guidelines*, *supra* note 25, para. 6. Other terms used include the obligations to "ensure" rights, *see, e.g.*, ICESCR, *supra* note 5, arts. 3, 8(1), 11(2)(b), and "respect" rights, *see, e.g.*, ICESCR, *supra* note 5, arts. 1(3), 13(3), 15(3). *See generally* Philip Alston & Asbjørn Eide, *Advancing the Right to Food in International Law*, *in* FOOD AS A HUMAN RIGHT 249 (Asbjørn Eide et al. eds., 1984) (discussing State obligations to respect, protect, and fulfill in the context of the right to food); Henry Shue, *The Interdependence of Duties*, *in* THE RIGHT TO FOOD, *supra* note 24, at 83 (discussing the duties to aid, fulfill, and promote rights). For a rebuttal of the view that economic, social, and cultural rights have a second class status to civil and political rights, see G.J.H. van Hoof, *The Legal Nature of Economic, Social and Cultural Rights: a Rebuttal of Some Traditional Views*, *in* THE RIGHT TO FOOD, *supra* note 24, at 97.

and other measures toward the full realization of these rights.[27]

According to the United Nations Committee on Economic, Social and Cultural Rights, entrusted with interpreting the ICESCR, States are obliged "to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights" enshrined in the ICESCR.[28] This means that if "any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education," a State is, prima facie, in violation of its obligations with respect to economic and social rights.[29] As the Committee has stated, "If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would largely be deprived of its *raison d'être*."[30] 10

States, however, are required to go further than simply ensuring *minimum essential levels* of economic, social, and cultural rights: the ICESCR requires that States undertake immediate measures "to achiev[e] progressively the full realization of the rights recognized in" the Covenant.[31] To this end, each State is obligated to use "*the maximum of its available resources*."[32] Through this provision, the ICESCR sets a priority on how countries are to use their resources. While States have a "margin of discretion in selecting the means for implementing their respective obligations,"[33] States must prioritize human rights; their discretion does not extend to the discretion to not fulfill these obligations. 11

States in which large segments of the population are denied effective access to education, basic health services, nutrition, housing, and safe drinking water are States in which not even the minimal essential levels of economic and social rights are satisfied. These States are not meeting their minimum core obligations under international law. 12

Such States include the HIPC countries. Average life expectancy in these countries is a mere fifty-one years—twelve years less than in developing countries overall, and twenty-six years less than in the more developed countries of the world.[34] As UNICEF reports: 13

> The under-five mortality rate [in the HIPC countries] averages 156 per 1000 live births. This translates into 3.4 million deaths annually, most of them resulting from infectious diseases which could be averted through low-cost interventions. . . . There are

27. *See Maastricht Guidelines*, *supra* note 25, para.6.
28. General Comment No. 3, *supra* note 6, para. 10.
29. *Id.*
30. *Id.*
31. ICESCR, *supra* note 5, art. 2(1).
32. *Id.* (emphasis added).
33. *Maastricht Guidelines*, *supra* note 25, para. 8.
34. *See* UNICEF & Oxfam Int'l, *Debt relief and poverty reduction: Meeting the Challenge* para. 2.1 (visited Apr. 4, 2000) <http://www.oxfam.org/advocacy/papers/debtchallenge.htm>.

> some 47 million primary school-aged children out of school . . . . [and a]bout half of all households lack access to safe water and sanitation.[35]

14 These human rights violations are closely tied to the issues of debt and debt relief. By insisting on debt service payments, creditors deprive HIPC countries of the resources they need to satisfy even minimal levels of human rights, much less to progress beyond these levels. The tens and hundreds of millions of dollars (and more) that countries spend annually on debt service could go a long way toward realization of a minimum core of human rights, and could put countries on their way to going beyond this minimum. Creditor nations and institutions are not passive observers of these human rights violations, but active (if unintending) participants. In other words, these human rights violations are occurring, in part, because of the debt service demands of the more developed nations.

15 By diverting resources to creditor countries and institutions, debtor nations are not able to use "all available resources" to move toward the full realization of economic and social rights. It could be argued that money an indebted country owes another country or institution is a resource not to be included in "the maximum of its available resources" that must be used to ensure the full realization of economic and social rights of the people in the impoverished country. That interpretation of available resources, however, would imply that States have a greater duty to meet their obligations with respect to debts than they have to meet their obligations with respect to the very lives of their people. This perverse implication denies the centrality of human rights to international law, a place secured by the Charter of the United Nations.[36]

16 Indeed, if the view that States must sooner repay their debts than meet their people's human rights were to be taken to its logical conclusion, States would have a stronger obligation to repay their debts than to realize even a minimal level of human rights for their people. This cannot be correct. As the U.N. Committee on Economic, Social and Cultural Rights has affirmed, a State not satisfying these minimal levels "is, prima facie, failing to discharge its obligations under the Covenant."[37] It is doubtful that the Committee would have said this had international law required States to pay off debts before they sought to meet the minimum levels of human rights.

17 Debt obligations are not necessarily the primary obstacle to social

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35. *Id.*

36. *See* U.N. CHARTER, arts. 1(3) (identifying one of purposes of U.N. as "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion"), 55 ("[T]he United Nations shall promote: . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.").

37. General Comment No. 3, *supra* note 6, para. 10.

spending in every poor country; other resource allocation decisions also affect the realization of human rights. One of the HIPC countries, Ethiopia, at war with Eritrea, spent about $380 million purchasing arms in 1999.[38] Spent otherwise, that money could have gone a long way toward meeting Ethiopia's minimum core obligations with respect to such rights as the right to free primary education, the right to be free from hunger, and the right of access to health care.[39]

Large debt burdens do, however, facilitate human rights violations 18
in many countries. In Tanzania, one of the world's most impoverished countries,[40] the military budget is small: $21 million in fiscal year 1998–99.[41] Yet fifty-one percent of its people do not have access to safe drinking water, one-third of its children do not attend primary school, and the life expectancy is forty-eight years. Tanzania's debt service payments in 1998 totaled $158 million,[42] money that could have been spent to provide greater access to potable water, primary schooling, and health services for the impoverished population.

It is possible for the HIPC countries to have their debts cancelled 19
through a well-implemented system that will ensure that millions of people who at present are persistently denied human rights will be denied those rights no longer. Indeed, if money is owed by poor nations to rich nations through certain legal obligations, the latter have a certain leverage over what becomes of that money, including the ability to use it to enhance the enjoyment of human rights. The absence of a well-designed and well-implemented debt relief plan to achieve this end, although proven to be eminently achievable,[43] facilitates the continuation of violations of the basic rights to health, education, and other economic and social rights. While the absence of debt relief is not the only factor contributing to such violations—military spending and government corruption, among others, may also be major factors—it is an important one. As the Maastricht Guidelines affirm, moreover, "The

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38. *See Background: Drought Fails to Stop Ethiopia-Eritrea Arms Race*, Deutsche Presse-Agentur, Apr. 12, 2000, *available in* LEXIS, News Library, Deutsche Presse-Agentur File. Eritrea is reported to have spent $236 million on arms in 1999. *See id.*

39. Ethiopia acceded to the ICESCR on June 11, 1993. *See* U.N. Treaty Collection, *Status of Multilateral Treaties Deposited with the Secretary-General: International Covenant on Economic, Social and Cultural Rights* (visited Apr. 5, 2000) <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty4.asp> (password required). All HIPC countries except Burma (Myanmar), Ghana, Lao People's Democratic Republic, Liberia, Mauritania, Mozambique, São Tomé and Principe, and Tanzania are parties to the ICESCR. *See id.*

40. More than half of Tanzania's people live below the poverty line, with an estimated GNP per capita of $246 in 1998. *See* IMF & INT'L DEV. ASS'N, TANZANIA, *supra* note 13, at 1, para. 3.

41. *See* CIA, *The World Factbook 1999: Tanzania* (visited Apr. 4, 2000) <http://www.cia.gov/cia/publications/factbook/tz.html>.

42. *See* WORLD BANK, TANZANIA AT A GLANCE 2 (1999), *available at* <http://www.worldbank.org/data/countrydata/aag/tza_aag.pdf>. Statistics on access to safe water, primary school enrollment, and life expectancy are from the latest year available, 1992–98.

43. *See infra* Part III.

failure to . . . put into effect policies designed to implement provisions of the Covenant" is a violation of economic, social, and cultural rights.[44]

## II. BRIEF OVERVIEW OF DEBT RELIEF PLANS

20 The first significant movement on debt relief came at a G7 summit in 1994, when the leading industrialized nations agreed to a two-thirds reduction of bilateral debt, that is, debt that the HIPC countries owed individual G7 countries.[45] The debt relief was contingent, however, upon stringent and prolonged economic reforms that many countries would not or could not meet, considerably limiting the value of the plan.[46]

21 In 1996, the World Bank, the IMF, and creditor nations embarked on the HIPC Initiative.[47] This initiative increased the bilateral debt relief to eighty percent and introduced multilateral debt relief.[48] The HIPC Initiative created a special Trust Fund, administered by the World Bank, which provides debt relief to eligible HIPC countries on debt owed to certain multilateral institutions.[49] The World Bank and over a dozen donor States contributed to this Trust Fund.[50] Meanwhile, in 1997 the IMF created the ESAF-HIPC Trust, which extended grants and loans to eligible HIPC countries, and subsidized the interest rate on loans made as part of the IMF's structural adjustment programs. Funding for this trust came directly from donors and from the IMF's Special Disbursement Account and its General Resources Account.[51]

22 The biggest obstacle to significant progress through the HIPC Initiative echoed that of the 1994 G7 summit agreement: Debt relief was conditional upon IMF-structured economic reforms, which have proven difficult to implement, largely because of their political unpopularity among domestic constituencies.[52] Indeed, these reforms often hurt the poor. Common features include requiring governments to end subsidies on basic goods, making them less affordable to the poor[53];

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44. *Maastricht Guidelines*, *supra* note 25, para. 15(c).

45. *See* Jubilee 2000 Coalition, *Too Little, Too Late* (visited Apr. 4, 2000) <http://www.jubilee2000uk.org/politic.html>.

46. *See id.*

47. *See id.*

48. *See id.*

49. *See* World Bank, *HIPC Initiative*, *supra* note 9.

50. *See* 1999 WORLD BANK ANN. REP. 14, *this section available at* <http://www.worldbank.org/html/extpb/annrep/pdf/ar99_6.pdf>. The African Development Bank Group was also an important contributor to the Fund. *See id.*

51. *See* IMF, IMF FINANCIAL STATEMENTS: QUARTER ENDED APRIL 30, 1999, at 52, *available at* <http://www.imf.org/external/pubs/ft/quart/1999fy/043099.pdf>. ESAF is the Enhanced Structural Adjustment Facility, which was the IMF's mechanism for managing structural adjustment programs.

52. *See* Jubilee 2000/USA, *HIPC: The Official Debt Relief Program* (visited Apr. 4, 2000) <http://www.j2000usa.org/debt/edpac/hipc.html> [hereinafter Jubilee 2000/USA, *HIPC*].

53. *See, e.g.*, Christopher S. Wren, *Even the Best of Times Are Tough in Zambia*, N.Y. TIMES, May 29, 1989, at A36 (referring to Zambia's December 1986 riots that occurred

to cut budgets, which translates into a reduction in public expenditures; and to privatize state-run enterprises, which reduces employment.[54] Moreover, in order to qualify for bilateral debt relief, countries were required to implement IMF reforms for three years, and only after up to three more years of these reforms would they receive the debt relief.[55]

Along with the burden and conditions of IMF reforms, the definitions of "poor" and "heavily indebted" were restrictive, preventing many countries that in fact required debt relief from being eligible. Ultimately, only twenty-six of the then-forty-one HIPC countries themselves were eligible.[56] Furthermore, the goals of the program were narrow, as high levels of debt service were considered to be "sustainable," and thus acceptable.[57] Through 1999, only four countries—Uganda, Bolivia, Guyana, and Mozambique—had actually received debt relief, with relief levels set but not yet acted upon for several other countries.[58] 23

## III. DEBT RELIEF CAN WORK

Despite the obstacles to implementation, the experience of the 1996 HIPC Initiative has proven that debt relief can work. The ability of debt relief to lead directly to human rights improvements—as well as important insights into how debt relief can bring about poverty reduction—is best seen in Uganda, which in March 1998 became the first country to receive relief under the 1996 HIPC Initiative. 24

In 1997, only about fifty-four percent of children in Uganda attended primary school.[59] The access of millions of children to primary education was impeded by State-required school fees, which their parents could not afford. Uganda used much of its early debt relief savings to cancel the school fees for up to four children per family.[60] By 1999, attendance had risen to ninety percent.[61] 25

Beyond its success in using debt relief to boost primary school attendance, Uganda's debt relief program presents several other 26

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when President Kenneth D. Kaunda sought to double the price of cornmeal as part of the IMF's economic reform plan).

54. *See, e.g.*, Chakravarthi Raghavan, Third World Network, *Failed Expectations of SAPs, Liberalization* (visited Apr. 4, 2000) <http://www.twnside.org.sg/title/saps-ch.htm>.

55. *See* Jubilee 2000/USA, *HIPC*, *supra* note 52.

56. *See* Morrison, *supra* note 9.

57. *See* Jubilee 2000/USA, *HIPC*, *supra* note 52.

58. *See* Gordon Brown, *Duty to the Neediest*, Op-Ed, WASH. POST, Sept. 26, 1999, at B7. *See also* IMF, *Debt Initiative for the Heavily Indebted Poor Countries (HIPCs)* (visited Apr. 4, 2000) <http://www.imf.org/external/np/hipc/hipc.htm>.

59. *See Out of the Debt Trap*, Opinion, INT'L HERALD TRIB., May 4, 1999, at 8.

60. *See* IMF & INT'L DEV. ASS'N , UGANDA: INITIATIVE FOR HEAVILY INDEBTED POOR COUNTRIES SECOND DECISION POINT DOCUMENT 19 n.7 (2000), *available at* <http://www.worldbank.org/hipc/Uganda.pdf> [hereinafter IMF & INT'L DEV. ASS'N, UGANDA].

61. *See Out of the Debt Trap*, *supra* note 59. This increase has meant an additional 2 million children enrolled in Ugandan schools. *See* UNICEF & Oxfam Int'l, *supra* note 34, para. 6.5.

instructive links between debt relief and poverty reduction. All of the budget savings from debt relief—nearly $40 million per year—were placed in a Poverty Action Fund. Uganda has allocated the money in this fund not only to education, allowing it to cancel the primary school fees, but also to rural roads, agricultural extension, water supply, and primary health care. These areas received priority under a Poverty Eradication Action Plan, which was developed over a two-year period with much popular support. To help assure that the Poverty Action Fund money is properly used, the money that flows into and out of the fund is reported every quarter, an independent audit is published annually, and non-governmental organizations are involved in overseeing the use of the funds. The Ugandan Parliament is also involved in ensuring that new lending is based on solid strategy and is in accord with national development priorities.[62] Beyond making it probable that the poverty eradication strategy will focus on what people really need, the wide involvement in this process, including that of the government, along with the careful monitoring of the plan, help ensure that the additional social spending from the Poverty Action Fund is not countered and rendered meaningless by reductions in regular government spending.

27 Without the direct connection between the money freed by debt relief and a specific fund, it is more difficult to judge the effect of debt relief on poverty reduction and human rights fulfillment. Bolivia, for example, beginning in September 1998, became the second HIPC country to receive debt relief.[63] Its social spending significantly increased thereafter, despite the Latin American financial crisis, suggesting that debt relief may have played an important part in the increase. From the end of 1998 through 1999, Bolivia received a total of $103 million in debt relief; social spending rose by $115 million in 1999, a nine percent increase over the previous year.[64] The relation between the increased social spending and debt relief, however, is difficult to tease out. Social spending had, after all, already been on the rise in Bolivia, both in absolute terms and as a percentage of GDP. Social spending rose steadily from 12.4 percent of GDP in 1995 to an estimated 16.1 percent in 1999.[65]

28 How has the increased social spending in Bolivia translated into human rights improvements? There were slight increases in general health spending, with a significant improvement in access to treatment for acute respiratory infections through the Mother and Child

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62. *See* Jubilee 2000/USA, *How Can Debt Cancellation Benefit People?* (visited Apr. 4, 2000) <http://www.j2000usa.org/debt/uganda.html>.

63. Guyana and Mozambique were the final two countries to receive debt relief in the 1990s, in May and June 1999, respectively. However, at the time of this writing, there is little data on what in fact happened with the money freed by debt relief.

64. *See* IMF & INT'L DEV. ASS'N, BOLIVIA: DECISION POINT DOCUMENT FOR THE ENHANCED HEAVILY INDEBTED POOR COUNTRIES (HIPC) INITIATIVE 5, para. 12 & n.4 (2000), *available at* <http://www.worldbank.org/hipc/Bolivia.pdf>.

65. *See id.* at 19 tbl.2.

Insurance Program. Perhaps the most significant improvement in the past few years in the social arena came in the increased number of beneficiaries of water and sanitation projects in rural areas—from 132,000 before 1997 to over 216,000 by the end of 1998.[66] Increased water and sanitation projects in rural areas was not, however, one of the social progress targets established as part of Bolivia's involvement in the HIPC Initiative. At the same time, most of this increase occurred before Bolivia had received debt relief, making its connection to debt relief tenuous. Access to education for boys and girls in rural areas also increased, but its link to the debt relief plan is also not clear.[67]

The effect of HIPC debt relief is, therefore, far less clear in Bolivia 29
than it is in Uganda. Indeed, Bolivia offers no clear way of determining how the money that would have been spent on debt relief was actually used, and less time has elapsed since Bolivia received debt relief. While a narrow range of social services did improve, the link between these improvements and debt relief is questionable. The contrast between Uganda and Bolivia strongly suggests that the *manner* in which a country implements a debt relief plan will have a large impact on the extent to which debt relief leads to decreased poverty and increased enjoyment of human rights.

It is also important to recognize that even as debt relief has had a 30
very palpable effect on human rights improvement in Uganda, it is only part of the solution. One of the crucial elements of Uganda's successful use of debt reduction to reduce poverty and its associated indignities has its own drawbacks. The extensive administrative efforts needed for the monitoring and conditions that assure the money is properly spent limit the ability of some local governments to access and utilize the Poverty Action Fund money.[68] Meanwhile, the proportion of Ugandans in absolute poverty remains near one-half, and life expectancy in Uganda dropped to forty-two years in 1998. The decrease in life expectancy is attributable to HIV/AIDS, although infection rates are now falling, largely due to an aggressive AIDS prevention program.[69] The Ugandan government does not pay for school supplies such as uniforms, notebooks and pencils, and some children do not remain in school because they cannot afford these items.[70] Classrooms are overcrowded, and absenteeism among teachers is a problem.[71] In the realm of health care, despite increased expenditures, selected immunization rates are falling, half of households surveyed do not use available health clinics when they are ill, and nearly two-thirds of staff

66. *See id.*

67. It has been reported that much of the reported increase was due to changes in the Ministry of Education's reporting methods. *See id.* app. 1, at 42 tbl.2.

68. *See* IMF & INT'L DEV. ASS'N, UGANDA, *supra* note 60, at 16 para. 15.

69. *See id.* at 8, para. 6. The absolute poverty rate stood at 44 percent in 1996–97, a six percent drop from 1994–95. *See id.* at 9 tbl.3.

70. *See id.* at 8, para 7.

71. *See id.*

positions in the clinics are unfilled.[72]

31 The experience of Uganda demonstrates that debt relief can have a substantial effect on human rights and poverty reduction. The new 1999 debt relief initiative, described in Part IV below, will further increase Uganda's debt relief; Uganda will receive $40-50 million more annually in debt relief under the new initiative than it would have received under the 1996 HIPC Initiative.[73] The additional money, which, thanks to Uganda's Poverty Action Fund, should go directly to poverty reduction programs, should lead to further human rights improvements in Uganda. Combined, the two initiatives could reduce Uganda's debt service by about two-thirds, possibly more. Over its first three years, the new initiative should free money equivalent to approximately ten percent of Uganda's projected social spending. This money will go into the Poverty Action Fund.[74]

## IV. THE 1999 ENHANCED HIPC INITIATIVE

32 In June 1999, at the G7 meeting in Cologne, Germany, the leading industrialized nations agreed to expand the HIPC debt relief program. Members of the G7 touted the new agreement, deemed the Enhanced HIPC Initiative, as a very significant achievement. France's President Jacques Chirac said that the effort could relieve $65 billion of debt.[75] Gene Sperling, President Clinton's chief economic advisor, said that this number could reach $90 billion if countries outside of the G7 joined in theenterprise.[76] G7 attendees identified a total of $127 billion in HIPC debt; if the plan works, about seventy percent of this debt will be relieved.[77]

33 Whether this second HIPC initiative will actually lead to meaningful debt relief and significant poverty reduction is not nearly as certain as these numbers suggest.[78] Only thirty-three of the forty HIPC countries are expected to be eligible for relief under this program. At the same time, while total HIPC debt is about $207 billion,[79] the initiative *recognizes* HIPC debt as only $127 billion.[80]

34 The estimated thirty-three countries eligible for the new initiative is an increase over the twenty-six countries eligible under the previous

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72. *See id.*
73. *See id.* at 44, para. 59.
74. *See id.* at 44, para. 61.
75. *See* Cohen, *supra* note 3.
76. *See id.*
77. *See id.*
78. This analysis of the structure Enhanced HIPC Initiative is based largely on Morrison, *supra* note 9, and Jubilee 2000 Coalition, *Details and Interpretation of the Köln Debt Initiative* (visited Apr. 4, 2000) <http://www.jubilee2000uk.org/news/kolndebt.html> [hereinafter Jubilee 2000 Coalition, *Details and Interpretation*].
79. *See supra* text accompanying note 8.
80. *See* Morrison, *supra* note 9.

initiative, this increase due to less restrictive eligibility requirements.[81] Countries are eligible if they have what the IMF and World Bank deem an unsustainable debt, determined by ratios comparing the net present value of the debt[82] to a revenue measure. For some countries the relevant ratio is debt-to-export earnings, while for others the debt-to-government revenue ratio is used. Under the 1996 plan, for those countries for which the debt-to-export earnings ratio determined eligibility, the ratio had to be at least in the 200-250 percent range and, for those countries for which the debt-to-government revenue ratio determined eligibility, the ratio had to be at least 280 percent. The 1999 plan lowers these ratios to 150 percent and 250 percent, respectively, making an additional seven countries eligible for debt relief.[83] A country can now be eligible with a debt level that, under the 1996 plan, would have been deemed sustainable, and thus too low to warrant relief.

As with the original HIPC Initiative, however, a country that is 35
*eligible* for debt relief under the Enhanced HIPC Initiative still must *qualify*. In order to qualify, a country must undergo IMF-designed economic reforms. These reforms have been promulgated under the umbrella of the Enhanced Structural Adjustment Facility (ESAF), which, following the Enhanced HIPC Initiative, has had its name changed to the Poverty Reduction and Growth Facility (PRGF).[84]

While these economic reforms vary somewhat from country to 36
country, they share similar objectives: "raising saving rates, securing financial stability, liberalizing and opening economies to foreign trade, reducing State intervention and making markets more efficient, reorienting government spending and improving revenue collection, and

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81. Technically, 29 countries met the eligibility requirements for the 1996 HIPC Initiative, and 36 countries are eligible under the 1999 Enhanced HIPC Initiative. However, three of the countries in each case—Liberia, Somalia, and Sudan—are not expected to meet the reform requirements for a number of years, and so are generally excluded from the tally. *See* Oxfam Int'l, *Halfway there? G-7 must now make debt agreement work for the poorest* (visited Apr. 4, 2000) <http://www.oxfam.org/advocacy/papers/halfway.htm>. Including these three countries, the 29 countries that would qualify under both plans are Bolivia, Burkina Faso, Burma (Myanmar), Burundi, Cameroon , Chad, Republic of Congo, Côte d'Ivoire, Democratic Republic of Congo, Ethiopia, Guinea, Guinea-Bissau, Guyana, Liberia, Madagascar, Malawi , Mali, Mauritania, Mozambique, Nicaragua, Niger, Rwanda, São Tomé and Principe, Sierra Leone, Somalia, Sudan, Tanzania, Uganda, Zambia. The seven additional countries expected to qualify under the 1999 initiative are Benin, Central African Republic, Ghana, Honduras, Lao People's Democratic Republic, Senegal, and Togo. *See* IMF, *Modifications to the Heavily Indebted Poor Countries (HIPC) Initiative* (visited Apr. 4, 2000) <http://www.imf.org/external/np/hipc/modify/hipc.htm> [hereinafter IMF, *Modifications*].

82. The net present value of the debt is what countries would have to pay if they were to pay off their entire debt today; this number is about 54 percent of the total nominal debt. *See* Morrison, *supra* note 9.

83. *See id.*

84. *See* IMF, *Overview: Transforming the Enhanced Structural Adjustment Facility (ESAF) and the Debt Initiative for the Heavily Indebted Poor Countries (HIPCs)* (visited Apr. 4, 2000) <http://www.imf.org/external/np/esafhipc/1999/index.htm> [hereinafter IMF, *Overview*]. The structural adjustment programs were called the Structural Adjustment Facility (SAF) when established in 1986, then changed to the ESAF a year later.

mobilizing external resources."[85] To accomplish these aims, many of the structural adjustment programs have common features. These include cutting budget deficits by reducing government spending and increasing tax revenue (especially by broad-based consumption taxes), deregulating pricing mechanisms, devaluing currency and liberalizing the exchange rate, reforming and privatizing state-run enterprises, reforming the banking system, developing financial markets, and promoting more transparent economic systems.[86]

37 G7 countries argue that these economic reforms are important to ensure that the money that debt relief makes available is well spent.[87] It is thus open to question how many of the eligible countries will actually qualify. Countries that do successfully implement these economic reforms will, however, receive relief from the IMF and World Bank sooner than they would have under the 1996 HIPC Initiative. Under the 1996 plan, countries had to complete two ESAF programs, each of which would last three years, before they could get relief from the IMF and World Bank; now, the multilateral lending institutions will provide interim debt relief after a country completes one three-year round of economic reform.[88]

38 Even for those countries that manage to qualify for debt relief under this program, it is not clear how meaningful the relief will in fact be. Since the debt of many of these countries is so high, the countries are unable to service their entire debt, so they service the debt only to certain creditors. "[D]onors acknowledge that much of it will never be repaid. Therefore, 'forgiving' it is essentially an accounting exercise."[89] How much the debt reduction affects debt service payments largely depends on how the forgiven debt is distributed.

39 The key question is how much of the forgiven debt is owed to creditors to whom a given country is actually making debt service payments, and how much is owed to creditors to whom no payments are being made. Only in the former context will debt relief have real meaning. The actual cost of the debt relief plan, given that much of the debt has, for all practical purposes, already been written off, is expected to be about $27 billion.[90] Proponents of the Enhanced HIPC Initiative

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85. World Bank, *World Economy in Transition: Experience Under the IMF's Enhanced Structural Adjustment Facility* (visited Apr. 4, 2000) <http://www.worldbank.org/fandd/english/0997/articles/0150997.htm> [hereinafter World Bank, *World Economy in Transition*].

86. *See id.*

87. *See id.*

88. In addition to the three years of economic reform, States will be required to draft a Poverty Reduction Strategy Paper in order to be eligible for interim debt relief. *See* World Bank, *HIPC Debt Initiative: Flow Chart* (visited Apr. 4, 2000) <http://www.worldbank.org/hipc/about/FLOWCHRT4.pdf>. *See also infra* text accompanying note 117.

89. *See* Morrison. *supra* note 9.

90. *See* Jubilee 2000 Coalition, *Details and Interpretation. supra* note 78. This is the net present value of the anticipated cost; the nominal cost is $50 billion. The World Bank's estimate in net present value is $28 billion. *See* World Bank, *HIPC Initiative*, *supra* note 9.

argue that even though the revised plan still concerns itself with the total amount of debt, as opposed to the debt service itself, the deeper cuts in the total debt will affect the debt service.[91]

40 Another change in the HIPC plan involves bilateral debts. Under the 1996 plan, G7 countries were to forgive up to eighty percent of the bilateral commercial debt of qualifying countries. Under the 1999 revision, that number will rise to ninety percent, and possibly more in certain cases.[92] Most of the more developed countries had, by 1999, already completely forgiven debts that arose from Official Development Assistance. The Enhanced HIPC Initiative calls upon those creditor countries that have not fully forgiven debt that arose from development aid to do so.[93]

41 How will multilateral institutions pay for debt relief? The Enhanced HIPC Initiative envisions several mechanisms by which multilateral institutions will finance debt relief. It mandates that donor governments contribute to an HIPC Trust Fund[94] and creates a Millennium Fund, to which the private sector can contribute. The initiative also calls for the sale of ten million ounces of gold from the IMF's reserves to raise money.[95]

42 Since the Cologne meeting, the G7 countries have moved toward completely forgiving the bilateral debts of debtor countries, going beyond their pledges under the Enhanced HIPC Initiative. Indeed, even before the Cologne meeting, in March 1999, Canada committed itself to complete bilateral debt relief for eligible heavily indebted nations, and urged other G7 countries to do the same.[96] And in October 1999, Canada pledged to completely cancel the debt owed to it by Bangladesh. Though the amount was small—$600,000—the action was noteworthy because Bangladesh, though a highly impoverished nation, had not been designated a HIPC country.[97]

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91. *See* Morrison, *supra* note 9.

92. *See* University of Toronto G8 Info. Ctr., *Report of G7 Finance Ministers on the Köln Debt Initiative to the Köln Economic Summit* paras. 12–13 (visited Apr. 4, 2000) <http://www.library.utoronto.ca/g7/finance/fm061899.htm>.

93. *See id.* para. 13.

94. The HIPC Trust Fund will primarily pay for debt owed to the Inter-American Development Bank and the African Development Bank. *See* Lisa Wright, Jubilee 2000/USA, *December 1999 Legislative Update* (visited Apr. 4, 2000) <http://www.j2000usa.org/updates/lisa.html>.

95. *See* Jubilee 2000/USA, *Overview of G7 June 1999 Debt Relief Initiative* (visited Apr. 4, 2000) <http://www.j2000usa.org/debt/cologne.html> [hereinafter Jubilee 2000/USA, *Overview*].

96. *See* Jean Chrétien, Address to a luncheon of the Canadian Club of Winnipeg (Mar. 25, 1999) *available at* <http://pm.gc.ca/default.asp?Language=e&Page=publications&Sub=Speeches&Doc=speeches19990325957_e.htm>.

97. *See* Jubilee 2000 Coalition, *Canada cancels 100% of bilateral debt owed by Bangladesh* (visited Apr. 4, 2000) <http://www.jubilee2000uk.org/news/canada1012.html>. According to Canada's Finance Minister, Paul Martin, Bangladesh was chosen because of "Bangladesh's track record in implementing reforms that benefit its people, and the priority given to poverty reduction by the government of Prime Minister Sheikh Hasina, [which made] Bangladesh an appropriate candidate for the new Canadian Debt Initiative." *Id.* Also, the "series of devastating floods [Bangladesh has suffered through] in

43 In September 1999, the United States began a similar initiative. President Clinton proposed that the United States fully forgive the bilateral debt owed it by thirty-six HIPC countries.[98] The face value of this debt is about $5 billion, but since most of this money has already been written off as never to be repaid, the debt relief will cost the United States approximately $970 million.[99] President Clinton planned on funding the debt relief through a three-year effort,[100] hoping to have Congress approve $370 million in debt relief for the year 2000 budget.[101]

44 Congress initially offered a mere $33 million in debt relief. The Clinton Administration was able to increase that figure somewhat in the final budget, but only to $123 million, still far less than the President had hoped.[102] Of this sum, $110 million is for bilateral debt relief, with the balance of the money going to a debt-for-nature tropical rainforest conservation program.[103]

45 Congress and the President also compromised in an area of multilateral debt relief. One key element of the Enhanced HIPC Initiative involves the IMF raising money through transactions involving its gold reserves. The IMF planned on using gold transactions as its primary mechanism for paying its share of the debt relief because the Fund's charter forbids it from forgiving debts outright.[104] Of the $27 billion that the HIPC debt relief is expected to cost, the IMF's share will be about $2.1 billion.[105] Since IMF rules require that eighty-five percent of its ownership shares must approve the gold revaluation that would be central to the gold transactions, and the United States holds seventeen percent of the shares, the United States has veto power over the revaluation.[106]

46 Meeting a concern of many in Congress, the IMF changed its plan to sell gold, coming up instead with a gold transaction and revaluation plan that would not affect the market value of gold.[107] After prolonged

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recent years" played a role in its inclusion in Canada's debt relief program. *Id.*

98. *See Unburdening the Third World*, Editorial. N.Y. TIMES, Oct. 4, 1999, at A26.

99. *See* Michael Grunwald, *GOP's Bachus Makes Debt Relief His Mission*, WASH. POST, Oct. 9, 1999, at A3.

100. *See id.*

101. *See* Eric Schmitt, *House Passes Compromise Bill for $13.5 Billion in Foreign Aid*, N.Y. TIMES, Nov. 6, 1999, at A7.

102. *See* Schmitt, *supra* note 101.

103. *See* Wright, *supra* note 94. Through this program, money goes to Tropical Forest Funds in beneficiary countries. Such funds give grants to conserve, maintain, and restore tropical forests. *See* Tropical Forest Conservation Act of 1998, Pub. L. No. 105–214, 112 Stat. 885 (1998) (codified at 22 U.S.C. § 2151 n.,§§ 2431–2431h (2000)).

104. *See* Paul Blustein, *IMF Crafts New Plan for Using Its Gold*, WASH. POST, Sept. 8, 1999, at E3.

105. *See Gold Comfort*, ECONOMIST, Oct. 2, 1999, at 81.

106. *See* John Burgess & Helen Dewar, *Congress's Inaction Holds Up Debt Relief*, WASH. POST, Nov. 12, 1999, at E3.

107. *See* IMF. *News Brief No. 99/62* (visited Apr. 4, 2000) <http://www.imf.org/external/np/sec/nb/1999/NB9962.HTM>. According to the plan, the IMF would sell its highly undervalued gold to a member at the gold's market value. The IMF member State would immediately pay for the gold with this very gold by returning it to the IMF. However, upon the return, the IMF would value the gold not at the artificially low value

negotiations, Congress agreed to this action, with the restriction that in the first year, only sixty percent of the profits would immediately become available for debt relief. Pending further congressional review, the other forty percent could also become available.[108] In mid-December 1999, with the cooperation of Brazil, the first of these transactions, involving seven million ounces of gold, took place.[109]

47 Congress did not compromise at all in terms of U.S. funding for the HIPC Trust Fund, the multilateral government-funded debt relief fund. The Clinton Administration had asked for $210 million for the Fund; Congress would not authorize even a single dollar.[110] This is regrettable. It is important that the money to pay for debt relief is rapidly forthcoming if the total debt reductions are to translate into significant debt service payment reductions.[111]

48 As 1999 drew to a close, Britain became the third G7 country to announce that it was forgiving all of its debt to the poorest, heavily indebted countries. This debt had a face value of $8 billion. Like the United States, Britain's debt relief will cost the British far less than the debt's nominal value, and the relief is conditional on the indebted countries' meeting HIPC eligibility and economic reform criteria.[112] Britain quickly cancelled the bilateral debt of four countries: Bolivia, Mauritania, Mozambique, and Uganda. The debt of up to seven more countries could be cancelled after the IMF's April 2000 meeting.[113] Italy has also agreed to completely cancel the debt of eighteen countries, and in late February 2000, the Italian Prime Minister Massimo D'Alema promised to consider doubling this figure.[114] In early April 2000, the remaining three G7 countries—France, Germany, and Japan—all agreed to cancel 100 percent of the bilateral debts that most or all of the HIPC countries owed them.[115]

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that was previously in the IMF's books, but rather at the market price. Thus, on paper, the IMF will have made a large profit from the sale—the difference between the market value and the artificially low value—though in reality, nothing will have changed. The IMF would then invest this profit, and use the returns on the investment to fund debt relief. In this way, the IMF would revalue up to 14 million ounces of its gold.

108. *See* John Burgess, *Deal Will Allow IMF to Fund Debt Relief*, WASH. POST, Nov. 17, 1999, at E2.

109. *See* IMF, *News Brief No. 99/84* (visited Apr. 4, 2000) <http://www.imf.org/external/np/sec/nb/1999/NB9984.HTM>.

110. *See* Wright, *supra* note 94.

111. *See infra* text accompanying note 133.

112. *See Do You Believe in Fairies?* ECONOMIST, Dec. 23, 1999, at 3, *available at* <http://www.economist.com/editorial/freeforall/19991225/index_ld2100.html>.

113. *See* Julian Lee, *Finance: British Debt Relief Called "A Drop in the Ocean,"* INTER PRESS SERVICE, Dec. 22, 1999, *available in* LEXIS, News Library, Inter Press Service File. The seven countries are Benin, Burkina Faso, Côte d'Ivoire, Guyana, Mali, Senegal, and Tanzania. *See id.*

114. *See* Jubilee 2000 Coalition, *San Remo Festival forces Italian Government to respond to appeal for debt cancellation* (visited Apr. 4, 2000) <http://www.jubilee2000uk.org/news/italy230200.html>.

115. *See* Jubilee 2000 Coalition, *G7 all promise 100% cancellation—but debt relief is still a long way off* (visited April 23, 2000) <http://www.jubilee2000uk.org/news/cancel100400.html>.

49 Significantly, then, all G7 countries have pledged some form of complete bilateral debt cancellation, though the conditions that countries must meet in order to qualify vary, in some cases linked to qualification requirements for the Enhanced HIPC Initiative. As of early April 2000, only one G7 creditor, Britain, had in fact delivered on its pledge of complete debt cancellation, and that to only one country, Mauritania.[116]

50 Beyond deepening the debt relief, the Enhanced HIPC Initiative focuses more than its predecessor on the true objective of debt relief: not merely to change economic statistics, but rather to change—to better—lives by reducing poverty. In order to strengthen this link between debt relief and poverty reduction, the IMF and World Bank have proposed making debt relief part of a broader poverty reduction program. Government officials of each HIPC country, collaborating with World Bank and IMF officials, will draft a Poverty Reduction Strategy Paper. The papers will "identify the key obstacles to poverty reduction . . . formulate appropriate policies, and specify mechanisms for monitoring and policy adaptation." They will also outline macroeconomic policies consistent with social goals.[117] At least in theory, then, the poverty reduction framework will help ensure that countries are not bringing budgets under control by cutting spending on health, education, and other important social investments.

51 One of the key principles underlying the poverty reduction strategies is broad public participation in developing poverty reduction strategies—including not only officials from the international financial institutions[118] and debtor governments, but also NGOs, academics, and the private sector. Another principle is that poverty reduction requires rapid economic growth, macroeconomic stability, structural reforms, and social stability.[119]

52 The latter principle, however, risks undermining the first. By determining that rapid economic growth and structural adjustments are necessary for poverty reduction,[120] the IMF limits the acceptable dimensions of the goal of broad participation. Apparently, traditional economic measurements like GDP growth will continue to be seen as central[121] and participation will have to take place within the IMF

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116. *See id.*

117. *See* IMF, *Overview*, *supra* note 84.

118. Some people and organizations very reasonably question the central role of the IMF in designing a plan to reduce poverty, given its poor track record on poverty reduction. Criticism also comes from those who view the central role of the IMF and the World Bank in the poverty reduction plan as paternalism. *See* Jubilee 2000/USA, *Overview*, *supra* note 95.

119. *See* World Bank PovertyNet, *Principles Underlying Poverty Reduction Strategies* (visited Apr. 4, 2000) <http://www.worldbank.org/poverty/strategies/principl.htm>.

120. In the words of one IMF document, "faster growth . . . is key to lasting poverty reduction." IMF, *Overview*, *supra* note 84.

121. The IMF's overview of the 1999 HIPC initiative remarks "1995–98 data for countries with ESAF-supported programs suggest that they are beginning to see real payoffs from the reforms they have adopted." *Id.* The payoffs are in the form of an

structural adjustment framework. Rapid GDP growth will, thus, be considered movement in the right direction, even if that growth comes at the expense of poverty reduction (perhaps in the name of long-term benefits). Indeed, the IMF seems to take it for granted that there will be harmful short-term negative effects; one of the objectives of the PRGF is "better protecting the poor from any short-term negative effects of economic adjustment and reform."[122] Unless that protection is bolstered by effective safety nets, these short-term negative effects may well translate into deprivations of human rights.

The twin goals of the PRGF, as the name readily suggests, are reducing poverty and increasing growth. According to the IMF, the former, lasting poverty reduction, has "always been implicit" in the structural adjustment programs.[123] The IMF will have a long way to go in convincing the people of the countries that participate in its programs that the IMF is serious in its concern about poverty reduction and that it has the ability to play an important role in that reduction. After all, the purposes stated in the Articles of Agreement of the International Monetary Fund, the IMF's founding document, relate to promoting international monetary stability and cooperation, facilitating the growth of international trade, and reducing obstacles to that trade—not to reducing poverty.[124] 53

If poverty reduction has truly been an implicit goal of the ESAF, 54

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increased per capita GDP growth in countries with ESAF-supported programs. *See id.*

122. *See id.*

123. *See id.*

124. Article 1 of the Articles of Agreement reads as follows:

> The purposes of the International Monetary Fund are:
> (i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.
> (ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.
> (iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.
> (iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.
> (v) To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.
> (vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

Articles of Agreement of the International Monetary Fund, July. 22, 1944, art. 1, 2 U.N.T.S. 39, *available at* <http://www.imf.org/external/pubs/ft/aa/aa.pdf>.

moreover, it is a goal that the IMF has failed to achieve. According to a World Bank review of structural adjustment programs, over the past decade "[l]iving standards and social indicators improved in ESAF countries, but more slowly than in the rest of the developing world."[125]

55 In order to realize its goal of reducing poverty, it would seem more effective for the World Bank and IMF to measure countries' performance by standards similar to those in the Human Development Index (HDI), developed by the United Nations Development Programme. Beyond looking at traditional economic statistics like GDP per capita,[126] the HDI looks to such measures as life expectancy and the adult literacy rate.[127] There is no reason that the World Bank and IMF should become wedded to these particular metrics, as others like infant mortality or percent of population with access to safe drinking water are also very important. Also, given the long-term perspective that the World Bank agrees is necessary for a poverty reduction strategy,[128] measures related to the environment might also be developed and included in the poverty reduction strategy's assessment. Rather than aiming for rapid economic growth as a goal in and of itself, the type and rate of economic growth could be adjusted to maximize these other measures, which are much more genuine measures of poverty reduction and human well-being than a country's GDP. Why focus on a proxy for the object of true concern when that object can be directly measured?

56 The IMF and World Bank expect the PRGF to increase the influence that poverty-reduction programs have on macroeconomic policies, to increase the focus on good governance (especially transparency and effective budget monitoring), and to make the plans more responsive to social goals.[129] It remains to be seen whether the PRGF programs can become tools for reducing poverty, rather than obstacles to that end. Some of the proposed revisions seem eminently sensible and manageable, such as increasing spending in health and education.

57 Nevertheless, the interactions of Mozambique with the IMF in June 1999 under the original HIPC Initiative demonstrate how much the latter will have to reform its structural adjustment policies if it wishes to promote poverty reduction. As part of the structural adjustment conditions that accompanied the IMF's decision to increase debt relief to Mozambique under the Enhanced HIPC Initiative, the IMF required Mozambique to reduce the state subsidy for clean water and to give priority to people who are able to pay for the water in rural areas by

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125. World Bank, *World Economy in Transition*, *supra* note 85.

126. *See supra* note 119.

127. *See* UNDP, *What Is Human Development: Glossary of Selected Terms* (visited Apr. 4, 2000) <http://www.undp.org/hdro/hd.htm> (also defining the Human Poverty Index).

128. *See* World Bank PovertyNet, *supra* note 119 ("A medium- and long-term perspective is needed . . . .").

129. *See* IMF, *Overview*, *supra* note 84.

2002.[130] In a country as poor as Mozambique, this could leave many people without safe water.[131]

The experiences of Mozambique suggest that IMF practices have not yet significantly changed. As one pro-debt relief organization put it, "[t]he core macro-economic policies required by the IMF are currently antithetical to poverty reduction and to democratic decision-making on macro-economic policies."[132] As indicated by the conditions imposed on Mozambique in the waning era of the ESAF, the PRGF will be a friend rather than an adversary of the poor only if it manages a profound transformation of the policies of the ESAF. 58

## V. ENHANCING THE ENHANCED HIPC INITIATIVE

Debt relief can work. The experiences of Uganda demonstrate that debt relief can be a central factor in significant human rights improvements in impoverished countries. Unfortunately, as it now stands, the Enhanced HIPC Initiative has multiple shortcomings that leave many outstanding questions about how much this approach to debt relief will actually improve human rights. How many countries will meet the structural adjustment requirements necessary to qualify for debt relief? Will these requirements really be changed so they are not in tension with human rights obligations? Will tens of millions of dollars in debt service reductions in fact translate into tens of millions of dollars of social spending increases? At the same time, although it is "broader, deeper and faster" than the original HIPC Initiative, the new initiative is neither broad enough, deep enough, nor fast enough to prevent continued, severe human rights violations from occurring in connection with the debt, even if the initiative works as planned. 59

There is genuine concern that the plan will not work as intended, and that debt stock reduction will not in fact translate into debt service reductions. Debt service will only be reduced if the debt forgiven is debt that is in fact being serviced; a significant portion of it is not. Furthermore, so far as the multilateral portion of the debt reduction is concerned, it is very important that the private sector actually contribute to the Millennium Fund created under the Enhanced HIPC Initiative. During the Cologne meeting, a British government "spokesperson said that the degree of debt service reduction depended 'crucially' on reducing much of the stock of debt very soon after the 60

130. *See* Letter from Joseph Hanlon, Policy Advisor, Jubilee 2000, to author (March 22, 2000) (on file with the *Yale Human Rights and Development Law Journal*).

131. *See* Joseph Hanlon, Jubilee 2000/South Africa, *Mozambique Gains an Extra $28 Mn Per Year from HIPC Debt Relief but IMF Imposes New Conditions on Cashew and Rural Water* (visited Apr. 4, 2000) <http://www.aidc.org.za/j2000/documents/mozambique_relief_conditions.html>.

132. *See* Jubilee 2000/USA, *Overview*, *supra* note 95. For example, privatization may increase unemployment, and the reduction and elimination of government subsidies on such basic necessities as bread and water makes these essential goods less accessible to the poor.

completion point."[133] Whether this will occur is largely dependent on how much and how quickly the private sector contributes to the Millennium Fund.[134]

61 One way to remove this uncertainty is to have the debt relief plan focus explicitly on debt service rather than total debt stock. It is the debt service, not the total debt stock, which affects peoples' lives. The fact that a country is $1 billion or $10 billion or $20 billion in debt is, in itself, merely a statistic. No one's human rights in Mozambique are violated because that country *has* a $2.9 billion debt (nominal value) to wealthy creditors.[135] Basic human rights do go unrealized because Mozambique is *paying* $1.4 million every week in debt service, instead of spending the money on education, health care, nutritional programs, and the like.[136] Also, as a general rule, "[t]he amount of debt a government can afford to service should be calculated only *after* the basic needs of its people have been met."[137] So long as debt service payments are interfering with a country's ability to meet even its minimal core human rights obligations, those debt service payments should be cancelled, even if that means completely canceling the debt relief payments, as would likely be the case for all of the HIPC countries.[138] This means putting the sanctity of human rights ahead of the sanctity of fiscal balancing.

62 This has not happened under the Enhanced HIPC Initiative. Oxfam International estimates that figures on debt service and social spending *after* countries benefit from the 1999 Initiative will look disturbingly similar to what they looked like before.[139] For instance, Zambia will be paying the same on debt service as on health and education combined; Nicaragua's debt service payments will exceed its spending on health and education combined.[140]

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133. Morrison, *supra* note 9. The completion point is when the creditors actually forgive the debt. Under the first HIPC Initiative, it came three years after the decision was made to forgive the debt, during which time economic reforms would continue. Under the new Enhanced HIPC Initiative, the completion point is "floating," meaning that the completion point will be advanced if the debtor countries meet certain reform targets rapidly. *See* Jubilee 2000 Coalition, *Details and Interpretation*, *supra* note 78.

134. *See* Morrison, *supra* note 9.

135. *See* IMF & INT'L DEV. ASS'N, REPUBLIC OF MOZAMBIQUE: INITIATIVE FOR HEAVILY INDEBTED POOR COUNTRIES (HIPC) COMPLETION POINT DOCUMENT para. 1 (1999) (visited Apr. 4, 2000) <http://www.worldbank.org/hipc/country-cases/mozambique/mozcompl.pdf>.

136. *See* Jubilee 2000 Coalition, *Jubilee 2000 welcomes Mozambican debt service freeze to UK and calls on creditors to cancel 100%* (visited Apr. 4, 2000) <http://www.jubilee2000uk.org/news/mozamb290200.html>. This is the amount that Mozambique was paying Western creditors as of February 2000.

137. Jubilee 2000/USA, *Overview*, *supra* note 95.

138. Note that many NGOs involved in the debt relief movement, such as Oxfam, "believe debt service payments should be lowered to 10 percent of government revenue." Morrison, *supra* note 9. This position may have political expediencies, but it does not maximize human rights, as the money that would still be used for debt service could, instead, be used to reduce poverty and the associated human rights abuses.

139. *See* Oxfam Int'l, *supra* note 81.

140. *See id.* Oxfam's calculations did not factor in the devastation that Hurricane Mitch caused.

The Enhanced HIPC Initiative should be broadened to include all HIPC countries as well as other countries that might not be designated HIPC countries but share some of their features. HIPC countries that will not receive debt relief under this second initiative, because they do not have unsustainable debts according to IMF and World Bank formulas, do nonetheless have unsustainable debts so far as the rights and lives of their people are concerned. Angola, for example, spent over $1.3 billion on debt service payments in 1998; in 1997 Angola had one of the world's highest infant mortality rates,[141] only 34.7 percent of the relevant age group was enrolled in primary schools,[142] and sixty-nine percent of the population did not have access to safe water.[143] And yet Angola is one of the HIPC countries not expected to be eligible under the Enhanced HIPC Initiative.[144] 63

There are also non-HIPC countries that require debt relief. For example, Nigeria, originally an HIPC country,[145] spends about $1.9 billion a year on its debt service, compared with $300 million per year on health infrastructure. This amounts to only about $3 per person in Africa's most populous country,[146] where 51 percent of the population lacks access to safe water[147] and the infant mortality rate is 112 per 1000 live births.[148] The numbers speak in a loud and a clear voice of Nigeria's need for debt relief. 64

In fact, many non-HIPC countries could see dramatic human rights improvements if they were to receive debt relief as part of a broader, people-oriented poverty reduction strategy. The vital statistics of Indonesia, which has a foreign debt of $140 billion,[149] for example, include fifty-seven percent of the population without access to health services, twenty-five percent without access to safe water,[150] and an 65

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141. Angola's infant mortality rate was 170 per 1000 live births in 1997. *See* UNDP, HUMAN DEVELOPMENT REPORT 1999, at 171 (1999), *this section available at* <http://www.undp.org/hdro/Backmatter2.pdf>. The rate was well under 10 per 1000 live births in the more developed countries. *See id.* at 168.

142. *See id.* at 179.

143. *See* UNDP, HUMAN DEVELOPMENT REPORT 1999, at 148 (1999), *this section available at* <http://www.undp.org/hdro/Backmatter1.pdf>.

144. *See* IMF, *Modifications*, *supra* note 81 tbl.2 (listing 36 HIPCs that may qualify under the Enhanced HIPC Initiative).

145. The World Bank and IMF removed Nigeria from the list of HIPC countries in August 1998. *See* Jubilee 2000 Coalition, *Profile: Nigeria* (visited Apr. 4, 2000) <http://www.jubilee2000uk.org/profile/nigeria.html>.

146. *See* Jubilee 2000 Coalition, *Economist Jeffrey Sachs says that debt cancellation is vital for Nigeria's development* (visited Apr. 4, 2000) <http://www.jubilee2000uk.org/news/nigeria090300.html>.

147. *See* UNDP, HUMAN DEVELOPMENT REPORT 1999, at 147 (1999), *this section available at* <http://www.undp.org/hdro/Backmatter1.pdf>.

148. *See* UNDP, HUMAN DEVELOPMENT REPORT 1999, at 170 (1999), *this section available at* <http://www.undp.org/hdro/Backmatter2.pdf>.

149. *See* Paul Blustein, *Indonesia Announces Bank Guarantee Plan*, WASH. POST, Jan. 27, 1998, at D3.

150. *See* UNDP, HUMAN DEVELOPMENT REPORT 1999, at 147 (1999), *this section available at* <http://www.undp.org/hdro/Backmatter1.pdf>. The figure for access to safe water is from the most recent year available of 1990–97, while the figure for access to

infant mortality rate of forty-five deaths per 1000 live births.[151]

66 Nor is the Enhanced HIPC Initiative fast enough. Before even interim relief will be provided under this plan, a country must have undergone three years of structural reforms. Yet every day in these countries children are not going to school, are being made ill from unsafe drinking water, and are dying from easily preventable causes. HIPC countries are in violation of their obligation to ensure their people with at least a minimal core of human rights *today*; consequently, debt relief should happen *today*.

67 There are two important impulses behind the HIPC initiatives' connection to structural reforms that should be acknowledged: the desire to have the savings on debt relief used effectively, and to help create a political-economic structure that will lead to economic growth and thereby enable a country to better meet its peoples' needs on its own.[152] Delaying debt relief, however, and prolonging human rights abuses as a result, is not a wise approach to satisfying these impulses. Structural adjustment conditions, moreover, breed resentment and, in the past, have actually contributed to poverty, rather than poverty reduction.[153]

68 These impulses can be satisfied consistent with a policy of strong respect for human rights and without engendering the resentment that comes when the IMF requires countries to undergo structural reform. In terms of the first goal, ensuring that the reductions in debt payments are indeed channeled into programs to help the poor, several central elements of Uganda's efforts to use money saved by debt relief to the benefit of its people are instructive.[154] One is its Poverty Action Fund, to which all savings from debt relief are allocated, and all of which are earmarked for poverty reduction activities. This very simple device has powerful ramifications, as it allows a connection between debt relief and poverty reduction to be easily established, and helps assure that debt relief will in fact go to poverty reduction measures.[155] Each country

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health services is from the most recent year available of 1981–92.

151. *See* UNDP, HUMAN DEVELOPMENT REPORT 1999, at 170 (1999), *this section available at* <http://www.undp.org/hdro/Backmatter2.pdf>; *see also supra* note 138.

152. *See* IMF, *Overview*, *supra* note 84.

153. *See supra* note 128 and accompanying text. *See also, e.g.*, Steven Greenhouse, *Five Questions: for Juan Somavia; Making Markets Work for All*, N.Y. TIMES, Oct. 24, 1999, sec. 3, at 4 ("Many of the things that were done to make structural adjustment work meant that an enormous number of companies went broke. Somebody has to have an eye on what happens to people," quoting Juan Somavia, director-general of the International Labour Association); Eric Pooley, *The IMF: Dr. Death? A case study of how the global banker's*
*shock therapy helps economies but hammers the poor*, TIME, Apr. 24, 2000, at 47 (asserting that structural adjustment programs "drive up the cost of living, rip holes in already tattered safety nets and help kill small farms and businesses"); UNICEF & Oxfam Int'l, *supra* note 34, para. 5.7 ("fiscal conditionality is sometimes too tight, and therefore an impediment to the public investment needed to finance improved access to basic services").

154. *See supra* note 66 and accompanying text.

155. Recall the difficulty in determining the effects of debt relief in Bolivia. *See supra*

qualifying for debt relief would do well to create its own version of the Poverty Action Fund. A second important element in Uganda's plan is the prominence of monitoring. As with the specific fund for debt relief savings, the transparency of that fund, with quarterly publications of financial flows and annual independent audits, helps assure that debt relief will lead to poverty reduction.

There are other ways to deal with the desire to make the debt relief plan part of an effort to create lasting, positive change in impoverished countries. For instance, one way to use debt relief to institutionalize the enjoyment of human rights is to have immediate and complete debt service relief—but not complete debt stock forgiveness. Under this approach, while the countries would not be servicing the debt, they would technically remain in debt. At the outset of the plan, they could nominally continue to owe creditors billions of dollars. The purpose of prolonging the debt relief process would be to help ensure that a one-time debt forgiveness program would not turn into a one-time only increase in social spending and, at the same time, to encourage the creation of democratic institutions that prioritize human rights. Prolonging the debt relief process could, thus, be used to create a mechanism for ensuring that the benefits of debt relief to the people of impoverished countries outlast a potentially transitory international spotlight on the suffering to which the debt service payments contribute. 69

The total debt stock could, therefore, be eliminated over a period of years. Debt relief would be contingent on certain levels of social spending—targeted increases in health care spending, education spending, programs to bring about universal access to safe water and sanitation, and the like. Within these very general contours of how the money should be spent, the people of each country—not only political actors, but a broad spectrum of all society, including NGOs and community leaders—should decide what the priorities are and how to go about meeting them. As governments spend what would otherwise be debt service on improving the human rights of people within their jurisdictions, creditors could gradually reduce the debt stock until, at the end of the scheduled period, the debt is fully forgiven. 70

The gradual rather than immediate relief of the debt might stir concerns of Western imperialism—of the North hanging debt over the South's head to enable it to maintain leverage. This plan might be seen as a new incarnation of the structural adjustment requirements of the IMF, conditions imposed by the more developed countries that the developing countries must meet in order to receive certain benefits. For at least three reasons, however, such a comparison would be mistaken and the image of imperialism would be an illusion. 71

First, the central criticism of the debt itself is that it is unfair for countries so poor, and that already spend too little on health care, 72

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text accompanying notes 63–67.

education and the like, to have to pay such large sums of money to wealthy countries. Therefore, all that the countries would be required to do would be precisely what one would expect them to do anyway: to increase social spending with the money that will no longer head to the rich.

73 Second, within very broad parameters that address the central wrong of the debt, the people of the impoverished countries, not Western governments, would determine the nature of the social spending increases. It would be a plan of the South, not a dictate from the North. This would be in keeping with the Ugandan model of wide participation in forming the country's poverty reduction strategy.

74 The third reason that prolonging the existence of the debt stock, at least nominally, should not be viewed as a modern guise of Western domination reveals the importance of viewing debt relief as a human rights issue, and not simply as a development and poverty issue. It is arguable that it is not the concern of one nation how another nation develops, that the nature of a country's social and economic development is at the heart of state sovereignty. This is part of why there is much dislike for the IMF, for it is telling these countries how to run their economies, with all of the effects this has on society. In other words, these institutions dominated by wealthy nations are telling them how they should go about their development.

75 Human rights, however, are recognized as matters of universal concern. Whatever one's views are on the issue of state sovereignty and development, it is far too late to plausibly assert that the people of one country have no legitimate concern for the human rights of the people in another country. As the 1993 Vienna Declaration and Programme of Action observes, "the promotion and protection of all human rights is a legitimate concern of the international community."[156] Thus, it could be much more palatable for the recipient country to have debt relief conditioned on human rights improvements rather than on the course of its development, even if they are, in practice, intimately related.

76 What if countries fail to live up to social spending agreements? Under the approach of the two HIPC initiatives, if a country does not implement the required structural reforms, debt relief will not be forthcoming. There is a better way. Simply requiring countries to resume debt service payments, at least in isolation, will not advance the goal of improving people's enjoyment of their rights as human beings, which should be central to debt relief. Rather, creditors could send the debt service payments from the recalcitrant governments back to that country, but directly to local NGOs and community-based organizations that will work to improve human rights in their country, so that people can still see their health care and access to education improve even if

156. World Conference on Human Rights, Vienna Declaration and Programme of Action, U.N. GAOR, U.N. Doc. A/CONF.157/23 para. 4 (1993), *available at* <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/be26ac5be3286d86802567c9004b2dad?Opendocument>.

the government would rather increase military spending.

Conceivably, creditors could bypass governments in the first place by collecting debt service and then redirecting all of those funds to local NGOs. This approach would have several drawbacks, however. It would mean that at least to an extent, the more developed nations, rather than the people of the indebted nations, would be choosing what to spend the money on. Creditors would be giving the money directly to certain NGOs, rather than to a central fund to which virtually everyone has access and for which everyone can be involved in determining spending priorities. This approach would also exclude the government's role in poverty reduction, which, as Uganda and the cancelled school fees demonstrate, can be significant and positive. Also, bypassing the government could upset relations with that government, which might feel that is not being regarded as important, and could have damaging effects, possibly leading to hostility or oppression. 77

Debt relief alone, however well implemented, cannot bring about the full enjoyment of human rights. Among the HIPC countries are Burma with its repressive military dictatorship and Sudan with its seemingly interminable and very destructive civil war. It will take far more than increases in social spending and strengthened civil society to bring such countries into conformity with universal human rights norms and to transform their governments.[157] Nor will savings from debt relief wholly curb the massive human rights violations suffered by the poor around the globe. Even as debt relief will allow countries to spend significant portions of their budgets on improving the lives of their people, one must recall that these are small budgets to begin with. It is unrealistic to expect that, absent change external to the debt relief regime, poverty can be extinguished. But a well-executed debt relief strategy is an extremely important step along that path. 78

## VI. CONCLUSION

Debt relief, if part of a broader strategy to reduce poverty, can be a powerful tool for advancing human rights, helping to save literally millions of lives and to greatly improve the lot of many millions more. The 1999 Enhanced HIPC Initiative is a step in this direction. While Uganda is still heavily indebted, the first HIPC Initiative helped bring an additional two million Ugandan children into the classroom. With the promise of more significant reductions in debt service and a new, central focus on poverty reduction, the new debt relief initiative has the potential to produce better results still. 79

These better results, however, are still far from satisfactory. As money that could go to health care and education, to saving and bettering lives today, continues to be used to pay off the debts of 80

157. And, of course, it is not certain that an effort to increase social spending would even succeed in these countries.

yesterday, the silent casualties of the muted war of poverty will continue to mount. They are victims of the age-old cannonballs of disease and ignorance that—incredibly—are still flying in the year 2000.

81 Leaders of industrialized nations have been reluctant to embark on complete debt relief because they "oppose setting a precedent of wiping out all of a lender's debt."[158] It would be, in the language of economics, a "moral hazard," creating the risk that countries will not take their debts seriously. One cannot help but wonder which is the greater moral hazard: the possibility that some future debtors will take their debts less seriously, or the reality that the large portions of their budgets that impoverished countries spend on debt service to the wealthy nations could be used instead to save millions of lives. If the greater danger is the gross violation of human rights that the deaths of millions of children entail, then the Enhanced HIPC Initiative, while a step forward, lands well short of the demands of human rights and human dignity.[159]

158. *See* Cohen, *supra* note 3.

159. In our midst will remain the young child whose stomach is bloated from malnutrition, whose body is weakened by vitamin deficiencies, whose mind is dulled by a lack of schooling and lack of nutrition, whose life is often put in the balance by diarrhea and infections that could be easily treated, whose face is often the resting place of insects that sense death in the air. There will remain many such children. A more earnest debt relief plan could have gone, and could yet go, a long way toward replacing that scent of death with the scent of life. So long as this suffering continues to be with us, our society silently but mightily mocks "the inherent dignity . . . of all members of the human family." Universal Declaration, *supra* note 18, preamble.