**Submission to the Independent Expert on Foreign Debt and Human Rights**

4 June 2021

**Background**

The existing legal governance of sovereign debt restructuring places a disproportionate burden of risk on the debtor state. The wave of sovereign debt crises compounded by COVID-19 is just a reflection of the inherently asymmetric way in which the international institutional system is structured. Responding to the call for contributions on international debt architecture reform and human rights ahead of the Independent Expert’s report to the 76th session of the General Assembly, this submission outlines key concerns and recommendations using the [Principles for Human Rights in Fiscal Policy](https://derechosypoliticafiscal.org/images/ASSETS/Principios_de_Derechos_Humanos_en_la_Politica_Fiscal-ES-VF-1.pdf), an innovative new normative tool produced by the collective work of Latin American human rights and fiscal policy experts and advocates.

The Principles for Human Rights in Fiscal Policy, steered by the [Initiative for Human Rights Principles in Fiscal Policy](https://derechosypoliticafiscal.org/es/)[[1]](#footnote-1), have been informed by a series of dialogues and consultations with different groups and social movements in the region (including Indigenous and afro-descendant groups, feminist movements, and trade unions) and greatly reflects the need for a clear and specific framework to strengthen accountability of all actors involved. In this submission, we outline how the relevant Principles can inform international debt architecture reform. Specifically, we have aimed to address questions - 2, 3, 5, 9, 13 (a.) and 14 highlighting the General Principles that are the most relevant to the questions posed by the call. We have also added a list of references at the end which have informed these recommendations.

**Recommendations**

“**States must ensure that their fiscal policy is in line with the pursuit of social justice.**”

* Principle III*, Principles for Human Rights in Fiscal Policy (2021)*
1. We underscore the importance of the State party’s obligation under Article 2(1) of the International Covenant on Economic, Social and Cultural Rights to take steps making use of “maximum available resources” to avert retrogressive policy measures introduced as a direct result of worsening debt.
2. As part of their duty to cooperate to mobilize the maximum available resources for the universal fulfilment of economic, social and cultural rights, State Parties must contribute, in accordance with their capacities, to the availability of a financing offer under favorable conditions, particularly for countries with the greatest needs, including through adequate financing from development banks.

“**States must ensure their fiscal policy does not generate regression in protection of economic, social, cultural and environmental rights, even in contexts of economic crisis.**”

* Principle XI, *Principles for Human Rights in Fiscal Policy (2021)*
1. A debt crisis resolution must also acknowledge that it cannot happen at the expense of diverting crucial resources from public services that the marginalised and vulnerable depend on. Low-income and middle-income countries especially cannot afford austerity measures or any cutting back on social services given the current circumstances which may threaten not only their recovery to ‘build back better’ but may in fact prolong it.

1. In this regard, we also find it to be essential to ensure that public spending policies are designed in accordance with the human rights principles of equality, legality, efficiency, priority in social spending, and participation, among other principles such as redistribution and elimination of discrimination in the enjoyment of rights.

“**Fiscal policy must be transparent, participatory and accountable. People have a right to fiscal information.**”

* Principle VII, *Initiative for Human Rights Principles in Fiscal Policy (2021)*
1. To maintain sovereign economic policymaking, agreements with the IMF must undergo parliamentary scrutiny or the constitutional recourse available nationally. This will also safeguard the space to manage public debt in a way that does not hinder the improvement of conditions that guarantee the enjoyment of human rights. States must ensure that debt-related decision-making processes and agreements are open to informed and inclusive public debate, including the participation of groups historically excluded from political representation in debt and fiscal decision-making processes.

“**States must promote substantive gender equality through their fiscal policy, by using an intersectional approach.**”

* Principle VI, *Principles for Human Rights in Fiscal Policy (2021)*
1. External debt programs must undergo a gender responsive assessment exercise to evaluate their impact on women’s human rights and the realisation of substantive equality. Such programs, and any fiscal adjustment measures they entail, must be governed by non-discrimination principles, avoiding the entrenchment of poverty suffered by women, the excessive unpaid domestic and care workloads they shoulder, and the reduction in financing and budgets for gender equality policies.

“**States, and the international institutions of which they are members, must offer assistance and international cooperation in fiscal matters, and create an enabling global governance environment with the aim of achieving the full realization of human rights.**”

* Principle XIII, *Principles for Human Rights in Fiscal Policy (2021)*
1. We support the provisions of the UN Guiding Principles on Foreign Debt and Human Rights which call for a framework to ensure transparency and accountability in loan negotiations and in our view, this includes human rights impact assessments in debt sustainability analyses is a key part of that process. It is crucial to highlight the support lent by the UN Guiding Principles to the long-standing call by Global South countries and civil society groups for the creation of a permanent multilateral mechanism under UN auspices for the systematic, comprehensive and enforceable restructuring of sovereign debt.

1. Human rights standards on debt and extraterritorial obligations provide strong legal justification for the call by debt justice advocates for permanent debt payment cancellation for all countries in need, at least for the next four years, as well as the participation in the Debt Service Suspension Initiative (DSSI) of all creditors, including private lenders. It is estimated this would free up more than US$ 25 billion for lower income countries. Additionally, the Inter-American Commission on Human Rights (IACHR) has called for granting low- and middle-income countries different mechanisms of debt relief, and the lifting of sanctions which could weaken and undermine efforts by States to protect human rights.

1. The costs of expanding debt cancellation could be covered by the reallocation of US$ 3 trillion in SDRs, as called for by hundreds of civil society organisations. Unlike the credit financing tools made available by the IMF, SDRs provide low-cost liquidity without creating additional debt. This measure, coupled with a mechanism for redistributing unused SDRs from high-income countries, would be consistent with the collective duty of states to provide international cooperation so that all countries can count on the “maximum available resources” to guarantee essential levels of socioeconomic rights protection to their people.

“**States must adopt all the necessary financial and fiscal measures to realize human rights, within a sustainable fiscal framework.**”

* Principle VIII*, Principles for Human Rights in Fiscal Policy (2021)*
1. Tackling debt requires a strengthening of national resource mobilisation by implementing progressive tax proposals – such as solidarity taxes, excess corporate profits tax as well as taking concrete steps to curbing illicit financial flows, as highlighted by the High-Level Panel on International Financial Accountability, Transparency and Integrity (FACTI) - to effectively target the rapidly deepening socio-economic inequalities due to the pandemic.

“**Non-state actors, including companies and their intermediaries, have human rights responsibilities in relation to their fiscal conduct.**”

* Principle XIV, *Principles for Human Rights in Fiscal Policy (2021)*
1. It is the responsibility of private creditors and credit rating agencies to respect human rights and prevent contributing to resolving unsustainable debt situations. In the case of creditors, this includes the obligation to perform due diligence on the credit-worthiness and ability of the borrower to repay as well as the duty to refrain from providing a loan in circumstances where the lender is aware that the funds will be used for non-public purposes or for a non-viable project. All relevant creditors and debtors therefore, must engage in the debt restructuring mechanism.
2. Human rights standards establishing the extraterritorial obligations (ETOs) of states acting as members of inter-governmental bodies and their duty to regulate the conduct of private actors, must inform the positions on debt cancellation taken by the World Bank. The latter has argued that debt cancellation would downgrade its rating by credit agencies, a fear that has also been a major factor dissuading countries from requesting private sector debt relief.

1. More importantly, the UN Secretary General has called for the need to reform the international debt architecture so that it facilitates an orderly restructuring that involves all creditors, and tackles the underlying causes with the aim of preventing recurring sovereign debt crises, while giving States greater room for investing in guaranteeing rights and sustainable development. By ensuring regulation of credit rating agencies, this reform will also address existing apprehensions regarding private sector debt relief requests and discourage States from pursuing any austerity measures due to fiscal crunch.
2. International cooperation on debt issues must take into account the magnitude of the risks and stress that circumstances such as the climate crisis, natural disasters and pandemic which has catapulted into a humanitarian crisis, impose on the debtor countries, in order to design debt relief, restructuring or cancellation mechanisms that involve all relevant stakeholders and establish appropriate incentives and measures for their effective implementation. The acquisition of sovereign debt conditioned by the situation of the borrowing State, such as GDP-linked bonds, or the inclusion in debt contracts of moratorium provisions in their force majeure clause could also be considered, which can help countries in times of catastrophes.

**References**

1. IACHR (2020). Pandemic and Human Rights in the Americas. Resolution1/ 2020 (Adopted by the IACHR on April 10, 2020). Par. 18
2. Maastricht Principles on the Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, Art. 31.
3. Initiative for Human Rights Principles in Fiscal Policy (2021). *Principles for Human Rights in Fiscal Policy*. <https://www.cesr.org/principles-human-rights-fiscal-policy>
4. Center for Economic and Social Rights and Latindadd (2020). *Debt Financing to Realize Rights*. Part of COVID-19 Recovering Rights series. <https://www.cesr.org/sites/default/files/Brief%204%20Debt%20Finance__%20_0.pdf>
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6. Saiz, Ignacio (SEF, 2021). Freeing Fiscal Space: A human rights imperative in response to COVID-19 <https://www.cesr.org/sites/default/files/Freeing%20Fiscal%20Space.pdf>
7. Progressive International (2021). Take Back Our Institutions. <https://progressive.international/blueprint/98bf6846-33cd-45ea-ae9f-575d6e0c18dc-take-back-our-institutions/en>
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9. Latindadd, Latin America: Between debt and the pandemic (2021) http://www.latindadd.org/wp-content/uploads/2021/05/LATIN\_AMERICA\_Between\_debt\_and\_the\_pandemic\_Guarded\_prognosis.pdf
1. The Steering Committee of the Initiative includes: Asociación Civil por la Igualdad y la Justicia, ACIJ – Argentina; Centro de Estudios Legales y Sociales, CELS – Argentina; Center for Economic and Social Rights, CESR – International; Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia – Colombia; Fundar, Centro de Análisis e Investigación – México; Instituto de Estudos Socioeconômicos (INESC) – Brasil; and Red de Justicia Fiscal de América Latina y el Caribe, RJFALyC - Latin America & the Caribbean. [↑](#footnote-ref-1)