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Mandate of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

17 July 2023

Your Excellency,

I have the honour to address you in my capacity as Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, pursuant to Human Rights Council resolution 52/17.

I write to highlight significant concerns over the human rights threat posed by potential conditionalities imposed in current and upcoming international debt renegotiations, in particular the OECD’s Pillars one and two proposals.

Multiple, international crises have created huge financial needs that have left no option for many lower-income countries but to resort to high debt. The climate crisis and the growing frequency of related disasters, the COVID-19 pandemic, and war in Ukraine; each have fed macroeconomic pressures of inflation, interest rate rises and US dollar appreciation that collectively have done great damage to government budgets.

The latest debt sustainability analysis of the World Bank and International Monetary Fund lists 39 countries as either in debt distress already or at ‘High’ risk. The pressure to maintain debt repayments leads directly to the deprioritisation of public spending upon which human rights depend. According to Oxfam’s Commitment to Reducing Inequality Index 2022, in 2021, low and middle-income countries spent an average of 27.5% of their budgets on interests and debt repayments – many times more than what was spent on education, healthcare, and social protection combined – while barely 5% of countries increased taxes on the richest.

Meanwhile, revenue losses due to corporate tax abuse have continued to grow sharply. Tax Justice Network has recently reported that the most intense losses, as a share of current tax revenues, fall consistently on lower-income countries. The solution for taxing the digitalized economy that was scheduled for 2020 has still not been delivered by the OECD, and the proposals that remain under discussion are increasingly perceived to have lost most of their original ambition. Independent analysis on all sides indicates that the OECD proposals are highly complex and will tie the hands of lower-income countries if they agree to participate, while allowing them to generate little (or perhaps no) additional revenue.

H.E. Csaba Kőrösi
President of the United Nations General Assembly, New York

These trends will only exacerbate the crisis of inequality. In 2021, more than 80% of the world's population lived in countries that were implementing austerity – a figure forecast to rise to 85% through 2023.[1]

The growing momentum around debt renegotiation is both vital and urgent, therefore, to minimise the ongoing and deepening damage to human rights. Equally, it is crucial that the renegotiations prioritise the need for additional public spending to respect, protect and fulfil human rights.

For country negotiators, three points of advice may be useful.

First and foremost, countries accept *no* restrictions on their future ability to raise revenues. There is no point renegotiating a debt burden in order to free up resources to promote human rights, *if that same renegotiation ties a government's hands and prevents them from generating resources.*

For example, the OECD's proposed 'Amount A of Pillar One' reform is forecast to deliver small revenue gains at best. But as it stands, adoption would require countries to forsake their ability to pursue a whole range of 'unilateral measures' – better described as national measures - that currently generate substantial and sustainable revenues – from digital service taxes in many countries to 'significant economic presence' measures such as that of Nigeria. In the letter I sent, together with other Special Procedures, to the OECD of 4 November 2022 OL OTH 107/2022, we noted the risk that the OECD's proposed reform limits the States' capacity to mobilise the resources required for the realisation of economic social and cultural rights. In addition, even the estimated benefits – which are distributed disproportionately towards high-income countries and the largest economies[2] – will be largely eliminated if the US does not participate (as seems inevitable), and if China then follows suit.

The OECD's Pillar Two – the 'GloBE' minimum tax proposal – also privileges the headquarters countries of multinationals (typically OECD member countries). This bias and the great complexity of the current proposals mean that lower-income countries will do best by adopting unilateral measures instead, aimed at securing their own tax base. However, the GloBE rules' biggest weakness is that they still leave the door open for profit shifting. It is entirely possible for an in-scope company to continue paying zero taxes under the GloBE rules, as the tax base is financial accounting net income, which is vulnerable to profit shifting methods such as interest stripping or royalty payments. Hence, the term 'global minimum tax' is misleading and developing countries are better off considering alternative policy options.

As an absolute minimum, *negotiators should refuse to commit to any OECD proposals that have not already been fully ratified and implemented by all OECD member countries*. This is especially true for Amount A of Pillar One. No other negotiating party could legitimately make a proposal without having shown a minimal commitment with it.

Second, country negotiators should resist pressure to tilt revenue-raising towards regressive measures such as VAT or against much-needed progressive measures including wealth taxes and excess profits taxes.

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[1] Ortiz, I., & Cummins, M., 2022, *END AUSTERITY: A Global Report on Budget Cuts and Harmful Social Reforms in 2022-25*, New York: Initiative for Policy Dialogue and partners.
[2] Barake & Le Pouhaër, 2023.

Third, country negotiators should resist pressure to commit not to use fiscal space to respect, protect and fulfil human rights through inclusive public spending. Instead, negotiators should insist on protecting this space both in order to ensure that the renegotiations do indeed give rise to the gains which are their only raison d'être; and also in respect of the fundamental principle that citizens, not creditors, may determine such national priorities.

For international financial institutions engaged in debt renegotiations, there are three related demands.

First, transparency: to ensure that negotiations support, rather than deny the public's political rights and the accountability of governments, international parties to the negotiations should provide full transparency in advance about their full negotiating position, including any demands related to fiscal policy decisions.

Second, to support progressive revenue-raising. At a minimum, the international financial institutions should commit explicitly not to include any restrictions on such policies in their own negotiating positions.

Third, and finally, these negotiating positions should be informed by the evidence. Policy positions that clash with research findings, including of the institutions themselves, should neither be brought forward nor imposed.

For private sector stakeholders in debt renegotiations, it will be valuable to be aware of the threat posed. If renegotiations end up tying the hands of governments in a way that prevents future revenue-raising, the negotiations will make future defaults more, rather than less likely. Such a self-defeating approach will also deepen the risks of political conflict over distributional questions.

In the context of multiple crises and pervasive 'austerity' measures, the coming months are critical for the growing number of people whose countries are engaged in debt renegotiations. The protection and promotion of human rights must be paramount in the negotiations if they are to succeed in delivering sustainable progress.

I would like to request you to kindly circulate this letter among all Member States.

Please accept, Excellency, the assurances of my highest consideration.

Attiya Waris
Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights