***Labour rights in the context of structural adjustment
and fiscal consolidation policies***

1. **Background**

The next thematic report to the 34th session United Nations Human Rights Council, by the Independent Expert on the effects of foreign debt on human rights, Mr. Juan Pablo Bohoslavsky, will focus on the impact of structural adjustment and fiscal consolidation policies on labour rights contained in international human rights law.

Countries facing a sovereign debt crisis have adopted fiscal consolidation measures, such as reducing the public sector wage bill or the number of people employed in the public sector, and labour market reforms to render the labour market more flexible and thereby increase the competitiveness of their economies. These measures include the modification of labour laws, freezing or reducing the minimum wage, extending working hours, and weakening the collective bargaining system through decentralization. The measures have sometimes been alleged to contravene states’ international obligations, erode labour rights, or result in retrogression of work-related gender equality.

There is also concern that such labour market reforms contribute to an increase in insecure and informal employment; may foster discrimination in the labour market towards young and older persons, persons with disabilities, and individuals belonging to marginalised social groups if adequate safeguards are not incorporated; and result in the reduction of unemployment benefits and other job-related social protection.

On the other hand, certain reform measures may have resulted in significant improvements in the enjoyment of labour and other economic, social and cultural rights contained in international human rights treaties.

The report will analyse the relationship between labour rights and sovereign debt, focusing on labour market reforms and austerity measures implemented in the context of sovereign debt crises. Analysing selected case studies, the report will explore the ways in which austerity measures and labour market reform have modified, both in law and in practice, collective and individual labour rights at the domestic level. The report will conclude with proposals for improving protection of individual and collective labour rights during sovereign debt crises and times of austerity.

1. **Questionnaire**

In the context of preparing his report, the Independent Expert would like to receive contributions and views from States and/or national human rights institutions addressing the following issues:

1. During the last two decades, has your Government implemented fiscal consolidation measures or a structural reform programme that included any of the following labour related measures:

[ ] labour market reforms (flexibilisations);
[ ] changes to the national labour law;

[ ] changes to the system of collective bargaining;

[ ] freezing of salary increases for public service workers and civil servants;

[ ] reduction of the number of persons employed in the public service;

[ ] freezing or reduction of minimum wage;

[ ] privatization of state-owned or controlled businesses and services;

[ ] reform of system of unemployment and/or social security benefits.

Please briefly summarise the reforms, the changes in law, their intended purpose and how they were implemented.

2. Please explain if the above mentioned reforms were implemented at the Government’s own initiative, or if they were part of conditionalities for emergency lending or other financial assistance from an international financial institution (IMF, ESM etc.), or responded to other factors?

3. What kind of mechanisms for consultation with trade unions, business associations and civil society organizations were used during the design and implementation of the above reforms? Could you provide a brief overview of the consultative process that accompanied the reform process?

4. Can you describe how your Government has reviewed proposed structural adjustment and fiscal consolidation in relation to their impact on economic and social rights? What are the results of the Government’s monitoring and evaluation of the programme’s impact on economic and social rights? Could you explain the methodologies used and share any impact assessment or evaluation reports?

5. To what extent did the reforms have a positive or negative impact on the following rights contained in international human rights treaties:

(a) Freedom of association – workers have the right to form and join, without prior authorization, organizations of their own choosing for the defense of their occupational and industrial interests.[[1]](#footnote-1)

 (b) Right to collective bargaining[[2]](#footnote-2)

 (c) Right to strike in conformity with domestic laws[[3]](#footnote-3)

(d) Right to just and favourable conditions of work (fair and decent living wages for workers and their families; safe and healthy working conditions; rest, leisure and reasonable limitation of working hours; etc.)[[4]](#footnote-4)

 (e) Right to social security, including social insurance[[5]](#footnote-5)

 (f) Prohibition of all forms of forced labour[[6]](#footnote-6) and of harmful child labour[[7]](#footnote-7)

(g) Non-discrimination in employment (equal pay for equal work; equality of opportunity and treatment, etc.)[[8]](#footnote-8)

6. Please explain changes/impacts caused by the reforms in the following areas:

(a) levels of unemployment

(b) poverty (including the number of people considered as working poor),

(c) involuntary temporary employment,

(d) non-standard work contracts,

(e) irregular and/or informal work arrangements or

(f) the percentage of people contributing to or receiving benefits from unemployment social security or public health insurance?

7. How did the reforms affect the inclusion/exclusion of the following groups in the labour market: young persons, older persons, persons with disabilities, migrant workers, and members of ethnic or religious minorities?

8. How did the reforms affect the inclusion/exclusion of women in the labour market? Had the reforms any impact on the gender-related wage gap, and women’s right to enjoy the same rights in employment on an equal basis with men (for example, the right to maternity leave with pay or comparable social benefits; the right to protection from dismissal on the grounds of pregnancy, maternity leave or marital status, etc.)[[9]](#footnote-9) ?

9. Could you provide information whether the reforms result in an increase in the activity of organized labour, including strikes and public demonstrations? Could you describe possible human rights concerns related to the treatment or safety of labour representatives, workers, or individuals who participated in trade union work, strikes or public demonstrations or were affected by them, that have been brought to your attention?

10. Please explain a particular successful measure or good practice by your Government that had a positive impact on the enjoyment of labour rights or economic and social rights in your country? This can include successful measures to mitigate adverse impacts of a financial crisis or adjustment programme. If possible, please provide a reference or link to an academic article, independent evaluation, or report providing more details.

1. **Submission of responses**

Due to limited capacity for translation, we kindly request that you submit your answers, if possible, **in English, Spanish or French, no later than 9 September 2016.** Kindly identify links or provide copies of any laws, documents or cases, related to your answers. Responses to the questionnaire can be sent to ieforeigndebt@ohchr.org cc: registry@ohchr.org (encouraged) or addressed to:

UN Independent Expert on foreign debt and human rights

Thematic Engagement, Special Procedures and Right to Development DivisionUNOG-OHCHRCH-1211 Geneva 10, Switzerland

Fax : +41 22 917 9006

We kindly request that your submission be concise and preferably limited to a maximum of 8 pages (or 3,500 words).

Unless otherwise requested, all submissions will be posted on the OHCHR webpage and *made publicly available*:

<http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/IEDebtIndex.aspx>

**Response:**

Q 1 .

In our country, the government has not made remarkable labour market reforms and for the first time in Nepal labour right is incorporated as the fundamental rights in the constitutional of Nepal 2015. The system of collective bargaining is included in the existing civil service act and regulations for the civil servants.

No freezing of salary increases for public service workers and civil servants. No reduction of the number of persons employed in the public service in stead, there is increase in the salary. There is provision of increase in the minimum wages of the workers in the media sector. In some of the state-owned industries are privatized or dissolved as they are continuously in loss to their business. The government has tried to regulate for the Nepalese migrant workers who are working abroad and brought the policy to reduce unemployment. There is increase in the social security allowances to the senior citizens, persons with disabilities and other marginalized people.

Q 2.

The government of Nepal has tried to increase the salary of the civil servants and workers of the corporate sectors. Also government increased the social security allowances by the financial policy.

Q 3.

During the reform process the representatives from the trade union, business associations and very few no. of civil society organizations usually form the mechanism in which the participation of civil society organizations may not seems meaningful.

So, the implementation of such kind of reform seems challengeable for eg. Some times government brings the policy for the minimum wages of the labour but business associations and corporal sector deny implementing.

Q 4.

Generally the Government reviews the provision related to the impact on economic and social rights as output and its result on the programs it takes in program and budget it announces in the parliament before the fiscal year starts. Also the Nepal Government slightly doing the progress on the protection of economic and social rights including the social security provision providing the allowances to the senior citizen, single women, people with disabilities and marginalized people.

Q 5.

After the restoration of democracy in 1990, Nepal has got progress in significant way is the enjoy of freedom of association, to participate and of collective bargaining by the civil servants and workers in the industries and in organized offices.[[10]](#footnote-10)

Q 6.

In Nepal the government has not any special plan so that the citizens can get the job easily, in stead the unemployment is increasing and the youth are trying to get the job as migrant workers in the Golf, Middle East and Malaysia like countries. As of the impact of the remittances the report published by the Central Bureau of Statistics shows that the poverty is decreasing, this may be but some of the poorer may poorer as there may have the possibility of economic disparity.

In Nepal like countries there is the possibility of temporary employment as there are many farmers and farming seems the seasonal and which may contribute the commodities they consume may grow by themselves and they don't have the regular employment.

As the unskilled workers are going as migrant workers, they suffer for the non-standard works contract in the destination countries and here in the country such cases are not reported.

Irregular and informal work could be obtained as some of the development works those are planned by the consumers committee in the local areas and some of the works are being done by some projects like Food for Work.

In Nepal public health insurance is just the policy is discussed by the government and some people do as by individual way also the senior citizen, single women, person with disabilities and people of disadvantaged groups or community are benefited the social security allowances but not by the unemployment social security.

Q 7.

The reforms affects to said group of people generally the younger people are seeking the job in the labour market and if they find they contribute otherwise they seek globally the job as migrant workers and for some of the groups only in the government employment they get the opportunity to serve or get the job and it is bringing the situation brain drain too.

Q 8.

Generally reforms affect the inclusion/exclusion of women in the labour market as we don't see the gender related wage gap in the organized institutions and now there is the tendency of being independent by the women too. Also the women get the maternity leave with payment for that period but in some of the private organization this might be but no report registered.

Q 9.

The provision of freedom of association in the constitution and civil service act and regulations the increase in the activity of organized labour, including strikes and public demonstrations is seen. In some cases there is the scarcity of skilled labour in the market and some of the industries are being closed and the owners sifted the investment in the next country and area. There is the possibility of doing more if got the chance by the labour and owner both side which resulted the degrading working and industrial environment.

Q 10.

The government has the compulsory and primary education to all so that there is the decrease in the illiteracy, also by the government the health policy for the delivery only in the hospitals, health centers cause very much positive results in the right to health and that caused remarkable decrease in the maternal mortality and infant mortality as the government provides the travel fare to come and return the health centers and free service to the patients when they come. We can see as example in the following link of achievement in the delivery care and anti and post natal care and progress in comparative data base.

http://dohs.gov.np/wp-content/uploads/2014/04/Annual\_Report\_2070\_71.pdf

1. See International Covenant on Civil and Political Rights (ICCPR), art. 22; International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 8; International Labour Organisation (ILO) Convention 87. [↑](#footnote-ref-1)
2. See ICCPR, art. 22; ILO Convention 98. [↑](#footnote-ref-2)
3. See ICESCR, art. 8(d). [↑](#footnote-ref-3)
4. See ICESCR, art. 7. [↑](#footnote-ref-4)
5. See ICESCR, art. 9, and ILO Convention 102 and ILO Social protection Floor Recommendation, 2012 (No. 202). [↑](#footnote-ref-5)
6. See ICCPR, art. 8; ILO Conventions 29 and 105. [↑](#footnote-ref-6)
7. See Convention on the Rights of the Child, art. 32; ILO Conventions 138 and 182. [↑](#footnote-ref-7)
8. See ILO Conventions 100 and 111; Convention on the Elimination of All Forms of Discrimination against Women, art. 11; Committee on the Elimination of Discrimination against Women, General Comments Nos. 13 and 16; Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e)(i)-(ii); Convention on the Rights of Persons with Disabilities, art. 27; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 25, 26. [↑](#footnote-ref-8)
9. See Convention on the Elimination of All Forms of Discrimination against Women, art. 11. [↑](#footnote-ref-9)
10. Constitution of Nepal, 2015 Article 34(3) [↑](#footnote-ref-10)