

**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**

Ref.: OL USA 9/2023  
(Please use this reference in your reply)

21 April 2023

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 34/3.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning a law proposal introduced in the New York State Legislature: The New York Taxpayer and International Debt Crises Protection Act, (Senate Bill S.4747, and companion Assembly Bill to A.2970)<sup>1</sup>. The Act amends the Debtor and Creditor Law, in relation to the recoverability of sovereign debt.

Section 2 of the Bill defines the international debt initiatives the United States supports, the debt claims to which the legislation will apply, the eligible debtor states, and the standards for equitable burden-sharing among all creditors embedded in international debt initiatives. It mandates that debt claims for countries participating in international debt initiatives against eligible debtor states will only be recoverable to the extent they meet burden-sharing standards, and robust disclosure criteria, and not exceed the proportion that would have been recoverable by the US government had it been the creditor holding such claim. The Bill will compel private sector creditors to participate in debt restructurings of distressed low-and middle-income countries on the same terms as official government creditors.

As a matter of background, I would like to mention to your Excellency's Government that unsustainable debt levels, disproportionate debt servicing obligations and the lack of debt restructuring can have a profound impact on the human rights of the people. It may substantially diminish the ability of a country to raise and mobilize the maximum available resources needed for the protection and realization of human rights, particularly economic, social and cultural rights. Such a situation may deprive and cut the country off from funds that are critical to the delivery of essential public services.

In this regard, I would like to remind your Excellency's Government of some relevant information, such as the report of a previous Independent Expert on foreign debt, in particular the report (A/75/164), which in line with article 2 of the International Covenant of Economic, Social and Cultural Rights, points to the recognized obligation of international financial organizations and private corporations to respect international human rights especially when circumstances have rendered a debt unpayable.

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<sup>1</sup> <https://www.nysenate.gov/legislation/bills/2023/s4747>

I would also like to mention a joint communication (AL OTH 85/2022) sent by a number of Special Procedures mandate holders to the International Monetary Fund (IMF)<sup>2</sup> on the differentiated impact of the surcharge policy on countries already in debt distress, which is part of the loan arrangements provided by the IMF. In that communication, we expressed concerns about the impact of the surcharge policy on the enjoyment of the human rights, in particular of economic, social and cultural rights. We also noted that where financial institutions—public or private—may cause, contribute to, or be linked to negative impacts on people, they should uphold their human rights responsibilities by adopting and embedding relevant policies across the whole of their institutions and activities, conducting ongoing and iterative human rights due diligence, and playing a role in access to remedy, where appropriate.

In addition, the mandate's report on international debt architecture reform and human rights (A/76/167) points to the obligation's lenders have in not undermining a borrowers' debt sustainability. Lenders' responsibilities include the recognition that sovereign borrowing aims to protect the public interest and must therefore not be undermined, referring to the Statement on public debt, austerity measures and the CESCR (see E/C.12/2016/1). International debt architecture reform should not only have the capacity to respond to debt crisis in an effective and timely manner but should also serve to prevent future crises.

I would like to highlight the Guiding Principles on human rights impact assessment of economic reforms (A/HRC/40/8), in particular: principles 15 and 16, which state respectively that: "The State's donors and creditors, both official and private, should not attach conditions to their financing that could undermine the State's ability to respect, protect and fulfil its human rights obligations" and "The State's donors and creditors, both official and private, should assess the human rights impacts of the terms and conditions of their proposed transactions with the reforming state and of any advice they may provide to the State".

These Guiding Principles must be read in line with the Guiding Principles on foreign debt and human rights (A/HRC/20/23) which are based on the recognition of States' existing obligations to respect, protect and fulfil all human rights, the obligations of international financial institutions and private corporations to respect human rights, as well as the need for a comprehensive solution to the sovereign debt problems of developing countries that is anchored to a human rights-based framework.

I would also like to bring to your attention that the UNCTAD Principles on Promoting Responsible Sovereign Lending and Borrowing (UNCTAD/GDS/DDF/2012/Misc.1) underscore the importance of cooperation to restructure debt on behalf of all lenders to reach a resolution. In particular, principle 5 states that "Lenders financing a project in the debtor country have a responsibility to perform their own ex ante investigation into and, when applicable, post-disbursement monitoring of, the likely effects of the project, including its financial, operational, civil, social, cultural, and environmental implications. This responsibility should be proportional to the technical expertise of the lender and the amount of funds to be lent". Principle 7 states that "In circumstances where a sovereign is manifestly unable to service its debts, all lenders have a duty to behave in good faith and with cooperative spirit to reach a consensual rearrangement of those obligations. Creditors

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<sup>2</sup> [AL OTH 85/2022](#)

should seek a speedy and orderly resolution to the problem”.

Reports by previous mandate holders ([A/HRC/14/21](#)) have mentioned negative impacts of “vulture fund” activities like predatory lending, lack of cooperation among others on international debt relief efforts and on the capacity of indebted poor countries that have benefitted from debt relief to create the necessary conditions for the realization of human rights. The report on the role of credit rating agencies ([A/HRC/46/29](#)) further noted that each State party to the Covenant is required to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant. In this regard, the phrase ‘to the maximum of its available resources’ refers to both the resources existing within a State as well as those available from the international community through international cooperation and assistance. Precisely, this international cooperation and assistance in debt-related crises can take several forms, notably debt restructuring, cancellation or standstills.

In July 2022, a joint communication (US 14/2022) by Special Procedures mandate holders was sent to the US highlighting the role of BlackRock’s involvement in Zambia’s sovereign debt crisis impeding the country’s ability to restructure its debt, negatively affecting the realization of human rights of its populations. A similar letter was also sent to BlackRock (OTH 75/2022).

Against this backdrop, it is encouraging to learn that the purpose of the bill "The New York Taxpayer and International Debt Crises Protection Act (S.4747, companion bill to A.2970) is to promote effective and orderly sovereign debt restructuring for countries suffering from the pandemic, health, and economic crises, achieve equitable burden-sharing between public and private creditors, address economic and supply chain shocks, prevent financial system disruption, and protect New York taxpayers.

It is noteworthy that the Bill acknowledges that debt distress, debt crises, and disorderly default are associated with unacceptable human suffering and have a negative economic impact. It is also welcome that it declares that -if passed- it shall be the policy of the state of New York to support international debt relief initiatives for developing countries in, or at high risk of, debt distress, to ensure that the cost of such debt relief is allocated in a fair and equitable manner.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify matters brought to my attention, I would be grateful for your observations on the following:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned draft legislation including expected steps on the legislative process and measures for its implementation should it be adopted.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Attiya Waris

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