



# CENTER FOR ECONOMIC AND SOCIAL RIGHTS

SOCIAL JUSTICE THROUGH HUMAN RIGHTS

## **CESR's Response to the Call for Inputs by the Independent Expert on Foreign Debt and Human Rights – November 2021**

The Center for Economic and Social Rights (CESR) welcomes the opportunity to provide inputs on the call to inform the Independent Expert's first report to the Human Rights Council, 49th session, on a vision and strategy for the work of the mandate in the coming years.

### **Taking stock**

The domestic resource mobilization needs of global South countries are arguably higher than ever before, to mitigate and recover from the long-term impacts of the pandemic. As the pandemic continues, UNCTAD recognizes the need for an additional allocation of \$3-5 trillion (at current exchange rate) in Special Drawing Rights to developing countries, if China and other emerging economies are included.<sup>1</sup> In fact, an additional \$1.7 trillion revenue shortfall for 2020 has been projected by the OECD to the existing annual financing gaps of \$2.5 trillion for developing countries.<sup>2</sup> These financing gaps are not just abstract technical problems - they represent a shortfall of desperately-needed investments in goods and services which are essential to realizing people's human rights, especially in the most disadvantaged communities in the Global South.

Recent policy trends show how countries are relying even more heavily on regressive or unsustainable revenue-raising methods to meet the large deficit. For example, borrowing more to meet fuel purchasing needs<sup>3</sup> or to service oil and petrol debt bonds<sup>4</sup> using economic partnership agreements, or taking loans from multilateral development banks or the IMF which may have onerous austerity conditionalities attached. By relying on these types of measures rather than on levying progressive direct taxes like corporate income taxes, excess profit taxes, wealth taxes etc., countries are placing the rights (including the right to development) of their populations at risk. The increasing dependence on indirect taxes and

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<sup>1</sup> The COVID-19 Shock to Developing Countries [https://unctad.org/system/files/official-document/gds\\_tdr2019\\_covid2\\_en.pdf](https://unctad.org/system/files/official-document/gds_tdr2019_covid2_en.pdf)

<sup>2</sup> OECD (2020) Global Outlook on Financing for Sustainable Development 2021: A New Way to Invest for People and Planet <https://www.oecd.org/development/global-outlook-on-financing-for-sustainable-development-2021-e3c30a9a-en.htm>

<sup>3</sup> Sri Lanka Seeks \$500 million Loan from India for Fuel Purchase <https://www.ndtv.com/india-news/lanka-seeks-usd-500-mn-loan-from-india-for-fuel-purchase-2578193>

<sup>4</sup> Rules on Retrospective Tax to be Framed Soon Says Nirmala Sitharaman <https://www.thehindu.com/business/Economy/rules-on-retro-tax-to-be-framed-soon-says-nirmala-sitharaman/article35940234.ece>



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heavily-conditioned loans is troubling and counterproductive amidst rising inequality. According to the latest figures, debt in low-income countries rose to \$860 billion in 2020.<sup>5</sup>

The joint IMF and World Bank policy update shows that the Debt Service Suspension Initiative (DSSI) extended to 73 low-income countries which came into play as the pandemic hit, has actually failed to address the revenue challenges associated with COVID in these countries.<sup>6</sup> This initiative will end on December 31st, 2021. Sustainable debt, therefore, not only requires a strengthening of domestic resource mobilization by implementing progressive tax proposals, but also requires taking concrete steps to curb illicit financial flows (IFFs), as highlighted by the High-Level Panel on International Financial Accountability, Transparency and Integrity (FACTI).

Time and again, revelations like the Pandora Papers, have sounded the urgent need to fix the broken international financial system, and instead build a system that works for the people and planet.<sup>7</sup> Meanwhile, the “solutions” being most loudly proposed in multilateral spaces are perpetuating these systemic inequalities rather than fixing the problem. Mirroring this inherent geopolitical imbalance, the OECD and G20 backed global tax deal has undesirable consequences for developing countries. The global corporate minimum tax under the Two Pillar solution set at 15% is not enough to meet the fiscal needs of low-and middle-income countries that are losing billions of dollars to corporate tax evasion and avoidance. Moreover, the carve-outs and exceptions in the deal mostly benefit wealthy countries and international financial centers that facilitate IFFs.

However, advocacy and research on a) sovereign debt b) tax and illicit financial flows and c) climate finance have been dealt with in a very disconnected manner, despite how intrinsically interconnected they are in their causes and consequences. We would urge the Independent Expert to investigate the linkages between rising debt, tax systems and governance, and climate action and examine the potential solutions offered in the submission. In general, the human rights obligations most relevant to this mandate - international cooperation and assistance, extraterritorial obligations, maximum available resources - have been politically sidelined, little understood and under-leveraged, so the mandate has an important role to play and example to set in shifting this dynamic. Below we include more detailed analysis/suggestions based on the areas identified in the call for submissions:

## **Humanitarian, conflict and health- related crisis, and natural emergencies and financial obligations:**

While the IMF-World Bank have called for debt restructuring to help reduce the debt burden of lower-income countries, it is not enough when taking into account the magnitude of risks looming for global South countries. International cooperation on debt issues must be interlinked with issues of pandemic

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<sup>5</sup> Low-Income Country Debt Rises to Record \$860 billion in 2020 <https://www.worldbank.org/en/news/press-release/2021/10/11/low-income-country-debt-rises-to-record-860-billion-in-2020>

<sup>6</sup> Joint IMF- WBG Staff Note: DSSI Fiscal Monitoring Update <https://www.imf.org/en/Publications/Policy-Papers/Issues/2021/09/16/Joint-IMF-WG-Staff-Note-DSSI-Fiscal-Monitoring-Update-465864>

<sup>7</sup> What’s in Pandora Papers? - Biggest Offshore Tax Leak <https://www.icij.org/investigations/pandora-papers/>



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recovery as well as climate emergency and vaccine apartheid that have the potential to turn into humanitarian crises. More than 80% of the loans negotiated between the IMF and 85 countries envisage or require fiscal consolidation measures as the intensity of the pandemic lessens.<sup>8</sup> This will have detrimental effects in not only how public debt rises but creeping high-levels of unemployment in the global South and thus, the delivery of public services that disadvantaged people - especially women with marginalized identities - most depend on.

The continued disconnect between States' human rights obligations and fiscal policy design is jarring. As the Committee on Economic, Social and Cultural Rights and others have made clear, austerity measures which cause retrogression in rights enjoyment are only permissible under extremely limited circumstances.<sup>9</sup> Privatization of aspects of public delivery of services, as well as countries adopting the public-private partnership model, also places human rights-aligned financing at risk.<sup>10</sup> As summarized by the new Principles for Human Rights in Fiscal Policy: "As companies gain more political power, they exercise even greater undue influence to reduce corporate taxation, broaden tax allowances and exemptions, and increase legal loopholes enabling tax avoidance."<sup>11</sup>

Effective designing of debt relief, restructuring or cancellation mechanisms must involve all relevant stakeholders and establish appropriate incentives and measures. 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. In addition, work to align debt sustainability analyses/assessments with human rights norms, principles and needs is also badly needed.

## **Environment, illicit financial flows, debt and financial transactions:**

Systemic problems in the areas of debt, tax, and climate finance are all deeply interconnected, reflecting the same colonial power and institutional dynamics and many of the same policy dogmas. They are also all areas that are largely still seen as a "rights free zone", despite their dramatic impact on the human rights of millions of people, disproportionately women in the Global South. It is the combination of failures and disparities in these policy areas which add up so devastatingly to the situation of endemic poverty, extreme inequality and climate catastrophe that we see today across much of the world. We therefore look forward to the mandate "connecting the dots" between these different areas and

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<sup>8</sup> Adding Fuel to Fire: How IMF Demands for Austerity will Drive Up Inequality Worldwide <https://reliefweb.int/sites/reliefweb.int/files/resources/bp-covid-loans-imf-austerity-110821-en.pdf>

<sup>9</sup> See .e.g. CESCR statement 2016 E/C. 12/2016/1 [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2016%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2016%2f1&Lang=en)

<sup>10</sup> See Report of former UN Special Rapporteur on extreme poverty and human rights, Philip Alston, on privatization: A/73/396

<sup>11</sup> Principles for Human Rights in Fiscal Policy [https://derechosy politicafiscal.org/images/ASSETS/Principles\\_for\\_Human\\_Rights\\_in\\_Fiscal\\_Policy-ENG-VF-1.pdf](https://derechosy politicafiscal.org/images/ASSETS/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf)



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providing guidance on the human rights standards and considerations that can underpin and guide a transformation of the system.

In particular, the work on debt and human rights-aligned climate finance is crucial - especially in the wake of the recent Human Rights Council resolution recognizing the right to a healthy environment. The mandate could provide very useful analysis on the fiscal and financial resources needed to realize that right, and in particular the obligations of Global North countries in this regard.

### **Transparency of financial and tax information and digital systems:**

Accountancy reforms such as public country-by-country reporting can reveal how and where multinational corporations pay their taxes and actually end up reporting their incomes. This information can shed light on where companies operate on the basis of employees, users, sales etc. even without necessarily having a physical presence in that particular jurisdiction, allowing market jurisdictions to reclaim their right to tax digital companies. Countries must also adopt public registers of ultimate beneficial owners of legal entities and arrangements (companies, trusts, foundations, cooperative societies, limited liability partnerships) to further integrate aspects of financial transparency.

Robust transparency practices like public country-by-country reporting and beneficial ownership are needed to equip oversight bodies as well as the larger public to curb tax motivated illicit financial flows.

### **Fiscal legitimacy and the evolving social contract:**

In terms of good practices, the Principles for Human Rights in Fiscal Policy point to a framework of redistributive policies that protect the rights of all people. The principles also highlight fiscal information should be presented in disaggregated data based on gender, ethnicities, race, caste and other categories of discrimination of social identities.<sup>12</sup>

Tax exemptions and incentives offered to multinational companies must undergo environmental and socio-economic impact assessments to avoid wasteful or even harmful expenditures. Additionally, for representative and transparent budgetary procedures, Economic and Finance Ministries of countries should undertake gender impact assessments on tax policies as well as public-private partnerships. Scrutinizing gender budget statements reveal a certain degree of arbitrariness in how gender weights are assigned under schemes and programs meant to target women and girls – which is indicative of an ex-post accounting process which any gender mainstreaming approach shouldn't be aligned with. Greater use of domestic laws like the right to information law can also shed further light on the fund flow and utilization of those allocated public funds at lower tier levels.

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<sup>12</sup>Principles for Human Rights in Fiscal Policy [https://derechospoliticafiscal.org/images/ASSETS/Principles\\_for\\_Human\\_Rights\\_in\\_Fiscal\\_Policy-ENG-VF-1.pdf](https://derechospoliticafiscal.org/images/ASSETS/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf)



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We would be happy to provide more information, please write to us at Kate Donald ([kdonald@cesr.org](mailto:kdonald@cesr.org)) or Sakshi Rai ([srai@cesr.org](mailto:srai@cesr.org)).

Further CESR resources which may be of relevance:

- Ignacio Saiz (2021): Freeing Fiscal Space: A human rights imperative in response to COVID-19. <https://www.cesr.org/sites/default/files/Freeing%20Fiscal%20Space.pdf>
- Sakshi Rai (2021): Tax Reforms and Global Redistribution: Situating the Global South. <https://www.epw.in/journal/2021/33/commentary/tax-reforms-and-global-redistribution.html>
- Center for Economic and Social Rights (2018): Assessing Austerity: Monitoring the Human Rights Impacts of Fiscal Consolidation. <https://www.google.com/search?q=ssessing%20Austerity%3A%20Monitoring%20the%20Human%20Rights%20Impacts%20of%20Fiscal%20Consolidation>
- Center for Economic and Social Rights (2020): Governments' Obligation to Invest "Maximum Available Resources" in Human Rights. Part of COVID-19 Recovering Rights series. [https://www.cesr.org/sites/default/files/CESR\\_COVID\\_Brief\\_1.pdf](https://www.cesr.org/sites/default/files/CESR_COVID_Brief_1.pdf)
- Center for Economic and Social Rights (2020): Governments' Obligation to Cooperate Internationally to Realize Human Rights. Part of COVID-19 Recovering Rights series. [https://www.cesr.org/sites/default/files/Issue%20Brief%202\\_.pdf](https://www.cesr.org/sites/default/files/Issue%20Brief%202_.pdf)
- 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\\_%200.pdf](https://www.cesr.org/sites/default/files/Brief%204%20Debt%20Finance_%200.pdf)
- Center for Economic and Social Rights and Christian Aid (2020): A Rights-Based Economy: Putting People and Planet First. <https://www.cesr.org/rights-based-economy-putting-people-and-planet-first>
- Principles of Human Rights in Fiscal Policy (2021): Documents and Sources <https://derechosypoliticafiscal.org/en/resources/documents-and-sources-en>
- Center for Economic and Social Rights and Third World Network (2015): Universal Rights, Differentiated Responsibilities: Safeguarding human rights beyond borders to achieve the Sustainable Development Goals. [https://cesr.org/sites/default/files/CESR\\_TWN\\_ETOs\\_briefing.pdf](https://cesr.org/sites/default/files/CESR_TWN_ETOs_briefing.pdf)