



General Assembly

Distr.: General
4 August 2021

Original: English

Seventy-sixth session

Item 75 (b) of the provisional agenda*

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

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

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report 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, Yuefen Li, in accordance with Human Rights Council resolutions [34/3](#) and [46/8](#).

* [A/76/150](#).



Report 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, Yuefen Li

International debt architecture reform and human rights

Summary

In the present report, the Independent Expert focuses on international debt architecture reform and human rights by examining the weaknesses and limitations of and attempting to evaluate past and recently proposed reforms. In order to respond to the unfolding debt crisis, it is imperative that any reforms prioritize social justice, equity and human rights and address structural issues, so as to prevent a vicious circle. The Independent Expert sets a two-fold objective for this reform: first, the debt architecture should have the capacity to respond to debt crises in an effective and timely manner; and second, it should most importantly serve to prevent future crises. Upholding human rights should be an ultimate drive for the reform. The Independent Expert offers conclusions and recommendations to States and the international community.

Contents

	<i>Page</i>
I. Introduction	4
II. Impact of the coronavirus disease (COVID-19) pandemic on debt and socioeconomic conditions	5
III. International debt architecture reform yet to start	8
A. Human rights considerations	8
B. International debt architecture prior to the COVID-19 pandemic	10
C. Strong rhetoric but weak reforms	12
IV. Reform urgently needed to prevent debt crises	14
A. Centrality of human rights in debt architecture reforms	14
B. Statutory protection against litigation	15
C. Ensuring adequate access to unconditional, debt-free liquidity in times of crisis	16
D. Special drawing rights and new allocation mechanisms	16
E. Reform of credit rating agencies	17
F. Reform of debt sustainability assessment	17
G. Enhanced transparency	18
V. Reform needed to resolve debt crises	18
VI. Conclusions and recommendations	20

I. Introduction

1. The coronavirus disease (COVID-19) pandemic has catalysed one of the greatest global crises in modern history, sending countries simultaneously into recession, overwhelming health infrastructures that were already weakened after a decade of austerity, and deepening socioeconomic inequalities within and between countries. The global economic and financial turbulence that followed in the wake of the pandemic has had grave implications for the protection and enjoyment of human rights. Economic contraction and consequent falls in revenue have been coupled with the unprecedented rise in debt and deficits, bringing developing countries' debt crises into the spotlight. The ability of States to respond is deeply unequal, leading to a diverse range of negative impacts on economic and social development and on the full enjoyment of all human rights. This is particularly concerning in low-income countries, small island developing States and middle-income countries, which have been excluded from initial debt service relief. The pandemic has revealed the starkest dilemma: the choice between servicing creditors or protecting human rights, notably the rights to life, health, food, education and social security.

2. Unfortunately, the handling of the pandemic has revealed deficiencies in the international debt architecture, highlighting the perils of a creditor-run system, especially during times of crisis, in which States cannot provide needed resources to combat multiple crises, where States do not have equal access or equal terms of access to needed finance, and where States are being forced to redirect funds and shrink needed socioeconomic expenditures to repay creditors. The measures taken to provide relief have provided only a temporary alleviation of the debt service burden to a small number of States, while the international community appears to be on the fence about addressing the structural concerns for middle-income countries, where over 73 per cent of the global population resides, or an estimated 5.7 billion people.¹

3. The constrained fiscal space, sharp contraction of gross domestic product (GDP), increasing expenditures and inadequate condition-free liquidity have pushed countries into further indebtedness, with great consequences for the realization of the human rights of their populations and of the right to development of those countries. Matters have been made much worse by the persistent failures of an international financial system that is unable effectively to prevent debt crises or adequately to address and resolve them in a manner that is consistent with human rights obligations. Existing practice for debt crisis resolution is fragmented, uncoordinated, unfair and characterized by too little relief that comes too late, leaving countries unable to address debt problems comprehensively and caught in a process driven mostly by creditors' needs. This results in an exorbitant social cost for the populations of debtor countries.

4. The Human Rights Council, in its resolution 46/8, recognized the need for reform of the global financial architecture, including of credit rating agencies, and emphasized that a more effective international financial architecture is required now more than ever in order to respond to the socioeconomic fallout resulting from the COVID-19 pandemic. It also recognized that developing countries require massive liquidity and financing support to deal with the pandemic and its repercussions for the economy and for all human rights, and that debt relief can play a key role in freeing-up resources for sustainable growth and development, including poverty reduction and the 2030 Agenda for Sustainable Development.

5. The Council also called for debt relief measures, where appropriate, to be pursued vigorously and expeditiously, ensuring that they do not replace alternative

¹ Population Division of the Department of Economic and Social Affairs, "World Population Prospects 2019", available from <https://population.un.org/wpp/>.

sources of financing and that they are accompanied by an increase in official development assistance (ODA). Also, in its resolution 46/11, the Council requested the Independent Expert to conduct a study aimed at curbing the illicit transfer of funds and mitigating its negative effects on the enjoyment of human rights.

6. In the present report, the Independent Expert focuses on international debt architecture reform and human rights and attempts to evaluate past and recently proposed reforms. International debt architecture must prioritize social justice, equity and human rights, and any reforms must address structural issues to prevent vicious debt cycles. She offers conclusions and recommendations to States and the international community.

7. For the preparation of the report, the Independent Expert received substantive responses to her call for contributions from States and civil society, as well as United Nations agencies, international institutions, economic commissions and academics.² She also convened an online consultation with civil society organizations and academics from various regions and disciplines on 26 May 2021. The Independent Expert is grateful for the valuable input, discussions and insights provided, which have benefited the present report.

II. Impact of the coronavirus disease (COVID-19) pandemic on debt and socioeconomic conditions

8. More than a year into the COVID-19 pandemic, what was a vulnerable debt situation has worsened dramatically. Global debt levels as a share of GDP have increased 13 percentage points in 2020 to 97.3.³ The public debt of developing countries has increased from an average of 40.2 to 62.3 per cent of GDP between 2010 and 2020, with more than one third of the increase occurring in 2020.⁴ In 2020, public debt increased in 108 out of 116 developing countries, and those countries with the highest pre-pandemic debt experienced the largest increases. Leaders called for measures to do “whatever it takes” to address COVID-19, but the international financial system has not delivered: despite the public messaging by the World Bank and the International Monetary Fund (IMF) to spend, their own commitments have fallen far short of promises and needs.⁵ This has left fiscally constrained countries with high debts with no choice but to borrow to respond to urgent needs and avert economic collapse. Five countries defaulted, and sovereign downgrades tripled in 2020.⁶

9. An increasing proportion of low-income countries are in debt distress or high risk of debt distress.⁷ Middle-income countries have been among the hardest hit by the pandemic. A study by the United Nations Development Programme (UNDP)⁸ identified the total debt-service payment that is at risk, for the period from 2021 to

² See www.ohchr.org/EN/Issues/Development/IEDebt/Pages/InternationalDebtArchitecture.aspx.

³ International Monetary Fund (IMF), *Fiscal Monitor 2021*, Chap. 1 (Washington, D. C., April 2021).

⁴ Eurodad, “A debt pandemic: Dynamics and implications of the debt crisis of 2020” (March 2021). Available at www.eurodad.org/2020_debt_crisis.

⁵ T. Stubbs et al, “Whatever it takes? The global financial safety net, Covid-19, and developing countries”, in *World Development*, Vol. 137, September 2021.

⁶ See www.fitchratings.com/research/sovereigns/2020-transition-default-study-shows-spike-in-sovereign-downgrades-27-05-2021.

⁷ As of April 2021, 7 countries are in debt distress and 29 countries are at high risk of debt distress. See www.imf.org/external/Pubs/ft/dsa/DSAlist.pdf.

⁸ Lars Jenson, “Sovereign Debt Vulnerabilities in Developing Economies” (United Nations Development Programme, New York, 2021). Available at undp.org/sites/g/files/zskgke326/files/publications/54241%20-%20UNDP%20WP%20Debt%20Vulnerability-web.pdf.

2025, for long-term public and public-guaranteed debt in lower middle-income countries (49 per cent) and upper middle-income countries (45 per cent). It also identified that a large share of upper middle-income countries' debt is rated as "default current or imminent". Several small island developing States are at greater risk of debt distress, with approximately one quarter of export earnings directed towards servicing external public debt (see [A/74/943](#)). Several countries in sub-Saharan Africa – including Ghana, Kenya, Nigeria and Zambia – face debt service relative to tax revenues that exceed 20 per cent, with escalating social tensions linked to poverty and inequality.⁹ Zambia, for example, already faced high levels of foreign debt before the pandemic, coupled with a sharp reduction in commodity prices and government revenues. Estimates point to around 1.2 million people living in extreme poverty in Zambia, as they face diminished work and livelihood opportunities because of the pandemic, as well as a lack of access to safe drinking water, sanitation and health facilities. Yet the Government's budget for 2021 allocated 25.4 per cent to social sectors, while debt service accounted for 39 per cent.

10. Lower-income countries face systematically higher costs of borrowing, despite historically low interest rates. They also face unequal access to reserve currencies and to international capital markets, and hence an inability to gain access to liquidity in the near term. Long-term bond yields in the United States of America, which hit their highest levels in February 2021, would affect the cost of borrowing and rolling over for developing countries. As the Independent Expert discussed in her previous report ([A/75/164](#)), existing inequalities across countries have been exacerbated.

11. Despite the global nature of the pandemic, the response has been highly divergent. Governments that could act quickly to stem the socioeconomic fallout, with broad programmes of direct and indirect support for employees and small and medium-sized businesses, leading to a total fiscal response by all countries to the pandemic amounting to \$16 trillion up to mid-March 2021.¹⁰ Most of that spending came from high- or upper middle-income countries. On average, advanced economies deployed about 24 per cent of GDP in fiscal measures to boost economies, whereas low-income countries provided less than 2 per cent of their much smaller GDPs.¹¹ In Latin America and the Caribbean, for instance, expansionary fiscal policies averaged 4.6 per cent of GDP.¹² However, not all countries were able to spend, with 23 countries cutting expenditures during the pandemic.¹³ While certain high-income countries engaged in second rounds of fiscal stimulus and the global economy received a boost from a \$1.9 trillion United States stimulus in 2021, the world economy is estimated to be over \$10 trillion short of the pre-pandemic projection.¹⁴ While fiscal actions have cushioned economic contraction,¹⁵ the impact across the globe has been devastating and unequally distributed. Billionaires' wealth increased by \$3.9tn between 18 March and 31 December 2020,¹⁶ while in April 2021, the World Food

⁹ IMF, *Fiscal Monitor*, p. 8.

¹⁰ *Ibid.*, p. 1.

¹¹ See <https://blogs.imf.org/2021/02/24/the-great-divergence-a-fork-in-the-road-for-the-global-economy/>.

¹² Economic Commission for Latin America and the Caribbean (ECLAC), *Fiscal Panorama of Latin America and the Caribbean 2021: Fiscal policy challenges for transformative recovery post-COVID-19* (Santiago, 2021). Available at https://repositorio.cepal.org/bitstream/handle/11362/46809/1/S2100169_en.pdf.

¹³ Isabel Ortiz and Matthew Cummins, "Global austerity alert: Looming budget cuts in 2021–25 and alternative pathways" (April 2021). Available at <https://policydialogue.org/files/publications/papers/Global-Austerity-Alert-Ortiz-Cummins-2021-final.pdf>.

¹⁴ See <https://unctad.org/news/global-economy-gets-covid-19-shot-us-stimulus-pre-existing-conditions-worsen>.

¹⁵ IMF, *Fiscal Monitor* 2021, p. 10.

¹⁶ Oxfam, *Inequality Virus*, (Oxford, United Kingdom of Great Britain and Northern Ireland, 2021). According to the report, their total wealth now stands at \$11.95tn, which is equivalent to what

Programme warned that over 31 million people across West and Central Africa would face hunger, owing to a combination of high food prices and the fallout from the pandemic. In May 2021, the Food Price Index of the Food and Agriculture Organization of the United Nations raised concerns about increases in global food prices, with an increase of 39.7 per cent from May 2020 to the highest level since September 2011.

12. Debt service is crowding out social expenditures. Before the pandemic, one in eight countries spent more on debt than on the combination of education, health and social protection. Some of world's poorest countries, such as Chad, the Gambia, Haiti and South Sudan, are facing the highest levels of debt service and spend multiple times more on debt than they do on essential social expenditure.¹⁷ As debt difficulties grow, resources will be increasingly diverted to debt crisis containment and management, away from the urgent needs of the poor and vulnerable.

13. The adverse effects of the pandemic are alarming, bringing abrupt reversals in decades of poverty reduction, leading to greater numbers of people globally without access to social protection.¹⁸ According to the International Labour Organization (ILO), working-hour losses in 2020 were approximately four times greater than during the global financial crisis in 2009.¹⁹ Compared with 2019, 108 million more workers are now classified by ILO as extremely or moderately poor, leaving them and their families living on less than \$3.20 per day in purchasing power parity terms.²⁰ Unemployment and inactivity of the labour force have increased dramatically, leading to labour income losses (before income support) of \$3.7 trillion.²¹ Latin America and the Caribbean have been heavily affected by the pandemic, worsening the region's structural development gaps in terms of inequality, limited fiscal space, low productivity, informality and fragmentation of social protection and health systems.²² Small island developing States face higher external indebtedness than developing countries on average, bringing simultaneously elevated debt service indicators. They also face external shocks, such as hurricanes and the impact of climate change, which can abruptly reduce or erase a year's GDP. With climate change bringing to the fore the issue of ecological debt, there is an urgent need to address climate financing and the impacts on fiscal space and debt sustainability.

14. Global recovery will take longer as long as the virus is circulating. With close to 200 million confirmed cases and 4.22 million deaths as of July 2021,²³ the COVID-19 pandemic continues to devastate. Alarming global increases in those numbers in spring 2021 – due to new, fast-spreading variants, changes in public

the Governments of the Group of 20 have spent in response to the pandemic.

¹⁷ United Nations Children's Fund (UNICEF), "Covid19 and the Looming Debt Crisis" (Florence, Italy, April 2021). Available at www.unicef-irc.org/publications/pdf/Social-spending-series_COVID-19-and-the-looming-debt-crisis.pdf.

¹⁸ According to the International Labour Organization (ILO), half of the world's population have no access to social protection systems, and another 23 per cent only have inadequate access to such systems. See ILO, *World Social Protection Report 2017–19* (Geneva, 2017). See [A/HRC/47/36](https://www.ohchr.org/en/hrdoc/hrc/HRC_47_36.pdf) for the current situation of the right to social security through the life cycle and the call for a global fund for social protection.

¹⁹ ILO, *World employment and social outlook: Trends 2021* (Geneva, 2021). Available at www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_795453.pdf.

²⁰ See <https://blogs.worldbank.org/opendata/updated-estimates-impact-covid-19-global-poverty-looking-back-2020-and-outlook-2021>; and Ortiz and Cummins, "Global austerity alert".

²¹ International Labour Organization, "ILO Monitor: COVID-19 and the World of Work" (Seventh Edition) (Geneva, 2021). Available at www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_767028.pdf.

²² ECLAC, *Fiscal Panorama*.

²³ See <https://covid19.who.int>.

protection measures and fatigue from lockdown – are coupled with vaccine inequalities across countries. Over 4.21 billion vaccine doses have been administered globally, and 14.8 per cent of the world population is fully vaccinated. However, only 1.1 per cent of people in low-income countries have received at least one dose, while high- or upper middle-income countries having administered over 82 per cent of vaccines.²⁴ With constrained resources, most low-income countries rely on external grants and multilateral programmes, such as the COVID-19 Vaccine Global Access (COVAX) Facility to fund access to vaccines. As the Committee on Economic, Social and Cultural Rights has noted, this situation not only represents discrimination in terms of the right to access to vaccination at the global level, but also undermines progress on achieving the Sustainable Development Goals, especially Goals 3, 10 and 17 (E/C.12/2021/1, para. 1). For illustration, countries such as Tunisia, a lower middle-income country, have clearly indicated in their requests for additional funding that the debt burden would exceed 100 per cent of GDP if government guarantees and State-owned enterprise debts were included. This potentially affects government spending and budgeting, including the ability to adequately fund critical COVID-19 related expenditures, including the acquisition of vaccines and the necessary distribution mechanisms.²⁵

15. The choice between servicing debt or saving lives has come forcefully into the limelight. As the Chief Executive of Save the Children, Kevin Watkins, noted: “when the claims of creditors threaten the rights of children, there is only one choice to be made, and that is the choice to defend child right”.²⁶ Countries are unequally able to fund the needed recovery, despite the fact that the ability to protect human rights is inextricably related to the ability to spend needed resources. Growing debt burdens and a growing frequency of debt repayment difficulties will have negative impacts on the ability of States to fulfil the economic, social and cultural rights of their population. As the Committee on Economic, Social and Cultural Rights has noted, States parties are under an obligation to devote their maximum available resources to the full realization of all economic, social and cultural rights, including the right to health. As this pandemic and the measures taken to combat it have had a disproportionately negative impact on the most marginalized groups, States must make every effort to mobilize the necessary resources to combat COVID-19 in the most equitable manner, in order to avoid imposing a further economic burden on these marginalized groups. Allocation of resources should prioritize the special needs of these groups (E/C.12/2020/1, para. 14).

III. International debt architecture reform yet to start

A. Human rights considerations

16. The current lack of an equitable and effective debt crisis resolution mechanism, often called a “non-system” by those working on sovereign debt, has led to situations that dramatically undermined the ability of States to promote and protect human rights and that have resulted in unjustified retrogressive measures affecting economic, social and cultural rights in numerous developing countries.

17. On many occasions, the Committee on Economic, Social and Cultural Rights has underlined the obligation, enshrined in article 2 of the International Covenant on Economic, Social and Cultural Rights, of taking steps to make use of the maximum

²⁴ See <https://ourworldindata.org/covid-vaccinations>.

²⁵ See <https://documents1.worldbank.org/curated/en/754341617069835875/pdf/Tunisia-COVID-19-Response-Project-Additional-Financing.pdf>.

²⁶ See <https://live.worldbank.org/defusing-debt-creating-solutions>.

of available resources to achieve progressively the full enjoyment of all rights in the Covenant. In doing so, the Committee has: (a) emphasized the central role that international cooperation and assistance should play, including official development assistance; and (b) warned borrowing States about unjustifiable retrogressive measures in the area of economic, social and cultural rights that would amount to a violation of the Covenant.

18. Specifically, the borrowing State should ensure that loan conditions do not reduce its ability to respect, protect and fulfil the Covenant rights. As the Committee has stated, if the adoption of retrogressive measures is unavoidable, such measures should be necessary and proportionate, in the sense that the adoption of any other policy or failure to act would be more detrimental to economic, social and cultural rights. They should remain in place only insofar as they are necessary; they should not result in discrimination; they should mitigate inequalities that can grow in times of crisis and ensure that the rights of disadvantaged and marginalized individuals and groups are not disproportionately affected; and they should not affect the minimum core content of the rights protected under the Covenant ([E/C.12/2016/1](#), para. 4).

19. Other treaty body monitoring mechanisms have also provided an authoritative interpretation of the obligations, by clarifying the crucial link between the use of available resources for human rights and macroeconomic and fiscal policy, including in relation to debt management. In its general comment No. 19 (2016) on public borrowing, the Committee on the Rights of the Child recognized that sustainable debt management by States, on behalf of creditors and lenders, can contribute to mobilizing resources for the rights of the child. Sustainable debt management includes having in place transparent legislation, policies and systems with clear roles and responsibilities for borrowing and lending, as well as managing and monitoring debt. The Committee also recognizes that long-term unsustainable debt can be a barrier to a State's ability to mobilize resources for children's rights, and may lead to taxes and user fees that impact negatively on children. Child rights impact assessments should therefore be carried out also in relation to debt agreements ([CRC/C/GC/19](#), para. 78).

20. In its monitoring function, in recent years, the Committee on Economic, Social and Cultural Rights has underscored these principles with regard to specific States. For example, in 2019, it recommended that Ecuador review the economic measures taken and under consideration, including a specific call not to reduce social spending in the areas of health and education from the levels achieved in 2018 ([E/C.12/ECU/CO/4](#), para. 6 (b)). In 2018, the Committee expressed concern that, although it was aware of the financial crisis in Argentina, the levels of effective protection of rights had been reduced as a result of inflation and austerity measures. The Committee was also concerned that, under the agreement with the International Monetary Fund, the Government had set a zero-deficit target for 2019, entailing further cuts in social spending ([E/C.12/ARG/CO/4](#), para. 5), and called upon the State party to preserve budget lines related to social investment in the most disadvantaged groups and facilitate the effective and sustainable implementation of public policies to safeguard their economic, social and cultural rights. In 2015, in its engagement with the Sudan, the Committee recommended that the State party ensure that it duly takes account of its obligations under the Covenant in its negotiations with international financial institutions, including the International Monetary Fund ([E/C.12/SDN/CO/2](#), para. 18.).

21. Similarly, the Committee on the Rights of the Child, in its periodic reports on Mozambique ([CRC/C/MOZ/CO/3-4](#), para. 10 (c)) and Angola ([CRC/C/AGO/CO/5-7](#), para. 9 (g)) with respect to the allocation of resources for children's rights, called upon the Governments to carry out impact assessments of any austerity measures in areas directly or indirectly related to children's rights. It reminded them to allocate

adequate budgetary resources, in accordance with article 4 of the Convention, for the implementation of children's rights and, in particular, increase the budget allocated to the health, education and social sectors. In keeping with these international standards and norms, the United Nations country team of Lebanon also provided a position paper to IMF outlining a number of immediate and medium-term policy reforms in a number of areas, including human rights, domestic governance.²⁷

22. The guiding principles on foreign debt and human rights, presented in 2011 by the former Independent Expert (see [A/HRC/20/23](#)) and endorsed by the Human Rights Council in its resolution [20/10](#), are based on provisions emanating from various international human rights instruments. They serve to establish for States and all relevant actors, public and private, national and international, the connection between foreign debt and human rights. They reiterate the primacy of human rights over debt-service, providing detailed perspective of key human rights principles as they apply to borrowing and lending States and international institutions. Equally critical to the prevention and resolution of debt crises are the guiding principles on human rights impact assessments of economic reforms, developed by the former Independent Expert in 2019, that apply to States, international financial institutions and creditor (see [A/HRC/37/54](#) and [A/HRC/40/57](#)).

B. International debt architecture prior to the COVID-19 pandemic

23. The existing processes for preventing and resolving debt crisis developed as a patchwork of norms, actors and procedures, through trial and error over decades of crises and driven by the needs of creditors and creditor-dominated institutions, such as the Paris Club of Industrial Country Creditors, the Bretton Woods institutions, the Group of Seven and the Group of 20. Between 1950 and 2010, there were over 600 cases where sovereign debt needed to be restructured,²⁸ many of which failed to ensure that debtors regained sustainability with some degree of confidence. Instead, another restructuring within five years followed in more than half of all restructurings with private creditors since 1970, indicating that the scale of relief was simply not enough to provide even medium-term positive outcomes.²⁹

24. Existing debt architecture creates long uncertainty over fiscal resources, owing to delays in restructuring that drastically erode States' capacity to use resources for human rights. The current non-system incentivizes holdouts, creates perverse incentives for legal arbitrage, generates intercreditor imbalances and makes non-participation in restructuring a lucrative alternative. Existing debt architecture is characterized by growing creditor litigation, both in frequency and in terms of outstanding amount under litigation, mostly by funds that speculate on countries in debt distress by purchasing deeply discounted debts then suing debtors for full repayment.³⁰ By 2010, debt restructuring was accompanied by litigation in more than

²⁷ See <https://lebanon.un.org/sites/default/files/2021-02/UNCT%20Leb%20PositionPaper%20toIMF.pdf>.

²⁸ U. Das et al., "Sovereign Debt Restructurings 1950–2010", IMF Working Paper (2012). Available from www.imf.org/en/Publications/WP/Issues/2016/12/31/Sovereign-Debt-Restructurings-1950-2010-Literature-Survey-Data-and-Stylized-Facts-26190.

²⁹ See https://unctad.org/system/files/non-official-document/2019_panel4_guzman.pdf.

³⁰ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=13675>, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22090> and <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=17632>. See also [A/HRC/41/51](#).

50 per cent of restructurings,³¹ with exorbitant profits ranging from 300 to 2,000 per cent.³²

25. The Heavily Indebted Poor Countries Initiative and Multilateral Debt Relief Initiative were much-delayed responses for addressing the long-ignored bilateral official and multilateral debt of low-income countries. They created a highly conditional debt relief framework, premised on the erroneous view that they and their enhancement in 1999 would be sufficient to yield long-lasting beneficial results. Yet 24 heavily indebted poor countries were targeted with 46 litigating creditors, with total litigated debts in the range of 13 to 15 per cent of GDP. The existing system left some of the poorest countries, for example, Sierra Leone and Uganda, facing lawsuit payments of as much as 35 per cent of debt service in one year.³³ After years of IMF- and World Bank-mandated fiscal consolidation, countries that benefited from the Initiatives are finding themselves once again in new debt traps.

26. Following the growing instability in middle-income countries, the South-East Asian crisis and defaults in Argentina and the Russian Federation, IMF proposed a sovereign debt restructuring mechanism in the early 2000s to deal with debt repayment difficulties.³⁴ This opportunity for an overarching mechanism was blocked by a few countries and, since then, international debt architecture reform has relied on incremental contractual changes to bonds contracts, introducing and enhancing collective action clauses and updating *pari passu* wording to deter uncooperative minority creditors from litigations. While welcome, these are insufficient.

27. A core criticism of the existing debt architecture is the central role of IMF, an institution that bears great influence on countries' policy space, stipulating macro targets on fiscal balances to a perennially growing array of issues that include privatization of public assets, liberalization of trade and product markets and a host of market reforms that constrain the ability of States effectively to address their human rights obligations. These conditionalities are not necessarily negotiated with States, let alone with their populations, and the previous Independent Expert highlighted the responsibility for complicity of international financial institutions in human rights violations in the context of retrogressive economic reforms (see [A/74/178](#)). Disproportionate power emanates from the IMF governance structure, whereby the voices of the single-country constituencies far outweigh the multi-country, thereby eroding its credibility and legitimacy to act as crisis manager. As the International Trade Union Confederation has said, this highlights the issue of IMF governance, in which advanced economies that need IMF support the least have the most voting power and even the ability to block major decisions. The current quota system of IMF concentrates voting power on all major decision in the hands of a few advanced economies. IMF governance needs reform to fairly represent all its members.³⁵ General reviews of quotas are met with delays and are not adequate to reflect the changing dynamics in the world economy.

28. Debt crisis prevention and resolution have been made more complex by the changed creditor landscape. The overarching liberalization of financial markets since the 1980s and the rapid expansion and power of private finance has led to a dramatic increase in the size and complexity of flows to developing countries. Contrary to the

³¹ Julian Schumacher, et al. *Sovereign Defaults in the Courts* (CESifo Working Papers, 2018).

Available from www.cesifo.org/en/publikationen/2018/working-paper/sovereign-defaults-court.

³² See https://unctad.org/system/files/non-official-document/gds_sd_2015-04-28-30_Zivkovic_en.pdf.

³³ See <https://archives-financialservices.house.gov/hearing110/htcaliari110807.pdf>.

³⁴ Anne O. Krueger, *A New Approach To Sovereign Debt Restructuring* (International Monetary Fund, Washington, D. C., 2002), p. 4. Available from www.imf.org/external/pubs/ft/exrp/sdrm/eng/sdrm.pdf.

³⁵ International Trade Union Confederation, "Reforming the IMF for a resilient recovery" (Brussels, 2021).

view that debtors face rising borrowing costs and difficulties in financing owing to a failure to manage funds, or corruption or prolific management of public finances, systemic problems underlie the international debt architecture and structural reasons why developing countries face frequent financing difficulties. Borrowing through private capital markets increases exposure to the global liquidity cycle, determined predominantly in advanced economies and largely the result of how advanced economies dealt with the global financial crisis, generating repercussions for the rest of the world. Changes to monetary policy in the United States or Europe will lead to tighter global liquidity conditions, correlated with a higher cost of borrowing, leaving countries facing shortages of needed capital to fund social expenditures.³⁶

C. Strong rhetoric but weak reforms

29. The pandemic appeared at last to signal momentum for long-lasting solutions to debt crisis and reform of the international debt architecture. In March 2020, the fear of a wave of defaults and a systemic debt crisis washed over policymakers, given the build-up of vulnerabilities over the past years. This gave some impetus to discussion about reforms, with a flurry of proposals for changes that could be made. More than a year later, that fear has largely subsided with the complacency that the worst-case scenario was averted. Instead, the mood has shifted to tinkering around the edges with needed but insufficient reform focused around contractual changes and access to liquidity via conditional loans and special drawing rights. Thus the main goal for IMF seems not to reform debt architecture but to support the international community in working together to avoid deeper debt restructurings when needed.³⁷

30. To address the ongoing fallout, IMF revamped its lending facilities to increase the speed at which countries could gain access to emergency liquidity support. It provided minimal amounts of grant financing to cancel the debt service due to IMF via the Catastrophe Containment and Relief Trust. In April 2020, the Group of 20 inaugurated the Debt Service Suspension Initiative, recently extended until December 2021. Eligibility is based on income criteria, leaving only 73 countries eligible to participate, on condition of IMF financing or request for financing. Suspended debt repayment must be repaid within three years following the one-year grace period and can be implemented through rescheduling or refinancing on neutral net present value terms. The scheme provides no relief and involves no creditor loss. In its submission for the present report, Maldives mentioned the principle of net present value neutrality as one of the main drawbacks of the Initiative.³⁸

31. In November 2020, the Group of 20 and the Paris Club endorsed the creation of the common framework for debt treatments beyond the Debt Service Suspension Initiative, in recognition that the Initiative would not suffice. While hailed as a breakthrough, it is nevertheless a mere extension of the Initiative, following the Paris Club template, only applicable to countries eligible for the Initiative and conditional on the straight-jacket of an IMF programme. The common framework is assumed to handle both liquidity and sustainability problems – covering official Paris Club creditors and non-Paris Club creditors, using a case-by-case approach and placing the onus on the debtor to seek comparable treatment from other creditors, including

³⁶ Overseas Development Institute, “Private lending and debt risks of low-income developing countries” (London, 2020). Available at https://cdn.odi.org/media/documents/200615_private_lending_debt_risks.pdf.

³⁷ See www.imf.org/en/About/FAQ/sovereign-debt.

³⁸ See: www.ohchr.org/EN/Issues/Development/IEDebt/Pages/InternationalDebtArchitecture.aspx.

private creditors – and does not grant immediate generous write-downs of debt for low-income countries.³⁹

32. As criticized by Antigua and Barbuda, the Chair of Alliance of Small Island States, more than half of the world’s small island States don’t even qualify for this debt relief, owing to outdated and illogical criteria,⁴⁰ thus ignoring the needs of poor people living in middle- and high-income countries and ignoring the vulnerabilities of small island developing States. As of today, only three countries have requested assistance under the Common Framework: Chad, Ethiopia and Zambia.

33. Globally, the response has focused predominantly on liquidity provision, mainly through IMF non-concessional loans. The proposal for a new special drawing rights allocation of \$650 billion received the blessing of major IMF member countries, the Group of 20 and the Group of Seven and was approved by the IMF Board of Governors on 2 August. This will be the largest new issuance of special drawing rights since their creation in 1969. The new issuance is a truly non-debt-creating mechanism to provide additional financial resources for countries, but compared with actual needs is far from enough. According to IMF estimates, low-income countries need around \$200 billion for relief and recovery up to 2025 and another \$250 billion to resume development progress.⁴¹ As this will be proportional to the IMF quota of each country, those that most need special drawing rights will be given the least, and those that do not need them will have the most. The countries of the Group of Seven combined hold quotas amounting to 43 per cent of the IMF, equivalent to \$283 billion out of a new issue, while low-income countries will have access to only 3.2 per cent.

34. Pressure for reform of the international debt architecture has escalated. In March 2021, the Secretary-General, the Prime Minister of Canada and the Prime Minister of Jamaica convened a virtual meeting of Heads of State and Government to discuss the international debt architecture and liquidity, as part of the Initiative on Financing for Development in the Era of COVID-19 and Beyond. In the context of that Initiative emerged a “menu of policy options” that included a proposal for an independent sovereign debt authority, with a view, ultimately, to advance a blueprint for a multilateral sovereign debt workout mechanism.⁴² The Sustainable Development Group issued a policy brief emphasizing the urgency of acting now to reform the international debt architecture and welcomed efforts to improve existing architecture via contractual clauses, targeted anti-vulture fund legislation and State-contingent debt instruments, recognizing the importance not only of debtors’ responsibilities but also those of creditors.⁴³ The strongest call for reform came from the Prime Minister of Jamaica, who called for the extension of the Debt Service Suspension Initiative to middle-income countries, the integration of private creditors and credit ratings agencies into the discussion on resolving debt crisis and the need to establish a sovereign debt resolution mechanism and to provide a framework for creditors and

³⁹ See www.imf.org/en/About/FAQ/sovereign-debt#g20q1; and statement by the Group of 20 on 13 November 2020, available from www.mof.go.jp/english/policy/international_policy/convention/g20/g20_201113_1.pdf.

⁴⁰ See www.aosis.org/release/small-island-states-call-for-a-systemic-debt-shake-up-at-imf-and-world-bank-meetings.

⁴¹ See IMF, “Macroeconomic developments and prospects in low-income countries” (Washington, D. C.). Available from <https://www.imf.org/en/Publications/Policy-Papers/Issues/2021/03/30/Macroeconomic-Developments-and-Prospect-Prospects-In-Low-Income-Countries-2021-50312>.

⁴² Available at www.un.org/sites/un2.un.org/files/financing_for_development_covid19_part_ii_hosg.pdf.

⁴³ See “Liquidity and debt solutions to invest in the SDGs”, available from <https://unsdg.un.org/resources/liquidity-and-debt-solutions-invest-sdgs-time-act-now>.

debtors to negotiate collectively restructuring agreements along pre-agreed procedures.⁴⁴

IV. Reform urgently needed to prevent debt crises

35. As recognized by the Secretary-General, the current debt architecture has been ineffective in both preventing repeated episodes of unsustainable debt build ups and restructuring debts, when needed, in an efficient, fair, and durable manner. It is characterized by numerous gaps in transparency and a lack of clarity about roles and responsibilities. More importantly, there are no processes that incentivize all creditors and debtors to act cooperatively in accordance to a uniform set of principles and standards.⁴⁵ The scope and extent of the reforms to the international debt architecture on the table do not go far enough to address the known problems. Lasting effects that do not simply repeat cycles of crises and failed restructurings need a new debt architecture, with a twofold objective: to prevent future crises; and to resolve current debt crises in accordance with human rights standards and norms. In this section, the Independent Expert focuses on some aspects of those goals that should be taken into account.

A. Centrality of human rights in debt architecture reforms

36. The respect for and protection and fulfilment of human rights requires financial resources. States need the fiscal space and macroeconomic planning capacity to guarantee human rights and to comply with their obligations under numerous international human rights instruments. Hence, no reform of the international debt architecture would be effective, fair, sustainable and coherent if it does not incorporate, from the start, as its main objective, the well-being and dignity of people, particularly of those who experience discrimination, poverty and neglect.

37. Previous mandate-holders have developed guiding principles that clarify the primacy of international human rights standards and obligations over debt service, that offer a framework for understanding why sovereign debt is a human rights issue and that address the importance of human rights impact assessments in the context of economic reform programmes. States can and should take steps to incorporate those principles into decision-making by both national and international bodies – an essential step for any systemic reform of the debt architecture. Guiding principles that promote fairer and more debtor-friendly perspectives include but are not limited to the following: the Basic Principles on Sovereign Debt Restructuring Processes; the Principles on Promoting Responsible Sovereign Lending and Borrowing; the guiding principles on foreign debt and human rights; and the guiding principles on human rights impact assessments of economic reforms. In addition, civil society organizations and networks have also developed principles, such as the Afrodad borrowing charter,⁴⁶ the Eurodad responsible finance charter,⁴⁷ the civil society principles for sovereign debt resolution⁴⁸ and, most recently, the Principles for Human Rights and Fiscal Policy.⁴⁹

⁴⁴ See www.un.org/en/coronavirus/meeting-of-finance-ministers, statement by the Minister of Finance of Jamaica.

⁴⁵ See “Liquidity and debt solutions to invest in the SDGs”.

⁴⁶ Available at <https://afrodad.org/index.php/en/initiatives/65-african-borrowing-charter>.

⁴⁷ Available at <https://slettgjelda.no/assets/docs/Eurodad-Responsible-Finance-Charter-2011.pdf>.

⁴⁸ Available at <https://www.eurodad.org/debtworkout>.

⁴⁹ Available at https://derechosypoliticafiscal.org/images/ASSETS/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf.

38. To this day, the Basic Principles on Sovereign Debt Restructuring Processes represent the most coherent and most representative normative framework that can ensure human rights at the centre of international debt architecture. They include the principles of sovereignty, good faith for both parties, transparency, impartiality, equitable treatment, sovereign immunity, legitimacy, sustainability and majority restructuring. The implementation of the Principles would prevent and resolve numerous deficiencies in existing debt architecture. Previous attempts to improve international debt architecture have been voted against and boycotted by creditor countries.⁵⁰ States might wish to act to introduce the Principles into domestic legislation, as was the case in Argentina⁵¹ and the Plurinational State of Bolivia.⁵²

39. Encouraging responsible lending and borrowing practices means it is necessary to indicate how lenders and borrowers can minimize the disastrous consequences of debt crises for people's lives and livelihoods. This includes, for instance, avoiding abusive or non-cooperative behaviour and instead focusing on lending and borrowing that promotes growth and development integrated within a human rights framework. In 2009, the Principles on Promoting Responsible Sovereign Lending and Borrowing laid out a normative framework to help systematize good practices. The Principles have been included in several General Assembly resolutions, as well as the Addis Ababa Action Agenda.⁵³ Creditors have an obligation not to undermine a borrowers' debt sustainability. Creditors' responsibilities include the recognition that sovereign borrowing aims to protect the public interest and must therefore not be undermined, as warned by the Committee on Economic, Social and Cultural Rights (see [E/C.12/2016/1](#)). The onus is on lenders to be transparent about the financial risks of the financial products offered; lenders are independently bound to ensure authorization exists to prevent instances of odious or illegitimate debts. In the context of a debt restructuring, the Principles on Promoting Responsible Sovereign Lending and Borrowing state that lenders must negotiate in good faith and attempt quickly to resolve problems, recognizing that when holdouts try to undermine restructuring processes, they are acting abusively.

B. Statutory protection against litigation

40. Existing debt architecture has many loopholes for vulture funds to profit and sabotage restructuring and relief initiatives, leading to heavy financial and social costs for debtors. Statutory legislation can assist in preventing and resolving debt crises, along the lines of ad hoc measures proposed in the past, including the following: anti-vulture fund legislation introduced in Belgium in 2015;⁵⁴ the Debt Relief Act of 2010 in the United Kingdom of Great Britain and Northern Ireland,⁵⁵ which places a cap on what commercial creditors can retrieve from heavily indebted poor countries; the World Bank Debt Reduction Facility to incentivize more creditors to participate, thus reducing the debt available for litigation, and providing resources for countries to take on debt buybacks at discount; and commitments by Paris Club

⁵⁰ On 9 September 2014, the General Assembly adopted resolution [68/304](#) by a recorded vote of 124 in favour, 11 against and 41 abstentions. On 10 September 2015, it adopted resolution [69/319](#) by a recorded vote of 136 in favour, 41 abstentions and 6 against: Canada, Germany, Israel, Japan, the United Kingdom and the United States.

⁵¹ See www.argentina.gob.ar/normativa/nacional/ley-27207-254761.

⁵² See <https://eju.tv/2015/12/diputados-bolivia-aprueban-ley-adoptar-principios-la-onu-reestructuracion-deuda-soberana/>.

⁵³ See https://sustainabledevelopment.un.org/content/documents/2051AAAA_Outcome.pdf, para. 97.

⁵⁴ *Loi relative à la lutte contre les activités des fonds vauteurs* of 12 July 2015. Available at https://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&caller=summary&pub_date=15-09-11&numac=2015003318.

⁵⁵ Available at <https://bills.parliament.uk/bills/570>.

members not to sell claims to creditors who do not intend to participate in restructuring. Since the pandemic, strong action to prevent litigation has not taken place despite being needed urgently, if we recall the round of litigation against heavily indebted poor countries, litigation lasted up to 10 years, and it took a further 6 years for countries to recover from litigation.

C. Ensuring adequate access to unconditional, debt-free liquidity in times of crisis

41. There is a severe lack of access to unconditional, debt-free, liquidity for countries in crisis. The future is one of deep austerity, with public expenditure austerity cuts expected in 154 countries in 2021 and as many as 159 countries in 2022, and the trend continues up to 2025. Austerity is projected to affect 5.6 billion people by 2021 or about 75 per cent of the global population, rising to 6.6 billion or 85 per cent of all persons in 2022.⁵⁶ Countries need a sustained positive net resource transfer in order to respond to crises. As proven in some high-income countries, ample liquidity makes it possible to avert a catastrophe. This should not be a privilege only for the few, rather it is the need of States across income groups to protect and promote human rights, using the maximum available resources.

D. Special drawing rights and new allocation mechanisms

42. Despite the complex IMF rules governing the use of special drawing rights, a new allocation creates an opportunity to formulate a workable mechanism to allow donated special drawing rights to be rechannelled to countries in urgent need of unconditional liquidity. In a communiqué of April 2021 from their second meeting, the finance ministers and central bank governors of the Group of 20 invited IMF to present proposals to enhance transparency and accountability in the use of special drawing rights while preserving the reserve asset characteristic of special drawing rights. In parallel, they asked IMF to explore options for members to channel special drawing rights on a voluntary basis to the benefit of vulnerable countries, without delaying the process for a new allocation.⁵⁷ The IMF poverty reduction and growth trust could be a vehicle to place the donated special drawing rights as it has used them before,⁵⁸ but this creates other problems given the high conditionality of trust loans.

43. Existing rules do not oblige IMF to be the only institution to have the responsibility for recycling donated special drawing rights. According to the IMF articles of agreement, official financial entities may also hold and use special drawing rights, including intergovernmental monetary institutions and regional development banks.⁵⁹ Thus, IMF is an appropriate agency to recycle special drawing rights, but not the only body to do so, and other financial institutions may bring more diversity and vitality to the process. Besides, to allow IMF to monopolize the liquidity provision by multilateral institutions may not be a good idea, given the controversies over IMF conditionality, its ideological bias and its control by advanced countries. Suggestions

⁵⁶ Ortiz and Cummins, "Global austerity alert".

⁵⁷ See <http://www.g20.utoronto.ca/2021/Communique-Second-G20-Finance-Ministers-and-Central-Bank-Governors-Meeting-7-April-2021.pdf>.

⁵⁸ David Andrews, "Can special drawing rights be recycled to where they are needed at no budgetary cost?" (Center for Global Development, 21 April 2021). Available from www.cgdev.org/publication/can-special-drawing-rights-be-recycled-where-they-are-needed-no-budgetary-cost.

⁵⁹ See <http://www.imf.org/en/About/FAQ/special-drawing-right#Q6.%20Can%20existing%20SDRs%20be%20%E2%80%98recycled%E2%80%99%20or%20channeled%20toward%20other%20purposes?>.

exist for establishing special purpose facilities for vaccines⁶⁰ or for climate change,⁶¹ or the Economic Commission for Africa proposal for a liquidity and sustainability facility to be partly financed by special drawing rights.⁶²

44. Given the difficulty for middle-income countries to gain access to concessional lending, any facilities to recycle special drawing rights must ensure middle-income countries are eligible to benefit. Mechanisms to ensure that the allocation of donated special drawing rights would also require transparency, and Governments should be held accountable for their effective utilization for the benefit of the population in fighting the pandemic and supporting a fairer and better recovery from it. Therefore, rechannelling and the use of special drawing rights should be neither subject to conditionality nor at cost to beneficial countries, but should be for all vulnerable countries irrespective of country groupings and should not be reported as ODA if donated by the developed countries.

E. Reform of credit rating agencies

45. As the Independent Expert discussed in her thematic report to the Human Rights Council (see [A/HRC/46/29](#)), credit rating agencies have an enormous influence on market expectations and the lending decisions of public and private investors. However, past financial and debt crises exposed the inherent structural problems of those agencies and their failure to perform their supposed role. Despite many reform proposals, no progress has been made. The Expert has argued that the reform can no longer be postponed, in particular to prevent negative impacts on human rights.

F. Reform of debt sustainability assessment

46. Current practice examines debt sustainability through a narrow economic approach that focuses on the ability of a country to pay back its debt without having to resort to exceptional financing or significant policy adjustments, focusing on primary balances. Debt sustainability assessments performed by multilateral creditors – IMF and the World Bank – allow for the label of “sustainable” to be applied unduly, in contexts where debt servicing may be depriving a State of resources needed to guarantee human rights. A country’s debts should not be labelled as sustainable in the context of human rights violations and chronic underfunding of key essential services, while resources are diverted to creditors, leaving vulnerable populations unable to gain access to water, sanitation, schools, hospitals or housing, and leaving development goals unattained. Despite gradual reviews of the World Bank and IMF debt sustainability analyses, these assessment templates are not fit for purpose: they are self-serving and indicate a conflict of interest, as those calculating the financing envelope and needed relief are themselves important creditors.⁶³ Instead, debt sustainability assessments must rely on realistic repayment and

⁶⁰ Mark Plant, “Making the IMR’s special drawing rights work for COVID-19 economic relief” (Center for Global Development, 6 May 2020). Available from www.cgdev.org/publication/making-imfs-special-drawing-rights-work-covid-19-economic-relief.

⁶¹ Nancy Birdsall and Benjamin Leo, “Find me the money: financing climate and other global public goods” (Center for Global Development, 6 April 2011). Available from <https://www.cgdev.org/publication/find-me-money-financing-climate-and-other-global-public-goods-working-paper-248>.

⁶² See www.uneca.org/stories/eca-launches-lsf%2C-a-vehicle-for-debt-management-and-fiscal-sustainability.

⁶³ See [A/HRC/20/23](#), para. 65; and C. Laskaridis, “When push came to shove: COVID-19 and debt crises in low-income countries”, in *Canadian Journal of Development Studies*, vol. 42, p. 200 (April 2021), available from www.tandfonline.com/doi/full/10.1080/02255189.2021.1894102.

development prospects, by incorporating economic, social and environmental considerations, as well as long-term development expenditures to meet the objectives related to the Sustainable Development Goals. Debt sustainability assessments must be independent.

G. Enhance transparency

47. Greater transparency is key to untangling and addressing debt issues, for instance, by restructuring bonds, which are collateralized, ensuring comparability of treatment across consenting and non-consenting creditors, untangling claims between State-owned enterprises and national bankruptcy legislation, classifying debts or providing clarity where the perimeter of debts to be included in restructuring are unclear. Difficulty in gaining access to public information on government loan contracts, the concentrated reliance on a few multinational underwriting firms⁶⁴ and the opacity of collateral pledged in the infrastructure investments all limit effectively the monitoring of issues that are relevant to society at large and call for greater transparency and accountability. To avoid conflicts of interest, disclosure around the holdings of credit default swaps and who holds them is needed during a debt restructuring. Transparency is needed to open the processes beyond key creditors and law firms, and debt audits can help to empower population in debtor countries, to shine a light on national and international authorities' debt policies.

48. As stated in principle VII of the Principles for Human Rights in Fiscal Policy, fiscal policy must be transparent, participatory and accountable. People have a right to fiscal information. Civil society organizations note that, in order to maintain sovereign economic policymaking, agreements with IMF must undergo parliamentary scrutiny or the constitutional recourse available nationally. This will 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.⁶⁵

V. Reform needed to resolve debt crises

49. When crises arrive, three elements need to be present. First, there must be a comprehensive debt standstill across all creditors, and that moratorium must last as long as the crisis lasts. Second, countries that are hard hit and facing debt problems need to have access to large amounts of unconditional liquidity. Third, this should pave the way for significant and meaningful debt relief and debt restructuring. Given the enormous incentives to “free ride”, debt relief and restructuring must be comprehensive and cover multilateral and private debt. Incentives are not sufficient to establish efficient and fair restructuring, and more penalties are needed. The amount of relief should be calculated using estimations of fiscal space based on the Sustainable Development Goals, in compliance with the use of the maximum available resources to protect and promote human rights obligations. The following elements are essential:

(a) **Democratic process.** This is a fundamental prerequisite for effective international debt architecture reform. There is no lack of good alternatives on the table, but in the face of repeated refusals to engage in a democratically open and

⁶⁴ See www.eurodad.org/sovereign_bonds_covid19.

⁶⁵ Principles on fiscal policy for human rights, May 21, page 23.

representative process, all strategies rely on creditor-run forums, which by design are unable to account for the needs of the debtor population. The international debt architecture must be inclusive of developing countries in co-developing just and equitable solutions. As the President of Argentina was quoted as saying, there cannot be a global recovery when there are countries excluded from the solutions.⁶⁶ The failure of creditors' to recognize their own actions means that the governance of the international debt architecture has not allowed the voice of debtor countries to be heard and their interests to be taken care of. The Paris Club is an informal and voluntary organization for creditors. IMF is organized around an unequal and outdated quota system whose reform is long overdue and has led to a governance structure that has long posed problems for its legitimacy as crisis manager. In addition, IMF is the promoter of conditionalities leading to a lack of fiscal space to address underfunded and weakened social and health infrastructures, which had left much of the world unprepared to deal with the pandemic;

(b) **Austerity avoidance.** As conditionality programmes are at the core of any restructuring agreement, this leaves austerity programmes that rely on reducing public expenditures, tax increases and privatization of essential public assets in order to address sovereign crises. These have a negative impact on growth, debt and equality and routinely result in negative human rights impacts (see [A/HRC/40/57](#)). Procyclical policy to combat debt crisis is retrogressive; crises should not be dealt with by fiscal tightening. The former Independent Expert has argued that, according to international law standards, international financial institutions may be held responsible for complicity in the imposition of economic reforms that violate human rights (see [A/74/178](#));

(c) **Impartiality.** To receive the broadest acceptability possible, debt crises must be addressed in impartial forums, where assessments of needed relief are conducted by actors without conflict of interests who can ensure impartiality and apply objective criteria;

(d) **Multilateral framework for debt restructuring.** International debt architecture reform should be based on human rights standards and principles, which offer a transparent, coherent and universally recognized framework that can inform the design and implementation of a debt restructuring mechanism that can provide a just, equitable and durable solution to debt crises.⁶⁷ The United Nations should play a leading role in guiding and implementing the reform to establish an equitable, durable, commonly acceptable resolution to sovereign debt crises. A multilateral framework would reduce the presence of moral hazards during crisis resolution. Contrary to the argument that a bankruptcy procedure for sovereigns would incentivize debtors to default, a multilateral framework would help to neutralize the unequal balance of power and the bias in the international debt architecture;

(e) **Debt cancellation.** For countries in huge debt distress and economic contraction, it would be impossible to pull out of the debt trap through organic GDP growth, in particular when no one knows when the world economy can be restored to its pre-COVID form. Therefore, debt cancellation is needed for such countries, irrespective of country groupings, to adequately restore their ability to provide for their populations and ensure stable and prosperous future development. The measure of relief should be the ability to adequately uphold human rights obligations and fund the Sustainable Development Goals and not be ascertained on the basis of biased and ineffective debt sustainability analyses. Cancellation should cover all creditors,

⁶⁶ See www.eurodad.org/un_hle_debt_architecture_response.

⁶⁷ Office of the United Nations High Commissioner for Human Rights, *Realizing the Right to Development* (New York and Geneva, 2013). Available at https://ohchr.org/Documents/Publications/RightDevelopmentInteractive_EN.pdf.

including private and multilateral, and not be conditional on lengthy retrogressive economic reform programmes. Cancellation needs to be deep enough to ensure that repeated restructurings are avoided and that countries free up enough resources. There are successful precedents, such as the London Agreement of 1953, in which export surpluses were linked to debt repayment to ensure that debt service did not drain scarce resource from the economy. However, cancellation that leaves the underlying system unchanged will only lead to problems building up again. The Committee on Economic, Social and Cultural Rights has stated that international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights, which may point to the need for major debt relief initiatives (see [E/1990/23](#));

(f) **Right to restructure.** Even without a statutory approach to resolving debt crisis, improvements can be made. Until the establishment of a workout mechanism, countries have the right to restructure debts and to be able to utilize all available resources, especially in times of crisis, and can do so on the basis of international law, for example by invoking a state of necessity, a fundamental change in circumstances and force majeure. If consensus on debt crisis resolution continues to be an impasse, there is the expressed desire to resort to Chapter VII of the Charter of the United Nations to provide temporary protection of the assets belonging to sovereigns, as was the case in Iraq in 2003, when the Security Council adopted its resolution [1483 \(2003\)](#) to that effect. Soft-law regime could build on United Nations principles and complement existing contractual reforms. Codification of those principles for practical purposes could help to guide domestic legislation. Distinguishing between good- and bad-faith creditors is essential during debt restructuring, and a registry of vulture funds could be kept that could be used to ascertain good-faith compliance;⁶⁸

(g) **Addressing illicit financial flows.** In its February 2021 report,⁶⁹ the High-level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda offers an important assessment of the large amounts of resources that are lost to trade mis-invoicing, corruption, tax avoidance and evasion, and profit-shifting by multinationals, in developed and developing economies. When compared with the essential public goods or services that could have been provided had those funds been available, there is a great need for a systemic solution, such as a global pact for financial integrity for sustainable development, that aims for the well-being of people and the planet in developing and developed countries. It argues that, without transformative steps towards a redesigned international financial architecture that addresses illicit financial flows, the shortcomings of financing for development cannot be overcome.

VI. Conclusions and recommendations

50. Although the COVID-19 pandemic has at last elevated the concerns and the rhetoric about the perils of a debt crisis and the urgency of reform of the debt architecture, little has truly been achieved thus far. The actions on debt standstill, liquidity provision and debt service relief so far have been too little and too late and have failed to ensure the fiscal space and capacity of States to fulfil their human rights obligations. Instead, debt servicing has continued to reduce the availability of resources and the planning capacity of States to respond swiftly and effectively to the urgency of a pandemic that has ravaged

⁶⁸ M. Guzman and J. Stiglitz, *A Soft Law Mechanism for Sovereign Debt Restructuring* (Initiative for Policy Dialogue, October 2016). Available from <https://library.fes.de/pdf-files/iez/12873.pdf>.

⁶⁹ Available at www.un.org/pga/75/wp-content/uploads/sites/100/2021/02/FACTI_Panel_Report-compressed.pdf.

the health, lives and livelihoods of hundreds of millions of people, and that remains unabated. The COVID-19 pandemic brutally revealed the vulnerability of the world's poor to economic shocks, inadequate health systems, food insecurity and shortages, and lack of a social protection safety net.

51. Without a holistic approach towards tackling debt guided by international human rights law and global goals, such as the Paris Agreement on climate change and the 2030 Agenda for Sustainable Development, all development objectives will be compromised. At a time of intersecting crises, including debt, climate and socioeconomic inequalities, when many countries are still struggling to cope with the pandemic, an ambitious and coherent set of reforms must be tackled by States and other relevant actors as a matter of urgency.

52. The overall objective of an international debt architecture reform should be twofold: first, to make use of the tools available in the most progressive way possible in order to respond to the current crisis; and second, to set the foundations for a mid-to-long-term system that can prevent future crises or provide timely and effective responses. The well-being and dignity of people must be at the centre of those reforms.

53. In that context, the Independent Expert reiterates the recommendations contained in her reports to the General Assembly at its seventy-fifth session and to the Human Rights Council at its forty-sixth session. In addition, she makes the following recommendations to States, both individually and as States Members of the United Nations, and international financial institutions:

(a) **Prioritize human rights obligations.** Indebted countries must prioritize their human rights obligations and guarantee the well-being and dignity of their populations over creditors' conditionalities. A human rights impact analysis should serve to ascertain those debts that can be repaid, how deep debt relief should be and the resources necessary to ensure compliance with the obligation of using the maximum available resources for the protection and fulfilment of human rights. The guiding principles of foreign debt and human rights and the guiding principles on human rights impact assessments of economic reforms can be more systematically operationalized;

(b) **Put in place, across all creditors, an immediate debt standstill** for those countries hit hard by the pandemic and with serious debt problems, to prevent the diversion of needed funds to debt servicing. Debt standstill should cover all those countries hit the hardest and facing risks of debt distress or in debt distress. The objective is not to allow debt servicing to mop up the limited financial resources of crisis-stricken countries by placing a heavy burden on them and leaving them with no money to fight the crisis. To be effective, this will need immediate national statutory legislation in order to prevent litigation against countries;

(c) **Ensure large-scale liquidity provision for debt-free, condition-free financing.** The reallocation of special drawing rights must not be counted as ODA. Adequate increases in the funding of concessional facilities, increases in ODA and a sustained positive net resource transfer are also necessary. A standing mechanism to re-channel unused special drawing rights is necessary; this should not be based on GDP per capita but instead on countries' urgency of need for liquidity. Furthermore, it should not be housed entirely in IMF;

(d) **Create a multilateral debt workout mechanism.** A legitimate, independent and fair mechanism, with the least costs to debtor countries, is needed urgently. This must be agreed upon, designed and implemented with the United Nations playing a leading role and should ensure that all Member States

have the opportunity to participate. It should function with a clear set of principles and norms, including a human rights-based approach and built upon existing guiding principles. Current mechanisms for debt resolution do not share common approval or legitimacy since they do not represent the debtors' perspective. Debt restructuring is complex, time consuming and costly and, in times of crisis, the lack of an available mechanism often leads to a panicked search for a solution. The pandemic has made it imperative that we not wait for another crisis to renew efforts to have such a multilateral mechanism;

(e) Use and implement existing common principles. Sovereign lending and borrowing and the resolving of debt repayment difficulties need to follow commonly agreed principles. The Basic Principles on Sovereign Debt Restructuring Processes and the Principles on Promoting Responsible Sovereign Lending and Borrowing provide the more widely accepted set of guiding principles. As indicated in the Basic Principles, countries have the right to restructure debts. Legal tools are available, such as relying on the state of necessity, a fundamental change in circumstances and force majeure. Further contractual improvements can continue, such as state-contingent instruments and repayment linked to the state of a country's recovery;

(f) Ensure debt cancellation. Debt cancellation to alleviate debt burdens is needed, based on human rights-related and Sustainable Development Goals-related debt sustainability assessments. World Bank and IMF debt sustainability assessments must be reformed further to incorporate debt repayment prospects focused on human rights and meeting longer-term development goals. As experienced already with heavily indebted poor countries, cancellation is not enough – structural change is required to remove persistent global inequalities between countries and prevent the build-up of debts;

(g) Reform credit rating agencies. States must reduce the mechanistic reliance on credit-rating agency assessments. Credit rating agencies should improve the quality of ratings and accountability. Measures and regulations should be introduced to avoid conflicts of interest in the provision of credit ratings. The lack of competition perpetuates wrongful behaviour and removes the incentive to improve the quality of credit ratings. The removal of the oligopoly of the “big three” credit rating agencies could be made possible by encouraging new players to enter the market, including publicly owned credit rating agencies;

(h) Continue to reform the IMF quota system and avoid retrogression in human rights. Quota reform at IMF needs to continue. Unjustifiable retrogressive measures affecting human rights must not be included as part of IMF conditionalities. International financial institutions are bound by human rights obligations and as important creditors, IMF and the World Bank are not independent actors.