

Mandates 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; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to development; the Special Rapporteur on the right to food and the Special Rapporteur on extreme poverty and human rights

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Excellency,

We have the honour to address you in our capacities as Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right to development; Special Rapporteur on the right to food and the Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 34/3, 44/15, 42/23, 49/13 and 44/13.

In this connection, we would like to bring your attention to the information we have received concerning **BlackRock's involvement in Zambia's sovereign debt as the largest private fund manager holding nearly USD 220 million of the country's sovereign bonds¹ and its subsequent impact on the country's ability to ensure the realization of human rights of its population including, responding to as well as mitigating the socio-economic impacts of the COVID-19 pandemic and other emergencies.**

In 2014, the Independent Expert on foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights sent an allegation letter (AL ZMB 1/2014) drawing similar issues to the attention of the Government of Zambia. While no response was received, the letter sounded an alarm on Zambia's sovereign debt levels.

Impact of the debt crisis on human rights

Before the COVID-19 pandemic hit, a joint World Bank-IMF Debt Sustainability analysis highlighted that Zambia's debt in 2019 was already unsustainable and the country was in distress. This situation was exacerbated by the onset of the pandemic.² A 2019 Staff Report by the IMF too noted that the fiscal deficit of 8.3 per cent of the GDP in Zambia was not caused by excessive social expenditures but was likely triggered by a combination of factors, including declining trade, financing conditions and climate related shocks.³

¹ Ministry of Finance and National Planning, Republic of Zambia, https://www.mofnp.gov.zm/?page_id=3475

² World Bank-IMF (2019). [Joint World Bank-IMF Debt Sustainability Analysis Zambia.](https://openknowledge.worldbank.org/handle/10986/32572)
<https://openknowledge.worldbank.org/handle/10986/32572>

³ IMF (2019), Country Report No. 19/263 Zambia [IMF Country Report No. 19/263 Zambia, August 2019.](https://www.imf.org/en/Publications/Country-Reports/2019/08/19/263-Zambia)

As per the information received, due to the prevailing risks of over-indebtedness and the economic contraction as a result of the COVID-19 pandemic, Zambia defaulted on two outstanding Eurobond payments: one of USD 42.5 million on 13 November 2020 and another of USD 56.1 million in January 2021. Since the global supply chains came to a standstill in 2020, the country as a commodity intensive economy underwent a historic contraction of 4.9 per cent in that year. This situation has been worsened by the subsequent waves of the pandemic and external factors such as the fuel crisis, the impending impact of climate disruption and rising food insecurity. According to several alarming reports, the annual food inflation rate for June 2022 was recorded at 11.9 per cent. Nearly 35 per cent of Zambian children under 5 are affected by stunted growth as per the 2018 Zambia Demographic Health Survey.⁴ Moreover, Zambia topped a 2022 list on the world's most under-reported crisis on poverty and hunger, disproportionately affecting the country's rural population.

A cascading effect of large debt repayments were major budgetary cuts applied to the social protection and health sectors since 2018.⁵ The country has also undergone adverse impacts of climate change-induced droughts in the southern and western parts of the country in 2021 and in the first half of 2022.

Debt burden and prioritization of debt servicing leads to austerity driven policies contravening international human rights obligations of States including their sovereign right to restructure debt ([A/RES/69/319](#)). A general allocation of USD 1.33 billion was provided to Zambia as Special Drawing Rights by the IMF in August 2021, part of which was used to support budgetary commitments for 2022.⁶ Despite the deteriorating socio-economic situations in the country, Zambia allocated 39 per cent i.e. USD 1.7 billion of its total budget to debt servicing of loans in 2021 ([A/76/176](#)) and 30 per cent of its 2022 budget to external debt servicing alone.⁷ This figure is expected to rise to USD 2.7 billion by 2024.⁸ The Government of Zambia only allocated 23.5 per cent of its total budget to the social sector, namely 8 per cent for health, 10.4 per cent for education, 3.6 per cent for social protection and 2 per cent for water and sanitation of the total budget for 2022. Further, this was an overall increase of 34 per cent in the total social sector allocation from 2021. In contrast, the share of debt servicing to domestic revenues has increased from 46 per cent in 2020 to 79 per cent in 2022.⁹ More importantly, private lenders in particular own half of Zambia's external debt.

⁴ Zambia Statistics Agency, Zambia Demographic and Health Survey 2018 (January 2020)

⁵ UNICEF (2021): The Looming Debt Crisis in Eastern and Southern Africa: What it means for Social Sector Investments and Children

⁶ 2022 Budget Address by Honourable Dr. Situmbeko Musokotwane, MP, Minister of Finance and National Planning (29th October 2021) https://www.parliament.gov.zm/sites/default/files/images/publication_docs/BUDGET%20SPEECH%20_%202022.pdf

⁷ EY Zambia 2022 National Budget Analysis

⁸ Jubilee Debt Campaign, Lower income countries spend five times more on debt payments than dealing with climate change (October 2021) https://jubileedebt.org.uk/wp-content/uploads/2021/10/Lower-income-countries-spending-on-adaptation_10.21.pdf

⁹ 2022 Budget Address by Honourable Dr. Situmbeko Musokotwane, MP, Minister of Finance and National Planning (29th October 2021). https://www.parliament.gov.zm/sites/default/files/images/publication_docs/BUDGET%20SPEECH%20_%202022.pdf

Addressing this issue is urgent as the debt to GDP ratio for Zambia in 2022 is expected to rise exponentially.¹⁰ The country has Eurobonds worth USD 750 million that are due to mature in 2022, another USD 1 billion in 2024, and a third one worth USD 1.25 billion due to be paid back in installments in 2025, 2026 and 2027.¹¹ Under these trying circumstances, the country is in an urgent need of a sovereign debt restructuring and economic reform agenda that does not compromise on the fiscal ability of the State to realize human rights.

BlackRock's role in Zambia's debt

In September 2020, Zambia requested a six-month suspension of debt interest payments on three commercial Eurobonds worth USD 3 billion beginning 14 October 2020 until 14 April 2021. This was met with a rejection by private creditors¹² which included BlackRock as Zambia suspended debt service payments. This led to a downgrading of the country's credit rating to RD for defaulting on its external debt payments. At the end of 2021, Zambia's debt stood at USD 31.74 billion of which USD 17.27 billion was external debt.¹³

As per the information received, private bondholders constitute 23 per cent of the country's external debt. Out of this BlackRock owns USD 220 million of Zambian bonds as the largest bondholder i.e. 6.1 per cent of the total debt held by private bondholders. In early 2020, these bonds had an average face value of 59 cents on the dollar with an average interest rate of 8.1 per cent on these bonds – indicating that BlackRock allegedly accrued profits on Zambia's debt. It is alleged that the company bought majority of the bonds since September 2020 when the country first requested for debt suspension on interest payments. It is estimated that the hedge fund has paid USD 165 million in total for its USD 220 million of holdings in Zambia's debt. The total profit that BlackRock will potentially accrue, should the debt be paid in full, is USD 180 million, equivalent to 47 per cent of the total allocation made for social protection in 2022, 21 per cent for health and 16 per cent for the education sector.¹⁴ While Zambia faces increased fiscal pressures due to the socio-economic consequences of the pandemic and the impact of other crisis, BlackRock will generate a 110 per cent profit out of Zambia's debt.¹⁵

The information also refers to the potentially harmful and long-lasting consequences of this company not participating in Zambia's debt restructuring and debt relief efforts.

¹⁰ Fitch Ratings, Fitch Affirms Zambia at 'RD' (5 April 2022).

¹¹ UNICEF (2021): The Looming Debt Crisis in Eastern and Southern Africa: What it means for Social Sector Investments and Children

¹² IMF, Joint IMF-WBG Staff Note: DSSI Fiscal Monitoring Update (September 16 2021)

¹³ See https://www.mofnp.gov.zm/?page_id=3475

¹⁴ 2022 Budget Address by Honourable Dr. Situmbeko Musokotwane, MP, Minister of Finance and National Planning (29th October 2021)
https://www.parliament.gov.zm/sites/default/files/images/publication_docs/BUDGET%20SPEECH%20_%202022.pdf

¹⁵ Tim Jones, Zambia edges towards debt default, but bondholders could make millions (2 Nov 2020),
<https://debtjustice.org.uk/blog/zambia-edges-towards-debt-default-but-bondholders-could-make-millions>

Debt restructuring efforts

On 14 June 2022, Zambia presented its economic reform agenda along with the progress made since reaching a Staff-Level Agreement with the IMF in December 2021. Accompanied with a host of economic reforms, the Staff-Level Agreement aims to provide a USD 1.4 billion three-year credit facility to the country.¹⁶ As per the information received, the first meeting between Zambia's Official Creditor Committee and the IMF organized under the G20 Common Framework¹⁷ was a crucial step towards discussing the partial writing off from the USD 32 billion debt which includes the external debt¹⁸ as of May 2022. The meeting further discussed issues of revenue measures to regain fiscal space by making the tax system more efficient, developing a comprehensive public finance management strategy, and improving oversight of borrowing on the table.

Based on the findings summarized above, we wish to express our grave concern about the human rights impact of Zambia's debt crisis and BlackRock's lack of cooperation to meaningfully engage in the country's sovereign debt restructuring and debt relief efforts, possibly cutting the country off from funds that are critical to the delivery of essential public services. In July 2022, the World Bank reclassified Zambia as a low-income country, ten years after it achieved lower middle-income status in 2011.

Even as multilateral lenders attended the meeting, the participation of private lenders remained absent. In this regard, we wish to draw your attention to the UNCTAD Principles on Promoting Responsible Sovereign Lending and Borrowing which underscore the importance of cooperation to restructure debt on behalf of all lenders to reach a resolution. It should be noted that there is no clarity over BlackRock's engagement with the Government of Zambia at this point to reach an agreement.

There is an urgent need for coordination between the Government of Zambia and private, bilateral and multilateral creditors to address the country's unsustainable debt and for private lenders to take prudent steps towards preventing future debt crisis. We encourage BlackRock to engage with the official creditors' committee and offer debt relief to Zambia.

We find it worrying that this debt is impeding Zambia's ability to respond to people's essential human rights in the midst of a global food crisis, the ongoing pandemic, and economic crisis which has heavily impacted the country.

We are particularly concerned that disproportionate debt service obligations, including substantial non-transparent debt contracting and the lack of meaningful cooperation in Zambia's debt restructuring may substantially diminish the country's ability to raise and mobilize the maximum available resources needed for the protection and realization of human rights, particularly economic, social and cultural rights.

¹⁶ G20 Indonesia: First meeting of the Creditor Committee for Zambia under the Common Framework for Debt Treatments beyond the DSSI (June 16 2022), <https://g20.org/first-meeting-of-the-creditor-committee-for-zambia-under-the-common-framework-for-debt-treatments-beyond-the-dssi/>

¹⁷ Ibid

¹⁸ Ibid

In connection with the above alleged facts and concerns, please refer to **Annex containing References to International Law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all issues brought to our attention that fall within our mandates, and in this regard, we would appreciate your observations on the following matters:

1. Please provide information regarding measures that your Excellency's Government has taken, or plans to take, to strengthen regulatory frameworks to support investors' efforts to assess and address human rights risks in investment portfolios, for instance, by mandating corporate human rights due diligence in line with the UN Guiding Principles on Business and Human Rights.
2. Please provide information regarding the measures that your Excellency's Government have or is planning to put in place in response to the recommendations given in the Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises upon its visit to the United States of America in 2013, in particular on ensuring "that reports submitted under transparency and reporting schemes include information on how the submitting companies have addressed human rights risks...[I]t is also recommended that there are meaningful consequences for companies which do not fulfil reporting obligations".
3. Please provide information on the steps your Excellency's Government has taken, or plans to take, to provide guidance to business enterprises, including financial business enterprises, operating in the United States of America on how to integrate human rights into their investment practices and on their expected human rights due diligence process. Such a process allows companies to identify, prevent, mitigate and account for how they address their impacts on human rights (as per the Guiding Principles on Business and Human Rights, Principles 17-21).

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to urge BlackRock to meaningfully cooperate with the Government of Zambia in efforts to restructure their sovereign debt and prevent further alleged violations of economic and social rights.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should

be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

As the debt crisis in Zambia raises the issue of co-responsibility of lenders and borrowers, please note that we are also sending letters with similar information to BlackRock Inc., the Government of Zambia, the Secretariat of G20 and the International Monetary Fund for their respective comments.

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

Attiya Waris

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

Fernanda Hopenhaym

Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Saad Alfarargi

Special Rapporteur on the right to development

Michael Fakhri

Special Rapporteur on the right to food

Olivier De Schutter

Special Rapporteur on extreme poverty and human rights

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention to the relevant international norms and standards that are applicable to the issues brought forward by the situation described above.

- *Committee on Economic, Social and Cultural Rights*

One of the pillars of the protection of economic, social and cultural rights under Article 2 of the International Covenant on Economic, Social and Cultural Rights is the obligation to progressively realize the rights set out in the Covenant, making use of the maximum of available resources.

In compliance with article 2.2 of the Covenant, and the provision on progressive realisation of these rights, States should not adopt impermissible retrogressive measure, unless strictly justifiable. As the Committee on economic, Social and Cultural Rights has clarified, retrogressive measures, meaning taking steps that would reduce the enjoyment of economic, social and cultural rights, are only permissible under certain strict circumstances. Furthermore, the onus is on the various Governments to demonstrate that their proposed measures will meet all their human rights obligations, notably by ensuring that measures are, among other characteristics, necessary, in that they must be justifiable after the most careful consideration of all other less restrictive alternatives; reasonable, in that the means chosen are the most suitable and capable of achieving the legitimate aim; not discriminatory, aimed at mitigating the inequalities that can emerge in times of crisis; and ensuring that the rights of disadvantaged and marginalized individuals and groups are not disproportionately affected; and subject to meaningful review and accountability procedures.

The Committee has also provided its authoritative interpretation on State obligations under the Covenant in the context of business activities in its General Comment No. 24 (2017). In paragraph 37, the Committee states, inter alia, that: “States should combat transfer pricing practices and deepen international tax cooperation and explore the possibility to tax multinational groups of companies as single firms, with developed countries imposing a minimum corporate income tax rate during a period of transition. Lowering the rates of corporate tax solely with a view to attracting investors encourages a race to the bottom that ultimately undermines the ability of all States to mobilize resources domestically to realize Covenant rights. As such, this practice is inconsistent with the duties of the States parties to the Covenant.”

- *Right to food*

We would like to refer to Article 25 of the Universal Declaration of Human Rights recognizes the right of everyone “to a standard of living adequate for the health and well-being of himself and of his family, including food.” Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), recognizes “the right of everyone to an adequate standard of living for himself and his family,

including adequate food, clothing, and housing, and to the continuous improvement of living conditions.”

Food must be accessible for present and future generations. Accessibility implies physical accessibility for everyone, including children, the elderly, persons with disabilities and displaced populations. Economic accessibility means that food must be affordable to all; expenses for food must not be so high as to compromise the enjoyment of other human rights, such as to housing, water, health or education.

We would like to refer to Article 11 of the ICESCR that states that while the right to food is to be progressively realised, the right to be free from hunger is immediate. In this regard, the full realization of this right may be achieved progressively over time, States have an immediate obligation to take concrete, deliberate and targeted steps aimed at realizing the right to food. The measures most suited to implementing the right to food will vary from one country to another. In the view of the CESCR in its General Comment No. 12, the ICESCR requires States to take "whatever steps are necessary to ensure that everyone is free from hunger and as soon as possible can enjoy the right to adequate food."

• *Reports of Independent Expert on foreign debt, other international financial institutions and human rights*

We call your attention to previous reports of the Independent Expert on foreign debt, other international financial institutions and human rights. In particular, we recall the report (A/75/164), entitled Addressing, from a human rights perspective, the debt-related problems of developing countries caused by the coronavirus disease (COVID-19) pandemic in which the Expert looked into “pre-existing debt vulnerabilities and the existing financing gap affecting efforts to contain the pandemic, highlighting the impact of debt on emergency response efforts of and resources available to States.” In line with article 2 of the International Covenant of Economic, Social and Cultural Rights, the report also points to the recognized obligation of international financial organizations and private corporations to respect international human rights especially when circumstances have rendered a debt unpayable.

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

We would like to highlight the Guiding Principles on human rights impact assessment of economic reforms (A/HRC/40/8), in particular:

Principles 15: The State's donors and creditors, both official and private, should not attach conditions to their financing that could undermine the State's ability to respect, protect and fulfil its human rights obligations.

Principles 16: The State's donors and creditors, both official and private, should assess the human rights impacts of the terms and conditions of their proposed transactions with the reforming state and of any advice they may provide to the State.

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

• *Guiding Principles on Business and Human Rights*

We would like to highlight the Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011. These Guiding Principles are grounded in recognition of:

- a) "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c) The need for rights and obligations to be matched to appropriate and effective remedies when breached."

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. The obligation to protect, respect, and fulfil human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8).

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory, including by taking appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication" (Guiding Principle 1). This requires States to "state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities" (Guiding Principle 2). In addition, States should "enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights..." (Guiding Principle 3).

In addition, the Committee on the Economic, Social and Cultural Rights has indicated that “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.” (General Recommendation 24 (2017)).

• *Declaration to the right to development*

We recall that the UN Declaration on the right to development (A/RES/41/128) declares that States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development; that they have the duty to co-operate with each other in ensuring development and eliminating obstacles to development, and that they should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and cooperation among all States, as well as to encourage the observance and realization of 9 human rights (article 3.1 and 3.3).

The Declaration further states that sustained action is required to promote more rapid development of developing countries and that effective international cooperation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development (article 4.2). We are concerned at the information that, contrary to these commitments, the concerns of low- and middle-income countries in relation to the establishment of the new international taxation rules have not been taken into consideration in a meaningful manner. We refer to the Guidelines and recommendations on the practical implementation of the right to development (A/HRC/42/38), which urge states to guarantee social protection floors and welfare, even in times of economic and financial crisis, in line with the Social Protection Floors Recommendation, 2012 (No. 202), of the International Labour Organization (para 60). The Guidelines also request States to States should prioritize the use of domestic resources for development over the servicing of debt (para 63) and to enhance accountability in the private sector, by publishing the taxation rates and revenues generated by major economic actors (para 65); and recommend that Governments should develop a global and a regional taxation architecture with a view to countering the race to the bottom fuelled by tax policies that are increasingly in favour of capital to the detriment of people’s welfare (para 81).