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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 promotion and protection of human rights in the context of climate change; the Special Rapporteur on the right to development; the Special Rapporteur on the right to food; the Independent Expert on the promotion of a democratic and equitable international order; the Independent Expert on human rights and international solidarity; the Special Rapporteur on extreme poverty and human rights and the Working Group on discrimination against women and girls

Ref.: AL OTH 85/2022
(Please use this reference in your reply)

26 August 2022

Dear Ms. Georgieva,

We have the honour to address you in our capacities as 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; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the promotion and protection of human rights in the context of climate change; Special Rapporteur on the right to development; Special Rapporteur on the right to food; Independent Expert on the promotion of a democratic and equitable international order; Independent Expert on human rights and international solidarity; Special Rapporteur on extreme poverty and human rights and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 34/3, 44/15, A/HRC/48/14, 42/23, 49/13, 45/4, 44/11, 44/13 and 50/18.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action.

On 2 March 2022, 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 addressed a communication (OTH 16/2022) to the International Monetary Fund pointing towards the need to holistically adopt gender-responsive macroeconomic and financial policies as the long-lasting impact of global events have chipped away the much-needed fiscal space required to realize women's human rights (A/73/179).

Ms. Kristalina Georgieva
Managing Director
International Monetary Fund

In this communication, we would like to bring to your attention information received on the differentiated impact of the surcharge policy[1], which is part of the loan arrangements provided by the International Monetary Fund (IMF) to debt-affected countries. Our concern is primarily with the impact of the surcharge policy on the enjoyment of the human rights in affected countries, in particular of economic, social and cultural rights.

Background

Introduced in 1997, surcharges are designed to incentivize ahead of schedule repayment by borrowing States, offset the risk on non-repayment and discourage the cyclical dependence of countries on the IMF's resources. They are applied to credit lines provided by the IMF including the Extended Fund Facility (EFF) which is offered to States in times of serious balance of payment crisis. Countries with loans of more than three or more years or above the country quota of 187.5 per cent are subjected to a surcharge of 2 per cent on the outstanding debt balance. An additional time-based fee is applied to the outstanding debt after 36 to 51 months in cases of credit outstanding under the EFF – compounding the existing debt conditions.[2]

Before the onset of the COVID-19 pandemic, one fifth of low-and middle-income countries (LMICs) spent more on debt servicing than on education, health and social protection combined.[3] In 2019, fifty-four per cent of LMICs paid more in servicing debt payments than spending on financing health services[4] – indicative of the impact servicing debt obligations have had on the sovereign decision-making ability of countries. Public debt levels of LMICs have further increased from 55.7 to 65.1 per cent of GDP between 2019 and 2021. In 2022, it is estimated these countries would require USD 311 billion to service external public debt which is approximately 13.6 per cent of their combined government revenues.[5]

Information received

Despite prioritizing servicing of debt payments, countries that crossed 187.5 per cent of their quota were liable towards paying additional surcharge over delays in repayments. By April 2022, 53 countries were in debt to the IMF.[6] In 2021, 52 countries were subjected to surcharges, 14 of which exceeded 187.5 per cent of their quota. Further, 37 members borrowing from the general reserve account paid no surcharges.[7] In order of quota utilization, these countries are Argentina, Ecuador, Egypt, Angola, Ukraine, Mongolia, Gabon,

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1 Review of Access Limits and Surcharge Policies; IMF Policy Paper, January 20, 2016
2 Ibid
3 UNICEF 2021: Social-spending-series_COVID-19-and-the-looming-debt-crisis.pdf
4 Frederik Federspeil *et al,* Growing debt burden in low- and middle-income countries during COVID-19 may constrain health financing (22 June 2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9225792/
5 UN Global Crisis Response Group on Food, Energy and Finance (8 June 2022), Brief no. 2, Global impact of the war in Ukraine https://news.un.org/pages/wp-content/uploads/2022/06/GCRG_2nd-Brief_Jun8_2022_FINAL.pdf?utm_source=United+Nations&utm_medium=Brief&utm_campaign=Global+Crisis+Response
6 IMF Credit Outstanding for all members as of March 31, 2022 https://www.imf.org/external/np/fin/tad/extcred2.aspx?date1key=2022-03-31&reportdate=2022-03-31
7 Daniel Munevar, A Guide to the IMF Surcharges (02 December 2021) https://www.eurodad.org/a_guide_to_imf_surcharges

Tunisia, Barbados, Albania, Jordan, Pakistan, Armenia, and Georgia.

At the end of September 2021, the share of outstanding Fund credit was at 68 per cent for the five largest borrowers namely, Argentina (Special Drawing Rights (SDR) 30.6 billion), Egypt (SDR 14.2 billion), Ukraine (SDR 6.7 billion), Pakistan (SDR 5.0 billion) and Ecuador (SDR 4.3 billion).[8] In 2022 alone, these five countries will together pay USD 2.7 billion in surcharges.[9] The number of countries expected to make surcharge payments will increase to 38 by April 2024 as projected by IMF's World Economic Outlook.

Situation in specific debt-affected countries

As of July 2022, Ukraine sought debt deferral on USD 20 billion as interest payments are due in the beginning of September 2022.[10] Undergoing a fiscal shortfall of USD 5 billion a month due to the ongoing war and low tax revenue, Ukraine is still estimated to pay USD 483 million in surcharges from 2021 to 2023 equivalent to 25 per cent of the country's health sector financing during the pandemic.[11] Prior to the current hostilities, Ukraine was already cutting health spending, undermining their health system and increasing women's unpaid care burden. In addition to cutting 25,000 health -care jobs, reducing the number of hospital beds, and, in some cases forcing hospitals to close. This disproportionately affected rural residents (who comprise one third of the total population of Ukraine), in particular rural women and girls, since they are already disadvantaged with respect to work, health and physical security when compared with women in urban areas and with men (A/73/179).

Egypt provides another illustration. Egypt is facing surcharges at a time when the country is also suffering from a food crisis. At the end of May 2022, to cover its wheat import needs, Egypt requested USD 500 million from the World Bank.[12] Furthermore, in June, owing to the rising food security concerns in the country, Egypt objected to proposals tabled by the World Trade Organization denying countries the right to impose export restrictions on food. According to the information received, Egypt is estimated to spend USD 1.8 billion from 2019 to 2024 on surcharges – enough to vaccinate against COVID-19 its population three times over.[13]

Pakistan is a third example. After negotiating the 2019 bailout arrangement of USD 6 billion, a staff level agreement was reached with Pakistan after the completion of 7th and 8th review of the IMF's EFF program in July 2022. The country which is facing an outstanding debt of USD 21 billion in 2022 will be paying surcharge payments that are equivalent to one-third of their entire health sector financing during the COVID-19 pandemic.[14]

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8 Quarterly Report on IMF's Finance for the quarter ended January 31, 2022.

9 CEPR, Surcharges at the IMF: Regressive, counterproductive and bad for the world economy (2021) https://cepr.net/wp-content/uploads/2021/12/CEPR-Surcharges-Fact-Sheet.pdf

10 CEIC, Ukraine External Debt (2022) https://www.ceicdata.com/en/indicator/ukraine/external-debt

11 Eurodad, IMF Surcharges – Ukraine (2021) https://infogram.com/1py2n0kz211ledh3wnvmmg53xlcy9vnvj9x?live

12 Egypt rejects World Trade Organization agreements on global food crisis (19 June 2022) https://www.al-monitor.com/originals/2022/06/egypt-rejects-world-trade-organization-agreements-global-food-crisis

13 Debt Justice (2021) https://www.politico.com/f/?id=00000180-18ca-dc88-a7be-18fa439c0000

14 Adnan Aamir, Pakistan's IMF deal offers economic pain relief but no panacea (23 July 2022). https://asia.nikkei.com/Economy/Pakistan-s-IMF-deal-offers-economic-pain-relief-but-no-panacea#:~:text=Islamabad%20on%20July%2014%20reached,further%20loans%20from%20other%20lenders.

As a fourth example, Ecuador will pay an average of USD 144 million annually in surcharge payments from 2022 to 2024.[15] Due to the size of the IMF loan, borrowing costs for the country are expected to rise by 148 per cent, undermining the aims of the EFF arrangement of USD 800 million reached with the IMF in October 2021.[16]

In October 2021, the Secretariat of the Group of 24 urged the Fund to "correct the regressive and procyclical character of the surcharge policy and suspend, or at least substantially reduce, existing surcharges to support pandemic responses."[17] The communiqué further encouraged the IMF "to review its financial governance and address equity considerations in its revenue structure, including the role of surcharges".

An internal discussion held on 16 December 2021 on the adequacy of the Fund's precautionary balances which analysed the role of surcharges as part of the Fund's risk management framework indicated interest on the part of some IMF Directors on "providing temporary relief to borrowing members in light of the health and economic challenges posed by the pandemic."

Based on the findings summarized above, we wish to express our grave concerns about the differentiated impact of the IMF's surcharge policy on the ability of low-and middle-income countries to comply with their international obligations to progressively realize the human rights of their populations in key areas such as health, education and social protection.

Instead of providing assistance, surcharges double down on countries already facing large liquidity constraints that are either close to defaulting on servicing their debt burdens or are buckling under the pressure of unsustainable levels of debt while increasing borrowing costs for them. These fiscal constraints may force countries to prioritize additional payments to the IMF on top of the interest payments over financing public services that the most vulnerable sections of their populations depend upon. In this regard, surcharges have the potential to aggravate a countries' debt situation and discourage investments in the country, hence undermining both short-term prosperity and inclusive growth, as well as the realization of human rights. This in our view is a contradictory and an inconsistent strategy towards the objectives of attaining future debt sustainability under the Common Framework for debt treatment which is meant to address high levels of sovereign debt among low-income countries.

We find it particularly worrying that the surcharge policy has not been re-assessed even in the midst of intersecting crises: an ongoing global pandemic, a global food crisis, climate emergency, multiple wars and conflicts with humanitarian crises and the economic breakdown that many countries are buckling under. In our view the current policy of the Fund on surcharges, for which we see no convincing economic justification, risks pushing low- and middle-income countries into further debt.[18]

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15 CEPR, Surcharges at the IMF: Regressive, counterproductive and bad for the world economy (2021) https://cepr.net/wp-content/uploads/2021/12/CEPR-Surcharges-Fact-Sheet.pdf

16 IMF country report no. 21/228 (7 October 2021).

17 Communique by the Secretariat of G24, Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development (October 11, 2021), https://www.g24.org/wp-content/uploads/2021/10/G-24-Communique-Final-October-Meetings-2021.pdf

18 Open Letter to the IMF by former Independent Expert on Foreign Debt and Human Rights, Juan Pablo Bohoslavsky (June 2021), https://www.brettonwoodsproject.org/wp-content/uploads/2021/06/Surcharges-Open-Letter-Former-UN-IE-on-debt-and-Human-Rights-June-2021.pdf

Where financial institutions—public or private—may cause, contribute to, or be linked to negative impacts on people, they should uphold their human rights responsibilities by adopting and embedding relevant policies across the whole of their institutions and activities, conducting ongoing and iterative human rights due diligence, and playing a role in access to remedy, where appropriate.

Article 2(1) of the International Covenant on Economic, Social and Cultural Rights establishes that States should ensure the progressive realization of economic, social and cultural rights by using the maximum available resources. The negative human rights impact of the IMF surcharge policy must be considered in the context of the Fund's mandated austerity reforms– with States forced to undertake additional budgetary cuts that affect low-income households in particular. This has severe and disproportionate impacts on women and girls. As highlighted by the former Independent Expert on Foreign Debt's report (A/73/179), austerity-driven measures and fiscal consolidation policies affect the human rights of women more negatively than men. In our view, this also contravenes IMF's own proposal of a gender mainstreaming strategy[19] which underscores the role macroeconomic financial policies play in plugging structural gaps.

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

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information or comment you may have on the aforementioned concerns;

2. Please explain the legal basis and economic rationale of applying the surcharge policy on countries that are facing severe fiscal constraints in the context of the COVID-19 pandemic and a multitude of intersecting global food, economic and climate crises.

3. Please indicate whether any human rights due diligence or impact assessments, including gender analysis, were carried out to review the policy on surcharges to identify, prevent, mitigate and account for adverse human rights impact on countries that are restructuring their debt under the Common Framework.

4. Please indicate if the IMF staff level agreement(s) reached with countries undergoing an economic crisis include a human rights impact or risk assessment of the surcharge policy. Which impact assessments have been undertaken for low- and middle-income countries to protect human rights, including socio-economic rights of their populations?

[19] IMF Strategy Toward Mainstreaming Gender (July 28 2022), Policy Paper No. 2022/037 https://www.imf.org/en/Publications/Policy-Papers/Issues/2022/07/28/IMF-Strategy-Toward-Mainstreaming-Gender-521344

5. Please describe to what extent the Fund has considered the impact of the surcharge policy on the ability of countries to mobilize fiscal resources for the realization of economic, social and cultural rights and other international human rights obligations as Article 15(3) of the UN Guiding Principles on Human Rights Impact Assessment of Economic Reforms underlines

6. Please indicate if the IMF has considered the impact of servicing surcharges, apart from the high interest payments owed, on the ability of low- and middle-income countries to prevent any future economic shocks, achieve long-term debt sustainability and secure a just recovery from the COVID-19 pandemic.

This communication and any response received from your institution will be made public via the communications reporting website withing 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to thank you for sharing a copy of this letter with the IMF Board members.

Due to the precarious economic conditions in Albania, Angola, Argentina, Armenia, Barbados, Ecuador, Egypt, Gabon, Georgia, Jordan, Mongolia, Pakistan, Tunisia, and Ukraine, a copy of this letter has been sent to their governments for information.

Please accept, Ms. Georgieva, 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

Ian Fry
Special Rapporteur on the promotion and protection of human rights in the context of climate change

Saad Alfarargi
Special Rapporteur on the right to development

Michael Fakhri
Special Rapporteur on the right to food

Livingstone Sewanyana
Independent Expert on the promotion of a democratic and equitable international order

Obiora C. Okafor
Independent Expert on human rights and international solidarity

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

Melissa Upreti
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

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

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 (CESCR) is the obligation to progressively realize the rights set out in the Covenant, making use of the maximum of available resources. Likewise, the Committee on the Elimination of Discrimination against Women has clarified that those measures should aim to accelerate the achievement of gender equality and address "the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women, as well as to provide them with compensation".

In compliance with article 2.2 of CESCR, and the provision on progressive realisation of these rights, States should not adopt impermissible retrogressive measures, 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.

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

> Principle 13: States have an obligation to provide international assistance and cooperation in order to facilitate the full realization of all rights. As part of their obligations with regard to international cooperation and assistance, States have an obligation to respect and protect the enjoyment of human rights of people outside their borders. This involves avoiding conduct that would foreseeably impair the enjoyment of human rights by persons living beyond their borders, contributing to the creation of an international environment that enables the fulfilment of human rights, as well as conducting assessments of the extraterritorial impacts of laws, policies and practices.
>
> Principle 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.

Principle 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.

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."

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 CESCR (see E/C.12/2016/1). International debt architecture reform should not only have the capacity to respond to debt crisis in an effective and timely manner but should also serve to prevent future crises.

In addition, we wish to draw the attention to one of the thematic reports of the Working Group on Discrimination against Women and Girls to the Human Rights Council (A/HRC/26/39), revealing that vulnerability and economic disadvantage for women are exacerbated by macroeconomic policies that increase inequalities and reduce social protection floors. This is clearly visible in periods of economic crisis, particularly where governments adopt austerity measures. Although the specific effects of the crisis differ by context, the overall picture is one of disparate impact on women, with deepening economic insecurity, an increase in precarious employment and a heavier burden of unpaid care work. Therefore, addressing the crisis provides an opportunity to tackle patterns of gender inequality and discrimination entrenched in the economic status quo and shape new gender equality policy responses.

Declaration on Right to Development

We would further like to recall the UN Declaration on the Right to Development, which defines the right to development as an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. The Declaration calls upon States, among other things, to co-operate with each other in ensuring development and eliminating obstacles to development and states that States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development (Article 3). We would also like to refer to the Guidelines on the practical implementation of the right to development in which the Special Rapporteur on the Right to Development recommended that that international monetary institutions and States should avoid austerity measures and public spending choices that would reverse progress on universal social protection and the delivery of public goods and services, taking such measures only when all alternative resourcing options have been exhausted (A/HRC/42/38, paras. 62 and 91).