

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 and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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(Please use this reference in your reply)

7 December 2023

Dear Mr. Ajay Banga,

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 and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 52/17 and 51/21.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 60 thematic and country mandates on a broad range of human rights issues. 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 (including companies) 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. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of your entity, information that we have received concerning the lack of accountability and transparency of the International Finance Corporation's (IFC), a member of the World Bank Group, investments in healthcare and ensuing risks for the realization of human rights.

Of primary concern is the impact that IFC's investments may be having on the realization of the right to health, especially regarding the context of constrained public finances due to the pressing debt crisis in many developing countries. The IFC reportedly manages a healthcare investment portfolio of \$3.5 billion in health care companies for their emerging markets. The World Bank Group's (WBG) "Cascade Approach", which seeks to further establish its relationship with the private sector to

attain the development targets outlined in the Sustainable Development Goals (SDGs) and save public financing and resources for the areas that require them the most, is also part of the IFC 3.0 strategy. This approach appears to be problematic in relation to health care as it runs counter to not only the human rights obligation to respect, protect and fulfil the right to health stemming from the International Covenant on Economic, Social and Cultural Rights, but also the World Health Organization's (WHO) policy guidance, which states that Member States should reduce reliance on private healthcare financing and progress towards publicly funded healthcare to achieve Universal Health Coverage (UHC)". Health financing experts, highlighting the statement that "not everything goes in the path to UHC", have claimed that not all private health investments contribute to UHC. Moreover, the COVID-19 pandemic has revealed to the world the essential role of public healthcare in tackling the contagion and the need for strengthening public health systems taking stock.

The IFC Impact Assessment Tool

The Anticipated Impact Measurement and Monitoring (AIMM) system, the assessment tool of the IFC, which allows the IFC to ameliorate its monitoring and measuring of the development impacts of projects, is not accessible to the public. While the IFC Access to Information Policy includes a section dedicated to the anticipated development impact of each project, the impact of investments in health projects is often unclear, particularly regarding their claimed contribution to UHC. In addition, the Independent Evaluation Group (IEG) has noted important gaps in prioritizing the measurement of the risks and the distributional impact of IFC investments in its 2018 World Bank Group Support to Health Services: Achievements and Challenges report. The IEG has also highlighted important gaps in IFC investment in the health sector, such as the fact that the IFC's Investment and Advisory Services have non-communicable diseases and general health as their focal point, with priorities in health care reflecting those of middle-income countries, as the majority of their support goes to hospitals, clinics, and pharmaceutical companies. Failures in the measurement of risks, alongside the gaps in quality and equity of its investments, continue to be reported with the IEG further noting that the IFC rarely monitors all dimensions of its health interventions. In addition, reports indicate that IFC's clients have abused human rights, for example the right to a healthy environment and access to communities' livelihoods and failed to conduct effective environmental assessments and consult with local communities. A full public account of how these cases have been addressed along with the corrective actions taken remains unavailable to the public. Remedy for harms inflicted through IFC projects, which result in the unintended cost of development projects being felt by the surrounding communities, (confirmed and investigated in lawsuits worldwide) and perpetuated by their clients is also not apparent. Lastly, the criteria for selecting IFC investments are listed in the AIMM system, which are currently undergoing revision. However, there is concern that the lack of transparency encountered with the first iteration of AIMM -in which the health sectoral framework remained undisclosed despite several attempts to claim its disclosure- will be replicated in the AIMM 2.0 process. It is also imperative that the next iteration of AIMM engage in a robust consultation process with civil society and affected communities.

Intermediated Investments in Healthcare

Investments in healthcare from IFC-supported financial intermediaries are difficult to scrutinise and important dimensions remain undisclosed to the public,

including investment amounts and impact monitoring information. While financial intermediaries may not have the same mandate as the IFC, their operations should remain coherent with the WBG's development mandate. We are aware of recent improvements at the IFC, regarding levels of transparency pertaining to disclosures of investments through private equity funds and commercial banks. However, reports indicate that stakeholders continue to face significant obstacles in tracking the money trail or identifying the repercussions of intermediated investments in domestic markets. Moreover, financial intermediaries allegedly make extensive use of tax havens. Resorting to tax havens may collide with "the strong culture of corporate integrity and governance" that IFC advocates for. The use of tax havens is highly unlikely to meet the requirements of performance standards in IFC sustainability policies. It also seems to refute IFC's statements about its due diligence to limit tax evasion and tax avoidance, as well as the need for companies to be fiscally liable within the national jurisdictions of the countries they operate in. The IFC would benefit from taking action to urgently address this glaring contradiction and prohibit any tax avoidance practices for investments it is involved in.

Development Impact Bonds

Development impact bonds should be reconsidered. The World Bank's new long-term strategy delineated in the WB Evolution Roadmap, puts significant emphasis on relaunching the use of development impact bonds. Development impact bonds have been relevant in the health sector, where they have been used for the Global Financial Facility (GFF) and the International Financial Facility for Immunization (IFFIm), whose operational activities are entrusted to the Global Alliance for Vaccine Immunization (GAVI). While success stories heralded in institutional communication promote innovative financing, research has also demonstrated how such approaches can be more expensive for the public sector than traditional financing, as private investors and speculators seem to have a high cost of capital and pursue large profit margins. Such costs are generally not considered. Moreover, the mechanical complexity of such development bonds renders them extremely difficult to track and monitor despite the key contribution of donor governments' grants. This opacity has serious implications in terms of weakening political control over global health and development, and of shaping undesirably unbalanced geographies of power and financial concentration in the global North. In this regard, the World Bank Evolution Roadmap's potential allusion to securitization platforms to encourage private finance for achieving sustainability is of concern. The securitization approach will likely not deliver on its promises, particularly in terms of health outcomes. Securitization will only further narrow policy efforts to provide universal public healthcare, a highly undesirable horizon.

Public-Private Partnership

The IFC often presents Public-Private Partnership (PPP) projects as being effective pro-poor strategies. However, research seems to hint at the opposite. A recent report published by the World Health Organization on Public-Private Partnerships for Health Care Infrastructure and Services, the first ever of its kind, highlights that PPPs have higher financing and transaction costs. Already back in 2017, the IEG, monitoring the World Bank Group engagement on PPPs in health, highlighted several critical aspects related to the WBG's promotion of PPPs in the healthcare sector. The Public-Private Partnerships in Health report notes that: (1) "the current Bank Group monitoring and evaluation (M&E) system for health PPPs is

inadequate and needs to be improved to better track results”, especially in relation to poor people’s access to health services; (2) “the Bank Group rarely provides crucial “aftercare” for contract management”; (3) before deciding to implement a PPP contract, public procurement was almost never presented as an alternative option; (4) there is little evidence that fiscal implications are assessed consistently, “even if the proposed PPP could have significant fiscal implications”. In other words, PPP-project designs often lack the necessary justifications, indicators, baselines and targets to track access by poor and marginalised populations. As of today, it seems that the recommendations formulated by the IEG have not entirely been taken into consideration and implemented.

In light of this, we would encourage a comprehensive evaluation of the IFC activities in healthcare from the WBG’s IEG, as well as public scrutiny with inputs from all concerned actors, including parliaments and governments as well as civil society or the rest of the population.

In addition, we would like to remind you of the WBG’s responsibilities regarding the human right to health and the principles of equality, non-discrimination, transparency, and accountability.

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

1. Please provide any additional information and/or comment(s) the WBG may have on the above-mentioned allegations.
2. Please describe how the WBG plans to take into consideration and implement the recommendations formulated by the IEG and follow up on the aforementioned issues.
3. Please indicate which measures are being taken to ensure that the IFC contributes to the WBG’s expanded vision and mission.
4. What are the most precise and beneficial forms of monitoring that the WBG would recommend regarding the adjustment of health service projects to include a form of monitoring that would provide a means by which distributional impacts of projects can be evaluated to realize and then compare the actual distributional impact these projects provide?
5. Please provide information on ways to incorporate explicit equity objectives when examining projects where specific disadvantaged or marginalized population groups are identified as the beneficiaries.

At the same time and while awaiting the above additional information, we would like to call on the World Bank Group to:

1. Task the IEG with evaluating the IFC’s role in the healthcare sector with a priority focus on how its healthcare sector operations, especially in hospitals, clinics, and healthcare chains, contribute to realising the right to health, deliver improvement of the quality and equity in healthcare systems and uphold patients’ rights;

2. Suspend using development impact bonds and reorient such healthcare development schemes towards traditional financing approaches. In view of the evidence displayed by recent scholarly research, there is no reason why the public sector should bear such high costs of capital for innovative finance schemes that come to the exclusive advantage of private investors and speculators;
3. Clarify the actions that the WBG intends to undertake to implement the 2017 IEG recommendations on PPPs in the health sector

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your institution will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please note that the same issues have been raised in a letter addressed to the International Finance Corporation.

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

Please accept, Mr. Ajay Banga, 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

Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Annex

Reference to international human rights law

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

We would like to refer to the International Covenant on Economic, Social and Cultural Rights. In particular, we would like to highlight articles 12 and 2.2 of the Covenant, which guarantee the right to the highest attainable standard of physical and mental health without discrimination.

In addition, General Comment No. 14 adopted by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) states that the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health. (General Comment No 14, para. 18).

The Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care (General Comment No. 3, para. 10). It also interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to healthy environmental conditions, among others.

The United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health stressed that the COVID-19 pandemic has drawn attention to the urgent need for strategic, equitable investments in public health infrastructure (A/77/197, para. 95). She recalled that the “right to health relies on public participation in health-related decision-making at community, national and international levels” stressing the challenges due to the private sector influence over these processes and the technical knowledge needed to effectively participate in decision-making” (A/HRC/53/65, para 9). She added that “the meaningful and consequential participation required to realize the right to health and health-related rights is intricately connected to State’ obligation of non-discrimination” (A/78/185, para. 65; see also E/C.12/2000/4, para. 54).

The Special Rapporteur also recalled that the Guiding Principles on Business and Human Rights set out a “global, authoritative framework for the duties and responsibilities of States and businesses to prevent, address and remedy human rights abuses in the context of businesses operations” (para. 10). In this regard, Principle n°11, states the “Business enterprises should respect human rights” and that “they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved”. This also implies that businesses enterprises should “comply with all applicable laws and respect internationally recognized human rights, wherever they operate” (Principle 23 (a)). The Special Rapporteur also stressed that “businesses are expected to take a number of measures,

including the adoption of policy commitments to meet that responsibility, putting in place an effective human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights and have in place processes to enable the remediation of any adverse human rights impact they cause or to which they have contribute or been linked” (A/HRC/53/65, para 25).

In this sense, the Special Rapporteur recommended to States and other stakeholders to “help to identify, through the constituent components of accountability, namely monitoring, review and redress, where progress has been made and where it is lacking, and allow rights holders to review and redress for violations where they have occurred”, stressing that “accountability constitutes a way for duty bearers to explain their actions and adjust (A/78/185, para. 97 (o)).

Furthermore, we wish to bring to your attention resolution 78/4 adopted by the United Nations General Assembly on 5 October 2023, entitled “Political declaration of the high-level meeting on universal health coverage”. In particular its para. 8, which reaffirms that States recognize that health coverage is fundamental for achieving the Sustainable Development Goals, not only to health and well-being but also to “promoting sustained, inclusive and sustainable economic growth, [...] reducing inequalities within and among countries, ensuring just, peaceful and inclusive societies and to building fostering partnerships, while reaching the goals and targets included throughout the 2030 Agenda for Sustainable Development is critical for the attainment of healthy lives and well-being for all, with a focus on health outcomes throughout the life course”. As stated in this resolution, “health is an investment in human capital” (para. 10) and that UHC implies that “all people have access without discrimination, to nationally determined sets of the needed [...] essential health services and essential safe, affordable, preventive, curative, rehabilitative and palliative essential health services and essential safe, affordable, effective and quality medicines and vaccines, diagnostics and health technologies [...], while ensuring that the use of these services does not expose the users to financial hardship, with a special emphasis on the poor, vulnerable and marginalized segments of the population” (para. 11). We wish to also remind the importance of equity and social protection mechanisms to ensure UHC and equitable access to quality health services without financial hardship for all people, in particular those in vulnerable situations (para. 14), we as the “significant gaps in the financing of health systems across the world” (para. 36). In this resolution States are also encouraged to “continue pursue policies towards adequate, sustainable, effective and efficient health financing and investments in universal health coverage and health systems [...] to respond to unmet health needs and to eliminate financial barriers to access to quality, safe, effective, affordable and essential health services [...] and ensure financial risk protection for all throughout the life course, especially for the poor and those in vulnerable situations” (para. 83). Finally, the resolution recommends States to “improve the efficiency of public management, accountability and transparency, and prioritize coverage of the poor and people in vulnerable situations, while noting the role of and the risks associated with private sector investment, as appropriate” (para. 87).