

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 negative impact of unilateral coercive measures on the enjoyment of human rights

Ref.: AL ISR 7/2024
(Please use this reference in your reply)

12 April 2024

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 and Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, pursuant to Human Rights Council resolutions 52/17 and 52/13.

In this connection, we would like to bring to the attention of your Excellency's Government information that we have received concerning the possibility of revoking the waiver to the Israeli banks under the Oslo and Paris Accords. Considering the current tensions in the region, we would like to express our concerns regarding two issues, seeking clarification and further elaboration on the matter.

According to the information received:

Firstly, regarding ***Taxation and Revenue Sharing***:

Under the interim peace accords in the 1990s, Israel collects tax revenues on behalf of the Palestinians, transferring them to the Palestinian Authority, which uses them in part to pay wages. Under terms set by Israel's cabinet on 24 January 2024, the monthly tax revenue previously allocated to the Palestinian Authority's public sector employees in Gaza (that continued to be paid with transferred tax revenues) is now transferred to a Norwegian-based trust account. However, according to information received, that money cannot be released by the fund to pay the public sector employees in Gaza without permission from Israel.

Due to the significant proportion of taxes in the Palestinian Authority's budget collected by Israel, the Palestinian Authority is vulnerable to unilateral suspensions by Israel of transfers of clearance revenue. As early as 1997, Israel began to unilaterally settle bills unpaid by Palestinians, not the Palestinian Authority itself, including fines and interest. It is alleged that Israel has suspended hundreds of millions of dollars for accumulated periods of some four years. While the Israel Electric Corporation unilaterally issues excessive late payment penalties and interest charges, Israel does not pay interest on the money it kept and did not transfer to the Palestinian Authority.

Secondly, regarding ***Banks Waiver Withdrawal***:

We are also concerned about the information that Palestinian banks could be cut off from the Israeli banking system by the withdrawal of the waiver

granted to the Israel Discount Bank and Bank Hapoalim starting 1 April 2024 following a decision by the Israeli Finance Minister to cease dealings between the two financial institutions. We also understand that a cabinet meeting could be organized within two days to discuss reversing plans by the Minister of finance that would isolate Palestinian banks from both the Israeli and international banking systems.

Cutting off Palestinian banks from the global banking system unilaterally by Israel may result in the violation of a number of the fundamental principles of international law, including the principle of sovereign equality of states, the principle of non-intervention into the domestic affairs of states, the principle of cooperation in good faith. It could also violate the promotion, protection, and fulfilment of human rights and the obligation of international cooperation. Moreover, the decision creates the circumstances for the Palestinian Authority to fail to meet its own obligations under United Nations Human Rights Treaties.

The impossibility of bank transfers will affect all people of Palestine indiscriminately, increase the level of already existing humanitarian catastrophe, affecting therefore a wide range of human rights, including the rights to food, water and sanitation, health, and the right to life. The list of rights is not exhaustive, considering the indivisibility and interdependence of all human rights, endangering further vulnerable groups, such as children, women, persons with disabilities, and other parts of the population.

The impossibility of bank transfers is also making the delivery of humanitarian assistance to those in need more complicated for all humanitarian actors.

Without prejudging the accuracy of these allegations, we express our deep concern regarding these measures and how they constitute unilateral coercive measures repeatedly condemned in multiple resolutions of the UN Human Rights Council and the UN General Assembly.¹

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 United Nations 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 and/or comment(s) you may have on the above-mentioned allegations.
2. Please clarify if the alleged action by the Minister of Finance is accurate and will the banking linkages be severed in April 2024.

¹ UN Human Rights Council (resolutions 15/24 of 6 October 2010, paras. 1–3; 19/32 of 18 April 2012, paras. 1–3; 24/14 of 8 October 2013, paras. 1–3; 30/2 of 12 October 2015, paras. 1–2 and 4; 34/13 of 24 March 2017, paras. 1–2 and 4; and 45/5 of 6 October 2020, paras. preamble). General Assembly (resolutions 69/180 of 18 December 2014, paras. 5–6; 70/151 of 17 December 2015, paras. 5–6; and 71/193 of 19 December 2016, paras. 5–6).

3. Is the taxation revenue intended for the Palestinian Authority indeed being transferred by Israel to a Norwegian trust, and if so, kindly name the trust and share its constitutional documentation for our better understanding?
4. Please provide information on whether the Government of your Excellency intends to reverse the plans and, in line with its international commitments, and continue the regular transfer of taxation revenues to the Palestinian Authority
5. Please indicate if the Government of your Excellency will enable continued access of Palestinian banks to the Israeli and international banking systems.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government 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.

While awaiting a reply, we urge that all necessary interim measures be taken to redress this situation.

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.

Please be informed that a copy of this letter has been also sent to the Palestinian Authorities, the Permanent Mission of Norway and the President of the United Nations Security Council.

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

Alena Douhan

Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of 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.”

• Declaration on 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 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 fueled by tax policies that are increasingly in favour of capital to the detriment of people's welfare (para 81)

• Guiding Principles on human rights impact assessment of economic reform policies

We also refer to report A/HRC/40/57 of the Independent Expert on foreign debt, international financial obligations and human rights, which contain the Guiding Principles on human rights impact assessment of economic reform policies. In particular, we highlight Principle 11 entitled Policy coherence, notably 11.b: "Fiscal policy should be used as a countercyclical tool to prevent and/or manage crises, as well as to equalize opportunities and maximize the realization of human rights". In the commentary, the Independent expert noted "[f]iscal policy can play a major role in achieving equality, tackling discrimination and strengthening governance and accountability, as well as combating poverty and funding development. Fiscal policy also has a clear and well documented effect on economic growth: while pro-cyclical contractionary fiscal policy reduces economic growth, expansionary fiscal policy during downturns increases growth."

• 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 particular, Principle 10 states that “when acting as members of multilateral institutions that deal with business-related issues, should: (a) seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights; (b) encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising; (c) draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

• **Guiding Principles on Extreme Poverty and Human Rights**

Furthermore, when adopting the UN Guiding Principles on Extreme Poverty and Human Rights, States agreed that adequate resources should be raised and used to ensure the realization of the human rights of persons living in poverty. In particular, “fiscal policies, including in relation to revenue collection, budget allocations and expenditure, must comply with human rights standards and principles, in particular equality and non-discrimination” (UN Guiding Principles on Extreme Poverty and Human Rights, para. 53).

States also agreed, in para. 63, to ensure policy coherence, by taking into account all international human rights obligations when designing and implementing policies and acknowledged that some international and national policies and decisions may result in conditions that create, sustain or increase poverty, domestically or extraterritorially. Therefore, they decided that “before adopting any international agreement, or implementing any policy measure, States should assess whether it is compatible with their international human rights obligations”.

Moreover, paras. 96-98 indicate that:

“96. States must take deliberate, specific and targeted steps, individually and jointly, to create an international enabling environment conducive to poverty reduction, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection and development cooperation. This includes cooperating to mobilize the maximum of available resources for the universal fulfilment of human rights.

97. Even when a member of an international organization, a State remains responsible for its own conduct in relation to its human rights obligations within and outside its territory. This includes identifying the possible human rights impact, including on persons living in poverty, of measures agreed at the international level.

98. A State that transfers competences to or participates in an international organization must take all reasonable steps to ensure that the relevant organization acts in accordance with the international human rights obligations of that State and in a manner conducive to poverty reduction.”