

**Mandate 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**

Ref.: AL IRL 1/2024  
(Please use this reference in your reply)

29 August 2024

Excellency,

I have the honour to address you in my capacity 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, pursuant to Human Rights Council resolution 52/17.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning grant-based climate finance, particularly regarding adaptation funding for Least Developed Countries (LDCs). I am keen to understand how your Excellency's Government is addressing its equitable share of climate finance commitments. To this end, I would like to share several observations and seek further clarification and elaboration on these matters.

According to the information received:

*Providing fair share of climate finance*

Ireland's fair share of the existing \$100 billion adaptation and mitigation climate finance target is approximately €500 million per year. Currently, Ireland has committed to providing €225 million annually in climate finance by 2025. However, according to the latest Department of Foreign Affairs figures, Ireland provided €120.8 million in climate finance in 2022. Based on this data and given that the commitment was to start in 2020, it appears that a cumulative shortfall may have developed.

*Loss and Damage Finance*

Ireland has committed to financing the loss and damage fund and supporting this vital initiative. Over two years, the Government of Ireland has made a €25 million contribution to the fund, which has a low overall commitment of €70 million. Considering the high need for loss and damage finance and for the effective impact of Ireland's commitment to this end, it is important that the delivery of finance follows key principles of common but differentiated responsibilities, including historical responsibilities and respective capabilities, the polluter pays principle, human rights, gender equality, transparency and accountability. In this sense, the funding should be grant-based, needs-based, and precautionary, and it should provide swift, direct access to funds by communities while encouraging their ownership of the funds.

*Additional funds provided to Official Development Assistance (ODA)*

According to the information received, Ireland has not yet reached the target of providing 0.7% of Gross National Income (GNI) towards ODA and climate finance is included in this calculation. Rather than committing additional funding envisioned under the Paris Agreement, the Programme for

Government instead commits to: “*double the overall percentage of our development assistance that counts as climate finance.* While ODA may remain a source of climate finance, it is important that climate finance does not divert existing ODA from some of the poorest countries in the world and that overseas aid is not re-labelled or reconfigured as climate finance.” More transparency and clarity on the additional climate finance that is being provided in addition to ODA may be needed

Additionally, in Ireland’s 8<sup>th</sup> national communication to the United Nations Framework Convention on Climate Change (UNFCCC), the Government of Ireland noted that “*A definition of 'new and additional' in relation to financial resources provided can be considered in the context of Ireland's national budgeting system. Ireland's approach to budgeting for public funding carries no assumption that funding made available in any given year will again be available in a subsequent year. Consequently, with the exception of a few heavily-caveated multiannual funding arrangements, such as GEF and GCF, all public climate finance provided by Ireland annually is considered new and additional. Even with regard to multiannual funding arrangements, support is conditional on the availability of funding in subsequent years through annual national budgeting process.*”

The above does not seem to address additionality in relation to ODA. [“New and additional”](#) implies that the funding provided should be above previous climate financing levels and that it should be in addition to existing funding for development purposes.

### *Tax justice*

I understand that Ireland does not support an UN-based process for tax reform that addresses the needs of low-income countries. In this regard, I remain greatly concerned regarding the impact of corporate profit-shifting and tax avoidance on developing countries. Revenue is being siphoned off instead of funding hospitals, schools and other essential services for the population, prolonging a reliance on aid and keeping countries trapped in poverty. As per information received, it is estimated that Ireland remains the destination of approximately \$120-14 billion of shifted corporate profits annually, jointly the first-largest destination in the world. Ten years ago, in response to these calls, the Government, to its credit, announced a ‘Spillover Analysis’ research project examining the impacts of Irish tax policy on developing countries, which was completed and published in 2015. This is an important and necessary step; however, the review was limited in several crucial respects: it examined only a small subset of countries over a very narrow period of just two years and ignored certain important trade and financial flows. More importantly, the analysis is now a decade out of date and does not provide an accurate picture of the current situation.

These issues have been raised extensively during recent assessments of Ireland by two UN Human Rights Treaty Bodies encouraging Ireland to conduct a new, independent and comprehensive ‘spillover analysis’, assessing the impact of Ireland’s corporate tax policies on the economies and human rights of

developing countries.<sup>1</sup>

### *Private financial flows*

Reportedly, over 1,200 multinational companies have established themselves in Ireland. Investment managers registered in Ireland allegedly hold US\$ 6.2 billion in bonds and shares attributable to fossil fuels and agribusiness in the Global South. As such, Ireland's current approach may inadvertently enable global institutional investors to benefit from their fossil fuel investments in the Global South. The UN Committee on Economic, Social and Cultural Rights, in its report on Ireland, noted concern that financial secrecy legislation and permissive corporate tax rules continue to hinder the ability of the State party, as well as other States, to meet their obligation to mobilise the maximum available resources for the implementation of the rights enshrined in the Covenant.<sup>2</sup>

Investment firms and investment funds based in Ireland are regulated under EU frameworks. While there are positive signs in the evolving EU objectives in support of sustainability in response to the European Green Deal and the EU regulatory framework, there are still strong concerns that the flow of money from the EU go to the causes of the climate crisis rather than the solutions. According to the information received, European banks have provided US\$327 billion of financing to fossil fuel and agribusiness activities in the Global South since the Paris Agreement. The EU has correctly recognised that achieving the goals set out in article 2.1(c) of the Paris Agreement “*making finance flows consistent with a pathway towards low greenhouse gas (GHG) emissions and climate-resilient development*” requires “*a reform of the economy and the financial sector placing consistency with the Paris Agreement at its core.*” In this regard, Ireland could take action to address harmful financial flows through Ireland's Foreign Direct Investment (FDI), including, as recommended by the UN Committee on Economic Social and Cultural Rights, conducting an independent and comprehensive assessment of the impacts of its national and international tax policy on the economies of developing countries and report on findings in its next periodic report. This analysis is needed to ensure that investments made through FDI in Ireland and international subsidiaries based in Ireland do not undermine climate and development objectives.

### *Debt justice and reform of the International Financial Institutions (IFIs)*

The Department of Finance leads Ireland's engagement with IFIs which include the International Monetary Fund (IMF) and Multilateral Development Banks such as the World Bank, the African Development Bank, the Asian Development Bank and the Asian Infrastructure Investment Bank. It is reported that in 2023, the Department of Finance provided over €90 million in funding to International Financial Institutions, including:

- €24.0 million to the IMF's Poverty Reduction and Growth Trust, which provides concessional financing, currently at zero interest rates, to low-income countries;

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<sup>1</sup> [E/C.12/IRL/CO/4](#), par. 15(e), and [CRC/C/IRL/CO/5-6](#), par. 13(f).

<sup>2</sup> [E/C.12/IRL/CO/4](#), par. 14.

- €37.15 million to the World Bank Group's International Development Association which provided concessional financing to the world's poorest countries;
- €4.75 million to the World Bank Group's International Bank for Reconstruction and Development, which provides loans, guarantees, risk management products, and advisory services to middle-income and creditworthy low-income countries;
- €2.01 million to the World Bank Group's International Finance Corporation, which provides investment, advisory, and asset-management services to encourage private-sector development in less developed countries;
- €11.28 million to the African Development Bank, which contributes to the sustainable economic development and social progress of African countries;
- €10.69 million to the African Development Bank's African Development Fund, which provides concessional funding for economic and social development in the least-developed African countries; and
- €3.24 million to the Asian Development Bank's Asian Development Fund, which provides concessional funding to benefit the poorer countries in the Asia/Pacific region.

The Poverty Reduction and Growth Trust (PRGT) is the fund through which only low-income countries are eligible to borrow at concessional rates (currently at 0 per cent interest rates through June 2021) through a number of different lending instruments. The different instruments come of course with conditions or coercive advice on austerity. In relation to PRGT, some significant issues regarding its impact on low-income countries include that loans to those nations tend to create more debt for them, while in some other cases, in the absence of proactive debt restructurings, these loans are primarily used to bail out previous reckless lenders, while imposing austerity measures on the borrowing countries.

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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Could you please provide any additional information and/or comment(s) you may have on the concerns that have been mentioned above?

2. I would like to hear your Excellency's Government views on the reasons why its climate finance target is below its fair share in line with Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) and climate justice principles. Is your Excellency's Government envisaging to increasing the target to align its fair share of the New Collective Quantified Goal?
3. Could you please indicate if your Excellency's Government is considering to increase its annual contribution to the loss and damage fund, which has an overall commitment of 70 million?
4. Could you please provide information on whether your Excellency's Government will meet its commitment to providing climate finance under the UNFCCC agreements alongside its commitment and delivering 0.7% of GNI towards ODA?
5. I would be curious to hear about the steps that the Government of your Excellency is taking to ensure its economic strategy does not conflict with or undermine Ireland's human rights obligations and development goals.
6. Could you please provide information on the measures taken by the Government of your Excellency to ensure that its economic policymaking complies with human rights standards, including through conducting human rights assessments of economic policies and positions before, during and after the policymaking process.? In addition, could you please indicate what resources are assigned to this endeavour, and how staff and institutions are trained to undertake these assessments?
7. I would be grateful to receive information on the reasons for which the Government of your Excellency is not supporting a UN based process on tax reform that addresses the needs of low-income countries, especially in light of the expected spillover, including whether it will be willing to support the development of an effective UN Tax Convention.
8. I would like to hear if your Excellency's Government is committed to conducting a new, comprehensive and independent analysis of the impacts of its tax policies on the economies of developing countries.
9. Could you please provide information on the actions your Excellency's government is taking to address climate-harming flows through Ireland's FDI, including if and how it will go beyond EU regulation in this area?
10. Please provide information on the steps the Government of your Excellency has taken to ensure that its support to the PRGT is not pushing poorer countries into more debt.
11. Finally, I would be grateful to indicate if the Government of your Excellency supports reform of the IFIs and debt cancellation and if yes,

how it will act on them?

I 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, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of my 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

## **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 (ICESCR) 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 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 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).

#### 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.