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Committee on Economic, Social and Cultural Rights

Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights

Statement by the Committee on Economic, Social and Cultural Rights*

Background

1. The Committee on Economic, Social and Cultural Rights is frequently faced with situations whereby States parties to the International Covenant on Economic, Social and Cultural Rights are unable to comply with their obligations to fully realize the rights enshrined in the Covenant owing to the adoption of fiscal consolidation programmes, including structural adjustment programmes and austerity programmes, as a condition for obtaining loans. Such programmes are negotiated between the States concerned and lenders. The lenders may be other States or international or regional organizations, including the International Monetary Fund (IMF), development banks such as the International Bank for Reconstruction and Development (IBRD), regional development banks and regional integration organizations such as the European Union.

2. The adoption of fiscal consolidation programmes may be necessary for the implementation of economic and social rights. If such programmes are not implemented with full respect for human rights standards and do not take into account the obligations of States towards the rights holders, however, they may adversely affect a range of rights protected by the International Covenant on Economic, Social and Cultural Rights. Most at risk are labour rights, including the right to work (art. 6), the right to just and favourable conditions of work, including the right to fair wages and to a minimum wage that provides workers with a decent living for themselves and their families (art. 7), the right to collective bargaining (art. 8), the right to social security, including unemployment benefits, social assistance and old-age pensions (arts. 9 and 11), the right to an adequate standard of living, including the right to food and the right to housing (art. 11), the right to health and access to adequate health care (art. 12) and the right to education (arts. 13-14). Low-income families, especially those with children, and workers with the lowest qualifications are

* The present statement, which was adopted by the Committee at its fifty-eighth session, held from 6 to 24 June 2016, was prepared pursuant to the Committee's practice on the adoption of statements (see *Official Records of the Economic and Social Council, 2011, Supplement No. 2 (E/2011/22)*, chap. II, sect. K).



disproportionately affected by measures such as job cuts, minimum wage freezes and cutbacks in social assistance benefits, which potentially result in discrimination on the grounds of social origin or property (art. 2 (2)). Moreover, reductions in the levels of public services or the introduction of or increase in user fees in areas such as childcare, and preschool education, public utilities and family support services have a disproportionate impact on women, and thus may amount to a step backwards in terms of gender equality (arts. 3 and 10).

3. The Committee has prepared the present statement with a view to providing guidance to States parties and other actors on the scope of their obligations under the Covenant in relation to incurring debt.

Borrowing States

4. The State party that is seeking financial assistance should be aware that any conditions attached to a loan that would imply an obligation on the State to adopt retrogressive measures in the area of economic, social and cultural rights that are unjustifiable would be a violation of the Covenant. The borrowing State should therefore ensure that such conditions do not unreasonably reduce its ability to respect, protect and fulfil the Covenant rights. As stated by the Committee in various general comments and recalled in a letter sent by the Chair of the Committee to States parties on 16 May 2012, it is the duty of both the State party concerned and the other States to assess the impact on the rights of the Covenant of the international agreements that they enter into and to take all measures possible to ensure that any negative impacts are reduced to the bare minimum. If the adoption of retrogressive measures is unavoidable, such measures should be necessary and proportionate, in the sense that the adoption of any other policy or failure to act would be more detrimental to economic, social and cultural rights. They should remain in place only insofar as they are necessary; they should not result in discrimination; they should mitigate inequalities that can grow in times of crisis and ensure that the rights of disadvantaged and marginalized individuals and groups are not disproportionately affected; and they should not affect the minimum core content of the rights protected under the Covenant. As regards the right to social security for instance, when faced with retrogressive measures adopted by States, the Committee examines whether: (a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine participation of affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the measures will have a sustained impact on the realization of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at the national level.¹

5. The duty of the borrowing State to ensure that the conditions attached to loans will not lead to violations of the Covenant is particularly clear when the lender is an international organization of which the borrowing State is a member. It would not be acceptable for such a State to circumvent its international obligations under the Covenant by transferring certain competencies relating to the subject matter of the Covenant to an organization, thus causing the organization to commit an act that, if committed by the State party, would be in breach of its obligations under the Covenant.²

¹ See general comment No. 19 (2007) on the right to social security, para. 42.

² See International Law Commission, articles on the responsibility of international organizations, art. 61 (A/66/10, para. 87), taken note of by the General Assembly in resolution 66/100 (see annex).

6. When exiting financial assistance programmes, States parties are also required to review their policies so as to enhance the effective protection of Covenant rights in line with the progress achieved in the post-crisis economic recovery.

International organizations as lenders

7. The lenders also have obligations under general international law. Like any other subject of international law, international financial institutions and other international organizations are “bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties”.³ They are therefore obligated to comply with human rights, as listed in particular in the Universal Declaration of Human Rights, that are part of customary international law or of the general principles of law, both of which are sources of international law.

8. The Committee is fully aware that, in the case of IMF or IBRD, the relevant Articles of Agreement⁴ establishing the organizations have sometimes been interpreted by the organizations as not requiring them to include human rights considerations in their decision-making. The Committee does not agree with such an interpretation. In discharging their duty to comply with human rights under international law, international institutions are not exercising powers that they do not have, nor are they taking into account considerations they would be obliged to ignore based on their statutes; rather, it is in the exercise of the powers that have been delegated to them by their member States that they should refrain from adopting measures that would result in human rights violations. Moreover, as specialized agencies of the United Nations,⁵ IMF and IBRD are obligated to act in accordance with the principles of the Charter of the United Nations, which sets the realization of human rights and fundamental freedoms as one of the purposes of the Organization, to be achieved in particular through international economic and social cooperation.⁶

States members of international organizations

9. The Committee recalls that States parties making decisions in their capacity as members of international financial institutions or other international organizations cannot ignore their human rights obligations when acting in their capacity as members of these organizations. The Committee has consistently stated that States parties to the Covenant, as well as the relevant United Nations agencies, should make a particular effort to ensure that the protection of the most basic economic, social and cultural rights is, to the maximum extent possible, built into programmes and policies designed to promote adjustment.⁷ The Committee therefore made it clear that States parties to the Covenant have obligations as States members of international financial institutions, in general, and of IMF, in particular. It has reiterated this in various general comments.⁸ States parties to the Covenant would be

³ See *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 73, para. 37.

⁴ See IMF, Articles of Agreement, art. IV, sect. 3 (b); and IBRD, Articles of Agreement, art. IV, sect. 10.

⁵ Charter of the United Nations, Articles 57 and 63; General Assembly resolution 124 (II) of 15 November 1947, approving the agreements with IRBD and IMF.

⁶ See the Charter of the United Nations, Articles 1 (3) and 55 (c).

⁷ See general comment No. 2 (1990) on international technical assistance measures, para. 9.

⁸ See, for example, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 39.

acting in violation of their obligations if they were to delegate powers to IMF or to other agencies and allowed such powers to be exercised without ensuring that they do not infringe on human rights. Similarly, they would be acting in breach of their obligations if they were to exercise their voting rights within such agencies without taking human rights into account. The same duty applies to States that are not parties to the Covenant, under human rights law as part of general international law. States would not be absolved of their responsibility even where, in its capacity as a State member of an international organization, a State would be acting in full accordance with the rules of the organization.⁹

Lending States

10. Debt financing can contribute to economic development and to the establishment of conditions for the realization of human rights. Moreover, States cooperating internationally by providing loans may legitimately expect and seek to ensure that the borrowing State repays the loan in good faith and complies with certain conditions that guarantee reimbursement. All States, however, whether parties to the Covenant or not, that coerce other States into violating their own obligations under either the Covenant or under other rules of international law are responsible for that act under international law.¹⁰ Both as lenders of bilateral loans and as members of international organizations providing financial assistance, all States should ensure that they do not impose obligations on borrowing States that would lead them to adopt retrogressive measures in violation of their obligations under the Covenant.

Human rights impact assessments

11. The Committee is of the view that the above-cited obligations imposed under the Covenant require both lending and borrowing States seeking loans with certain conditionalities, to carry out a human rights impact assessment prior to the provision of the loan, in order to ensure that the conditionalities do not disproportionately affect economic, social and cultural rights nor lead to discrimination. In this regard, the Committee draws the attention of States parties to the Guiding Principles on Foreign Debt and Human Rights, endorsed by the Human Rights Council in 2012, as well as the Guiding Principles on Extreme Poverty and Human Rights, adopted by the Human Rights Council in 2012,¹¹ both of which call for human rights impact assessment of conditionalities attached to loans or of measures which create a foreseeable risk of impairing the enjoyment of human rights by persons living in poverty beyond their national territory.¹²

⁹ See International Law Commission, draft articles on the responsibility of international organizations with commentaries, art. 58 (2) and commentary 5 (A/66/10, para. 88).

¹⁰ See International Law Commission, draft articles on the responsibility of States for internationally wrongful acts, art. 18 (A/56/10, para. 76), taken note of by the General Assembly in resolution 56/83 (see annex); see also general comment No. 8 (1997) on the relationship between economic sanctions and respect for economic, social and cultural rights.

¹¹ See A/HRC/20/23 and A/HRC/21/39 respectively.

¹² See A/HRC/20/23, para. 40; and A/HRC/21/39, para. 92.