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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 ('the Committee') has been frequently faced with the fact that States parties to the International Covenant on Economic, Social and Cultural Rights ('the Covenant') are unable to comply with their obligations to fully realise the rights enshrined in the Covenant due 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. Such Lenders can be other States or international or regional organisations, including the International Monetary Fund (IMF), development banks such as the International Bank for Reconstruction and Development (IBRD) and regional development banks, and regional integration organisations such as the European Union.

2. The implementation of fiscal consolidation programmes may be necessary for the implementation of economic and social rights. If not implemented with full respect for human rights standards and taking into account the obligations of States towards the rights holders, however, such programmes may 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 providing workers with a decent living for themselves and their families (art. 7) and the right to collective bargaining (art. 8), the right to social security, including to 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 healthcare (art. 12) and the right to education (arts. 13 and 14). Low-income families, especially with children, and the workers with the lowest qualifications are disproportionately affected by measures such as loss of jobs, freezing of the minimum wage

* The present statement, which was adopted on the 24 June 2016 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).

and cutbacks in social assistance benefits, potentially resulting in discrimination on grounds of social origin or property (art. 2, par. 2). Moreover, reductions in the levels of public services provided or the introduction or increase of users' fees in areas such as childcare and pre-school education or 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 this Statement in an effort to provide guidance to States parties and other actors as to the scope of their obligations under the Covenant in such situations.

Borrowing States

4. The State party seeking financial assistance should be aware that any conditions attached to a loan that would imply an obligation on that State to adopt retrogressive measures in the area of economic, social and cultural rights that are unjustifiable would be in 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 as recalled in a letter sent on 16 May 2012 by the Chairperson of the Committee to the States parties, it is a duty both of the State party concerned and of the other States to assess the impact on the rights of the Covenant of the international agreements they enter into, and to take all possible measures to ensure that any negative impacts are reduced to the minimum inevitable. 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 a failure to act, would be more detrimental to economic, social and cultural rights; they should remain in place only insofar as they remain necessary; they should not result in discrimination and they should mitigate inequalities that can grow in times of crisis, ensuring that the rights of the 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 organisation 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 to an organisation, in relation to the subject-matter of

¹ General Comment No. 19: The right to social security (Art. 9 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/19, para. 42.

the Covenant, thus causing the organisation to commit an act that, if committed by the State party, would be in breach of its obligations under the Covenant.²

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 Organisations as Lenders

7. The Lenders themselves have obligations under general international law. As any other subjects of international law, international financial institutions and other international organisations 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 bound 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 the IMF or the IBRD, the relevant Articles of Agreement⁴ establishing these organisations have sometimes been interpreted by these organisations as excluding human rights considerations in making their decisions. The Committee does not agree with such an interpretation. By discharging their duty under international law to comply with human rights, international institutions are not exercising powers they do not have, nor are they taking into account considerations they would be bound to ignore based on their Statutes: rather, it is in the exercise of the powers that they have been delegated by their member States that they should refrain from adopting measures that result in human rights violations. Moreover, as specialised agencies of the United Nations,⁵ the IMF and the IBRD are bound to act in accordance with the principles of the Charter of the United Nations, which refers to 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

Member States of International Organisations

9. The Committee recalls that the States parties making decisions in their capacity as members of international financial institutions or other international organisations cannot ignore their human rights obligations when acting in their capacity as members of these organisations. The Committee has consistently noted 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

² Art. 61, Articles on the responsibility of international organizations, adopted by the International Law Commission at its sixty-third session, in 2011 (A/66/10, para. 87), and taken note of by the General Assembly in Res. 66/100 of 9 December 2011.

³ International Court of Justice, Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion (20 December 1980), I.C.J. Reports 1980, 73 at 89–90 (para. 37).

⁴ IMF Articles of Agreement, Article IV(3)(b); Articles of Agreement of the International Bank for Reconstruction and Development, Article IV, section 10.

⁵ UN Charter, Arts. 57 and 63; UNGA Res. 124(II), 15 Nov. 1947, approving the relationship agreements with the International Bank for Reconstruction and Development and with the International Monetary Fund (doc. 1/349).

⁶ UN Charter, Arts. 1(3) and 55(sub c).

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 member States of international financial institutions in general and of the IMF in particular. This was reiterated in various General Comments of the Committee.⁸ States parties to the Covenant would be acting in violation of their obligations if they were to delegate powers to the IMF or to other agencies and to allow 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 such rights into account. The same duties apply to States that are not parties to the Covenant, under human rights law as part of general international law. Their responsibility would not be absolved even where a State party, in its capacity of a member State of an international organisation, would be acting fully in accordance with the rules of the organisation.⁹

States as Lenders

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

Human rights impact assessments

11. The Committee takes the view that the above-cited obligations imposed under the Covenant require both from Lenders and from States seeking loans against certain conditionalities to carry out a human rights impact assessment prior to the provision of the loan concerned, in order to ensure that the conditionalities do not disproportionately affect economic, social and cultural rights, and do not lead to discrimination. The Committee reminds States parties in this regard of the Guiding Principles on Foreign Debt and Human Rights, endorsed by the Human Rights Council in 2012, as well as of the Guiding Principles on Extreme Poverty and Human Rights, adopted by the Human Rights Council in 2012, both of which call for human rights impact assessment of conditionalities attached

⁷ General Comment No. 2 (1990), International technical assistance measures (Art. 22), E/1990/23, para. 9.

⁸ General Comment No. 14 (2000), The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2000/4, para. 39; General Comment No. 14 (2000), The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2000/4, para. 39.

⁹ International Law Commission, Articles on the Responsibility of International Organizations with Commentaries (A/66/10) Art. 58(2) at 91, para. 5.

¹⁰ International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts (annex to General Assembly resolution 56/83 of 12 December 2001, and corrected by document A/56/49(Vol. I)/Corr.4), Art. 18; see also General Comment No. 8 (1997): The relationship between economic sanctions and respect for economic, social and cultural rights, E/1998/22, para. 51.

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 territory¹¹.

¹¹ A/HRC/20/23, par. 40; A/HRC/21/39, par. 92.