Input from Asia Pacific Forum on Women, Law and Development (APWLD) to

“Best Practices in the Contribution of Development to the Promotion and Protection of Human Rights in the context of recovery from the COVID-19 pandemic”

Thematic report to be submitted to the fifty-seventh session of the UN Human Rights Council

# Introduction

In this input, the Asia Pacific Forum on Women, Law and Development details how neoliberal capitalism develops and reinforces systemic inequalities, thereby inhibiting preparedness, mitigation, response and recovery capacities for crises such as COVID-19, hampering the achievement of Agenda 2030, and trampling upon developing countries’ right to development. Conclusively, recommendations are presented to realise Development Justice, and ultimately ensure the protection and promotion of fundamental human rights for all.

# Crisis & Calamity in an Unequal World

During the pandemic response and immediate recovery period, some governments attempted to employ various practices that incorporated a human rights approach; these included but were not limited to:

1. Protecting the right to life and livelihoods;
2. Ensuring access to food, water, decent housing, sanitation (including the suspension of housing evictions for unpaid rent, securing jobs through targeted relief, support to employers through paid sick leave to workers or unemployment benefits, providing emergency water supplies to slums, expanding responses for victims of domestic violence) and
3. Protecting civic freedoms.

Efforts to safeguard particularly vulnerable groups such as the homeless, migrants, people with disabilities included

1. Emergency shelters for the homeless and
2. Suspending arrests of irregular migrants and/or granting temporary residence rights to migrants and asylum-seekers to ensure access to health care, thus also limiting risk to wider public health.

​​Equally importantly, several governments adopted the practice of daily press briefings regarding the situation and ongoing response, with others establishing independent or opposition-led parliamentary committees to conduct virtual public meetings, which served to inform the public as well as monitor pandemic response (“COVID-19 and Human Rights: We Are All in This Together,” 2020).

However, soon into the pandemic, it was evident that the ability to enact efficient measures that could later be emulated as best practices for crisis response and recovery varied by the availability of resources to do so, and the existing state of institutions and public services that guarantee people’s fundamental economic, social and political rights. The pandemic highlighted the global disparity in resources, manifesting as wide inequalities between and within countries in the progress towards attaining Sustainable Development Goals; it underscored the importance of universal healthcare and social protection systems, food security, access to decent work, housing, water and sanitation in ensuring resilience to crises.

# Compounding Burdens: Unilateral Coercive Measures During Crisis

Aggravating such disparities were instances of sanctions such as those on Iran (“G77, China Demand End to U.S. Sanctions Amid Coronavirus Pandemic”, 2020) and Cuba (*Statement by the Group of 77 and China on the COVID-19 Pandemic*, 2020) which severely impeded response and recovery efforts as they hindered access to vital protective equipment, medicines and vaccines, thus exacerbating the spread of the virus and putting millions of lives at risk; these embargoes have continued to incur losses worth billions of dollars in subsequent years (“Pakistan, Speaking for G77/China, Urges End of Decades-old US Economic Blockade on Cuba”, 2022).

Such unilateral coercive measures (UCMs) have always been in clear violation of international humanitarian law, especially while numerous, repeated calls by the international community, including the G77 and China, have been made to lift such measures, not only during the COVID-19 rapid response phase but also during recovery periods in subsequent years. UCMs have consistently invoked a strong international response due to their adverse implications for the long term development of affected countries, thus also weakening any crisis mitigation, response and recovery capacities in the future (*Ending the Embargo Against Cuba*, 2021).

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| **CUBA**  Sanctions on Cuba, coupled with sharply declining revenues from tourism and limited foreign investment and international trade, burdened pandemic mitigation and response efforts in the country. Aggravating this was the monopolisation of vaccines by big pharmaceuticals in the Global North.  However, the nation remarkably utilised its strengths and existing resources to its benefit including its universal healthcare, highly educated and trained medical staff along with state-of-the art biotechnological infrastructure. Further, an efficient emergency planning structure that was already in place gave the government wide outreach and rapid access to the remotest regions, thus facilitating rapid mobilisation efforts and efficient inoculation.  Despite being one of the poorest countries in the world, Cuba successfully developed multiple effective vaccines, and proactively combatted global vaccine apartheid by sharing its intellectual property with other countries such as Iran and Italy, both of which were two of the hardest hit countries by the virus. Its vaccine developing medical institutes globally ranked in the top 10, meeting human rights criteria such as:   * fair pricing and equitable distribution globally; * pledging to full technology transfer in order to enable low- and middle income countries to manufacture Cuban vaccines.   Source: (Meredith, 2022), (Rawson, 2022), (Singh, 2022). |

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# Systemic Impediments to Long Term Development, Crisis Preparedness, Response and Recovery

While several examples of best practices of crisis response and recovery can be found amongst the developed countries, it is imperative to understand the systemic causes of why such instances are, at best, sparse in the developing and least developed countries (LDCs) in the Global South. It is important to acknowledge the systemic causes of poverty and underdevelopment through the impact of political and economic factors which maintain chronic stuntedness of economies that are already struggling, thereby shaping paradigms of underdevelopment in the long run.

The capacity of states to invest in the development of robust economic, political, social institutions and services, which also determines levels of efficiency and extent of mitigation, preparedness and response capacities during a crisis, is severely inhibited particularly by pro-rich fiscal policies and measures resulting in massive losses of fiscal resources. This is brought about through a combination of corporate tools like the Investment-State Dispute Settlement (ISDS), loss of taxation revenues and unending debt burdens.

**Investor State Dispute Settlement**

Predatory and exploitative tools such as the ISDS empower corporations to sue governments if they deem any public health, environmental, and social protection measures harmful for their profits (Latek & Puccio, 2015). At the onset of the pandemic, over 500 international, regional and national civil society organisations signed a letter to governments urging them to not give precedence to potential ISDS claims that may arise due to emergency response efforts, and would divert enormous resources that were crucial to be committed to curbing the spread of the pandemic; The recommendations included permanently restricting the use of ISDS for claims related to COVID-19 measures, suspending all cases while pandemic response was underway, not entering into any new agreements which include ISDS and ensuring that no public money is diverted from saving lives and livelihoods to paying corporations for ISDS claims (*Open Letter to Governments on ISDS and COVID-19*, 2020).

The fears expressed in the above call to governments were well placed, as in subsequent years, ISDS claims forced already-struggling economies to bear heavy costs that drained resources away from efforts that were vital for pandemic recovery and responding to additional crises: As of July 2022, there were 1,229 ISDS cases of which 172 are from Asia-Pacific (*ISDS Navigator Update: 1,229 Known Investment Treaty Cases by 31 July 2022 | UNCTAD Investment Policy Hub*, 2022)); Pakistan alone is facing 12 cases, having lost USD 5.8 billion to one company alone - the Australian mining company, Tethyan Copper (“Pakistan Terminates 23 BITs,” 2021).

**Tax Havens**

Tax havens enable massive tax evasion and tax avoidance by corporations and wealthy elites such as through illicit financial flows that shift profits to low or zero-tax jurisdictions (Williams, 2019). In 2016, the Panama Papers revealed 214,488 offshore tax havens which cost developing countries approximately USD 100 billion to USD 300 billion in tax revenue losses; In Asia, illicit outflows stood at 3.8% of GDP from 2004-2013 (Araki & Nakabayashi, 2018), to which at least Euro 20.1 billion in additional revenue was lost since 2009 (*Revenue Statistics in Asia and the Pacific 2023*, 2023).

**Debt Distress**

The 2022 Report by the UN Special Rapporteur on the Right to Development on COVID-19 Recovery mentioned debt distress as one of the factors that restricted the capacities of poor countries to provide social protection to vulnerable groups during the pandemic.

During a debt crisis, budget allocation and spending on social services and protection are drastically reduced while debt servicing is automatic and eats up the bulk of the budget - developing countries in Asia generally spend less on social sectors (health and social protection are especially low in Southeast Asia) and more on capital formation or infrastructure development and defence spending, particularly in South and Southwest Asia (Cho & Lee, 2022).Meanwhile, spending on debt servicing is automatic and takes up most of national budgets: according to the UN, 48 countries representing 3.3 billion people are spending more on debt repayments than healthcare or education; following conditionalities imposed by private, multilateral and bilateral lenders, at one point, Sri Lanka, used 100 percent of its revenue for debt servicing, Pakistan, 50 percent (CNA Insider, 2023), and Laos 61 percent (*Lao Economic Monitor Addressing Economic Uncertainty - Thematic Section:Impacts of Macroeconomic Instability on Lao Households*, 2023).

The worsening debt crises spreading across the region are not surprising, given the historic use of loans as a tool to relentlessly extract wealth from the Global South. Even before COVID-19 hit, Asia Pacific was facing a rising level of public debt. The average government debt-to-GDP ratio in developing countries in Asia Pacific was at an 11-year high of 40.6 percent in 2019, worsened by the pandemic, pushing it further to 49.5 percent of GDP in 2021.

Despite pre-pandemic debt burdens, 85 percent of IMF’s pandemic ‘recovery’ finance was *still* in the form of loans accompanied by austerity-driven conditionalities, thus necessitating even more borrowing from the same predatory lenders (Tamale, 2021). Similarly, the World Bank’s funding agreements for the experimental COVID-19 vaccine rollout were also 86 percent loans - pushing countries deeper into debt and further weakening their health systems and pandemic preparedness and response (“Who Pays to Deliver Vaccines? An Analysis of World Bank Funding for COVID-19 Vaccination and Recovery,” 2021).

By late 2022, LDCs were projected to have paid USD 43 billion in debt payments (*Soaring Debt Burden Jeopardises Recovery of Least Developed Countries*, n.d.) along with soaring interest rates that are expected to increase even further in the future. Nineteen countries are rated at high risk of debt distress based on the joint World Bank-IMF Debt Sustainability Framework for Low-Income Countries, thus limiting their development investment capacities (“Economic and Social Survey of Asia and the Pacific 2023: Rethinking Public Debt for the Sustainable Development Goals,” 2023).

# Impact on Human Rights and Development

Fiscal consolidation measures as part of loan conditionalities enforce the prioritisation of debt servicing at the expense of fundamental human rights of the most marginalised. This entails the rationalisation of social safety nets, privatisation of essential public services, liberalisation of trade, increased domestic borrowing, regressive taxation and indirect taxation on essential goods. These measures significantly raise user fees and overall out-of-pocket expenses that compound household debts, thus inhibiting access to essential provisions, particularly having a disproportionate impact on the most vulnerable groups, such as women.

Mounting household debts force women to seek informal sources of help including increased borrowing, pawning or selling practically anything for survival, further compounding their vulnerability. Further, women’s unpaid care burden also increases, which results not only in economic poverty but also time-poverty as they have less time for self-care. Without social protection schemes, women, who comprise the majority of the informal sector, are placed in even more precarious situations. Reduced public investment in measures that ensure the right to a healthy environment also disproportionately increases women’s vulnerability to climate and other crises.

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| **PHILIPPINES**  Following the expansion of VAT (called E-VAT) from 10% to 12%, and the reinforcement of the Tax Reform for Acceleration and Inclusion (TRAIN) Law imposing an excise tax on fuel, a chain reaction of price hikes in basic commodities passed on the entire burden to consumers. According to a housewife interviewed by the Center for Women’s Resources (CWR), her family practised ‘no earning, no eating’, that is, whenever there is no earning for the day, their family would only make do with water or nothing at all.  Source: (Lumbera, 2019) |
| **SRI LANKA**  The 2022 IMF bailout loan and its associated conditionalities included cuts in public spending, steep hikes in utility tariffs, costs of food and energy, regressive taxation, limited cash handouts as social security and labour reforms that endangered wage and job security. These burdens were further compounded by 15 percent VAT increase, inflation, shortages of essential items and fuel reserves, and budget cuts on nutrition programmes, which reinforced malnutrition amongst women and children. Household debts mounted as women turned to predatory micro-financing schemes and loan sharks, pushing them further to precarious, underpaid jobs in order to pay off debts (2.8 million as of 2021). The government also subjected its citizens’ lifelong savings - the Employee Provident Fund - to domestic debt restructuring, thus forcing the country’s poorest to repay the world’s wealthiest creditors. Also increasingly worrying were the state’s steps to enact an Anti-Terrorism and the Online Safety law that would arbitrarily criminalise and label any legitimate expression deemed unsuitable as terrorism.  Sources: (Women and Media Collective, 2023), (Anglin, 2022), (*Submission of the Collective of Women Affected by Microfinance to the UN Special Rapporteur on Contemporary Forms of Slavery – CADTM*, 2021), (Shamdasani, 2023). |

The impact of the aforementioned impacts on human rights resulting from unsustainable debt burdens is in stark contrast to the normative advisories laid out at length by UN Human Rights Mechanisms for processes of debt crisis prevention, management and resolution.

For instance, the UN Human Rights Council (HRC) calls for a redefining of when debt is considered ‘sustainable’, reiterating that debt servicing must not compromise fundamental human rights, while underscoring the inadequate nature of the existing international frameworks that have failed to address debt crises in a way that identifies structural causes, and resolves them by ensuring the protection of fundamental rights. The proposed redefinition of debt sustainability expands it by including economic, social and environmental considerations to ensure that the ability of States to fulfil their fundamental obligations towards their people remains intact, ultimately considering debt sustainability assessments legitimate only if there are no violations of human rights and human dignity, or the impediment of development goals (“Guiding Principles on Human Rights Assessments of Economic Reforms,” 2020). Any debt sustainability assessments must therefore account for social and human rights dimensions; otherwise, they stand nullified.

Further, in reference to detrimental loan conditionalities, the Guiding Principles on Foreign Debt and Human Rights also premise the realisation of human rights as sound basis of debt relief, including debt forgiveness/cancellation, and state that any relief efforts (including conditionalities) must not compromise the provision of basic services or the development prospects of an indebted State (OHCHR, 2011).

This brings into question the legitimacy of the existing financial architecture which dictates dynamics of debt sustainability assessments, debt servicing and resolution mechanisms, especially so as the proposed ‘solutions’ so far have only aggravated debt crises in the long run, and also as forums comprising the existing financial order “*do not have explicit mandates to promote and protect human rights and have not factored human rights into their policies and programmes in line with the internationally accepted human rights-based approach to development*.”

UN resolutions have abundantly established the necessity and importance of “*effective, equitable, development-oriented and durable solutions to the external debt and debt-servicing problems of developing countries”,* for the benefit of the most marginalised and vulnerable in those countries. Subsequently, calls have been made for an independent debt restructuring mechanism, for the assessment of financial situation of debtor economies to be made by a neutral body and, most importantly, that a debtor State, during and after the restructuring process, should be able to fulfil its international human rights obligations, implement its development programme and provide basic services to its people. Thus, strongly discouraging adverse unilateral measures and reiterating that ultimately, States “*must not be put in a situation”* where their ability to fulfil fundamental human rights is compromised.

# Conclusion & Recommendations

Fiscal constraints like loss of revenues through corporate abuse, tax evasion and avoidance and unsustainable debt burdens undermine the mobilisation of domestic resources, particularly in developing and least developed countries in the Global South; this ultimately impacts the ability of governments to invest in and maintain the services, infrastructure and public goods necessary for the enjoyment of human rights, and ensuring resilience in times of crises by being able to efficiently mobilise response efforts centred on a human rights-based approach.

A shift to a more just and sustainable model of development must therefore begin by addressing the inequities in the global political order that enable and sustain harmful unilateral coercive measures, and the exclusionary and profit-driven global financial architecture dominated by Global North governments and corporations which constrain domestic policy space and undermines the human rights obligations of developing and least developed countries. In the absence of significant reform and regulation of existing structures, fulfilment of human rights, financing for the Sustainable Development Goals and a transition to Development Justice will remain illusory.

We put forth the following recommendations:

1. The IMF-WB and all multi/bilateral lenders must cancel all debts along with the conditionalities.
2. The Global North owes and must repay the Global South for the centuries of plunder and devastation caused by colonisation.
3. Instead of loans, IFIs and the Global North governments should provide grants/non-debt creating concessional finance to support education, health, and social protection, in the post-pandemic recovery period and beyond.
4. Global North countries and industries must pay climate debt that is new and separate from ODA, including through loss and damage.
5. Debt swaps, in any form, must fulfil principles of transparency and accountability, both in the negotiation and the implementation process, particularly on the use of the proceeds, guaranteeing meaningful participation and rights of the local communities over the interests of private intermediaries. Debt Swaps, in the current form, are not effective instruments for debt reduction. Instead, debt swaps lead to higher risk of greenwashing, erasing the historical responsibilities of Global North and used as a means of legitimising and erasing responsibilities on illegitimate debts.
6. Establish a sovereign debt restructuring mechanism under the UN auspices as an alternative to the fragmented and inequitable frameworks that currently exist..
7. Establish a UN Intergovernmental Tax Commission and negotiate a UN Tax Convention that tracks and dismantles tax havens, preempts tax abuse and other illicit financial flows.
8. Create a global tax body capable of ensuring that corporations are taxed and implement progressive and transparent tax policies.
9. The UN must take the lead in laying down basic principles to protect peoples’ rights when designing and implementing technological welfare measures for crisis response and recovery. Without societal oversight, the digitalisation of welfare systems runs the risk of making this public good inaccessible to people, concentrated in the hands of a few countries and primarily controlled by giant corporations. The UN and governments must establish mechanisms for participatory assessment of new and emerging technologies presented as solutions to crises to ensure that technological fixes do not cause harm to people’s lives and livelihoods and the environment at large. Digital welfare systems must be co-designed with and made accessible to their intended users to minimise incorrect assumptions and/or design, and facilitate public universal social protection.
10. Suspend patents and lift trade rules and embargoes that impede access to medicines, medical technologies and other resources, thus limiting government responses for crisis management and recovery.
11. Strengthen standards and regulatory frameworks on the labelling and performance of gender and other thematic bond issuances to ensure accountability, and monitoring that they are yielding demonstrable, additive, and measurable impact.
12. Create a binding regulatory framework for businesses based on international human rights law to ensure compliance with human rights standards and accountability for rights abuse.
13. Enable ex-ante and periodic human rights and gender impact assessments to prevent harmful fiscal measures and potentially assist in promoting favourable approaches to fiscal management such as gender budgeting.

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