Treatment Action Group

Submission to Attiya Waris, Independent Expert on foreign debt, other international financial obligations and human rights
Date: 8 May 2023

Regarding: Submission for GA 78 Report

Introduction:

1. Treatment Action Group (TAG) is an independent, activist, and community-based research and policy think tank committed to racial, gender, and LGBTQ+ equity; social justice; and liberation, fighting to end HIV, tuberculosis (TB), and hepatitis C virus (HCV). We are science-based activists working to expand and accelerate vital research and effective community engagement to end the HIV, TB, and HCV pandemics.

2. TAG's TB Project is dedicated to the promotion and maximization of equitable, affordable access to necessary prevention, diagnosis, treatment, and care to end the TB pandemic worldwide. TAG advocates to remove barriers to access for those most heavily impacted by TB. TAG prioritizes ensuring health for all over the profit for few.

3. The 2030 Sustainable Development Goals (SDGs) established global targets to promote health across UN member states, including the goal of ending the TB, HIV, and malaria epidemics (SDG 3.3). The SDGs underscore the importance of reducing global inequalities and promoting the economic, social, and cultural rights (ESCR) of all, including through the development of equitable financial flows to support the progressive realization of these goals (SDG 10.2, 10.4, 10.6, 10.b, 16).

4. The current system of foreign debt and financing hinders the realization of these goals by prioritizing creditor returns over health and human rights. This system entrenches longstanding global inequities between populations and limits the ability of debtor nations to invest in critical services for human rights. Novel financing architecture that centers human rights is necessary to support the realization of economic, social, and cultural rights and economic recovery from COVID-19 in high-debt burden nations.

5. COVID-19 sparked unprecedented efforts in debt relief from multilateral organizations such as the G20, International Monetary Fund, and World Bank. Combined efforts by these organizations suspended payments on US$16.7 billion in debt servicing in the first 1.5 years of COVID-19. Given the volume of bilateral debt and debt held by private creditors, these efforts resulted in only 10% of total sovereign debt suspended through the pandemic.[1]

[1] "Pandemic Triad: HIV, COVID-19 and Debt in Developing Countries" (Geneva, Switzerland: UNAIDS, October 13, 2022), https://www.unaids.org/sites/default/files/media_asset/pandemic-triad-HIV-COVID19-debt-in-developing-countries_en.pdf.

6. TAG strongly urges the Independent Expert on Foreign Debt, other international financial obligations, and Human Rights to recognize the urgency of debt reform, restructuring, relief, and cancellation led by multilateral bodies including the World Bank and International Monetary Fund. Further, TAG urges the Independent Expert to work with UN institutions and other human rights bodies and independent experts to introduce (1) a framework for assessing debt burden that accounts for the obligations of governments to provide services meeting the standards set out in the ICESCR and places a priority on provision of such services over debt servicing; and (2) guidelines for developing new legal frameworks for debt provision from multilateral, bilateral, and private lenders that accounts for fundamental ESCR and the duty of states to progressive realization over creditors' claims to returns.

<u>What are the gaps in the existing financial architecture and multilateral frameworks dealing with the scope and impact of the multiple crises?</u>

7. COVID-19 ushered in the provision of debt relief for 44 countries under the Debt Service Suspension Initiative (DSSI). DSSI temporarily suspended debt servicing on external public debts owed to bilateral creditors for low and low-middle income nations (LIC, LMIC). Through DSSI, 47 countries suspended debt payments valued at US$10.3 billion through the pandemic.[2]

8. Debt suspended through DSSI accounted for less than 10% of payments to external debt servicing across all DSSI-eligible nations between 2020 and 2021.[3] This was largely due to the failure of bilateral and private donors to participate in similar programs. Further, the DSSI program represented ad hoc debt relief that may ultimately exacerbate debt crises in participating nations by delaying default, downgrading credit rating, or obfuscating debt burdens as countries take on new debt during the COVID-19 recovery period.[4]

9. COVID-19 has accelerated the rise in debt burden. For 44 DSSI participant nations, debt levels rose from 39.6% to 66.3% of GDP between 2011 and 2020, with a third of the increase happening in 2020 alone. At the end of 2020, 25 of these countries had public debt levels above 55% of GDP, breaching the debt solvency threshold and threatening debt crises.[5]

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[2] Craig Beaumont and Dalia Hakura, "Joint IMF-WBG Staff Note: Implementation and Extension of the Debt Service Suspension Initiative," Note (World Bank Group, International Monetary Fund, September 28, 2020); "Pandemic Triad: HIV, COVID-19 and Debt in Developing Countries."
[3] "Pandemic Triad: HIV, COVID-19 and Debt in Developing Countries."
[4] Beaumont and Hakura, "Joint IMF-WBG Staff Note: Implementation and Extension of the Debt Service Suspension Initiative."
[5] "Pandemic Triad: HIV, COVID-19 and Debt in Developing Countries"; Joseph Stiglitz and Hamid Rashid, "Averting Catastrophic Debt Crises in Developing Countries," no. 104 (2020).

10. Amongst LICs and LMICs, the average public debt rose from 55% to 63.8% of GDP between 2019 and 2020, reaching US$2.3 trillion. Between 2020 and 2021, developing nations paid US$649 billion in debt servicing to external public creditors such as sovereign states or multilateral development banks.[6] 2020 alone saw an additional US$194 billion transferred from creditors to developing countries, exacerbating debt burdens and debt servicing challenges in the years ahead.[7]

11. The current policies and provisions established by creditors have failed to account for the cost of recovery in setting crediting terms.[8] Many countries have maintained financial liquidity by refinancing old debt with new debt streams. As the opportunity for refinancing through new debt streams stopped with COVID-19, nations fell back on their domestic reserves. This in turn devalued local currency, making loan repayment in hard currencies (e.g., US dollar or British pound) more expensive in crisis, increasing the risk of debt default, and limiting domestic investment in ESCR obligations.[9]

12. The COVID-19 era was marked by the degradation of progress against TB. 5.8 million individuals were newly diagnosed with TB in 2020, down from the peak of 7.1 million in 2019, recovering to 6.4 million individuals in 2021 – suggesting worsened access to TB diagnostic services during COVID-19. The number of individuals falling ill with TB rose 4.5% in 2021. Similarly, the number of deaths associated with TB increased between 2019 and 2021, and TB incidence rose 3.6%, the first increase in both since 2005.[10]

13. Failure to adequately invest in health threatens progress towards the attainment of SDG 3: health. For some LICs, high debt burdens resulted in four of every ten US dollars of government revenue going to debt servicing, compared to one dollar dedicated to health expenditure.[11] The strong relationship between TB incidence and indicators of development, such as undernourishment or Universal Health Coverage progress, underscores the importance of States' ability to invest in social protection to reduce the burden of TB and promote health and human rights.[12]

14. Rising debt burdens across diverse states cannot be attributed to unique factors in each country, but rather to underlying systemic factors that transcend borders. This is

[6] Daniel Munevar, "A Debt Pandemic: Dynamics and Implications of the Debt Crisis of 2020" (European Network on Debt and Development, March 2021), https://assets.nationbuilder.com/eurodad/pages/2112/attachments/original/1622627378/debt-pandemic-FINAL.pdf?1622627378.
[7] Munevar.
[8] Strategic Litigation: Human Rights Legal Clinic 2022, Treatment Action Group, and Science for Democracy, "The Right to Science as a Game-Changer Against Pandemics: Towards an International Instrument Against Global Health Emergencies" (University of Turin, June 2022).
[9] Joseph Stiglitz and Hamid Rashid, "Averting Catastrophic Debt Crises in Developing Countries," no. 104 (2020).
[10] "Global Tuberculosis Report" (Geneva: World Health Organization, 2022).
[11] "Pandemic Triad: HIV, COVID-19 and Debt in Developing Countries."
[12] "Global Tuberculosis Report."

manifest in global financial architecture that favors creditors' rights to return and promotes austerity measures to provide those returns. Austerity measures suppress economic recovery following economic or health crisis such as COVID-19 and exacerbate ongoing inequalities within and across nations.[13]

15. Unsustainable debt burdens created by the cycle of debt provision and servicing encourage nations to shift resources way from investments that support fundamental ESCR. This includes divesting from the health system and services to identify, treat, and control TB and HIV, undermining the right to health. COVID-19 saw a decline in global spending on essential TB services – dropping to US$5.4 billion in 2021 compared to US$600 billion in 2019, reflective of the financial challenges health systems face during crises and the associated impact on health.[14]

16. Debt burden also strips states of the ability to invest in research and development to address health challenges, undermining the right to enjoy the benefits of scientific progress and its applications. TB research is underfunded globally, with expenditure falling US$1 billion short of the projected $2 billion need. Persistent failure to invest in research to identify new tools to tackle TB hinders progress towards eliminating it.[15]

17. Following the 2008 financial crisis, the United States functionally exported the debt bubble to emerging and developing markets through increased debt streams, doubling bonds held in these markets. The legal framework for this debt falls largely under the auspices of New York State or English law, systems which favor creditors' rights over the debtor. These legal systems create unbridgeable gaps in the financial architecture that allow creditors to call on debts even in severe crises, with few options available to indebted nations to prevent default or sustain investment in core government provisions. All existing options require declaring a crisis, with the onus of proving a crisis falling on the debtor.[16]

18. The legislatures of New York State and the United Kingdom are responsible parties in their failure to develop legal protections for the provision of ECSR services in debt contracts that fall under their legal domain. The legislatures are well within their power to reform legal frameworks to support the achievement of SDGs and promote sustainable debt burdens for heavily indebted nations.[17]

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[13] Munevar, "A Debt Pandemic: Dynamics and Implications of the Debt Crisis of 2020"; Stiglitz and Rashid, "Averting Catastrophic Debt Crises in Developing Countries."
[14] "Global Tuberculosis Report."
[15] Catherine Tomlinson, "2022 Report on TB Research Funding Trends" (Treatment Action Group, December 2022), https://www.treatmentactiongroup.org/resources/tbrd-report/tbrd-report-2022/.
[16] Stiglitz and Rashid, "Averting Catastrophic Debt Crises in Developing Countries."
[17] Stiglitz and Rashid.

19. Legal frameworks that allow for restructuring of unsustainable debt, provide debt relief or cancelation in times of crisis, and require creditors to accept losses during sovereign bankruptcy in favor of continued provision of ESCR programs is necessary to respect, protect, and fulfill human rights. Failure to reform and address these gaps will hinder progress towards these goals, and lead to a regression in progress, forcing states into violating the basic human rights principle of non-regression.[18]

From a rights-based economy perspective, have recovery plans and policies contributed towards 'building back better'? Have human rights, gender, climate change, environment, food security, health and other related concerns been taken into consideration in these plans?

20. The current system of financing favors a debt system that transfers wealth from LICs and LMICs to high-income countries in the form of debt interest. This has taken place even as OECD nations fail to meet their pledges of official development assistance that would support domestic investments in high-debt nations.[19] **The world cannot build back better, or reach any of the SDGs, without developing a financial system that provides financing reflective of actual need and establishes adequate protections against debt distress.**

21. Existing debt structures and the prioritization of creditor return has fundamentally restricted the ability of states to invest in the progressive realization of the human rights and health objectives set out in the SDGs.

22. Countries most impacted by debt crises are home to 70% of the world's poor and nearly two-thirds are dependent on commodities exports. The decline in commodities values in recent years has resulted in economic contraction in commodity-dependent markets and a reduction in government revenues. Decreased revenues force governments to cut spending on primary services, especially in key areas of ESCR such as the rights to health and science.[20]

23. Between 2020 and 2026, expenditure cuts are projected in 139 countries. Primary expenditure in DSSI countries is projected to decline by an average of 2.8% of GDP, representing over half of the 5.25% of GDP average spent on health in LICs.[21] The percentage of revenue going to debt services in high-debt burden nations is projected to grow to account for US$4 of every US$10 in revenue – four times the current expenditure on health services.[22] Of the 39 nations with high TB or drug-resistant-TB

[18] UN Committee on Economic, Social and Cultural Rights, "General Comment No. 3: The Nature of States Parties' Obligations" (December 14, 1990), E/1991/23.
[19] "Pandemic Triad: HIV, COVID-19 and Debt in Developing Countries."
[20] Munevar, "A Debt Pandemic: Dynamics and Implications of the Debt Crisis of 2020"; "Pandemic Triad: HIV, COVID-19 and Debt in Developing Countries."
[21] "Pandemic Triad: HIV, COVID-19 and Debt in Developing Countries"; "World Bank Open Data," World Bank Open Data, accessed May 4, 2023, https://data.worldbank.org.
[22] "Pandemic Triad: HIV, COVID-19 and Debt in Developing Countries."

burdens, 12 are rated as having moderate to high debt distress risk, with an additional 5 currently in debt distress.[23] This underscores the critical need to ensure health system investment regardless of debt status to support progress towards ending TB.

24. The expanded budget capacity created by the COVID-19 DSSI program allowed for health expenditure to rise from 1.5% to 2.2% of GDP. However, this was not enough to overcome structural underinvestment in health in many high-debt burden nations, and many nations still failed to meet COVID-19 goals despite the increased budget availability. Even full debt cancellation and reallocation of resources would be insufficient to cover the gap in health care expenditure to address the TB and HIV pandemics, irrespective of the funds required for COVID-19.[24] Among all LMICs, it is estimated that an additional US$400 billion per year is required to meet the SDGs for health, including approximately US$15–32 billion for TB and US$29 billion for HIV.[25]

25. As economies contract following COVID-19, health expenditure is unlikely to be spared during austerity measures. Any suppressed investment in health systems will hinder progress towards meeting SDG 3.3 to end the TB, HIV, and malaria pandemics; and SDG 10.4 to adopt policies, especially social protection policies, to progressively achieve greater equality.

26. Austerity economies exacerbate inequalities as reduced government spending slows economic growth and raises unemployment. At the current pace, austerity measures designed to address high debt are expected to reduce primary expenditure to pre-COVID-19 levels by 2025. In Latin America, the projected 7.7% contraction is expected to result in an additional 45 million people falling into poverty, placing them at greater risk of poor health outcomes and at higher risk of TB. Unless the global framework for debt is reconsidered and rebuilt, states will be unable to meet their ESCR obligations and may backslide on key gains including progress against TB.

Recommendations

27. Debt must be restructured to allow for sustainable debt burden, repayment provisions, and investment for all debtor nations. Austerity measures must be rejected in favor of programs that place conditions of long-term investment towards SDGs to access debt relief or cancellation.

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[23] "Debt Sustainability," IFAD, accessed May 4, 2023, https://www.ifad.org/en/debt-sustainability; "Global Tuberculosis Report."
[24] "Pandemic Triad: HIV, COVID-19 and Debt in Developing Countries."
[25] "Pandemic Triad: HIV, COVID-19 and Debt in Developing Countries"; Tomlinson, "2022 Report on TB Research Funding Trends"; UNAIDs, "Resources and Funding," May 1, 2023, https://www.unaids.org/en/keywords/resources-and-funding.

28. The legal framework that guides debt restructurings must be **clarified and re-written to include provisions to protect the assets of governments against the claims of private creditors**. These provisions must be written to **ensure that public authorities continue to provide essential public services in the face of debt default and recognize that the ESCR obligations of states, including social protection and health, take precedence over the financial rights of creditors**. A similar legal framework developed in the United States during the Great Depression protected pension funds and public assets from seizure by private creditors and allowed for continued provision of public services.[26]

29. Debt provisions must be restructured to **account for the minimum necessary funding to continue to support economic, social, and cultural rights**. The provision of these services must be accounted for when assessing debt default. **Default must occur not at inability to service debts, but at divestment from core human rights provisions to service debt service.** Lenders must monitor decreases in percent of GDP going towards health, and associated declines in key proxy metrics tied to SDG targets – such as setbacks against TB and HIV including percent of TB or HIV cases identified, percent invested in provision of care for TB and HIV, and rise in TB diagnoses.

30. Debt relief, including full cancellation, must be provided with the sole purpose of reducing or eliminating debt burden to sustainable levels. Debt must be granted with awareness of the level of funding allocation needed to sustain investment in key SDG efforts, particularly in the health sector.

31. Additional metrics must be identified and implemented that monitor countries' progress towards the progressive realization of SDGs at the maximally available State capacity. Austerity measures must be rejected at the international level in favor of debt and debt provision that account for the need for continued investment in economic, social, and cultural rights. Continued failure to prioritize ESCR progress over creditor return will make the Sustainable Development Goals wholly unattainable.

[26] Stiglitz and Rashid, "Averting Catastrophic Debt Crises in Developing Countries."