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To
Prof. Attiya Waris
UN Independent Expert on Foreign Debt and Human Rights
OHCHR

Date: 28 March 2023

Subject: Response to the Call for Input on the Situation of Human Rights in Kenya Amid Multiple Crises


I hope this letter finds you in good health and high spirits. I am writing in my capacity as the Chair of the Committee on Fiscal Studies to respond to your call for input regarding Kenya concerning the situation of human rights amid multiple crises. We appreciate the opportunity to provide our views and insights on the challenges our nation is currently facing, as well as the steps being taken to address these issues from a human rights-based perspective. Enclosed with this letter, is our response to the questions posed in your call for input.

In our response, we have endeavored to provide a balanced and accurate picture of the crises affecting Kenya, the challenges faced in managing these crises, and the interventions and initiatives implemented to tackle their impact. Our response also sheds light on the gaps in the existing financial architecture and multilateral frameworks and offers recommendations on addressing these needs and financial gaps.

We hope that our submission will contribute to your analysis and understanding of the situation in Kenya and that it will be a valuable input for your report to the 78th Session of the United Nations General Assembly, as well as for other activities and initiatives that you may undertake within the scope of your mandate.

We thank you for your attention to this important matter and the resolve with which you are discharging your mandate in the promotion and protection of human rights and international solidarity.

Sincerely,

Lyla Latif, 

Chair, Committee on Fiscal Studies, ADHR Research Cluster



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Call for input – Mandate on foreign debt and human rights - Multiple crises, fiscal systems and human rights

Submitted by
Committee on Fiscal Studies, ADHR Research Cluster

General

- The crises affecting Kenya and its region include austerity, the rising cost of living, increased reliance on debt, and challenges in harnessing tax compliance. The nature of these crises is primarily economic, with implications for social and political stability. The rising cost of living exacerbates poverty and income inequality, while high levels of public debt limit the government's ability to invest in essential services and infrastructure. The scope of these crises is national, but they also have regional implications, as Kenya is an influential player in East Africa. The impacts of these crises are felt across various sectors of society, with disadvantaged groups and communities being disproportionately affected.
- Kenya faces numerous challenges in managing these crises. These include: balancing short-term fiscal constraints with long-term development goals, ensuring that austerity measures do not exacerbate existing inequalities and social tensions, addressing tax evasion and improving tax compliance, managing public debt to maintain macroeconomic stability, responding to public protests and political opposition that criticize the government's handling of the crises.



Interventions for a rights-based economy

To tackle and manage the impacts of different crises, Kenya has considered and implemented several initiatives and emergency interventions at the national, regional, and global levels. These include:

- a. Implementing social protection programs to cushion vulnerable populations from the rising cost of living (ICRW, 2022)
- b. Engaging with international partners and financial institutions to secure concessional loans and debt relief to alleviate the debt burden (Republic of Kenya, 2023)
- c. Strengthening public financial management systems to improve transparency and accountability in public spending (Republic of Kenya, 2023)
- d. Investing in infrastructure projects to stimulate economic growth and create employment opportunities (International Trade Administration, 2022)
- e. Enhancing regional cooperation with East African Community (EAC) countries to promote trade, investment, and economic resilience (EAC 2023)

From a rights-based economy perspective, Kenya's recovery plans and policies have sought to contribute towards 'building back better.' Human rights, gender, climate change, environment, food security, health, and other related concerns have been integrated into these plans. Some examples include (Ministry of Devolution and Planning, 2017):

- a. Prioritizing investments in universal health coverage, education, and social protection in national budgets
- b. Developing and implementing gender-responsive policies to address gender-based inequalities and promote women's empowerment
- c. Strengthening climate change adaptation and mitigation measures through the implementation of the National Climate Change Action Plan
- d. Pursuing sustainable and inclusive agricultural policies to enhance food security and resilience to climate shocks

To ensure the mobilisation of its maximum available resources for the realisation of its human rights obligations, Kenya has taken several measures, such as (National Tax Policy, 2022):

- a. Expanding the tax base and improving tax administration to increase revenue collection
- b. Implementing public-private partnerships to mobilise resources for investments in essential services and infrastructure
- c. Engaging with development partners and international financial institutions to secure grants, concessional loans, and technical assistance
- d. Streamlining public expenditure to reduce wastage and improve the efficiency of resource allocation



To protect the fiscal space required to respond to the exceptional needs of the population during these crises, Kenya has adopted various measures and mechanisms, including (World Bank, 2022):

- a. Allocating resources to priority sectors, such as health, education, gender, food, and social security, in annual budgets and medium-term expenditure frameworks
- b. Establishing and expanding social safety nets and cash transfer programs to support vulnerable households and individuals during crises
- c. Implementing targeted subsidies and price controls on essential goods and services to mitigate the impact of the rising cost of living on disadvantaged groups
- d. Strengthening disaster risk management and emergency preparedness systems to enhance the government's capacity to respond to crises effectively and efficiently
- e. Pursuing fiscal consolidation measures, such as rationalising public spending and optimizing debt management, to preserve fiscal space for essential social spending and investments

On ensuring human rights

- Kenya has implemented several practices, legislation, and policies at the national and regional levels that serve as positive case studies:
 - a. The Constitution of Kenya (2010) enshrines a comprehensive Bill of Rights, which has informed the development and implementation of human rights-based policies and legislation.
 - b. The National Gender and Equality Commission (NGEC) Act (2011) established an independent commission tasked with promoting gender equality and freedom from discrimination, providing a legal framework for mainstreaming human rights and gender concerns in policymaking.
 - c. Kenya has ratified the Paris Agreement on climate change and implemented the National Climate Change Action Plan (NCCAP), which integrates human rights and social aspects into climate change adaptation and mitigation efforts.
 - d. Kenya participates in regional initiatives, such as the African Union Agenda 2063 and the East African Community (EAC) integration process, which have explicit human rights objectives and promote regional cooperation on various crises.
- Gaps in the existing financial architecture and multilateral frameworks dealing with the scope and impact of multiple crises include:
 - a. Insufficient concessional financing and development assistance for low- and middle-income countries
 - b. Inadequate debt relief and restructuring mechanisms for heavily indebted countries
 - c. Limited access to international climate finance for developing countries, particularly for adaptation measures
 - d. Fragmentation of global governance structures and weak coordination institutions



- To address these needs and financial gaps, States should:

- i. Increase the provision of concessional financing and development assistance to support the implementation of development goals and ensure long-term growth
- ii. Strengthen debt relief and restructuring mechanisms to address debt sustainability challenges
- iii. Improve access to international climate finance for developing countries and prioritize adaptation measures
- iv. Enhance coordination and coherence among multilateral institutions and frameworks to effectively address multiple crises

Good practices include:

- a. The G20's Debt Service Suspension Initiative (DSSI), which provides temporary debt relief to eligible countries
- b. The Green Climate Fund (GCF), which supports developing countries in their efforts to combat climate change and its impacts
- c. The International Monetary Fund's (IMF) Poverty Reduction and Growth Trust (PRGT), which provides concessional financial assistance to low-income countries

- Other issues that the Independent Expert should address in this domain include:

- a. The need for inclusive and participatory decision-making processes in addressing multiple crises, ensuring that the voices of affected communities and marginalized groups are considered and integrated
- b. The role of the private sector and public-private partnerships in advancing human rights-based approaches to crisis management, as well as their potential risks and challenges
- c. The importance of international solidarity and enhanced global cooperation to effectively address multiple crises, including the need for a more equitable distribution of resources and technologies, such as COVID-19 vaccines
- d. The intersectionality of human rights, crises, and systemic inequalities, and the need for transformative and holistic solutions
- e. The necessity of addressing the root causes of multiple crises, including unsustainable development models, global economic imbalances, and structural inequalities

- ***For the General Assembly, 78th Session, and other activities and initiatives, the Independent Expert could:***

- i. Develop guidelines and best practices for integrating human rights-based approaches into crisis management and recovery efforts, with a focus on addressing systemic inequalities
- ii. Advocate for enhanced global cooperation and solidarity in addressing multiple crises, emphasizing the importance of equitable resource distribution and technology transfer
- iii. Facilitate dialogues and partnerships between governments, civil society, private sector, and international institutions to foster collaborative and coordinated responses to multiple crises



- iv. Monitor and assess the implementation of human rights obligations in the context of multiple crises, highlighting progress, challenges, and opportunities for improvement
- v. Encourage the sharing of knowledge, expertise, and good practices among countries, regions, and stakeholders, to build capacity and resilience in the face of crises

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The Committee on Fiscal Studies (CFS) is University of Nairobi's premier research think tank. Its objective is to influence a fair, sustainable and equitable social and economic future supported by a responsive fiscal system. CFS backs a people first vision related to informing fiscal law and policy. In 2022, OSIEA funded CFS to set up the African Debt and Human Rights (ADHR) research cluster to support research, clarity and participation in fiscal policy making on debt and human rights. These observations are shared as part of ADHR's broader aims.