



APWLD Submission: Guidance on human rights impact assessments for economic reform policies

The Asia Pacific Forum on Women, Law and Development (APWLD)¹ is pleased to make this submission on to the Independent Expert on Foreign Debt in response to the call for contributions on guidance on human rights impact assessments for economic reform policies. The submission focuses on main impacts of economic reform policies and how these should be shaped by human rights, and APWLD's proposed alternative framework countering neoliberal economic systems that entrench inequality.

I. Expanding the scope of international human rights law

Much of the existing studies and guidance from the thematic mandates focus on the role of states to ensure that economic reform policies do not adversely affect their own citizens, apart from the report of the Special Rapporteur on Extreme Poverty and Human Rights that focuses on the 'confusing' approaches taken by the World Bank ([A/70/274](#)). International finance institutions (IFIs) have played an immense role in shaping and controlling the economic policies of lender countries as a conditionality of loans. This is often in direct contravention of a state's human rights commitments, as raised in the Committee on Economic, Social and Cultural Rights' statement on 'Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights' ([E/C.12/2016/1](#)).² As the call for contributions has stated, these conditions 'increased poverty, homelessness and unemployment; reduced access to health care, social security, adequate housing, food or education; or made essential public services unaffordable'. However, the suggestion from the Committee that states be aware of these conditions and try avoid 'retrogressive' commitments is not an adequate measure. Instead, the lending institutions need to stop putting 'unjustifiable' conditions on states.

For this to happen, IFIs need to accept the core human rights conventions and apply these principles without limits in their work. The International Monetary Fund in its submission has stated 'The IMF has not accepted the Declaration on Human Rights as the motivating principle of our operations. UN agencies have generally accepted our arguments as establishing the limits of our engagement and obligations on promoting human rights.' It is perhaps time to stop accepting these arguments. For instance, if human rights principles were integrated in the work of the World Bank Group and given primacy in its agreements with companies, banks and business enterprises, it may have acted as a deterrent to Egypt's Ahli United Bank, which froze the bank accounts of human rights activists in violation of national law. The bank is a client of the International Finance Corporation (IFC).³

Another source of limitations on states' abilities to adhere to their commitments to core human rights conventions are trade and investment agreements. The effect of agreements that focus

¹ APWLD is Asia Pacific's leading feminist, membership driven network. Our 200 members represent organisations and groups of diverse women from 27 countries in the region. We use capacity development, research, advocacy and activism to claim and strengthen women's human rights.

² 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.'

³ Huffington Post: 'World Bank Group Funding Used to Target and Suppress Human Rights Activists' 17 August 2017 <http://www.huffingtonpost.com/entry/59955580e4b056a2b0ef0339>

on increasing 'free trade' and protect private investors' interests over all other concerns, has had many adverse effects. Common examples include the North American Free Trade Agreement (NAFTA) used to block the implementation of environmental protections, and the investor-state dispute settlement mechanism used against states, such as the case that French company Veolia filed against Egypt for raising the minimum wage. Effectively, private companies are able to challenge labour codes, environmental protections and any change that threatens their profit margins, and it does not matter if those changes are rooted in human rights.

Lending conditions of IFIs and the trade agreements work in tandem against the interests of the majority of developing nations. Industrialised nations with geopolitical power support free trade policies that benefit their own citizens at the cost of other countries.⁴ These shape a style of economic policy that increases in private sector protections while simultaneously reducing protections for people and the environment. Instead, trade agreements and IFIs alike must recognise the primacy of human rights and ensure the measures they implement do not counter commitments to reduce inequality and implement the core conventions. For instance, austerity measures recommended by IFIs should not act as a barrier to Decent Work: trade agreements cannot be allowed to compromise conditions of work or the realisation of living wages across sectors. APWLD's [briefing paper](#) on the Regional Comprehensive Economic Partnership (RCEP) outlines some of the ways that this particular trade agreement affect women's rights by curtailing their access to public goods and services, healthcare, land and resources.

II. Development Justice as an alternative framework

It has been increasingly recognised that the predatory lending practices and overt protections for foreign investors that enable them to dictate state policies are symptomatic of a neoliberal economic agenda that has increased inequality globally. Economic disparity is a problem that needs to be addressed by progressive economic policy: since 2014 APWLD has advocated an alternative approach, developed by nearly 100 civil society organisations from the Asia Pacific region. This approach counters the existing system that protects the few over the many through damaging measures such as reducing public spending, privatising public assets and services, reducing regulations on industry, and promoting cheap and flexible labour. APWLD calls this alternative framework [Development Justice](#),⁵ and it is framed by five foundational shifts as follows:

Redistributive justice, aiming to redistribute resources, wealth, power and opportunities to all human beings equitably. This necessitates dismantling existing systems that channel resources and wealth from developing countries to wealthy countries, from people to corporations and the military. It recognises the people as sovereigns of local and global commons.

Economic justice, aimed to develop economies that enable dignified lives, accommodate for needs and facilitate capabilities, employment and livelihoods available to all, and is not based

⁴ Former President Bill Clinton admitted the damage done to Haiti in a 2010 speech, where he said in part: 'Since 1981, the United States has followed a policy, until the last year or so when we started rethinking it, that we rich countries that produce a lot of food should sell it to poor countries and relieve them of the burden of producing their own food, so, thank goodness, they can leap directly into the industrial era. It has not worked. It may have been good for some of my farmers in Arkansas, but it has not worked. It was a mistake. It was a mistake that I was a party to. I am not pointing the finger at anybody. I did that. I have to live every day with the consequences of the lost capacity to produce a rice crop in Haiti to feed those people, because of what I did. Nobody else.' https://www.democracynow.org/2010/4/1/clinton_rice

⁵ 'Road to Development Justice' video can be viewed here: <https://youtu.be/1I2cEDbIW04>



on exploitation of people or natural resources or environmental destruction. It is a model that makes economies work for people, rather than compelling people to work for economies.

Social justice aims to eliminate all forms of discrimination, marginalization, exclusion that pervade our communities. It recognises the need to eliminate patriarchal systems and fundamentalisms, challenge existing social structures, deliver sexual and reproductive justice and guarantee the human rights of all peoples, particularly women, widows, dalits, indigenous peoples, migrants, refugees, children, youth, older persons, people living with disabilities, people living with HIV and other illnesses, sex workers, domestic workers and workers in the informal sector, survivors of trafficking, and those excluded by caste, class, income, sexual orientation, gender identity, ethnicity, or social status.

Environmental Justice recognises the historical responsibility of countries and elites within countries whose production, consumption and extraction patterns have led to human rights violations, global warming and environmental disasters and compels them to alleviate and compensate those with the least culpability but who suffer the most: farmers, fishers, women and marginalised groups of the global south.

Accountability to peoples demand democratic and just governments, transparency, and governance that enables people to make informed decisions over their own lives, communities and futures. It necessitates empowering all people, but particularly the most marginalised, to be part of free, prior and informed decision making in all stages of development processes at the local, national, regional and international levels and ensuring right of peoples to determine their development priorities. It also requires guaranteeing the right to freedom of information.

III. Specific requirements for impact assessments

Economic policy should focus on strengthening the public sector instead of reducing state obligations via privatisation, often based on the fictitious assumption that privatisation will increase efficiency. Policymakers must recognise that essential goods, such as water, cannot be allowed to turn into a profit-geared enterprise at the cost of the people. As put forward in section I, all economic and fiscal policy that will affect human lives or the environment should be grounded in human rights, and therefore should be subject to impact assessments. These assessments should include a gender dimension or a separate gender impact assessment (GIA); however, even when there is no gender assessment it is relevant to refer to the Committee on Economic, Social and Cultural Rights' recommendation to ensure universality of services in such a way that women are not disproportionately impacted.

Such assessments must not be invasive and should only proceed with the free, prior and informed consent (FPIC) of the people involved. Without such safeguards, the private sector is able to operationalise human rights principles strategically in ways that support corporate aims and undermine local agency or goals. Corporations are easily able to find nominally independent consultants to carry out human rights or environmental impact assessments. In order to ensure that there is effective public participation in the design of economic reform policies, in addition to applying FPIC principles, it should be necessary for any consultants brought in to conduct impact assessments be a consultant chosen by, or agreed upon by, the community.

IV Economic reform and tax

Oxfam's latest study finds that in 2017, eight men own the same wealth as the poorest half of the world's population.⁶ Among the many contributing factors to this imbalance is a flawed and opaque finance system that allows the private sector to retain at least US\$30 trillion in tax havens and unnamed bank accounts. A 2015 UNCTAD study estimated that at least US\$100 billion of annual tax revenue is lost by developing countries related to inward investment stocks directly linked to offshore hubs.⁷

Many global south states that are affected by debt would be in a stronger economic position if they were not losing much of public revenue through these opaque practices. Economic policies that attempt to address debt should not make cuts to public goods and services that could worsen the living conditions but instead focus on transparent tax practices and require transnational corporations to follow country-by-country-reporting. International finance institutions should support the creation of a global tax body as this is directly related to the purview of their work.

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⁶ The Guardian: 'Eight men earn more than 3.6 billion people: our economics is broken'

<https://www.theguardian.com/commentisfree/2017/jan/16/eight-people-earn-more-billion-economics-broken>

⁷ UNCTAD: 'Multinational tax avoidance costs developing countries \$100 billion+'

<http://www.taxjustice.net/2015/03/26/unctad-multinational-tax-avoidance-costs-developing-countries-100-billion/>