

Rethinking



Proposals on Resilience, Rights and Equity for the Global South

Kinda Mohamadieh, Bhumika Muchhala,
Ranja Sengupta, Celine Tan and Vicente Paolo Yu

TWN

Third World Network

Rethinking Global Economic Policy: Proposals on Resilience, Rights and Equity for the Global South

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Note

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Executive Summary

The pandemic exacerbates global economic crisis, needing structural global economic policy changes in response ...

GLOBAL economic governance and policy choices will determine the fate of economies and people in the fallout of the COVID-19 health and economic crisis. Today, many voices caution that the response to the present compounded public health and economic crisis should not be a repeat of past mistakes, but should set societies on a course towards progressive transformations in economic, social and ecological governance.

Such systemic course correction requires a fundamental shift in the international policy regimes and institutional arrangements that underlie today's global economy, such as with respect to trade, investment, tax, debt, finance, capital controls, and development finance and cooperation. It will also require a similarly fundamental change in the relationship between States and corporations, and a demonstration of willingness by States to utilize policy, institutional and legal tools that could allow a balancing in the power relations between corporations and capital on one hand, and governments, labour and citizens on the other. This includes balancing the privileges offered to globalizing corporations with commensurate obligations. Without such proactive interventions by States, the current compounded crisis could potentially become another platform for big corporations to leverage their already entrenched economic and political powers, thus contributing to further deepening inequalities and injustices in the post-crisis period.

COVID-19 has swept across the world with staggering scope and speed, instigating a historically unprecedented public health and economic crisis of inestimable proportions. Countries across the world are reeling from the pandemic triggered by the rapid spread of the novel coronavirus.

The pandemic has created sharp contractions and mass unemployment in manufacturing, trade, tourism, travel, retail and commerce. The world economy is projected to shrink by 5.2% in 2020, with 170 countries experiencing negative per capita growth. The economic recession unfolding from COVID-19 is the deepest recession since World War II. For the first time since 1998, global poverty will increase. The poorest countries and communities in the world are the hardest hit, further entrenching inequalities within and between countries.

The COVID-19 pandemic reveals how fractured and precarious the hegemonic economic structures and norms are. Institutional power imbalances and the primacy of the financial economy over the real economy have generated exponential inequalities, economic and social rights violations, an unequal gender division of labour, climate change, migration and refugees, and the transgression of ecological boundaries, among other failings.

The way forward in the long term requires a sustainable and equitable development paradigm that effectively addresses climate change. The three dimensions of the 2030 Agenda for Sustainable Development (environmental, economic and social) serve as a foundation upon which to reform trade, economic, social and environmental policies towards rights-based equitable outcomes.

In this context, a comprehensive and integrated approach to the reform of global economic governance institutions, frameworks and policies, ranging from debt and international public finance to trade, international taxation and other policy areas, needs to be undertaken by the global community in order to achieve the Right to Development and mitigate and avert any further loss of development prospects for the Global South.

Addressing developing countries' liquidity crunch through ...

Debt cancellation

To respond to the economic impacts of the pandemic, developing countries will require significantly scaled-up levels of liquidity and financing support amounting to at least \$2.5

trillion. Without outright cancellation of debt, including commercial debt, financial resources will be ultimately deployed to service debt repayments rather than to meet social – including health-related – and economic expenditures. If debt relief is funded from aid resources (for example, via debt swaps or donor-funded debt service), this too will reduce funds available for other fiscal expenditure, including shoring up health systems.

New allocation of Special Drawing Rights

Together with debt relief measures, there needs to be, as a result, the establishment of sovereign debt restructuring mechanisms complemented with new allocations of Special Drawing Rights (SDRs), scaled-up development cooperation financing to developing countries and a serious reform of the global financial architecture, including allowing capital controls to prevent sudden surges in outflows from developing countries.

A new issuance of SDRs would have the effect of building up the level of foreign currency reserves in the central banks of developing countries. Such a boost to reserves is critical in a time of capital outflows, rising import costs due to depreciating currencies, and mass disruption in global trade and financial flows. Besides financing stimulus needs, SDRs would also facilitate borrowing at lower interest rates and the purchase of needed imports.

Reforming the development cooperation framework

The COVID-19 pandemic is highlighting the systemic failures of an outdated post-World War II international framework for development cooperation and international public finance that aggravates power asymmetries and socioeconomic and geopolitical inequalities and is inadequate for dealing with global collective action, including the health, social and economic crisis facing the world today. These shortcomings are not inconsequential when we consider the scale of financial resources that are being called for to be provided to developing countries as a result of the pandemic. The fragmented, ad-hoc and donor-driven framework of international development cooperation and public finance has meant that there is little coordination in the

mobilization and disbursement of financing at international or national levels, with overlapping rules and jurisdictions creating significant administrative burdens on overstretched institutions. Developing countries often have little or no role in shaping the direction or application of official development assistance.

Doing away with austerity

More than 90 countries have asked the International Monetary Fund (IMF) for assistance to address the impacts of the COVID-19 pandemic. In response, the Fund redesigned its previous Flexible Credit Line into a Short-Term Liquidity Line (SLL), the first addition to the IMF's financial toolkit in almost 10 years. However, access to the SLL requires borrowing countries to demonstrate strong fundamentals and policy frameworks – including adopting and implementing fiscal austerity. According to research conducted by civil society organizations, fiscal austerity measures appear in the vast majority of IMF loan agreements in developing countries as early as 2021. By 2023, public budget cuts and regressive tax measures, such as value-added taxes, are to be implemented across 80 countries.

While low- and middle-income countries face austerity measures by early 2021, a very different if not opposite directive is offered to developed countries by the IMF, which had noted that “advanced economies that can borrow freely will not need to plan for austerity to restore the health of their public finances.” Their unhindered access to financial markets and record low or zero interest rates means that developed countries have the exclusive privilege of escaping the fate of raising taxes and cutting public financing for public goods. In contrast, the poorest countries in the world confront the highest costs of borrowing through applied interest rates. High debt levels in developing countries stem from a historical legacy of power inequalities among nations, which result in South-to-North resource flows through tax evasion, for example, and thwarted productive capacities and domestic revenue potential which drive the need to borrow externally.

The crisis triggered by COVID-19 needs to compel a fundamental rethink of the neoclassical economic ideology that

prescribes and institutionalizes fiscal consolidation and austerity measures. Under current fiscal discipline rules, many countries are assumed to lack sufficient fiscal space to undertake public investment. The result is restrictive fiscal targets, which have led to a decline in public-investment-to-GDP ratios in many countries.

Allowing regulatory capital controls

This has been exacerbated by the greatest ever outflow of investment capital from developing countries in the initial months of the pandemic in March and April 2020. This outflow was instigated by the panic selling of foreign portfolio investors, which weakened developing-country currencies and constricted their domestic macroeconomic policy options. With the exception of China, all emerging market economies, ranging from Brazil to India, Mexico, South Africa and Thailand, experienced large capital outflows from both equity and bond markets. In recent months, the context of a low-interest-rate environment has facilitated portfolio flows into many middle-income countries. However, these flows are typically volatile and unpredictable. More importantly, they are not applied to development financing use or productive investments.

Regulations focused on cross-border financial transactions can reduce the chance that a country will experience a massive outflow of short-term financial resources that can trigger a crisis. The benefits of capital account regulations, or capital controls, include a reduction of macroeconomic volatility and exchange rate volatility, and thus economic insecurity, as well as the imperative to bolster depleted foreign reserves that may be necessary to meet import payments.

Progressive taxation

Much-needed revenue for developing countries could be generated through progressive taxation, such as wealth taxes on the richest segments in society, or through instruments such as a financial transaction tax (FTT). The FTT would curb speculative and excessive financial trading by imposing a low tax on each trade transaction. It would thereby also raise much-needed financial resources for stretched public purses. The income could

be used for the emergency health financing needs of developing countries, including supporting essential workers, informal sector workers and the unpaid care economy. Although the FTT has been politically blocked for many years, the exceptional circumstances of COVID-19 justify it. Various countries have implemented wealth taxes, and momentum on the FTT is also growing in many countries.

Enhancing developing countries' regulatory policy space through ...

Avoiding unwarranted trade liberalization

The COVID-19 pandemic has caused global trade in goods to further contract. While global trade was already slowing down before the pandemic, the economic and social disruptions from the pandemic all over the world are bringing about steep declines. These economic and social impacts of the pandemic have exacerbated the economic and social inequalities between developed and developing countries and within developing countries brought about by the current global trading system that is underpinned by a web of multilateral, plurilateral and bilateral trade liberalization agreements.

However, instead of addressing the deep-rooted systemic failures in the global trading system that have created these inequalities, there seem to be opportunistic attempts by some developed countries to put forward the signing of trade agreements as a panacea for all real-life problems. The secretariat and some developed-country members of the World Trade Organization (WTO) have been trying to continue negotiations in several areas, including on fisheries subsidies and agriculture, through emails, virtual meetings and other online technologies. Some plurilateral negotiations, such as those on e-commerce, investment facilitation and domestic regulation in services, are also being strongly pushed forward. The rationale for earnestly continuing these negotiations when all countries are being ravaged by the virus is unclear.

The purpose seems to be a forced commitment to liberalize trade in the longer run, which would undermine the objective of

protecting domestic production and supply, as well as livelihoods. Most of these proposals for further trade liberalization through the WTO appear to be open-ended and do not specify a particular period for which this commitment should be in place. While this may be understandable given the uncertainty over the duration of this pandemic and its after-effects, it implies that countries would liberalize these sectors, including all kinds of agricultural products, for an unknown period.

Rather than forced trade liberalization that may not be compatible with a country's economic requirements, autonomous reduction of tariffs can ensure policy flexibility to increase duties later, if countries so need. The world is already seeing a reduction, rather than an increase, in these tariffs on a need basis, at least in the immediate term. At the same time during the pandemic, there have been instances of countries putting in place or proposing restrictions on the export of masks and vaccines, while others have sought to maintain or increase tariff walls to protect their domestic medical product and vaccine producers.

It is clear that COVID-19 is already ushering in an era of deep changes in economic policies worldwide. Trade policy will need to be reshaped in response to and following, not preceding, the needs of domestic development and macroeconomic policies. In such times, developing countries will need all the tools and policy space at their disposal to effectively implement trade, finance, intellectual property and other policies that best suit their needs.

Reforming the global intellectual property rights regime

Among these, addressing the current intellectual property rights (IPRs) framework first introduced in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) would be a priority. IPRs are a major issue when it comes to the production and supply of COVID-19 medicines and vaccines. Most of the vaccines being developed are likely to get patented even though most are at least partially funded by public money. Even with the discounts promised by some of the vaccine producers, the per-dose price that they charge will still be prohibitive for developing countries, which have to vaccinate

large populations. Limited supply will pose another problem.

To address the impact of IPRs on COVID-19 vaccines, a specific proposal related to the IPR rules and the TRIPS Agreement, entitled “Waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19”, was submitted by India and South Africa (subsequently joined by other developing countries) in the WTO’s TRIPS Council on 2 October 2020. The proposal basically calls for IPRs such as patents, copyrights, trade secrets and industrial designs to be waived in order to make COVID-19-related diagnostics, medicines, vaccines, ventilators and other needed products and technologies more widely and cheaply available by removing IPR-related monopolies. This will still require actions on the part of national governments through triggering of laws and policies at domestic level. However, it has faced stiff opposition from many developed countries including the European Union, Switzerland, Norway, Australia, Canada, Japan and the United Kingdom, joined by Brazil.

It is important to note that though the TRIPS Agreement provides for flexibilities such as issuing of compulsory licences, these are generally slow processes, whereas response to the COVID-19 pandemic requires urgent action. In addition, the stringent provisions of the TRIPS Agreement make it extremely difficult for developing countries to use the flexibilities and they also face enormous pressure from many developed countries if they try to use the flexibilities, e.g., issue a compulsory licence. These flexibilities are also ineffectual in offering reprieve from other forms of intellectual property besides patents, such as copyrights, trade secrets and industrial designs, which, in addition to patents, are extremely relevant to the COVID-19 response. For instance, access to know-how, which is protected through trade secrets, is critical for the non-originator production of vaccines and monoclonal antibodies, two important products against COVID-19 infections.

Reforming the international investment regime

In attempts to respond to the COVID-19 pandemic, many governments have found themselves in a position that obliges

them to take unprecedented measures such as taking over private corporations to manufacture essential health equipment, closing non-essential services, restricting local or national movement, as well as taking measures to ease the issuance of compulsory licences and to access patented drugs and medical equipment, among others. Several of these measures are in line with recommendations by the World Health Organization (WHO).

As the crisis evolved, it became clearer how international investment rules could potentially be utilized by big corporations and asset holders to challenge such measures, whether taken by developed or developing States. Investment lawyers and law firms have advised their corporate clients on the use of investor-State dispute settlement (ISDS) mechanisms to challenge such measures.

A rethinking of the investment governance regime, including balancing and/or reversing investor privileges and reclaiming the State's policy and regulatory tools, is needed and requires a fundamental reassessment of the role and content of international investment agreements. This entails rethinking both the substantive investment protection standards as well as the dispute settlement mechanisms under these treaties. There have been two main trends in approaching this "reform" endeavour. One focuses on reforming with the intention of saving the status quo and re-legitimizing the existing international regime of investment governance. The other entails reviewing the fundamental underpinnings of the system and envisioning new, more balanced approaches to governing international investment. In some cases, the latter necessitates withdrawal from existing investment agreements that cannot be rebalanced, as several developing countries have already done.¹ Generally, there are no quick fixes in these processes and effective solutions require revision and action at national and international levels, based on close cooperation between the home and host States of investors.

Addressing corporate power and profiteering

Rethinking and reshaping the rules under which corporate investors operate is crucial today, not only in response to the pandemic stress, but also in the longstanding context. The world's largest corporations increasingly extract profits from the

economy, including from their foreign host countries, and achieve huge financial gains without adding a commensurate level of decent jobs, innovative advancement or societal returns. The concentration in market power driven by corporate giants has resulted in declines in the share of labour in income. In the context of the pandemic, corporate powerhouses have attempted to shift parts of the burden of the crisis response to the poor (particularly in developing countries) through imbalanced relationships underpinning the global value chain. These imbalances threaten to foster inequality in accessing vaccines and other pandemic response medical equipment.

What has been witnessed during the COVID-19 crisis is part of the continuous story of fragilities and vulnerabilities in the lives of those who depend on jobs at the lower end of global value chains. These pressures that multinational companies have been exerting through squeezing down on the lower end of the supply chain have often been reflected in multiple pressures on the economic conditions of developing countries, including through factory closures, non-payment of workers, and clampdown on government tax revenue, which in turn means less investment in public systems and support to local workers and the local industry.

The pandemic era has seen an increase in the valuation of, for example, big pharmaceutical corporations. Public money has been central to the research and development going into the search for COVID-19 vaccines and therapeutics, with the major beneficiaries from these public contributions being the big multinational pharmaceutical corporations. Corporations benefiting from these public monies are already seeing returns in the form of higher stock value. Yet, patents and other intellectual property protections give these corporations control over the pricing, manufacturing and distribution of most of these innovations. Without effective governmental intervention, the actual access to COVID-19 vaccines and therapeutics will be undermined by financialized corporate strategies.

If serving public health and the broader public good is the collective objective pursued by the international community, then States should secure guarantees from pharmaceutical companies

geared towards ensuring availability and affordability of any vaccines and therapeutics to all in need worldwide, including in developing and least developed countries. Corporations receiving public funds ought to be prepared to guarantee the necessary technology transfer arrangements to manufacturers worldwide in order to rapidly scale up access. Furthermore, States ought to utilize intergovernmental mechanisms and legal tools available through multilateral platforms such as WHO and the WTO to ensure effective cooperation and lifting of barriers emanating from intellectual property. Otherwise, governments could in effect be funding a corporate model based on profiteering from the crisis, in which saving lives could be undermined by the financialized corporate models and strategies of pharmaceutical corporations.

Reviving the role of the State

One of the major lessons from this pandemic is that austerity measures have led to a systematic shrinking of the strength and resilience of public systems, which has in turn led to the lack of State capacity to adequately respond to the pandemic itself. Without State capacity and public financial resources, the legitimacy of the State comes into jeopardy. The pandemic invokes the need to rethink the liberal economic ideology that shapes the role of the State and the social contract between State and citizen.

Governments today find themselves in the driver's seat, as they steer the entirety of their national economies for the first time in a generation. There is an opportunity now to restructure the balance of power between States and markets to salvage the social contract between government and people. A task of this order involves a deeper examination of how the role of the State has been positioned. It is now time to revive the leadership role of governments in establishing the framework of economic and developmental strategies, actively shaping the interface between public and private interests and the boundaries for private sector profit-making strategies, as well as defining the nature of collaboration, the direction of compliance and the distribution of resources and benefits.

The way forward ...

The way forward must entail both a resuscitation and a reboot, one rooted in the principles of equality, rights, historical responsibility, feminist and ecologically just values, and international cooperation and solidarity. There are two broad imperatives to consider:

- First, urgent responses to an economic recession of historic magnitude through a renewed and strengthened multilateralism for health and economic recovery in developing countries. Specific policy actions have been outlined by the United Nations Conference on Trade and Development (UNCTAD) and by global civil society and progressive academics and analysts.
- Second, systemic and transformative change to global economic and financial governance and policy paradigms consonant with the reality of climate change. Such systemic reform must tackle unregulated finance and corporate power that pursues profit without accountability for social and environmental harm and abuse.

The pandemic is highlighting the urgent need to rethink the rationales and the institutional and regulatory model of international public finance and the global economic system within which it operates. The current model of financing for collective public good, including fighting pandemics and intervening in financial crises, relies on discretionary aid contributions by developed countries and private donors rather than on collective and mandatory pooling of funds. This model is not sustainable, accountable or redistributive. It continues instead to reproduce already existing global inequalities under current global economic structures that enable developed countries to extract resources and accumulate profits from developing countries.

Ultimately, pandemic response measures (as well as response measures to climate change and other global crises) should be located within an overall process of rethinking and reforming the international legal and regulatory architecture that governs the global economy. As advocated by activists, community organizations and South-focused scholars, there is a critical need

to centre health, social protection, human life and the environment above profit and power. Otherwise, a lost development decade or more for the vast majority of the human race living in the Global South will ensue, resulting in the disappearance of any hope of human societies being able to effectively and equitably adapt and respond to the adverse effects of climate change, biodiversity loss and other global crises.

In this context, there are several areas that bear urgent relevance for developing countries in the coming months and even years as key macroeconomic factors that will shape their development future after the pandemic. These include the role of a comprehensive and integrated approach to multilateral macroeconomic governance that is based on the achievement of the Right to Development; the issue of debt cancellation and restructuring in light of a prospective increase in sovereign debt; the provision of fiscal space and liquidity for developing countries through the expansion of Special Drawing Rights; the development of a new architecture on international public finance; a fiscal redirection away from austerity in order to revive ailing public systems and social services; the use of capital account and other financial regulations as part of the crisis response policy toolbox for developing countries; progressive taxation, including on the financial sector, to mobilize additional financial resources urgently required in the economic fallout of the COVID-19 crisis; addressing unwarranted multilateral trade liberalization; revisiting the global investment regime; addressing the role of corporate power in the global economy; and highlighting the role of the State as the primary development driver in developing countries.

1 Introduction: COVID-19 and Its Global Impacts

COVID-19 has swept across the world with staggering scope and speed, instigating a historically unprecedented public health and economic crisis of inestimable proportions. Countries across the world are reeling from the pandemic triggered by the rapid spread of the novel coronavirus.

There are impacts in terms of continuously increasing infections and deaths coupled with testing, containment and treatment constraints. The few countries that are able to manage the first wave of infections are anticipating new waves as long as effective vaccines and treatments remain elusive.

With the global economy and human society in a near-total suspension for many months, every part of the world economy is experiencing upheaval. There are also massive economic impacts that this pandemic and any effort to address it (such as “lockdowns”) have brought on. The damage is felt across both developed and developing countries, partially due to lack of capacities as well as lack of timely and appropriate decision-making. The full extent has yet to unfold.

The pandemic has created sharp contractions and mass unemployment in manufacturing, trade, tourism, travel, retail and commerce. The world economy is projected to shrink by 5.2% in 2020, with 170 countries experiencing negative per capita growth.² The cost of the COVID-19 crisis to the world economy is projected to amount to approximately \$9 trillion over the next two years.³ The economic recession unfolding from COVID-19 is the deepest recession since World War II.

For the first time since 1998, global poverty will increase. At least half a billion people may fall into poverty by the end of 2020, with some 60 million at risk of being pushed into extreme

poverty.⁴ And the poorest countries in the world will undoubtedly be the hardest hit, further entrenching inequalities within and between countries. The World Bank estimates that sub-Saharan Africa will see its first recession in 25 years, wiping out nearly half of all jobs across the continent.⁵ South Asia will experience the most severe economic downturn in 40 years.

Countries most reliant on global trade, tourism, external financing and commodity exports are likely to be hit the hardest. Developing countries have already experienced the greatest ever capital outflow of \$100 billion, amounting to five times the outflows during the global financial crisis of 2008.⁶ Capital outflows have led to currency depreciations, while commodity prices collapse, global trade and supply chains come to a halt and already existing debt distress across the developing world explodes into a debt crisis.

Achieving the economic, social and environmental Sustainable Development Goals (SDGs) by 2030 may well become a dream deferred, as the pandemic threatens to reverse existing milestones on the SDGs. The COVID-19 pandemic is unfolding to be a “great revealer”. The pandemic pulls the curtain back on intersectional inequalities and exposes how deeply embedded in the structures, systems and cultures of our societies they truly are. The most marginalized in society experience vastly disproportionate health and economic distress. These include the elderly and immunocompromised, low-income communities and in particular women, children, migrant workers, informal sector and gig economy workers, the disabled, the incarcerated, refugees and those living in conflict zones. The reproduction of inequalities occurs in a global context of a hurtling climate crisis, social protest and uprising, the rise of nationalism, discrimination and human rights violations, and unsustainable systems of consumption and production.

The public health crisis generated by illness and fatalities from COVID-19 across the world has placed a particular spotlight on the erosion of public systems, in large part resulting from decades in the neoliberal economic turn. The institutionalized bias of policy paradigms towards austerity, liberalization, deregulation and privatization is revealing its consequences. The

inadequacy of public health systems, public services, social insurance and social safety nets is in large part a direct consequence of public budgets that have been systematically cut over years if not decades.

Global economic governance and policy choices will determine the fate of economies and people in the fallout of the COVID-19 health and economic crisis. Today, many voices caution that the response to the present crisis should not be a repeat of past mistakes, but should set societies on a course towards transformations in economic, social and ecological governance. Such course correction requires a fundamental shift in the relation between States and corporations, and a demonstration of willingness by States to utilize policy, institutional and legal tools that could allow a balancing in the power relations between corporations and capital on one hand, and governments, labour and citizens on the other. This includes balancing the privileges offered to globalizing corporations with commensurate obligations. Without such proactive interventions by States, the current compounded crisis could potentially become another platform for big corporations to leverage their already entrenched economic and political powers, thus contributing to further deepening inequalities and injustices in the post-crisis period.

So far, there is no serious indication that such course correction is underway or possible. To the contrary, State responses seem either to privilege big, financialized corporations or to remain inattentive to interventions needed in order to ensure that private profit-making does not trump broader social and economic priorities, including the well-being and right to life of the less-resourced.

Since the 2008 global financial crisis, the non-bank corporate sector has been increasingly accumulating debt, which amounted to more than \$3 trillion during the first three quarters of 2019, making it one of the biggest chunks of global debt accumulated during that period.⁷ In March 2020, *The Economist* reported corporate debt at \$74 trillion,⁸ with research by the United Nations Conference on Trade and Development (UNCTAD) showing that these unsustainable corporate debt burdens have

been the result of highly leveraged corporate loans that had built up over the last decade of easy money and against a backdrop of heavily underregulated economies and deeply ingrained income inequalities.⁹

These trends tell the story of financialized corporations whose strategy is primarily focused on share value and not necessarily advancement in innovation, production, job generation and real growth.

Besides States' inaction that enabled such risky and unsustainable accumulation of debts, the liberalization and deregulation adopted by States through international trade and investment rules have been facilitating the accumulation of immense bargaining power by these corporations, and thus by capital in relation to labour. This allowed corporations to repress wages and working conditions in both developed and developing countries.¹⁰ Corporations' growth strategies became increasingly detached from productive activities and value-added investments and came to rely on and be driven by a financialized strategy.¹¹

UNCTAD had documented how the world's largest corporations increasingly extract profits from the economy and achieve huge gains without a proportionate contribution towards adding decent jobs, innovative advancement or societal returns.¹² Moreover, the International Monetary Fund (IMF)'s research pointed out the rise of market power concentration driven by "corporate giants", what have been called "superstar" companies in all broad economic sectors, including in information and communication technology.¹³

This concentration in market power exhibits a negative relation with investment, innovation and labour shares, noted the IMF's research, "implying that the labour share of income declines in industries where market power rises".¹⁴ This characterization by the IMF is in line with what UNCTAD calls the "winner takes most" distributional ethos of a hyperglobalized world order where big corporations look very much like a crocodile, with corporate profits devouring the labour share of income.¹⁵

Furthermore, a special set of exclusive privileges have been offered to highly endowed asset holders and corporations when

investing abroad, in the form of an investor-State dispute settlement (ISDS) mechanism that allows foreign investors to challenge legitimate non-discriminatory governmental action taken in the public interest.¹⁶ Civil society groups have documented how investment lawyers and law firms have advised their corporate clients on the use of ISDS to challenge measures taken by governments around the world in response to the COVID-19 crisis and related economic fallout.¹⁷

A global crisis of unparalleled dimensions requires an unparalleled response in the short term and visionary reform in the long term. If we look to history, in the aftermath of World War II, European economies recovered only because the leading surplus government, the United States, intervened with the large-scale grant package of the Marshall Plan. Today, a multilateral plan in a similar spirit of solidarity, responsibility and political will is required for the recovery of developing-country economies, many of which do not possess the fiscal space for stimulus packages commensurate to their needs. The way forward in the long term requires a sustainable and equitable development paradigm that effectively addresses climate change. The three dimensions of the 2030 Agenda for Sustainable Development (environmental, economic and social) serve as a foundation upon which to reform trade, economic, social and environmental policies.

There are several areas that bear urgent relevance for developing countries in the coming months and even years as key macroeconomic factors that will shape their development future after the pandemic. These include the role of a comprehensive and integrated approach to multilateral macroeconomic governance that is based on the achievement of the Right to Development; the issue of debt cancellation and restructuring in light of a prospective increase in sovereign debt; the provision of fiscal space and liquidity for developing countries through the expansion of Special Drawing Rights; the development of a new architecture on international public finance; a fiscal redirection away from austerity in order to revive ailing public systems and social services; the use of capital account and other financial regulations as part of the crisis response policy

toolbox for developing countries; progressive taxation, including on the financial sector, to mobilize additional financial resources urgently required in the economic fallout of the COVID-19 crisis; addressing unwarranted multilateral trade liberalization; revisiting the global investment regime; addressing the role of corporate power in the global economy; and highlighting the role of the State as the primary development driver in developing countries.

Out of the numerous lessons illustrated by COVID-19, this report seeks to highlight three key points. First, the global governance institutions of the 21st century must channel the political will and policy action to protect the most vulnerable and hard-hit countries and communities. Second, the ideology through which the role of the State has been deployed to serve markets through institutions, norms and laws that protect and facilitate the private sector at the expense of the public sector, needs to be re-evaluated. And third, the way forward is led by a renewed multilateralism to carry out a global plan for economic and health recovery for developing countries. For long-term structural change to address inequalities and imbalances at all levels, systemic reforms to the policies and paradigms in the international financial architecture are required.

2 The Right to Development Requires Bold Multilateralism

THE human toll of the pandemic demands that the centrality of public financing for public systems, such as healthcare, can no longer be undermined or ignored. The international community can no longer look the other way when the State protects creditors and investors at the expense of peoples' human, economic, social and cultural rights. Without an urgency of multilateral action, the pandemic endangers years, if not decades, of hard-earned progress in reducing poverty and expanding economic sectors and employment across the developing world.

As the *Trade and Development Report 2020*¹⁸ by UNCTAD illustrates, active government policies to reduce income inequality are required, and for many developing countries this will require effective multilateralism. Such policies should play multiple roles of lowering carbon emissions, establishing large public investment projects to generate jobs and accelerate the transition to a low-carbon energy-efficient economy, as well as enacting structural reforms to usher forth new patterns of production and consumption.

This will require a scale and depth of international solidarity that finds resonance in the 1986 Declaration on the Right to Development.¹⁹ The centrality of the Right to Development is precisely that it promotes an enabling international environment that ensures equality of opportunity for all in access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Economic and social reforms are guided by the imperative of eradicating all social injustices.

Economic recovery from the impacts of the pandemic and other global crises for any one nation is unsustainable. Uneven recovery will create difficulties in reviving global trade flows.

Debt crises in regions that are already in political and civil conflict, for example, can create upheaval such as displacement and migration that can hurt other countries.

Ultimately, unilateralism and protectionism are antithetical to a genuine recovery from a pandemic-induced global recession.

The countries and regions possessing the financial and material resources to pursue fiscal stimulus for health and economic recovery owe their policy space, in large part, to the legacy of several centuries of colonialism: the great transfers of wealth, extraction of natural resources and use of cheap or free labour from the colonies to the metropolises. This is not just a historical travesty; this wealth transfer diffused capital and resources across Europe, North America and other settler colonies, creating the very conditions for industrialization and economic wealth.

In this context, a comprehensive and integrated approach to the reform of global economic governance institutions, frameworks and policies, ranging from debt and international public finance to trade, international taxation and other policy areas, needs to be undertaken by the global community in order to achieve the Right to Development and mitigate and avert any further loss of development prospects for the Global South.

3 Debt Cancellation and a Restructuring Mechanism Are Essential to Recovery

IN an update to its *Trade and Development Report 2020*, UNCTAD said “developing countries now face a wall of debt service repayments throughout the 2020s. In 2020 and 2021 alone, repayments on their public external debt are estimated at nearly \$3.4 trillion – between \$2 trillion and \$2.3 trillion in high-income developing countries and between \$666 billion and \$1.06 trillion in middle- and low-income countries.”²⁰ This is compounded by the fact that servicing these debts has become “more onerous” due to record portfolio capital outflows and sharp currency devaluations in developing countries because of the financial turmoil triggered by the pandemic.²¹

To pay for their imports and to meet their external debt obligations, many developing countries continue to rely on foreign exchange income from their exports, migrant worker remittances, and concessional and market-based borrowing. Unlike developed countries that issue “hard” currencies, developing countries (particularly those already facing high debt burdens) cannot use their national central banks as lenders of last resort to their governments and provide large-scale fiscal stimuli to their economies without running the risk of severe depreciation of their local against hard currencies, triggering monetary inflation, and increasing the cost of their debt repayments.

In April 2020, the IMF cancelled six months of debt payments (worth \$215 million) due to it from the 25 poorest developing countries. In the same month, the Group of 20 (G20) major economies announced their “Debt Service Suspension Initiative for Poorest Countries” (DSSI), suspending debt payments (principal and interest) from 73 primarily low-income developing countries from May to December 2020, worth

“around \$20 billion of public debt owed to official bilateral creditors in the eligible countries in 2020. An additional \$8 billion of such debt payments might be included, if all private creditors joined the initiative, and a further \$12 billion if the same was the case for all multilateral creditors.”²²

A temporary standstill on sovereign debt repayments, however, will be ineffective for the majority of indebted developing countries in the longer term as it only postpones debt repayments while allowing them to accumulate more debt. Further, the current G20 debt relief deal only covers debt owed to official bilateral creditors and is only applicable to low-income developing countries. Many countries, especially middle-income emerging market economies, will face significant risk of debt default and higher borrowing costs on international capital markets due to downgrades by credit ratings agencies.

To deal with the economic impacts of the pandemic, developing countries will require significantly scaled-up levels of liquidity and financing support amounting to at least \$2.5 trillion.²³ Without outright cancellation of debt, including commercial debt, financial resources will be ultimately deployed to service debt repayments rather than to meet social – including health-related – and economic expenditures. If debt relief is funded from aid resources (for example, via debt swaps or donor-funded debt service as is the case under the IMF’s Catastrophe Containment and Relief Trust (CCRT)), this too will reduce funds available for other fiscal expenditure, including shoring up health systems.

There is evidence that countries in debt distress experience stubborn challenges in arriving at a debt restructuring agreement with their sovereign and private creditors, particularly in the absence of effective institutions that can facilitate the process. Box 1 clarifies this challenge by highlighting the case of Argentina’s private debt crisis.

Together with debt relief measures, there needs to be, as a result, the establishment of sovereign debt restructuring mechanisms complemented with new allocations of Special Drawing Rights, scaled-up development cooperation financing to developing countries and a serious reform of the global

Box 1: Excerpts from “Restructuring Argentina’s Private Debt is Essential” – a letter by Joseph E. Stiglitz, Edmund S. Phelps and Carmen M. Reinhart, 6 May 2020, at <https://www.project-syndicate.org/commentary/argentina-sovereign-debt-restructuring-private-creditors-by-joseph-e-stiglitz-et-al-2020-05>

Against the backdrop of this global emergency, Argentina is spearheading its public debt-restructuring process in a constructive manner, in good faith, and with the support of all domestic political sectors. Since 2016, when the country regained access to international markets, external creditors made a bet by acquiring debt with high coupons, but compatible only with extremely robust growth rates that did not materialize. There is consensus that the debt is unaffordable, with interest payments having doubled as a share of government revenue. To be blunt, the cost of refinancing has become excessively high.

A renegotiation requires the commitment of all parties. Argentina has presented its private creditors a responsible offer that adequately reflects the country’s payment capacity: a three-year grace period with a minor cut in capital and a significant cut in interest.

Debt relief is the only way to combat the pandemic and set the economy on a sustainable path. Before the crisis, the World Bank estimated that urban poverty in Argentina stood at 35.5%, and child poverty at 52.3%. The UN now regards the impact of the shock on the country as among the worst in its region, with the IMF projecting a 5.7% contraction in GDP in 2020.

Creditors are being asked to trim the revenue stream but would still receive reasonable interest rates in the future. Argentina has ratified its willingness to service the restructured debt, precisely because it will become feasible at the new interest rate proposed. Only an economy that grows sustainably can meet its financial commitments over time.

The difference in treatment between capital and interest is designed precisely to alleviate the burden of debt service, while the country fights COVID-19 and works to restore growth. Indeed, the reduction of the average bond coupon offered by Argentina (from the current average of 7% to 2.3%) is reasonable, given the current global interest-rate environment.

At this exceptional moment, Argentina’s proposal also presents an opportunity for the international financial community to show that it can resolve a sovereign-debt crisis in an orderly, efficient, and

sustainable manner. The absence of an international legal framework for sovereign-debt restructuring should not deprive indebted countries of the possibility to protect their people and provide for economic recovery during the greatest global crisis in our memory.

We believe a sustainable agreement benefits both sides: a struggling economy with 45 million people and the creditors themselves. Now is the time for private creditors to act in good faith. A responsible resolution will set a positive precedent, not only for Argentina, but for the international financial system as a whole.

financial architecture, including allowing capital controls to prevent sudden surges in outflows from developing countries.

A. Recent developments in the global governance of debt

In October 2020, the G20 finance ministers announced a six-month extension of the DSSI.²⁴ The extension concludes in the spring of 2021, at which time the G20 will “examine” if the financial and economic situation of indebted low-income countries requires another extension of six months. In November 2020, the G20 heads of state issued a communiqué recognizing the significant debt vulnerabilities and deteriorating outlook in many low- and middle-income developing countries.²⁵ At the same time, the World Bank estimated that 50% of the world’s poorest countries are now in or at risk of debt distress.²⁶

The G20’s overarching agreement was to undertake debt treatments beyond the temporary suspension on a case-by-case basis. There are multiple and critical shortcomings with the G20’s approach. Genuine debt cancellation is not provided, and a sovereign debt restructuring mechanism is not advanced. Private sector debt is left hanging without a meaningful way forward. Middle-income countries which also need urgent debt relief are not included, and neither are multilateral institutions such as the World Bank and the IMF.

Customized national debt restructuring is aligned with the Paris Club framework where developed-country donors formulate the terms for each borrower country. The terms of restructuring typically consider changes that reduce debt servicing

through cuts to the interest rates, extensions to the maturity periods or deferment of debt payments. However, beyond exceptional cases, the principal amount of debt will stay constant, as the G20 states that “In principle, debt treatments will not be conducted in the form of debt write-off or cancellation.”²⁷ This limits the potential of actual debt relief, as amelioration of the terms of payment only defers debt distress rather than reducing it and enabling debtor countries to respond to the public health and economic impacts of the pandemic. Furthermore, in centring only a case-by-case approach, the G20 yet again signals a foreclosed opportunity to advance a multilateral sovereign debt workout mechanism grounded in an international legal framework.

Importantly, despite calls from the IMF, World Bank and several developed-country central banks, the G20 did not provide a viable mechanism or process to ensure that private sector creditors participate in debt relief.²⁸ Debtor countries are advised to “seek” debt restructuring from private creditors; however, there is no requirement for private creditors to do so and no assistance from the G20 or any other international body to facilitate the often complex and tense negotiation process with the private sector.

Private creditors’ share of the foreign debts of low- and lower-middle-income governments increased from 25% in 2010 to 47% in 2018.²⁹ Since the global financial crisis in 2008, a wide range of private creditors have proliferated, from New York hedge funds to Middle Eastern sovereign wealth funds and Asian pension funds, each of whom have different views and priorities on what a relief plan for debtor governments in the developing world should look like. Among private creditors there are four key categories: commercial banks, holders of foreign currency denominated bonds, holders of domestic currency bonds and commodity traders.³⁰ Foreign currency denominated debt payments are increasingly difficult in the current context of local currency depreciation, lower government revenues, dwindling foreign reserves, global trade slowdowns and a worldwide economic recession.

One key issue in private debt is that private creditors are bound to fiduciary duties to clients that make granting leniency legally and bureaucratically challenging. Additionally, sovereign bond contracts preclude changes in the terms of repayment without the approval of the majority of bondholders. Similar to the G20 and Paris Club's case-by-case treatment of debt-distressed countries, private bondholders have also stated a preference for case-by-case rescheduling treatments.³¹ They argue that unilaterally halting payments could lock countries out of capital markets, or worsen the terms of borrowing. As a result, debt-distressed countries are repurposing their suspended debt payments to other governments to repay private lenders rather than to finance urgent national health and economic needs.

A problematic impact of the G20's DSSI scheme has been that it effectively bails out private creditors and speculators, which are among the wealthiest entities in the world. Due to the palpable absence of a sovereign debt workout mechanism in the international debt architecture, highly indebted developing countries are vulnerably positioned vis-à-vis their private creditors. As developing countries continue repaying private creditors in full, they drain their already stretched public purse and deny their citizens vital assistance in the midst of a health and economic crisis, unlike developed countries which have been well positioned to offer such assistance through significant amounts of fiscal stimulus.

Meanwhile, if indebted countries request debt relief from private creditors to attain some financial policy space, they risk being punished by credit rating agencies (CRAs) with credit downgrades that adversely impact their access to capital markets and their borrowing terms, such as increases to the interest rates attached to their borrowing.³² Without access to fresh financing, indebted countries could be forced into default at an even greater pace. Due to the deep power imbalances of the international debt architecture, many of the most vulnerable indebted countries refuse to request private sector debt relief and even take out new private and multilateral bank loans in order to maintain repayments.³³

Even in the G20's DSSI programme, only 46 of the 73 eligible countries have applied for the suspension. This means that while \$5.3 billion of sovereign debt has been suspended thus far, \$33 billion of debt payments continue to be made by the 73 countries in 2020.³⁴ In May 2020, the CRA Moody's downgraded Cameroon's sovereign credit rating, stating that Cameroon's participation in the DSSI had raised the risk of default on arrears owed to private creditors.³⁵ Up to 11 countries saw their sovereign credit rating downgraded in the first half of 2020, according to the *Africa Sovereign Credit Rating Review*³⁶ report produced by the African Peer Review Mechanism, an entity of the African Union, in collaboration with the African Development Bank and the United Nations Economic Commission for Africa. Additionally, 12 countries had their outlooks changed to negative by different CRAs, meaning their assessments were at risk of being cut. As the review states, "with the tremendous power of rating agencies to influence market sentiments and investors' portfolio allocation decisions, COVID-19-induced downgrades could have contributed to deterioration of macroeconomic fundamentals as investors immediately responded by raising the cost of borrowing and withdrawing their capital, aggravating the downside economic situation".

CRA downgrades often have a "self-fulfilling prophecy" effect: even countries with strong macroeconomic fundamentals, once downgraded, experience a deterioration of their fundamentals, converging to the levels predicted by the rating model. The main impact of the downgrades and negative outlooks has been a spike in interest rates, to more than double according to the African Union review, making it "more challenging for countries to mobilize resources to support the policy response to Covid-19 as investors became more risk averse."³⁷ Furthermore, the risk of a credit rating downgrade remains the key rationale behind the refusal of the World Bank Group to provide relief on the multilateral debt owed by borrowing countries.

The World Bank reports that 8 out of 10 people pushed into extreme poverty by COVID-19 are living in middle-income countries (MICs).³⁸ In some MICs, the servicing of the interest and principal of their external debt represents over one-third of

the national budget.³⁹ With current levels of public debt across several MICs having approached the sustainability limit, raising financial resources on the financial markets is also becoming even more difficult. However, the G20's DSSI programme limits applicability to low-income debt-distressed countries, which constitutes a dilemma of exclusion for MICs. This is rooted in large part in national categorization processes based on gross domestic product (GDP) rather than on actual debt distress.

The G20's recommendation to multilateral development banks, led by the World Bank Group, is to amplify lending on both concessional and non-concessional terms. However, loans, even when concessional, build up additional debt while also enforcing austerity measures on debtor governments. Reductions in public spending, regressive increases in taxation and accrual of debt further perpetuate debt distress and derail the path to health and economic recovery for developing countries.⁴⁰ When multilateral institutions premise debt crisis resolutions that strongly favour procyclical austerity policies, social, economic and environmentally sustainable development as well as debt sustainability are endangered.

The G20 also links the amount of debt restructuring offered to countries to the Debt Sustainability Assessments (DSA) produced by the IMF and World Bank. However, the methodology of the DSA only predicts the risk of debt defaults, and supplies risk ratings of debt distress in low, moderate or high risk categories.⁴¹ It does not, despite its name, assess the actual sustainability of the debt in light of the government's capacity to finance vital health and economic needs. The methodology of the DSA needs to be radically reworked to incorporate sustainable development financing needs, which include human rights, gender equality and climate financing consistent with the Paris Agreement on climate change and with the Sustainable Development Goals.

A key aspect that should be integrated into the DSA evaluation is that public expenditure on social and public services by the State yields returns.⁴² In this sense, it is in many ways more appropriate to view financing of public services as investments rather than as expenditures. The returns are not

financial, they are social and environmental returns that inherently multiply and regenerate over time. Employing Human Rights Impact Assessments (HRIAs) in debt assessments would identify and respond to the actual and potential human rights impacts of indebtedness.⁴³ HRIAs are independently verified and include the free, active and meaningful participation of affected communities. If and when negative human rights impacts are found, impact assessments can yield policy redress where the responsible party is held accountable in a due diligence process appropriate to the legal context of the State.⁴⁴ In the context of the setback to poverty reduction and social and economic development induced by the pandemic, the imperative of addressing the financial drain of debt servicing through such tools is even more clear.

The ad hoc architecture that has evolved to deal with debt crises in the era of financial globalization has strongly favoured private creditors and is inadequate to deal with increasingly chronic financial vulnerabilities across developing countries and a debt landscape that has grown massively in scale and complexity.⁴⁵ The faltering efforts by the international community to provide adequate and timely debt relief in the wake of the COVID-19 crisis are only the latest manifestation of gaps and shortcomings that have long been known.

Civil society and development economists have urged the G20 to: (a) use all legal, political and financial mechanisms available to compel private creditors to suspend debt payments and write down debts of *all* countries in need; (b) conduct independent debt sustainability assessments which define how much debt needs to be cancelled to meet the SDGs, climate goals and human rights and gender equality commitments; and (c) support the establishment of an international debt workout mechanism that allows for comprehensive debt restructurings under the auspices of the UN. This mechanism must be independent of creditors, fair, transparent and rapid, assigning priority to developing-country governments' primary responsibility for the welfare of their people. It would contribute to rebalancing the power asymmetry surrounding debt in the global economy.

4 Special Drawing Rights Provide Urgently Needed Liquidity

WHILE G20 countries are extending an aggregate \$5 trillion fiscal stimulus to their economies, most developing countries do not have the fiscal space to provide a lifeline for the vast majority of the world population. The disparity between the fiscal firepower of developed countries and the lack of fiscal space in most developing countries bodes a deepening of global inequalities. High public debt, record capital outflows, depreciating currencies and the tightening of global financial conditions are creating multiple and layered constraints to fiscal space for stimulus efforts in the developing world.

While developed countries can borrow directly from their central banks in their own currencies (unless they tied their own hands through legal restrictions), developing countries have to borrow from international capital markets in global reserve currencies, leading to higher borrowing costs in a context of longstanding debt distress. Adding to these structural constraints, lockdown measures, mass unemployment and the disruption of global trade, transport and investment have already inflicted greater damage on developing and emerging economies than on the rich world.

The monetary expansion led by the US Federal Reserve's quantitative easing policies of printing the US dollar and extending bilateral swap lines to certain countries has enhanced the fiscal capacity of developed and some emerging market countries.⁴⁶ These monetary manoeuvres inject liquidity into the global financial system, lower borrowing costs, purchase domestic bonds and introduce new lending facilities for specific sectors and enterprises. It is in this context that a bridge is needed between

the global credit created by monetary expansion and the fiscal lifelines urgently needed in much of the developing world.

One of the most feasible, accessible and low-cost means to raise the fiscal resources urgently required by developing countries is the creation of Special Drawing Rights (SDRs). The SDR is an international reserve asset based on a basket of five currencies (the US dollar, the euro, the Chinese renminbi, the Japanese yen and the British pound). It was created by the IMF in 1969 to supplement its member countries' official foreign reserves.⁴⁷ SDRs would provide low-cost emergency assistance to developing countries to help them address the health emergency needs as well as the economic fallout from the COVID-19 crisis.

In response to the global financial crisis of 2008, the IMF issued \$250 billion worth of new SDRs in 2009. The scale of the COVID-19 crisis certainly calls for a significantly higher issuance. A new issuance of SDRs would have the effect of building up the level of foreign currency reserves in the central banks of developing countries. Such a boost to reserves is critical in a time of capital outflows, rising import costs due to depreciating currencies and mass disruption in global trade and financial flows. Besides financing stimulus needs, SDRs would also facilitate borrowing at lower interest rates and the purchase of needed imports.

Unlike the IMF's credit financing tools, SDRs are an unconditional resource and do not create additional debt. This would allow some developing countries to avoid signing on to a conditional IMF loan or credit line. SDRs can be issued at low cost and used in a countercyclical manner, which is critical in the context of an exogenous shock such as the COVID-19 crisis. And they are allocated to all countries regardless of the IMF's macroeconomic assessment of the country. However, a key flaw of SDRs is the basis of their allocation. Countries receive SDRs according to their IMF quotas, or financial contribution shares, rather than their level of fiscal need. This creates an unfortunate irony by which the countries which have the most need receive the least amount of SDRs. However, despite this imbalance, an SDR issuance would be an important contribution to meeting low-income countries' fiscal needs. It also marks the only instance

in which developing countries have the opportunity to create international money.

Since March 2020, wide support for a new SDR issuance has been voiced by a range of political and policy actors, including the IMF Managing Director Kristalina Georgieva, the Group of 24 developing countries in the IMF and World Bank, UN agencies, as well as academics, policymakers, analysts and civil society from around the world. The amounts mooted for the issuance have ranged from \$500 billion to \$4 trillion. Former US Treasury Secretary Larry Summers and former British Prime Minister Gordon Brown, who supported the 2009 SDR issuance, called for a \$1 trillion-plus new issuance. They noted that “if ever there was a moment for an expansion of the international money known as Special Drawing Rights, it is now.”⁴⁸ To address the issue of SDR allocations by IMF quota rather than by fiscal need, a new mechanism is proposed by which countries that do not use their SDRs can voluntarily provide them to countries that need SDRs.⁴⁹

Despite widespread support for a new SDR issuance, the IMF and World Bank Spring Meetings in April 2020 failed to garner enough votes for it. The lack of votes appears to have been due to US opposition. US Treasury Secretary Steven Mnuchin delivered a statement on 16 April 2020 saying that a better, more targeted approach would be the enhancement of IMF support to low-income countries by providing grants to the CCRT and through new grants and loans to the Poverty Reduction and Growth Trust (PRGT).⁵⁰ The statement also mentioned that rich countries could also explore reallocating existing SDRs to developing countries on a bilateral basis or to bolster PRGT resources. An underlying reason for the US’ opposition to a new issuance may be its intransigence to the opening of new avenues of condition-free funding for countries it views as adversaries, such as Iran, Venezuela and China, which would benefit from a new SDR issuance that would be allocated to all 189 IMF members.⁵¹ Besides being tragically short-sighted, making use of the IMF as a venue for disputes among rival powers brings the institution’s legitimacy into question.

At the same time, there are deep political differences within the US between the US Treasury and legislators, made visible by a bill introduced in the US House of Representatives titled “Robust International Response to Pandemic Act.”⁵² The bill proposes that the US Treasury Secretary is to instruct the US Executive Director at the IMF to use the voice and vote of the United States to support the issuance of a special allocation of at least \$3 trillion in SDRs so that governments are able to access additional resources to finance their response to the global COVID-19 pandemic. The bill also calls for the relaxation of fiscal targets and opposes the approval or endorsement of any loan, grant, document or strategy that would lead to a decrease in healthcare spending or in any other spending that would impede the ability of any country to prevent or contain the spread of, or treat persons who are or may be infected with, the COVID-19 virus.

Yet another way that liquidity can be generated is, as has consistently been called for by many civil society organizations, for the IMF to sell its gold reserves and other assets in its General Resources Account, estimated at \$140 billion, for cash liquidity. This was advocated during the 2008 global financial crisis as well.

5 Developing a New Architecture on International Public Finance

WHILE the inequalities in fiscal space available to developed and developing countries are not new, the imperative for the most economically powerful countries to act in the “spirit of solidarity,” as mentioned by the G20, has never been greater.⁵³ During the last global pandemic in 1918, the developing world, much of which was still under colonization, suffered a far greater loss of lives and livelihoods. A century later, the international community must do better in forging international cooperation that delivers on both short-term financial needs and longer-term policy reform. A clear way to act on short-term needs is, as stated above, the countercyclical and unconditional issuance of SDRs. A global health emergency and economic crisis is a time for massive countercyclical monetary and fiscal policies being made possible for all countries, not just the rich.

While bilateral donors and multilateral institutions publicly announce support packages, the financing provided is not infused with new or additional money. The Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD) has thus far given a voluntary pledge to not cut aid budgets for low-income countries.⁵⁴ However, there is no pledge to increase the aid budget. The implication is that new and additional financing is not forthcoming to create an enabling financing environment for developing countries to cope with the pandemic and its economic fallout. A simultaneous challenge is that the reallocation of aid budgets and financing harms developing countries through the defunding of other important sectors, while also undermining the predictability and stability of aid flows and country ownership when donors suddenly reallocate funds without much consultation with

sovereign aid recipients. Box 2 expands on the challenges posed by the lack of new and additional funding for developing countries to cope with the pandemic.

Box 2: The lack of additional funding for developing countries to cope with COVID-19

By Bodo Ellmers, Director, Sustainable Development Finance Program, Global Policy Forum Europe

Donors and international organizations are announcing substantial financing packages in response to the coronavirus crisis, including in the context of development cooperation. A big problem is however the lack of additional funding. Packages, such as the \$14 billion support that the World Bank announced in April 2020, are funded through either reprioritization or frontloading of resources. The same applies to bilateral donors. This is highly problematic: reprogramming means that ongoing projects are terminated or commitments that have already been made are not being met, a big issue for development planning and aid predictability. Frontloading implies that there will be less money available in future periods, obviously not good either. Many voices including from civil society organizations therefore ask for truly additional assistance to help developing countries cope with the coronavirus crisis.

A key problem is that it is procedurally difficult for donor-country governments to come up with additional resources spontaneously, in an ongoing budget year. It would require passing supplementary budgets. Many countries already did this in the crisis, but development budget lines have been systematically sidelined. It is difficult to find any trace that development cooperation budgets were considered in the multi-trillion rescue and stimulus packages passed in different parts of the Global North. The German development ministry asked for an additional allocation of 3.1 billion euros through the supplementary budget, but this has not been approved yet, and there are no signs that it is seriously being considered by the ruling coalition government in Germany.

For the European Union, the situation is even more difficult when it comes to fresh money as the EU budget is fixed for a period of six years through the Multiannual Financial Framework (MFF). This gives the European Commission predictability, but of course

also implies that no additional things can be done, it is all reprogramming. We are in the last year of the ongoing MFF period, which lasts from 2014 to 2020, so they cannot even frontload. The Commission asked for a substantially larger MFF for the coming period, but EU Member States are reluctant to channel more money through the European institutions.

The only funders who can come up with “additional” resources without passing a supplementary budget are banks, as they can leverage their balance sheets to some extent. Hence the reliance on the European Investment Bank in the overall EU response to the crisis. But banks can only provide loans, and even if they do so on concessional terms, assistance in this form drives up debt levels in recipient countries. Many developing countries already have critically high debt levels. According to the IMF, almost half of all low-income countries are in debt distress, or at high risk of debt distress – and this assessment was made before they were hit by the COVID shock. So new loans might drive them even further into the debt trap, and ultimately into crisis, and do more harm than good.

To ensure additional and sustainable transfers, it is key that an “external action component” for transfers to developing countries is programmed in automatically whenever a rich country passes a new budget for a stimulus package. This is the prerequisite for having corona-related actions funded through additional money down the road.

The COVID-19 pandemic is highlighting the systemic failures of the international framework for development cooperation and international public finance. Based on an outdated postwar system that is premised on charity, not solidarity, the current architecture of public finance aggravates power asymmetries and socioeconomic and geopolitical inequalities and is inadequate for dealing with global collective action, including the health, social and economic crisis facing the world today.

The financial packages that have been extended to developing countries for COVID-19 responses must be scrutinized in the context of the current framework of international public finance. The reason behind this is that the speed and scale of financial packages committed to developing countries obscure

the political environment and institutional architecture through which they are being mobilized and disbursed. Given the historical legacies and contemporary realities of international development financing, it is imperative that the mechanisms and institutions funding global, national and local responses to COVID-19 are subjected to robust public scrutiny to ensure accountability in the use of resources and, more importantly, that the terms of such financing do not exacerbate the social, economic and ecological challenges already faced by developing countries.

It is important to note that the framework of multilateral and bilateral financing that is being utilized to channel resources to developing countries remains deeply rooted within the postcolonial rationalities that shaped the emergence of these institutions in the immediate postwar era. The circulation of financial resources from the Global North to the Global South – and the laws, institutions and policies that govern the flow of these resources – have been also central to the management of developing countries.

The two institutions that have once again emerged as pivotal financiers in the current crisis – the IMF and the World Bank – have traditionally served as powerful intermediaries between developing States and the global economy, using both their financial and epistemic leverage to exact domestic regulatory and policy change to accommodate States' insertion into the global economy. The other major pandemic financiers include the European Commission, regional development banks (RDBs) and bilateral donors from OECD Member States, including France, Germany, Japan, the UK and the US (the countries which also control decision-making at the IMF, World Bank and many RDBs).

Importantly, despite ostensible commitments to global coordinated action, including G20 coordination on debt relief and funding promises to more representative multilateral organizations such as the United Nations (UN) and the World Health Organization (WHO), the bulk of the financing will primarily be channelled via bilateral and multilateral organizations controlled by powerful States. This means that the amount of financial resources extended to developing countries,

and the terms that accompany such financing packages, will be largely determined by Northern policymakers and technocrats, with little input from countries and communities in receipt of such financing.

Moreover, it is expected that a significant amount of financing will also be channelled through private financing mechanisms, including commercial financial instruments, private philanthropic foundations and public-private partnerships, that will be subjected to much less scrutiny than official financing platforms.

The governance and regulatory shortcomings of the framework for international public finance are not inconsequential when we consider the amount of financial resources that are being called for⁵⁵ to be provided to developing countries as a result of the pandemic. Without clear and consistent oversight, these shortcomings can impact on short-term State responses to the pandemic and have the potential to endanger longer-term sustainable development in three critical ways.

First, regardless of its significant volume, the amount of financing available to developing countries is likely to fall far short of their actual needs, and this simply because they remain dependent on the political will of donors and the interests of creditors.

The fund-raising capacity of the IMF, for example, is limited by its archaic decision-making structure which confers effective veto power to the US. Efforts to boost the Fund's firepower in 2019 through increases in quota subscriptions – the financial contributions countries make to the IMF as a condition of membership and its main source of funding – were thwarted by the US,⁵⁶ preventing other countries, notably China, from expanding their contributions and, as a result, their decision-making power within the IMF.

Instead, the Fund has resorted to doubling New Arrangements to Borrow (NAB) and renewed its bilateral borrowing arrangements (BBAs) to maintain its \$1 trillion lending capacity. These are funding options that are much more susceptible to creditor interests and much less egalitarian than increasing quota subscriptions or issuing additional SDRs. The

use of supplemental financing as a means of topping up the IMF's liquidity is characteristic of the current landscape of international public finance. A significant amount of financing continues to be mobilized and disbursed through non-core platforms or concessional financing windows that require periodic replenishment. These are processes which often require laborious negotiations and horse-trading over the terms and amount of resourcing.

Financial resources pledged by the IMF and the World Bank to low-income and some lower-middle-income countries in response to the pandemic will be drawn, as a result of this, from the IMF's PRGT and the World Bank's International Development Association (IDA), which rely primarily on donor contributions to subsidize the cost of lending and/or to provide capital for loans, grants and technical assistance. Debt relief for countries indebted to the IMF or the IDA is also funded through donor contributions rather than outright cancellations by the institutions themselves.

In this context, any relief on debt owed to multilateral institutions will depend on the resources available in ad-hoc trust funds, such as the CCRT or Heavily Indebted Poor Countries Initiative Trust. As the European Network on Debt and Development (Eurodad) has calculated, the IMF's decision to extend limited short-term debt service relief to 25 countries will quickly exhaust most of the \$500 million available in the CCRT, including the \$285 million recently pledged by the UK and Japan.⁵⁷

In the arena of global health, the proliferation of earmarked funds has led to chronic under-funding of core operational activities of international organizations, notably WHO and other UN development agencies, reducing their financial autonomy and flexibility to respond to pandemics. At WHO, the share of non-core funding increased from less than 50% of its budget in the 1990s to more than 80% in 2016. Ironically, the US, which under the Trump administration announced a temporary withholding of contributions to WHO, had been instrumental, along with the UK, in advocating for a freeze in its core budget.

The US and the UK also constitute the largest non-core funders, which allows them to drive the agenda of the organization.

Second, the reliance on donor-dominated institutions to design and deliver COVID-19 financing will mean that donor interests will drive the short-, medium- and long-term solutions for many developing countries. The aforementioned creeping “bilateralism” or “Trojan multilateralism” in the constitution of international institutions responsible for financing global public goods has resulted in the widespread embedding of bilateral and, in some cases, private objectives and interests into multilateral institutions and development programmes extended to the Global South. The diversion of funds at WHO from core to earmarked funds and the rise of so-called “vertical funds” for health focused on specific health interventions, notably prevention, control and treatment of communicable diseases, have resulted in the underfunding of public health systems as a whole, radically diminishing developing countries’ capacity to deal with health emergencies. Additionally, it is likely that the routing of existing aid funds to pandemic finance and debt relief will divert attention from other equally pressing areas, including funding for climate change mitigation and adaptation, reproductive health and maternal services, and education.

As several commentators have already pointed out, over the years, financing conditionalities imposed by the IMF and the World Bank have exacerbated developing countries’ vulnerability to health epidemics and social and economic shocks resulting from natural and man-made disasters. Yet despite evidence that these structural and macroeconomic conditionalities, such as fiscal austerity, trade liberalization, deregulation and privatization of social and economic sectors, are leading to significant retrenchment in health services and social protection floors, these measures have continued to be a feature of adjustment programmes tied to financial packages from the IMF and World Bank (see discussion below).

Third and finally, the large-scale financial response of the international community will not succeed if not matched by a similarly large-scale framework of policy coherence and accountability.

The fragmented, ad-hoc and donor-driven framework of international development cooperation and public finance has meant that there is little coordination in the mobilization and disbursement of financing at international or national levels. Despite numerous commitments to alignment, harmonization and country ownership, there has been little uniformity, or indeed platforms for collaboration and oversight of financial support to developing countries. This means that developing countries are often left to deal with a Byzantine maze of overlapping rules and jurisdictions, creating significant administrative burdens on overstretched institutions and providing little scope for countries to engage proactively in the design of programme support.

At the same time, there is little institutional scope for accountability attached to financing from international financial institutions (IFIs) and bilateral donors, including in circumstances where their policies impact on human rights. Existing mechanisms for oversight and accountability for development finance interventions are often limited to providing redress for communities affected by development projects rather than broad-based economic programmes. The World Bank's Inspection Panel, for example, only has jurisdiction to consider breaches of operational policies relating to project-based harms, such as the impact on communities of dam construction, but not for impacts emanating from the Bank's policy-based lending.

Developing countries are being made to jump through numerous hoops in order to access critical financing and debt relief to tackle the pandemic and subject themselves to surveillance by international financial institutions and multilateral and bilateral donors, but there is no corresponding framework in which financiers are subjected to similar accountability and oversight.

6 Avoiding Renewed Fiscal Austerity in the Aftermath of Temporary Fiscal Space

MORE than 90 countries have asked the IMF for assistance to address the impacts of the COVID-19 pandemic. In response, the key development by the Fund has been to redesign the previous Flexible Credit Line into a Short-Term Liquidity Line (SLL), the first addition to the IMF's financial toolkit in almost 10 years. Similar to a credit card, the SLL provides reliable and renewable credit lines that can be drawn up to a limit, as long as borrowing countries demonstrate strong fundamentals and policy frameworks.⁵⁸ As the Fund states, a country which signs up for an SLL will be signalling the IMF's endorsement of its policy frameworks and institutions to markets. This endorsement can lower its borrowing costs during the current crisis-induced volatility. Only a few countries have passed the rigorous pre-approval procedures for the SLL, rendering accessibility as well as debt creation serious problems in the IMF's financial assistance strategy in response to the COVID-19 crisis.

The IMF's *Fiscal Monitor* publication in April 2020 revealed that the IMF's support for fiscal stimulus is limited to the immediate fallout of the COVID-19 crisis. Once the public health emergency diminishes, developing countries are expected to carry out the traditional fiscal consolidation measures to stabilize debt ratios on a "firm downward trajectory."⁵⁹ The chief of the IMF's Fiscal Affairs Department, Vitor Gaspar, stressed the slogan publicized by IMF Managing Director Kristalina Georgieva for governments "to do whatever it takes now but keep the receipts."⁶⁰ Essentially, the Fund's fiscal consolidation measures that retrench government spending on public systems and social services will remain unchanged in the long term.

While the Fund's *Fiscal Monitor* acknowledges that public investment as a share of GDP has declined in advanced economies and that the growth rate has significantly slowed in emerging and developing countries, governments are still advised to "manage expectations" by "making clear that support measures to address the COVID-19 crisis are temporary."⁶¹ Emerging markets and low-income countries are advised to maintain fiscal "credibility" and prepare for an "ambitious" fiscal consolidation. According to the Fund, fiscal credibility is essential to restore investor confidence and attract much-needed investment once economic conditions start to normalize. This adherence to the neoclassical fiscal rulebook stems, in large part, from the idea and theory that fiscal credibility is achieved by preserving the expenditure ceiling rule and reducing debt levels, even if such measures decrease growth and stall employment creation and social development.

The October 2020 Annual Meetings of the World Bank and IMF confirmed the fear expressed by many since the onset of the COVID-19 pandemic that another wave of austerity measures will soon sweep across developing countries. By 20 September 2020, the IMF had approved loans to 81 countries to combat the health and economic crises induced by COVID-19. In the short term, the institution's emergency financing packages support the intent of borrowing countries to use funds to meet urgent health and social protection needs, including relief for vulnerable households. The Fund's flagship *World Economic Outlook* report released in October 2020⁶² calls for policies that "guide economies to paths of stronger, equitable, and resilient growth," including investments in "health, education, and high-return infrastructure projects that also help move the economy to lower carbon dependence" and research spending in technology and innovation. However, within the fine print of loan and emergency financing documents, the institution's recurring policy recommendation is for pandemic-related fiscal measures to be targeted, temporary and reversed upon cessation of the pandemic.

According to research conducted by Oxfam International,⁶³ fiscal consolidation measures appear in 84% of loan agreements across 67 countries as early as 2021. Eurodad shows that by

2023, public budget cuts and regressive tax measures, such as value-added taxes, are to be implemented across 80 countries.⁶⁴ More than half of the projected measures, equivalent to 2% of GDP, will take place in 2021.

The consequences are grave. Many developing countries are in danger of facing “a lost decade”⁶⁵ as their pathways to achieving the SDGs and the Paris Agreement climate change targets are effectively derailed. In the absence of scaled-up, coordinated and multilateral solutions such as grant financing, liquidity, debt relief and a sovereign debt workout mechanism, for example, the austerity mandate is once again being enforced in order to generate financial resources to meet debt repayments and stabilize debt levels.

A. Double standards on austerity for South and North

While low- and middle-income countries face austerity measures by early 2021, a very different directive is offered to developed countries. According to the Fiscal Affairs Department of the IMF, most “advanced economies that can borrow freely will not need to plan for austerity to restore the health of their public finances.”⁶⁶ Unhindered access to financial markets and near-zero interest rates available to developed countries means that they have the exclusive privilege of escaping the fate of raising taxes and cutting public financing for public goods.

In contrast, the poorest countries in the world confront the highest costs of borrowing. Interest rates for African countries range between 5% and 16% on 10-year government bonds. For sub-Saharan African economies, interest repayments constitute the biggest and fastest-growing expenditure item in their public budgets.⁶⁷

While the Fund justifies these two opposite sets of policy advice through the “binding financial constraints”⁶⁸ that define developing countries’ limited capacity to borrow, no inquiry is made into the structural inequities that define a state’s “capacity” to borrow.

High debt levels in developing countries stem from a historical legacy of power inequalities among nations, resulting

in South-to-North resource flows through tax evasion, for example, and thwarted productive capacities and domestic revenue potential which drive the need to borrow externally. The past has repeatedly demonstrated the cost of maintaining debt sustainability in the eyes of official and private lenders and creditors: austerity measures will be paid for by the most vulnerable across developing countries, exacerbating inequalities as well as exclusion and discrimination, on all scales of income, gender, race, caste, disability and sexuality.

In response, over 500 organizations and individuals have signed a petition calling on the IMF to immediately stop advising austerity measures for developing countries, and instead advocate policies that advance human rights, sustainable development, climate justice, and gender and income equality.⁶⁹ The petition emphasizes that fiscal-consolidation-driven austerity will undermine the achievement of economic and social rights while deepening poverty in a context where the UN estimates 70 to 100 million people will be pushed into extreme poverty.

Empirical data on the impact of fiscal consolidation measures,⁷⁰ as well as research by the IMF's Independent Evaluation Office⁷¹ on the Fund's response to the financial and economic crisis, confirm that fiscal consolidation has led to reductions in health and education investments; losses of hard-earned pensions and social protections; wage freezes and layoffs affecting public sector employees such as teachers, nurses, doctors and public civilians who comprise a large portion of the public wage bill in developing countries; increased unpaid care work; and greater consumption taxes – all of which disproportionately affect the poor and women.

The World Bank is in agreement with the IMF, as the institution's president has expressed to G20 finance ministers that “countries will need to implement structural reforms to help shorten the time to recovery and create confidence that the recovery can be strong.”⁷² He added that “for those countries that have excessive regulations, subsidies, licensing regimes, trade protection, or litigiousness as obstacles, we will work with them to foster markets, choice, and fast growth prospects during the recovery.” Explicit in his remarks is the reinforcement of the World

Bank's foundational policy support for deregulation and privatization.

A new future round of fiscal austerity in developing countries is consonant with a tragic irony, in that the very structural adjustment policies that have chronically underfunded public systems and social safety nets will be required as economies eventually start to recover. Such a perpetuation of public spending retrenchment is akin to medicating a patient with the very poison that made her ill in the first place. This stance demonstrates that fiscal credibility through debt servicing is disconnected from economic stability and social development and well-being. The implication for the continued deprivation of public health systems, particularly in the context of a global health pandemic, is a failure to see health as part of the development policy arsenal.

Over the last several decades, the specific measures contained in IMF fiscal consolidation requirements or advice involve the elimination or reduction of subsidies, including on fuel, agriculture and food products; cuts and threshold ceilings on public sector wages, particularly the salaries of education, health and other public sector workers who comprise a large portion of the public wage bill in developing countries; rationalizing and further targeting social safety nets and insurance programmes, pensions, housing benefits, child benefits and disability benefits; and broadening consumption taxes, such as value-added taxes, on basic products that are disproportionately consumed by poor households.⁷³

Over the last four decades, fiscal austerity, or consolidation, has become normalized as well as internalized by many developing as well as developed countries. The singular compulsion to austerity is in part rooted in the neoclassical economic theory that fiscal credibility and macroeconomic stability is achieved by preserving the expenditure ceiling rule and reducing debt levels.

In particular, the predilection to viewing the macroeconomy through the methodology of general equilibrium⁷⁴ entails an analytical commitment to austerity policy by presupposing macro-stability. The prioritization of macro-stability through the primary channel of reducing debt levels is essentially a signal to

markets and lenders that debt and deficits will not obstruct private sector interests to avoid risks and losses.

Economists who work within the general equilibrium framework generally do not engage with a broader plurality of economic models and theories that might contest or opt out of the austerity bias. Due to the hegemony of the neoclassical form of economic knowledge over the past several decades, the economics discipline has not evolved or diversified the accepted and acknowledged basis of economic methodology and analysis. However, empirical evidence illustrating how austerity has neither restored income growth nor reduced unemployment has mounted over the years, and scholars have detailed⁷⁵ how the economic methodology in support of austerity is flawed.

New research by ActionAid International on recent IMF advice and loans to 78 low-income and many middle-income countries finds further evidence of widespread public wage bill suppression by the imposition of low inflation and deficit targets, with consequences for health, public services and care.⁷⁶ The debt crisis already cemented in many developing countries only exacerbates the erosion of public systems and services through protracted spending cuts. Several low-income countries spend more in debt servicing than on education and health combined.

The steep social costs of fiscal contraction include, for example, weak public health and education systems, diminished access to essential social services, loss of livelihoods in the public sector, and increased unpaid work and time poverty.⁷⁷ Budget cuts by the State often reduce or eliminate the very programmes and services which primarily benefit women, children, the elderly, disabled and physically ill – the very populations most vulnerable to the coronavirus. Social protection programmes, which are a critical source of economic survival for marginalized and vulnerable people, are often the first services to be reduced, even in countries that suffer extreme poverty.

Why, then, does austerity continue to “dominate the economic thought, both practical and theoretical, of the governing and academic classes of this generation, as it has for a hundred years past”, as John Maynard Keynes stated in 1936?⁷⁸ It has been 84 years since Keynes asked this question, and austerity’s

compulsion has yet to fade. In consideration of the argument that facts never disconfirm a powerful ideology, austerity can be considered a virulent idea inflicting systematic harms.

The crisis triggered by COVID-19 needs to compel a fundamental rethink of the neoclassical economic ideology that prescribes and institutionalizes fiscal consolidation and austerity measures. Under current fiscal discipline rules, many countries are assumed to lack sufficient fiscal space to undertake public investment. The degree of fiscal space is effectively circumscribed by limits placed on a country's public debt relative to GDP. The current approach to establishing debt ceilings defines fiscal sustainability for the short term, an approach that ignores the interaction between fiscal policy and growth over the longer term.⁷⁹ Relatedly, current guidelines for assessing fiscal space and sustainability ignore what the fiscal space is used for. Most budgets classify current and capital budgets separately, but this distinction is not made when evaluating fiscal deficits. The result is restrictive fiscal targets, which have led to a decline in public-investment-to-GDP ratios in many countries.

The challenge is for governments to reframe their thinking on public expenditures by recognizing the virtuous cycle, or positive feedback loop, of public expenditures.⁸⁰ The counterfactual of not investing and sustaining a long-term recovery for the poorest countries from the COVID-19 crisis is unconscionable. Most developing countries, and certainly all poor countries, simply do not possess the fiscal policy space, low borrowing costs or ability to raise capital that developed countries have employed to enact massive countercyclical monetary and fiscal policies in response to the exogenous shock of COVID-19. This is precisely why the public finance architecture must reform its response to developing countries by preventing fiscal austerity and debt accumulation, and instead commit to international coordination to support fiscal space for the most vulnerable people and States. In order to construct a viable case for the ability of expenditures to uphold equality, rights and justice, the theory, assumptions, discourse and consensus on fiscal space will need to be systematically contested and reshaped.

Box 3: Excerpts from “Ecuador, COVID-19 and the IMF: how austerity exacerbated the crisis” by Ana Lucía Badillo Salgado and Andrew M. Fischer, 9 April 2020, at <https://issblog.nl/2020/04/09/covid-19-ecuador-covid-19-and-the-imf-how-austerity-exacerbated-the-crisis-by-ana-lucia-badillo-salgado-and-andrew-m-fischer/>

Ecuador is currently (as of 8 April 2020) the South American country worst affected by COVID-19 in terms of the number of confirmed cases and fatalities per capita. The recent IMF Extended Fund Facility (EFF) Arrangement, signed in March 2019 with the Government of Ecuador, was already the subject of massive protests in October 2019 given the austerity and “structural reforms” imposed on the country. It has also directly contributed to the severity of the pandemic in this country given that health and social security systems were among the first casualties of the austerity and reforms. In particular, the government’s COVID-19 response has been severely hindered by dramatic reductions of public health investment and by large layoffs of public health workers preceding the outbreak of the virus.

Within the framework of the EFF, the government implemented a large layoff of public healthcare workers (including doctors, nurses, auxiliary nurses, stretcher-bearers, social workers, and other healthcare workers). The layoffs continued throughout 2019, despite protests by the National Syndicate of Healthcare Workers of the Ministry of Health. It is difficult to know the exact number of layoffs because of the fragmented functioning of the health system, although within the Ministry of Public Health alone, 3,680 public health workers were laid off in 2019, representing 4.5% of total employment in this Ministry and 29% of total central government layoffs in that year.

Thus, it is not a surprise that Ecuador is currently doing so poorly in handling the COVID-19 crisis. The retrenchment of the public health system together with an already weak and retrenched social protection system coupled for the perfect storm. But even more worrying is that, in the face of the pandemic, the government paid \$324 million on the capital and interest of its sovereign “2020 bonds” on 24 March 2020 instead of prioritizing the management of the health crisis. This decision was taken despite a petition on 22 March by the Ecuadorean assembly to suspend such payments, along with a chorus of civil society organizations lobbying for the same. The government nonetheless justified the payment as a trigger for further loans from the IMF, World Bank, Inter-American Development Bank,

and Andean Financial Corporation. This is especially problematic given that Ecuador has been hard hit by the collapse of oil prices and, as a dollarized economy, its only control over money supply and hence hope for economic stimulus rests on preventing monetary outflows from the economy (and encouraging inflows).

The payment is also paradoxical given that the IMF and the World Bank are currently calling for the prioritization of health expenditure and social protection and for a standstill of debt service, and have announced initiatives for debt relief and emergency financing. Nonetheless, despite such noble rhetoric, it appears that the precondition for such measures continues to be the protection of private creditors over urgent health financing needs. From this perspective, even though the IMF has recently moved to offer finance and debt relief to developing countries hit by the COVID-19 pandemic, a much more serious change of course is needed. For this, it is vital to understand its own role — and that of other IFIs such as the World Bank — in undermining health systems before the emergence of the pandemic in various developing countries, lest similar policy recipes are again repeated.

Box 3 demonstrates how austerity measures linked to IMF financing have exacerbated the pandemic in Ecuador, and highlights the urgency of protecting and strengthening public systems through long-term public financing.

B. Addressing developed-country crisis response stimulus packages that fund their corporate sector

As pointed out above, in an exercise of double standards, developed countries are under no pressure from multilateral agencies to practise fiscal austerity when it comes to putting together stimulus packages to address the economic impacts of the pandemic. While developed economies have been able to design huge stimulus interventions, coupled with deep interventions of their central banks in the corporate bond markets, many developing countries do not possess the fiscal space for stimulus packages commensurate to their needs.⁸¹ A key question, therefore, is whether the stimulus packages put in place by developed countries are socially and economically equitable in

terms of their ability to cushion and support vulnerable social sectors. Moreover, it is important to consider their implication for developing countries and the latter's capacity to fend off the adverse economic impacts of the pandemic.

The anatomy and terms of the stimulus packages and other measures launched by many developed economies to save companies tell us a lot about the nature of the interactions between States, corporations and rights holders, including workers and citizens. They also shed light on whether the choices adopted to get out of this crisis will lead us towards the economic, social and ecological transformations that many are calling for.

Stimulus packages rolled out in light of the COVID-related crisis have included a combination of financial injections to stabilize banking and corporate balance sheets in addition to government spending in the form of purchases of goods and services and extended unemployment benefits and cash transfers to households. However, the latter are often just a fraction of the packages adopted.⁸²

This is most clear in the United States, on which this section will focus. For example, under the Coronavirus Aid, Relief, and Economic Security Act (also known as the CARES Act), the largest share of the package consisted of loans to business. The CARES Act encompassed the largest economic stimulus bill in modern history, more than doubling the one passed in 2009 during the financial crisis.⁸³ It amounted to \$2.2 trillion, out of which only \$193 billion went to spending on goods and services, an estimated \$111 billion to additional unemployment benefits and \$275 billion to cash transfers. Around a quarter of the total package, or \$500 billion, was dedicated to big businesses. These transfers if not repaid will need to be restructured into equity, resulting in the government owning an increasing share of corporate America.⁸⁴

This money was transferred with few conditions from the side of the State, and these conditions do vary between big and smaller businesses. While there were some restrictions related to share buybacks during the term of the loan plus one year, payments of dividends and limits on executive compensation at the 2019 levels, no employee protections were included,⁸⁵ such

as requirements to give workers paid sick leave or guarantees that companies do not lay off workers. In addition, the US Treasury Secretary was given the power to waive any of the conditions on big corporations if deemed necessary to “protect the interests of the federal government.”⁸⁶ All the borrowing that the corporations will be able to secure on top of the government’s contribution will also be free from any restrictions.⁸⁷ In comparison, restrictions attached to the money going to small and medium-sized businesses included restraints on paying out dividends, buying back stock, and outsourcing or moving jobs offshore, in addition to requirements to honour collective-bargaining agreements.⁸⁸

Overall, the United States’ interventions seemed geared towards setting the stock market on the road towards recovery while leaving behind the majority of workers and their families who will be left worse off. While the interventions were built on an assumption that they could support employment by helping businesses to survive,⁸⁹ no specific conditions or requirements were established in that regard. It has been reported that US companies are denying workers unemployment benefits, shutting down their healthcare and laying off workers.⁹⁰ Small and medium-sized companies were left unable to face the shock and had shed millions of jobs since the beginning of the crisis. Many of these businesses have reported immense complexities in accessing funds made available through the stimulus packages.

At the same time, the US Federal Reserve’s interventions have sent US stocks surging.⁹¹ Its announcement of unlimited buying of treasuries and mortgage-backed securities helped stabilize debt markets, allowing big companies like Coca-Cola, Disney and Apple to access needed financing. It ventured into new territory during the current crisis with individual corporate bond purchases.⁹² The Federal Reserve intervention went beyond buying the bonds of struggling companies hit hard by the coronavirus pandemic. The Fed bought bonds issued by corporate titans such as Apple, Microsoft, Volkswagen Group America, Abbvie Inc., Ford Motor, Verizon Communications and Daimler Finance, among others, several of which were not in real need of the central bank’s help. This led to questions pertaining to the

moral hazard associated with such interventions.⁹³ The Fed has been reported to directly hold the debts of Microsoft, Visa and Home Depot.⁹⁴

The decoupling of Wall Street, as a representation of the financialized economy, from the real economy is stark. Stocks, including the S&P 500 index, rallied at a time when more than 20 million Americans were cut from payrolls and household names in the retail sector filed for bankruptcy.⁹⁵ Reflecting on these discrepancies, the UN Special Rapporteur on extreme poverty and human rights has said that the US “could use its significant wealth to resolve many of these issues, but a response that favours corporate interests and entrenches inequality will be catastrophic”.⁹⁶

While these interventions give a boost to corporations accessing this support in fending off the crisis, it is not clear what such interventions would mean to the rest of the world. For example, one consideration is whether and how such interventions create an advantage for developed countries’ corporations in surviving the crisis and in repositioning themselves in the period afterwards in comparison with the rest of the corporate sector, including in developing countries. In effect, the corporate bond purchases of the Fed have been described as “engineer[ing] private credit markets or push[ing] up asset prices”, and compared to the role of a “National Investment Authority”.⁹⁷ It has been pointed out as well that through its interventions, the Fed is “effectively subsidiz[ing] highly levered companies, by allowing them ‘to borrow at interest rates that are not reflective of their true risks’”.⁹⁸ This is not consistent with the market orthodoxy preached by developed-country governments and multilateral financial institutions.

7 Recognizing Capital Controls as Central to the South's Crisis Toolbox

IN March 2020, emerging markets and developing countries (EMDCs) experienced the greatest ever outflow of investment capital, amounting to \$100 billion.⁹⁹ By May 2020, outflows instigated by the panic selling of foreign portfolio investors exceeded \$150 billion, weakening developing-country currencies and sharply constricting their domestic macroeconomic policy options.¹⁰⁰ With the exception of China, all emerging market economies ranging from Brazil to India, Mexico, South Africa and Thailand experienced large capital outflows from both equity and bond markets.

Even countries with strong reserve holdings and windfalls from plummeting oil prices saw currency declines against a strengthening US dollar of 5-10%, and some as high as 15-20%.¹⁰¹ Brazil, South Africa, Russia and Mexico all saw their currencies devalue more than 20% against the dollar between March and May 2020. Analysts have highlighted that what is unprecedented in this crisis is the scale and speed of capital outflows. The role of capital account regulations to manage the panic exit of capital in the COVID-19 crisis is thus of paramount importance to national and global macroeconomic and financial stability. Regulations focused on cross-border financial transactions can reduce the chance that a country will experience a massive outflow of short-term financial resources that can trigger a crisis.¹⁰²

The benefits of capital account regulations, or capital controls, include a reduction of macroeconomic volatility and exchange rate volatility, and thus economic insecurity, as well as the imperative to bolster depleted foreign reserves that may be

necessary to meet import payments. Empirical records of countries that have employed capital controls, such as Malaysia in the aftermath of the Asian financial crisis of 1997-98¹⁰³ and Brazil in response to the global financial crisis of 2008, show that taxes on speculative, short-term investment capital reduce both the volume of speculative flows and the volatility of interest rates.

However, a key force that works against the prioritization of capital controls is neoclassical economic theory, and the internalization of its rationale among policymakers in countries across all development levels. Neoclassical rationale suggests that capital account regulations can drive up the cost of capital and curb incoming investments. Neoclassical economists contend that capital controls increase market uncertainty and carry the risk of reducing the availability of external finance, which in turn lowers investment levels.¹⁰⁴

The lack of political will in those developing countries which are able to spend more on health and economic recovery but are not doing so, reveals a pervasive fear of worsening an already disastrous scenario of capital flight. More than a quarter of developing countries' local currency debt is held by foreigners, while capital account liberalization norms have enabled domestic residents to easily shift their investment funds abroad.¹⁰⁵ Meanwhile, sovereign credit ratings of developing countries have been downgraded, despite the fact that COVID-19 is a purely exogenous shock. These vulnerabilities leave many developing countries hesitant to enact even urgently required fiscal policies out of a fear of losing even more investors.

In the economic crisis triggered by COVID-19, emerging markets and developing economies have been hit by simultaneous and interlocking factors: collapse of commodity prices, supply chain disruptions, a decline in trade revenue and a sudden record arrest in investment capital flows. Emerging market countries have over the decades self-insured their economies through accumulating foreign exchange reserves as a buffer in times of financial crisis and capital outflows, as well as building local debt markets to raise capital. However, capital outflows in previous financial crises never exceeded \$25 billion. During the

global financial crisis of 2008, outflows were more ‘manageable,’ albeit still long and painful. The magnitude of current capital outflows is exceptional, generating vulnerabilities that leave developing countries with dangerously narrow policy space. A petition addressed to international financial institutions and the G20 countries has been endorsed by leading economists and advocates from around the world clearly stating that “developing and emerging countries need capital controls to prevent financial catastrophe.”¹⁰⁶

8 Promoting Progressive Taxation to Redistribute Financial Resources

DURING the global financial crisis of 2008, a concerted campaign for a financial transaction tax (FTT) ensued. The argument is that an FTT would curb speculative and excessive financial trading by imposing a low tax on each trade transaction. It would thereby also raise much-needed financial resources for stretched public purses. The income could be used for the emergency health financing needs of developing countries, including supporting essential workers, informal sector workers and the unpaid care economy. Although the FTT has been politically blocked for many years, the exceptional circumstances of COVID-19 could justify it.

A proposal for a Corona Survival Tax (CST) by civil society illustrates how the COVID-19 crisis is an opportunity to reformulate the financial industry through re-regulation towards economic recovery.¹⁰⁷ The CST is proposed as a tax that elevates the average effective tax rate of large investment banks and financial firms to 35% from an average tax rate of between 18-22% in 2019. The actors being spotlighted are the global too-big-to-fail banks such as JPMorgan Chase and UBS, for example, and large asset managers such as Goldman Sachs Group, BlackRock and Pimco. The big financial firms are seen to have facilitated and profited from short-term and speculative investment and financial transactions, while also receiving dividends and benefitting from share buybacks. Hedge funds, private equity funds and high-frequency traders are also important actors, as are the big tech firms, such as Amazon and Zoom, that have disproportionately benefited from the global lockdowns. Such companies should pay a proportionately higher tax rate on the high profits they made.

During an extraordinary crisis, extraordinary measures such as a CST can feasibly direct idle private money to the urgent needs of the COVID-19 health and economic crises, particularly in developing countries. If a global agreement on a CST faces political resistance, a public advocacy campaign should introduce the CST on a bilateral basis.

Progressive income taxation directed at rich individuals and firms has been a historical fiscal tool to redistribute financial resources from the wealthy to the poor. During both World Wars, the US government imposed direct taxation on companies that made high profits by manufacturing for the war. Tax-related measures in the US during World War II included direct caps on prices, special war taxes, high marginal income tax rates on war manufacturers, and congressionally mandated “renegotiation” of corporate profits deemed to be “excessive” by the national War and Navy Departments.¹⁰⁸ The War Revenue Act effectively contained the dilemma of profiteering, while addressing public outrage at perceived illegitimate profit-taking in times of crisis. In the current pandemic, targeted taxes and controls could similarly limit hoarding and profiteering, for example by big tech corporations and financial markets, while generating necessary public financial resources. Progressive tax policies also imply that regressive indirect taxes, such as value-added or general sales taxes, are avoided due to their disproportionate costs to the poor.

The Indian think-tank Madhyam points out five key reasons why progressive “solidarity” and wealth taxes are important in the current moment.¹⁰⁹ First, tax revenues will be stunted over the next two or so years due to a slowdown in economic activity, particularly for countries which rely on commodities, natural resources, trade, tourism or consumption taxes for public revenues. Second, the spike in expenditures needed for healthcare and economic recovery will require a significant scaling up of financial resources. Third, there is a strong correlation between economic recovery and public health and economic spending. Fourth, analysts warn of a rise in protests and civil unrest with the deepening of hunger, poverty and unemployment. And fifth, taxes on wealth, estate and inheritance are the most effective policy tools to reduce economic and social inequalities.

9 Avoiding Unwarranted Trade Liberalization

THE COVID-19 pandemic has caused global trade in goods to further contract. While it was already slowing down before the pandemic, the economic and social disruptions from the pandemic all over the world are bringing about steep declines in global trade, as UNCTAD has pointed out in its Global Trade Update: “The value of international trade in goods has declined by about 5% in Q1 2020 and is expected to decline further by 27% in Q2 2020.”¹¹⁰ These economic and social impacts of the pandemic have exacerbated the economic and social inequalities between developed and developing countries and within developing countries brought about by the current global trading system that is underpinned by a web of multilateral, plurilateral and bilateral trade liberalization agreements.

The World Trade Organization (WTO) was instituted in 1995 in order to establish multilaterally agreed rules and a dispute settlement mechanism for international trade. With the WTO facing an impasse, an increasing number of bilateral and regional trade and investment agreements, generally known as free trade agreements (FTAs) or international investment agreements (IIAs), have proliferated globally. These agreements span issues already covered in the WTO – such as trade in agricultural and industrial goods, trade in services, intellectual property rights (IPRs) and investment – but often in a more expanded version, as well as several newer issues.

The WTO, regional and bilateral agreements, including their investment and IPR provisions, are infringing on member States’ regulatory policy space, constraining governments’ ability to design and implement independent domestic economic and even

social policies for development. For developing countries, this has posed a particular challenge as their regulations are still undeveloped or under-developed. The multilateral trading system had promised to help developing countries bridge the development divide but this has not really materialized.

These agreements generally promote so-called “free trade” and call for the reduction or elimination of import duties and subsidies. At the same time, developed countries have protected their own economies through subsidies and technical product standards (known generally as non-tariff barriers to trade), as well as through control over technology maintained through a system of IPR protection.

Instead of addressing deep-rooted failures in the global trading system that have created stark global inequalities, there seems to be an opportunistic or even a desperate attempt by some developed countries to put forward the signing of still more trade agreements as a panacea for all real-life problems. We see this in the case of some FTAs, but it has been more pronounced in the case of the WTO.

The secretariat and some developed-country members of the WTO have been trying to continue negotiations in several areas, including on fisheries subsidies and agriculture, through emails, virtual meetings and other online technologies. Some plurilateral negotiations, such as those on e-commerce, investment facilitation and domestic regulation in services, are also being strongly pushed forward. The rationale for earnestly continuing these negotiations when all countries are being ravaged by the coronavirus is unclear.

Given the urgent domestic situation in most countries and the digital divide that the poorer countries face, these negotiations run several risks. First, such processes are non-inclusive and opaque, and second, these are biased in favour of those who lead and can participate effectively through virtual means. As a result, the outcomes may be defective and often biased against developing countries and least developed countries (LDCs).¹¹¹

These processes seemed to have slowed down a little between April-May 2020, given the clear reluctance of many developing countries to participate especially in decision-making through

virtual means. But even after lockdown restrictions were lifted in Geneva, where the WTO is headquartered, member States' negotiators from their respective capitals are still finding it difficult to engage proactively given travel bans and domestic crisis management needs. What direction these negotiations will take following the departure of Roberto Azevedo as WTO Director-General and the appointment of Ngozi Okonjo-Iweala of Nigeria in his place also remains to be seen. However, the fisheries subsidies negotiations are being consistently pushed by the negotiating chair and the plurilateral negotiations on e-commerce, investment facilitation and domestic regulation in services still seem to be moving ahead.

A. Developed-country initiatives to use the pandemic as grounds to push further trade liberalization

Already, the policy prescriptions being advanced by the OECD and certain rich countries, as well as the G20, are worrying. Some developing countries also seem to have been brought on board. The WTO has seen a plethora of declarations and statements being circulated, while the OECD, the Ottawa Group and the G20 have come up with their own policy recommendations and statements. This section analyzes some of these positions from a developing-country perspective.¹¹²

i. The OECD

In a policy brief titled "COVID-19 and International Trade: Issues and Actions"¹¹³ released on 10 April 2020, the OECD suggests a higher use of trade facilitation through the WTO's Trade Facilitation Agreement (TFA) and of e-commerce, to resolve the crisis.

However, these are sensitive issues for developing countries and LDCs. For example, higher use of e-commerce should not necessitate higher engagement in e-commerce negotiations that are riddled with many regulatory and financial problems for developing countries.

Two other OECD recommendations have an important bearing for this period in terms of their immediacy. The brief proposes a global agreement on medical and other essential products that includes removal of all tariffs, coupled with either a complete ban on export restrictions or a condition that such measures will be “targeted, proportionate, transparent and temporary”.

ii. The New Zealand-Singapore declaration

The above ideas are reflected in the “Declaration on Trade in Essential Goods for Combating the Covid-19 Pandemic” launched on 15 April 2020 by New Zealand and Singapore. This was circulated to all WTO members on 16 April 2020 as a communiqué¹¹⁴ and as an invitation for others to join. The declaration pins down a commitment to “eliminate all customs duties and all other duties and charges of any kind” and not to “apply export prohibitions or restrictions” on a number of products listed under an Annex I, including so-called essential processed food items and medical products, and an Annex II list of food products for which the participating countries are expected to “endeavour” not to apply export restrictions and to enter into arrangements with one or more of the other participants for tariff removal. The participants will also “intensify consultations with a view to removing non-tariff barriers” and “expedite and facilitate the flow and transit of all products listed in Annex I and Annex II” through the WTO Trade Facilitation Agreement.

However, 92¹¹⁵ of the 126 products listed under Annex I do not come under the World Customs Organization (WCO)–WHO list of COVID-19 medical supplies and priority medicines.¹¹⁶ In addition, developed countries seem to be the top exporters of Annex I products, with New Zealand being a top exporter of several products under Annex II.

Notwithstanding the bias in the product list, the policy recommendations on export restrictions and tariff cuts are discussed below.

iii. Ministerial statement on action plans to facilitate the flow of goods and services as well as the essential movement of people

In a statement circulated at the request of South Korea, dated 12 May 2020, titled “Joint ministerial statement on action plans to facilitate the flow of goods and services as well as the essential movement of people”,¹¹⁷ Australia, Canada, New Zealand, South Korea and Singapore have pledged and urged others to “refrain from the introduction of export prohibitions or restrictions, tariffs and non-tariff barriers on essential goods, including food, pharmaceuticals, and critical medical supplies”. If they do apply these measures, the measures should be “targeted, proportionate, transparent, temporary and consistent with WTO rules”. This is along similar lines as the New Zealand-Singapore declaration and the OECD recommendations on export restrictions.

However, in a bold contrast from most statements and recommendations doing the rounds, this ministerial statement also recommends “facilitating the essential movement of people”. It suggests that signatories, without undermining efforts to control the spread of the virus, “facilitate the resumption of essential cross-border travel, with mutual assurance of health standards”, and “establish guidelines to allow, on an exceptional basis, essential cross-border travel for purposes such as maintaining global supply chains, including essential business travel, in accordance with national laws and regulations...”.

As expected, this statement has not found too many takers. Except for a G20 trade ministers’ statement (see below), most of the other statements put forward have been rather silent on the subject of the movement of people. However, the language in the 12 May 2020 statement does not refer very clearly to Mode 4 under the WTO’s General Agreement on Trade in Services, in terms of movement of professionals, in which developing countries may have an interest and a specific stake. Instead, the recommendations refer to general movement of people related to trade and production requirements.

iv. Statement on agricultural and food products

A joint statement was circulated by Canada entitled “Responding to the Covid-19 pandemic with open and predictable trade in agricultural and food products”, dated 22 April 2020 with revisions on 13 May 2020 and 29 May 2020.¹¹⁸ Twenty-nine signatories, including Canada, the United States, the European Union, the United Kingdom and Australia,¹¹⁹ mainly commit to banning or limiting export restriction measures on agricultural and food products during the pandemic. The language is along G20 lines and promises “to ensure that supply chains remain open and connected...” and “to exercise restraint in establishing domestic food stocks of agricultural products that are traditionally exported...”.

Most importantly, there is a commitment “not to impose agriculture export restrictions and refrain from implementing unjustified trade barriers on agriculture and agri-food products and key agricultural production inputs”.

Moreover, the statement says, “emergency measures related to agriculture and agri-food products designed to tackle Covid-19 must be targeted, proportionate, transparent, and temporary, and not create unnecessary barriers to trade or disruption to global supply chains for agriculture and agri-food products”.

This statement is in contrast to the New Zealand-Singapore declaration, the 12 May 2020 ministerial statement and the OECD recommendation in that it is limited to agricultural and food products and excludes medical products. More importantly, it does not explicitly mention tariff cuts. However, “emergency measures” could, in principle, include a change in tariff policy.

v. The G20 statements

In a statement from the G20 summit on COVID-19 dated 26 March 2020,¹²⁰ the leaders promise to “work to ensure the flow of vital medical supplies, critical agricultural products, and other goods and services across borders, and work to resolve disruptions to the global supply chains”. They promise also to “facilitate international trade and coordinate responses in ways

that avoid unnecessary interference with international traffic and trade”. But the most concrete decision seems to involve export and other restrictions and says, “emergency measures aimed at protecting health will be targeted, proportionate, transparent, and temporary”.

In a further articulation, a list of short-term and long-term collective actions was laid out by G20 trade ministers¹²¹ through a ministerial meeting held on 14 May 2020. It suggests that export restrictions on vital medical supplies and equipment and other essential goods and services, if deemed necessary, should be “targeted, proportionate, transparent, temporary, reflect our interest in protecting the most vulnerable...” (Paragraph 1.1.1).

On agricultural products, it suggests refraining from introducing export restrictions altogether and avoiding stockpiling. However, the statement recognizes domestic needs and adds “without prejudice to domestic food security, consistent with national requirements” (Paragraph 1.1.2).

It goes on to describe how to facilitate trade, increase transparency, support micro, small and medium-sized enterprises (MSMEs) and so on. Among its long-term objectives, Paragraph 2.1.4 ends with a pledge to keep “markets open”. This is a more explicit, even though slightly obscure, recommendation towards possible removal of import tariffs though it is not as clearly articulated as by the OECD, the 12 May 2020 ministerial statement or the New Zealand-Singapore declaration.

Paragraph 1.2.7 (under trade facilitation) says the G20 trade ministers “encourage our Governments to facilitate the resumption of essential cross-border travel, in accordance with national laws and regulations, while safeguarding public health...”. This echoes the language in the 12 May 2020 ministerial statement above on movement of people. As explained earlier, however, this does not exactly refer to the Mode 4 movement of professionals and is not of specific interest to developing countries.

Paragraph 2.1.6 reaffirms the importance of the interface between trade and the digital economy, and notes the ongoing discussions under the Joint Statement Initiative on Electronic Commerce and the moratorium on customs duties on electronic

transmissions, and reaffirms the need to reinvigorate the work programme on e-commerce at the WTO. As mentioned above, this does not recognize the sensitivities of developing countries in the WTO, including even some G20 members. It seems to be advancing the consistent developed-country agenda towards a multilateral – or, in lieu of that, a plurilateral – agreement on e-commerce under the WTO, which has been resisted by many developing countries.

vi. The Ottawa Group proposals

In two proposals submitted to the WTO dated 16 June 2020¹²² and 24 November 2020,¹²³ the members of the Ottawa Group¹²⁴ laid out their recommendations on trade policy during and after COVID-19. The first proposal covers general trade including agricultural, medical and other products, while the second focuses specifically on medical products. The June proposal advocates transparency and removal of trade-restrictive measures including export restrictions; removing or lowering tariffs temporarily; maintaining open and predictable trade in agricultural and agri-food products in particular; further promoting trade facilitation; promoting e-commerce; suggesting initiative in trade in medical supplies by addressing supply barriers and focusing on supply chain issues; and promoting stakeholder engagement.

The November proposal suggests review and prompt elimination of unnecessary existing restrictions on exports, and restraints in imposition of new export restrictions; using “customs, services and technical regulations” under which members are to share best practices on trade facilitation measures as well as standards and technical requirements; temporarily removing or reducing tariffs on medical goods; maintaining transparency and promoting review of trade policy measures taken during the pandemic; and continuing the WTO’s research and monitoring of pandemic-related trade measures in cooperation with other international organizations.

The proposals generally fall in line with many of the other proposals described above, especially in terms of limiting or

removing trade-restrictive measures such as export restrictions. Both proposals also prescribe removing tariffs as an important measure to ensure supply of essential goods but, unlike with other proposals above, this is supposed to be temporary. Both proposals also touch on trade facilitation measures including pushing the Trade Facilitation Agreement of the WTO and promoting digital customs procedures. The June proposal makes an explicit reference to pushing the plurilateral e-commerce initiative at the WTO.

Under the section on medical supplies in the June proposal, the Ottawa Group suggests examining “if current trade rules (including tariff and non-tariff measures, trade facilitation) should be adapted or built upon or if new ones should be developed to guide collaborative policy responses by WTO Members in order to help ensure that the world is better prepared to deal with similar future crises”, and that “the potential scope for new work in all areas of trade policy must be examined and considered”. Interestingly, however, it stops short of advocating for any re-examination of intellectual property rules promulgated by the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Even more interestingly, the November proposal, which focuses exclusively on medical products including medicines, vaccines, ventilators, masks and personal protective equipment, looks mainly at goods trade, trade-restrictive measures such as export restrictions and tariffs, and trade facilitation, but never advocates a review of the role of IPR policies in limiting global supply of essential medical products.

Even after a proposal was tabled at the WTO to waive certain TRIPS Agreement rules in order to deal with COVID-19 (see below), the Ottawa Group has continued to insist that addressing IPR issues is not necessary while pushing its own narrow approach on addressing supply chain issues in ensuring global supply of essential medical products. Needless to say, many of the Group’s recommendations regarding export restrictions, tariff cuts, trade facilitation and e-commerce tread dangerously on the sensitivities of developing countries.

Table 1: Some recommendations of different developed-country-led groups on trade policy during the COVID-19 pandemic

	OECD	New Zealand-Singapore	Ministerial Statement on Flow of Goods and Services and Essential Movement of People	Agricultural and Food Products Statement	G20 (Leaders' Statement and Trade Ministers' Statement)	Ottawa Group Proposals
Date Launched	10 April 2020	15 April 2020	12 May 2020	22 April, revised 13 and 29 May 2020	26 March/ 14 May 2020	16 June and 24 November 2020
Ban Export Restrictions (XR) or Restrict with Conditions	<ul style="list-style-type: none"> • Ban XR on medical products • Preferably ban XR on agricultural and food products 	<ul style="list-style-type: none"> • Ban XR on medical products under Annex I • Ban XR on agricultural and food products under Annex I • If possible, ban or restrict export restrictions on some agricultural and food products under Annex II 	<ul style="list-style-type: none"> • Ban XR on medical products including pharmaceuticals • Ban XR on food products • If XR is implemented, to follow conditions 	<ul style="list-style-type: none"> • XR on only agricultural and food products to be banned or to be limited with conditions 	<ul style="list-style-type: none"> • To limit XR and impose conditions for medical products • Preferably ban on XR on agricultural and food products, but recognizes domestic food security and national requirements 	<ul style="list-style-type: none"> • Ban or limit current and new XR on medical products (both proposals) • Ban or limit XR on agricultural and agri-food products
Import Tariff Reduction/ Elimination	<ul style="list-style-type: none"> • On medical products • Preferably on agricultural and food products 	<ul style="list-style-type: none"> • On medical products under Annex I • On agricultural and food products under Annex I • Preferably on agricultural and food products under Annex II on a bilateral or plurilateral basis 	<ul style="list-style-type: none"> • Ban introduction of tariffs (and non-tariff barriers) on medical products including pharmaceuticals • Same on food products 	<ul style="list-style-type: none"> • No explicit mention (unless under "emergency measures") 	<ul style="list-style-type: none"> • No explicit mention but suggests members should keep markets "open" (Paragraph 2.1.4) 	<ul style="list-style-type: none"> • On medical products • On agricultural and agri-food products
E-commerce	To engage in e-commerce negotiations at the WTO in order to use e-commerce to solve COVID-19 problems	Yes	NA	No	Promote e-commerce plurilateral, e-transmissions, WTO work programme on e-commerce	Yes (June proposal)
Trade Facilitation (including logistics)	To use the WTO's TFA to ease trade	Expedite flow and transit of all products	Yes	No	Yes	Yes (use information technology, logistics)
Global Supply Chains	Yes	No	Ease cross-border travel for global supply chains	No	Yes	Not specifically but members should promote analysis and consideration to ensure that versatile, diversified and resilient supply chains exist
Movement of People	No	No	Yes	No	Yes	No
Intellectual Property Rights (IPRs)	No	No	No	No	No	No

Source: Ranja Sengupta, TWN

B. Export restrictions: What is acceptable and what is not

The attempt to eliminate export restrictions on medical products as well as food products is expected and will be echoed in many trade circles. However, it is clear that many countries will attempt to restrict export of essential products to ensure domestic supply in a crisis, even if it means denying other countries these products. As of 14 May 2020, around 82 measures related to export restrictions on medical and agricultural products¹²⁵ have been imposed in relation to COVID-19.

The WTO rules generally ban export restrictions (though not export taxes). Article XI:1 of the 1994 General Agreement on Tariffs and Trade (GATT) stipulates general elimination of quantitative restrictions on exports, but allows quotas, import or export licences or other measures. Further, Article XI:2(a) states that export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting member are allowed.

The “general exceptions” of Article XX of GATT 1994 also allow export-restricting measures, subject to certain conditions, in order to allow members to pursue certain legitimate policy objectives.¹²⁶

There is no easy solution to this complex dilemma. Countries imposing export restrictions must try to increase production at the earliest possible, so the restrictions can be eased. In the very short run, with widespread, often sudden, lockdowns, this may not always be possible. However, even in a situation of export restrictions, there should at least be continued supply to the poorest countries, which may not have the capacity to produce these essential items.

As seen in the case of India’s hydroxychloroquine export ban, the most powerful countries do not hesitate to flex their muscles to secure access to the restricted products, including through threats of retaliation. (Case-by-case export approval was subsequently allowed once the domestic needs could be met.)

The scramble for N95 masks and vaccines has shown how the highest bidders could corner limited global supplies of crucial

medical products, leaving poorer countries without essential supplies.

In fact, in a statement entitled “Securing LDCs Emergency Access to Essential Medical and Food Products to Combat the Covid-19 Pandemic”¹²⁷ dated 4 May 2020, the LDC Group in the WTO came out with an appeal to non-LDC members. They asked them not to impose export prohibitions or restrictions with respect to certain medical products listed in an Annex I as identified by WHO and WCO and also to basic food products, when such products are requested or purchased by LDCs for their domestic use or are exported for humanitarian purposes (Paragraph 7.a). It is to be noted again that the New Zealand-Singapore proposal does not cover most of these WHO-WCO products that the LDCs want covered.

Secondly, the LDCs asked non-LDC members to be consistent with their WTO obligations under the Trade Facilitation Agreement, to expedite and facilitate the flow and transit and departure of all products listed in the Annex and foodstuffs through their respective seaports and airports to reach LDCs for their domestic use.

In a statement submitted on 25 June 2020,¹²⁸ the African Group raised concerns about specific challenges stemming from the pandemic relevant to them in the areas of: public health including intellectual property rights issues (discussed in Section D below); the rules of the multilateral trading system; agriculture; industrialization; digitalization; trade, debt and finance inter-linkage; and the importance of special and differential treatment (S&DT) for developing countries and LDCs. On public health, the statement asked for facilitation of local manufacturing and distribution of essential medical supplies, devices or technologies, including diagnostics, medicines and vaccines, at reasonable and affordable terms. On agriculture, the statement asked for a reform of the WTO Agreement on Agriculture to provide policy space for countries to support low-income and resource-poor farmers, and to deliver on issues of cotton, special safeguard mechanism, public stockholding and trade-distorting domestic support. The statement also pointed to the need to address the digital divide and pointed out that “global rules without addressing the

developmental aspects on e-commerce will only serve to exacerbate the existing disparities”. On S&DT, the statement said “a clear articulation of special and differential treatment across various WTO agreements has to remain an integral part of all trade agreements and negotiations. Development considerations must underpin WTO Members’ trade and investment responses and recovery plans given the impact of COVID-19 on developing countries and LDCs, notably those in Africa”.

Interestingly, none of the New Zealand-Singapore declaration (which calls for the prohibition of export restrictions), the G20 statement, the 12 May 2020 ministerial statement, the 29 May 2020 statement on food products (all of which advocate conditions on export restrictions if these have to be imposed) nor the Ottawa Group proposals explicitly mention special and differential treatment for developing countries, nor preferential treatment for the poorest countries.

The G20 trade ministers’ statement does mention that any emergency measure including export restrictions must “reflect our interest in protecting the most vulnerable”, but it does not per se recognize the needs of poorer countries. However, the OECD does suggest “addressing the needs of the most vulnerable countries”. Addressing the needs of the poorest and most vulnerable countries should have been an obvious and the topmost agenda for all statements and declarations on export restrictions.

It is also worth noting that many of the signatory countries of the 29 May 2020 statement on agricultural and food products are large agricultural producers and exporters, often with relatively small populations, which may be less likely to face supply shortages and may have less need to apply export restrictions. Further, some are large subsidizers, such as the US, the EU, the UK, Canada and Switzerland (see Box 4), and therefore tend to have over-production of food and agricultural products in relation to domestic demand needs. Again, they are less likely to see a domestic shortage in these supplies. In contrast, more may be at stake for developing countries such as India, Indonesia, the Philippines, Kenya and others, which are large

consumers themselves and have large domestic populations to support. The choices are more difficult for them. As expected, we do not see many such countries signing on to this statement.

C. Tariff removals

A WTO report on “Trade in Medical Goods in the Context of Tackling COVID-19”,¹²⁹ released 3 April 2020, highlights high tariffs related to, for example, soap (average tariffs of 17%, high tariffs at 65%), protective supplies (average tariff at 11.5%, high tariffs at 27%) and masks (high tariff rate at 55%).

The New Zealand-Singapore declaration, the 12 May 2020 ministerial statement as well as the OECD proposal all suggest total tariff removal on medical and, if possible, food products, to help resolve the pandemic crisis. The G20 trade ministers’ statement also hints towards tariff elimination. Interestingly, the 29 May 2020 statement on agricultural and food products does not mention disciplines on tariffs. This is probably aimed at getting on board some of the large countries such as the US, the EU member States and others which impose quite high import tariffs on some specific agricultural products.

According to the free-trade mantra, import duties distort demand, which in turn prevents the most efficient producer from supplying at the lowest price to the consumer. In reality though, while using import duties, countries need to balance two needs: to protect domestic production and livelihoods, and to meet domestic demand.

During the pandemic crisis, there is already excess increased demand for medical products to fight the pandemic, and any country that needs to import these (maybe cheaper) products will likely autonomously remove or reduce duties to encourage imports. A look at the WTO’s list of import measures¹³⁰ as of 14 May 2020 reveals that, out of 77 measures, most are related to a temporary elimination of import duties (along with easing of quotas, licensing and other requirements), while only one is related to raising import duties. Autonomous reduction of tariffs can ensure policy flexibility to increase duties later, if countries so need. So the world is already seeing a reduction, rather than

an increase, in these tariffs on a need basis, at least in the immediate term. Therefore, it is not clear why countries need to be forced to eliminate duties through such commitments as proposed by the above statements.

The purpose seems to be to set a forced commitment to liberalize trade in these products in the longer run, which would undermine the objective of protecting domestic production and supply, as well as livelihoods. Most of these statements appear to be open-ended and do not specify a particular period for which this commitment should be in place. While this may be understandable given the uncertainty over the duration of this pandemic and its after-effects, it implies that countries would liberalize these sectors, including all kinds of agricultural products, for an unknown period of time.

Tariff cuts will generally impact more on developing countries, whose tariff levels on average are much higher than those of developed countries, especially on agricultural products, which are extremely sensitive. Are developing countries thus being asked to now cut this protection for their farmers and producers, and expose them to foreign competition indefinitely?

The demand to cut tariffs on agricultural products is even more surprising given the history of agricultural trade negotiations at the WTO. Even when countries have pledged to eliminate agricultural export subsidies, the trade-distorting impact continues through domestic subsidies. For decades, developed countries such as the US, the EU, Japan, Canada, Switzerland and others have continued to give large domestic subsidies (especially on per-farmer and per-land-use bases) in excess of their *de minimis* limits (see Box 4). A substantial part of such subsidies has also been masked as non-trade-distorting subsidies under the Green Box category. Some of these support programmes have been held to be “export subsidies” by the WTO’s Appellate Body in disputes against the US, the EU and Canada.

In fact, large subsidy differentials exist between developed and most developing countries on total and per-farmer bases. However, there is continuous pressure on developing countries to cut their subsidies and/or allow subsidies only under stringent conditionalities including severe transparency and notification

requirements, such as the requirements under a “Peace Clause” granted at the WTO’s Bali Ministerial Conference of 2013.¹³¹

Box 4: The anomaly of agricultural subsidies

- In 2013, total domestic agricultural subsidies (including subsidies under the Green Box category in the WTO Agreement on Agriculture) of the US stood at \$146.8 billion, and those of the EU at \$130.4 billion approximately.
- Subsidies in the OECD countries increased from \$350 billion to \$400 billion between 1996-2011.
- During 2013-15, the EU gave \$12,384, Japan \$14,136, and the US \$68,910 of domestic subsidies annually per farmer.
- In comparison, China gave \$348, India \$228, Brazil \$468 and Indonesia \$73 annually per farmer over the same period.¹
- Moreover, many developed countries have enjoyed extra AMS (Aggregate Measurement of Support) entitlements above their *de minimis* entitlements (5% of value of production or VOP). For example, the US is entitled to \$19 billion, Japan \$37.5 billion and the EU \$95 billion. This is much higher than the *de minimis* entitlements of developing countries (10% of VOP).

For many developing countries, tariffs have been the only protection against such large subsidy differentials. Cutting tariffs now will give the large subsidizers unimpeded access to developing-country agricultural markets. This has long been the fear among developing countries since even the pre-WTO period, and nothing has changed in that regard to justify tariff cuts in the medium to longer terms.

i. Tariffs and self-reliance after COVID-19

Countries that have domestic production, perhaps infant industries, both in medical products as well as in food, will want to maintain import duties in order to develop these sectors further. In the aftermath of COVID-19, many countries will also urgently need to restart and strengthen domestic production capacities to ensure some extent of self-sufficiency in such essential goods. As is well established by now, such a policy would be unviable for developing countries without applying both subsidies and tariffs.

Many countries around the globe are already thinking in these terms, including the US, which is already a large producer and exporter of both medical products and food. In a statement on 4 June 2020, then-US Trade Representative Robert Lighthizer advocated a post-pandemic industrial policy for the US and specifically mentioned increased tariffs and subsidies as key instruments to restore supply chains so that “all the things that we need” to handle crises were made in the US. “We need a policy – be it subsidies or tariffs or whatever it takes – we have to have an industrial policy so we never find ourselves in this position again where we’re not independent on ... material that’s really, really important to the country,” Lighthizer said.¹³³

Indian Prime Minister Narendra Modi has also underlined a policy of self-reliance (or *atmanirbharta* in Hindi) backed by a mantra of “be vocal about local”.¹³⁴

Many other developed countries, some with well-developed medical industries such as Germany, have hinted as much. When even the US and several other developed countries are talking about tariff increases, it is unfair to expect developing countries to cut their tariffs. With tariff cuts, developing countries and LDCs will be even less able than richer countries to pursue an effective policy of self-reliance and support domestic production.

Many small and medium-sized enterprises, small-scale farmers and workers involved in these enterprises in developing countries and LDCs are already reeling from the impacts of the human, health and economic crisis posed by COVID-19. Any tariff removal commitment would mean their governments cannot protect them from foreign competition, even to maintain domestic supply in such difficult times.

Furthermore, such import competition may lead to a decline in the absolute volume of production in domestic industries in developing countries in the medium or longer term. This can create more global shortages. The already high import dependence of developing countries and high concentration in global markets for medical products may be further compounded. The abovementioned WTO report of 3 April 2020 shows that the global medical goods market is already heavily concentrated. Germany, the US and Switzerland supply 35% of medical

products, while China, Germany and the US export 40% of personal protective products. Singapore, the US, the Netherlands and China export more than half the world's respirators and ventilators.¹³⁵

Finally, it is clear that even in the absence of self-reliance, rich countries will still have the ability (even if it is more difficult or expensive) to buy the needed goods in a crisis, which poorer countries will definitely lack. The recent example of buying up of masks and hydroxychloroquine by the US vindicates this apprehension.

Box 5: Import duties for building a self-reliant economy after COVID-19

- Import duties are needed to rebuild domestic production in critical sectors such as medical products and food.
- Import duties are needed to enable MSMEs and farmers to restore livelihoods after COVID-19.
- Tariff elimination and the resulting import competition can adversely impact domestic production in these sectors, thus reducing rather than increasing global production and, therefore, increasing market concentration.
- In the absence of self-reliance, rich countries still get access to critical products by paying more, while poor countries cannot ensure access.

It is clear that COVID-19 is already ushering in an era of deep changes in economic policies worldwide. Trade policy will need to be reshaped in response to and following, not preceding, the needs of domestic development and macroeconomic policies. In such times, developing countries will need all the tools and policy space at their disposal to effectively implement trade, finance, intellectual property and other policies that best suit their needs.

D. International trade-related intellectual property rights, access to health and the pandemic

The current intellectual property rights framework is actually a non-trade issue that was first introduced in the WTO's TRIPS Agreement. It has then repeatedly been pushed through bilateral and regional trade agreements that include commitments that go beyond those required by the TRIPS Agreement (also known as "TRIPS-plus" commitments), to ensure economic control by corporations through the control of technology. The system asks governments to protect the economic rights of "innovators" through the protection of their intellectual property (IP) monopolies. The evidence that this encourages innovation is still inconclusive. While innovators need to be compensated for their innovation, the prices charged for their IP-protected products have most often been prohibitive and severely limited access to critical products such as seeds, medicines and medical devices for the ordinary citizen, in both the Global North and the South. This has hit developing countries more, as they hold very few of these IPRs (with the increasing exception of China) but bear the increasing costs of the system. The IPR system has also challenged the development of cheaper, generic medicines based in countries such as India, Thailand, Brazil and China.

Countries are allowed to use flexibilities offered under the TRIPS Agreement, such as issuing compulsory licences and allowing imports from generic producers, but always come under pressure not to.

In addition, TRIPS-plus provisions in FTAs such as data exclusivity have led to a large escalation of medicine prices. In the case of Jordan, which signed on to TRIPS-plus provisions in its FTA with the US, a 2007 Oxfam study¹³⁶ found medicine prices were 1.67-8 times those in neighbouring Egypt, which had no such TRIPS-plus provisions in its FTAs. Such provisions also delayed the introduction of generics in 79% of products that were introduced by multinational pharmaceutical corporations.

Other areas of trade policy such as the removal of import duties and subsidies have further undermined access to medicines and healthcare products by compromising the ability of developing countries to produce the products they need. As stated above, there is significant concentration in the medical products market, with only a few countries controlling most of the global exports.

Further, many bilateral and regional FTAs and investment agreements have restricted governments' options to protect public health. The investor-State dispute settlement clause in these agreements allows foreign investors, mainly large multinational companies, to sue governments in secretive international arbitration tribunals over any change in government policy that is deemed to threaten their profits. Evidently, public health measures such as control of medicine prices and regulation of foreign-owned healthcare services can be challenged under the ISDS system, which can lead to a "regulatory chill". Notwithstanding the economic and social damage created by the COVID-19 pandemic, investors are still suing governments through ISDS over government measures to fight the pandemic. Meanwhile private hospitals, many of which are foreign-funded and defy regulations, are charging crippling amounts for COVID-19 testing and treatment across developing countries, forcing poorer people to conceal infections and risk deaths. This has happened in both rich and poor countries, but the impact is worse in poorer countries with less advanced public health systems.¹³⁷

The global IPR rules mandated by the TRIPS Agreement, combined with inequitable trade- and investment-related provisions in the WTO, FTAs and investment treaties, have led to deepening inequalities between developed and developing countries, and within developing-country populations. For example, high prices of HIV/AIDS medicines have often forced women in poorer households in developing countries to give up treatment in favour of their husbands. These inequalities are now crippling treatment options as we face the COVID-19 pandemic.

IPRs are a major issue for COVID-19 medicines and vaccines. The medicine remdesivir, which is patented in 51 low- and middle-income countries with patents pending in three more

countries although it was developed through research partially funded by public money, costs \$2,340-3,120 for a patient in a developed country. Such prices are unaffordable to many in developed let alone developing countries. In any case, notwithstanding some licences to generic companies, most developing countries will not even get the needed supply as IPRs limit production rights to the IP owner. This is also leading to black-market trade. Remdesivir is currently sold at six times its price in the black market in New Delhi, India.

Most of the COVID-19 vaccines being developed are likely to get patented even though most are at least partially funded by public money.¹³⁸ Moderna has already set its vaccine price at a high \$32-37 per dose, while Pfizer has declared a price of \$19.50 per dose. Most of the vaccines require two doses per person. Even with discounts as promised by some of these companies, these prices will still be prohibitive for developing countries which have to vaccinate large populations, while limited supply will pose another problem.

A very good lesson comes from the 25 June 2020 statement by the African Group of countries,¹³⁹ which points out that “global cooperation is ... critical to ensure that [COVID-19] treatment is accessible and affordable to the world as a public good”, and that the TRIPS Agreement remains critical for attaining this objective. The statement also points out the importance of the Access to COVID-19 Tools (ACT) Accelerator and says, “An agreement on how these tools will be allocated equitably across countries through (new) intellectual property flexibilities is key to successfully addressing public health crises – now and in the future.” Paragraph 1.5 says, “We emphasize the importance to take policy and legislative measures to ensure that patents and other intellectual property do not erect barriers to access to medicines, diagnostics, vaccines, and medical supplies and devices.”

i. The developing-country proposal for a TRIPS waiver for COVID-19

Following on the heels of the African Group statement, a specific proposal related to the TRIPS Agreement, entitled “Waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19” (informally referred to as the waiver proposal),¹⁴⁰ was submitted by India and South Africa in the WTO’s TRIPS Council on 2 October 2020. Since then, the number of sponsors of the proposal has increased to include dozens of other countries.

The proposal basically calls for IPRs such as patents, copyrights, industrial designs and trade secrets to be waived when it comes to making COVID-19-related diagnostics, medicines, vaccines, ventilators and other needed products and technologies available more widely and cheaply by removing IPR-related monopolies. If the waiver is approved at the WTO, putting it into effect will still require actions on the part of national governments through triggering of domestic laws and policies.

The waiver proposal has since received strong support from developing and least developed countries as well as from WHO, UNCTAD, several UN human rights Special Rapporteurs, the Joint UN Programme on HIV/AIDS (UNAIDS), Unitaid, academia and the medical community, and very broad-based support from civil society organizations including women’s rights groups, trade unions and health research organizations. However, it has continued to face stiff opposition from many developed countries including the European Union, Switzerland, Norway, Australia, Canada, Japan and the United Kingdom, joined by Brazil. They have argued that IPRs are not the barrier to access to COVID-19-related medicines and technologies but rather are an incentive to develop these products, and that TRIPS Agreement flexibilities are sufficient to deal with any challenges.

It is important to note that though the TRIPS Agreement provides for flexibilities such as issuing of compulsory licences, these are generally slow processes whereas response to COVID-19 requires urgent action. In addition, the stringent provisions of the TRIPS Agreement make it extremely difficult for developing

countries to use the flexibilities and they also face enormous pressure from many developed countries if they try to use the flexibilities, e.g., issue a compulsory licence. Moreover, flexibilities such as compulsory licensing apply only to patents and are ineffectual in offering reprieve from other forms of IP such as copyrights, trade secrets and industrial designs which, in addition to patents, are extremely relevant to COVID-19 medical products and technologies. For instance, access to manufacturing know-how, which is protected through trade secrets, is critical for non-originator production of vaccines and monoclonal antibodies, two important products against COVID-19 infections.

Although there is currently no consensus on the waiver proposal, the Chair of the TRIPS Council has kept the discussion open.¹⁴¹

Unfortunately, as mentioned in previous sections, prescriptions on trade presented in the WTO ask countries to do more of the same, calling for more tariff liberalization and limiting export restrictions while constraining regulation of companies. Except for the 25 June 2020 statement of the African Group, none of the prescriptions, including proposals that specifically addressed the issue of barriers to supply of medical products such as the one by the Ottawa Group, recommended changes to the IPR regime – until the waiver proposal was put forward. And now that the proposal has actually been tabled, it is being rejected by the developed countries.

There is a clear disconnect between what countries need now and what conventional trade policy has been prescribing, as well as a disjoint with human rights and the Sustainable Development Goals. Many developing countries are talking of self-reliance at least in critical sectors such as food and health for economic revitalization, creation of jobs and incomes, and meeting critical needs. To achieve this, they must ask for a total review and restructuring of the global trading system, including the WTO. As part of this overhaul, the TRIPS Agreement, as well as IPR provisions in FTAs, need to be turned upside down so that they foster, rather than block, access to medicines and health products for the world's population, especially the poor, marginalized and vulnerable. This is not to argue against

international trade, which is an important economic tool today, but to ask for a fair, enabling, regulated and equitable trade, IPR and investment system for the South.

10 Revisiting the Global Investment Governance Regime

IN the time of the COVID-19 crisis, States have been reminded of the pressures emanating from the commitments they have signed up to under international investment agreements, including the arbitration-based mechanism of dispute settlement built into most existing investment agreements. As the crisis evolved, it became clearer how international investment rules could potentially be utilized by big corporations and asset holders to challenge measures that States, both developed and developing, have been taking in response to this crisis.¹⁴²

Many governments have found themselves in a condition that obliges them to take unprecedented measures, such as taking over private corporations to manufacture essential health equipment, closing down non-essential services and restricting local or national movement, taking various measures related to transport of essential goods and workers, and taking measures to ease the issuance of compulsory licences and to access patented drugs and medical equipment.¹⁴³ Several of these measures follow on recommendations by the World Health Organization. Yet, investment lawyers and law firms have advised their corporate clients on the use of ISDS to challenge such measures.¹⁴⁴ For example, law firms have reacted to regulatory action taken by States in response to the COVID-19 crisis by releasing reports suggesting that “foreign investors ... may wish to consider their rights and potential remedies under applicable investment treaties” or asserting that “for companies with foreign investments, investment agreements could be a powerful tool to recover or prevent loss resulting from COVID-19 related government actions”.¹⁴⁵

There are already over 1,000 known ISDS cases, according to UNCTAD.¹⁴⁶ Some developing countries have billions outstanding in pending ISDS claims. For example, in 2020 Mexico has 12 pending cases, making up a total of \$5.4 billion in claims, while India has 13 pending cases amounting to \$8 billion in claims.¹⁴⁷ A report by civil society groups¹⁴⁸ points out that by the end of 2018, States worldwide had been ordered or agreed to pay investors in publicly known ISDS cases the amount of \$88 billion. In 2019, an investment tribunal awarded a foreign mining company \$6 billion in compensation against Pakistan, two months after the IMF had agreed a \$6 billion bailout with Pakistan to save its economy from collapse.¹⁴⁹ In effect, every ISDS award paid out by losing States constitutes a cash transfer to private investors from the pool of public resources that ought to be invested in public collective goods. This requires diverting taxpayers' money away from funding for public health, access to food and employment creation, among other public concerns.

Overall, the way international investment rules have been interpreted and applied has provided international investors, which often operate through the legal structure of a multinational corporation, leverage and disproportionate power to influence law and policy, in ways that could undermine the advancement towards sustainable development, democratic governance and the fulfilment of human rights.¹⁵⁰

The COVID-19 crisis hit at a time at which the narrative on the need to reform investment governance regimes in order to align them with sustainable development had proliferated nationally and multilaterally. Yet, there does not seem to be a common direction of travel among the international community when it comes to this reform. Experiences of various countries show divergent approaches.¹⁵¹

Broadly, there are two main trends in approaching the "reform" endeavour. One focuses on reforming with the intention of saving the status quo and re-legitimizing the existing international regime of investment governance. The other entails reviewing the fundamental underpinnings of the system and envisioning new, more balanced approaches to governing international investment. The latter could entail withdrawal from

existing investment agreements, as several developing countries have already done.¹⁵²

Multilateral discussions, such as the ones held at UNCTAD on international investment treaty reform and sustainable development¹⁵³ and those held at the UN Commission on International Trade Law (UNCITRAL) regarding reform of investor-State dispute settlement,¹⁵⁴ also show divergent priorities and approaches among States. More recently, the narrative on investment for development has been used to argue for and justify opening discussions on new multilateral rules on investment facilitation, which are eventually intended as an addition to the WTO body of law.¹⁵⁵ Yet, approaches to different elements in these negotiations, including their scope, do not seem to be geared towards operationalizing the development objective. To the contrary, the policy and regulatory tools that countries need to dynamically link foreign direct investment to developmental goals could potentially be undermined by the proposed disciplines.¹⁵⁶ Thus, it is important to keep in sight the factors that drive the “reform”, including the vision and purpose that underpins it, and the approaches it adopts, including whose voices are heard and whose interests are accounted for in such processes.

A rethinking of the investment governance regime, including balancing and/or reversing investor privileges and reclaiming the State’s policy and regulatory tools, requires a fundamental rethinking of the role and content of IIAs. This entails rethinking both the substantive investment protection standards as well as the dispute settlement mechanisms under these treaties. Indeed, substantive and procedural provisions are intertwined in nature and inextricably linked. Whatever dispute settlement system is adopted, problems cannot be resolved as long as substantive law remains unreformed.

One starting point is the question of whether, and if so when, IIAs are needed in such a governance regime, or whether other legal frameworks, such as national laws, ought to be the core of such a regime. For example, South Africa set in place a Protection of Investment law in 2015 after it terminated its IIAs. This in effect levels the playing field in the treatment of foreign and domestic investors.

Clarifying the scope of investments and investors that benefit from preferences and protections offered under IIAs is crucial in a process of directing State action and legal commitments towards dynamically linking investment with sustainable development objectives. If the latter is the objective, then IIAs ought to be dedicated to facilitating investments by a certain category of investors, not all, particularly those who add value to the sustainable development trajectory while not doing harm. Some countries have commenced experimenting with redesigning the boundaries of the category of investments and investors covered under IIAs, although the sustainable development linkage is not fully explored yet.

Another aspect of this redesign ought to tackle the substantive protection standards that have proven to be problematic under IIAs, including those that are indeterminate and vague, such as “fair and equitable treatment” and protection against “indirect expropriation”. These standards have been interpreted and applied in a manner that intrudes on the State’s policy and regulatory space. As a result, some countries have chosen to drop these standards from their reformed treaties and opt for clearer, more defined language.¹⁵⁷ In any event, IIAs ought to be reviewed with a view towards lifting restrictions, where they exist, on important policy and regulatory tools, such as performance requirements.

While recently reformed IIAs include language pertaining to the “right to regulate”,¹⁵⁸ the efficacy of such language in easing the pressures on policy space resulting from the way broadly worded investment treaty provisions have been interpreted and applied is doubted. This is especially so as the terminology of the “right to regulate” often hides deep differences and disagreements. Indeed, it has been noted that the apparent consensus over the preservation of the right to regulate and the space for legitimate regulation in the public interest masks the potential for substantial disagreement, whereby developed countries are usually concerned with measures aimed at curbing market abuse while developing countries may refer to development policy, including measures to increase local content or support national champions.¹⁵⁹

Furthermore, one of the main shortcomings of including “right to regulate” language is that it does not change the substantive rules of these agreements. It also usually does not add any legal obligations or rights and does not explicitly cover human rights obligations. It eventually serves as an interpretative tool but does not guarantee that the State’s policy space and tools go unchallenged. While IIAs do not directly limit the “right” of States to regulate, which is an essential feature of States’ sovereignty, the way they are interpreted and applied has often limited the policy options and choices available to States in exercising the right to regulate, by excluding certain regulatory measures or putting them under pressure through requiring the State to pay compensation. The “right to regulate” language does not change this.

When it comes to reforming ISDS, the starting point ought to be whether, and in what cases, investors should be allowed to directly challenge the State. For example, should non-discriminatory measures taken by governments to fulfil their obligations under international treaties pertaining to a collective public good, such as addressing the climate crisis, public health objectives, or fulfilling human rights more broadly, be subject to such challenges?¹⁶⁰ Where ISDS is an option, should it be based on international arbitration and what should be the role of alternatives to arbitration, such as domestic courts?¹⁶¹ For example, in the United States-Mexico-Canada Agreement (USMCA, which is the renegotiated North American Free Trade Agreement (NAFTA)), ISDS between the United States and Canada was eliminated, while ISDS between Mexico and the US was limited to cases of direct expropriation and discrimination, with a requirement to exhaust local remedies, except for specified claims.

Given that most IIAs do not require exhaustion of local remedies, nor organize the interaction between international arbitral tribunals and domestic courts where need be, such as when tribunals are dealing with or applying domestic laws, this regime has led to marginalization of the role of domestic courts in international investment governance. Besides excluding national courts from the process of hearing disputes involving

public law and public policy matters, the current regime and the systematic use of ISDS have allowed private investors to challenge the decisions of the highest courts in a sovereign country.¹⁶²

The current lack of a rule on exhaustion of local remedies in relation to investor-State disputes stands out in comparison to the usual practice under international law, where exhaustion of local remedies is of fundamental importance to the law of State international responsibility and the international procedural law of diplomatic protection.¹⁶³ Under these principles of diplomatic protection, a State can bring international proceedings based on the violation of the rights of one of its nationals only once the latter has exhausted any remedies available to it in the local courts of the opposing State.¹⁶⁴ Even in human rights law, the rights holder who has allegedly suffered a violation must first turn to domestic authorities with his or her grievance, thus allowing them to correct any injustice that may have occurred,¹⁶⁵ before proceeding to regional or international mechanisms. For all of these reasons, some countries have been revisiting their approach to the relationship between domestic and international dispute settlement forums.¹⁶⁶

While obligations of investors and investments are a major lack in existing IIAs, UNCTAD points out that a salient feature of new IIAs is balance between investor protections and investor obligations through the investor's duty to comply with host State domestic laws and regulations, abstain from corruption, uphold labour rights, undertake impact assessments and meet corporate social responsibility standards.¹⁶⁷ Remedying flagrant gaps in the traditional content of IIAs requires clarifying investor obligations in the context of their activities as well as providing remedies for third parties that could potentially be impacted by the investors' practices. This includes clarifying the standards of liability that ought to be applied in cases of breach and clarifying that an investor could be sued in their home State courts in case of a breach. Indeed, the role of national laws and institutions, including domestic courts, is crucial when regulating the relations between investors and States and between investors and third parties, including the local communities impacted by investor practices.

The role of home States in regulating their nationals and holding them accountable where they do harm is an important part of building cooperative international governance of investments and investors, founded on mutual assistance between home and host States of investors. This could include clarifying the obligation of home States' courts to recognize foreign direct liability in situations where an investment by a national causes damage and harm in a host State, and to take judicial action against the concerned investor, including through ensuring that its legal system does not bar such actions.¹⁶⁸ This is closely connected with the need to advance the domestic legal framework in home States of investors in order to clarify their obligations when operating domestically as well as extraterritorially.

Such elements will be crucial in tackling a major asymmetry of international law that allows foreign investors special rights under IIAs but no liabilities. This is because they remain beyond the scope of host State courts, particularly where they operate in the host State through a separate domestic enterprise, and are also not subject to the jurisdiction of their home State courts for damage occurring outside its territory.

There are no quick fixes in these processes. Solutions require revision and action at national and international levels. Home and host States of investors ought to develop their national legal frameworks to fulfil their obligations towards regulating their nationals when operating domestically or extraterritorially. Instead of solely focusing policy and legal interventions on providing an enabling environment for investors, it is important to utilize policy and regulatory tools at the disposal of States to direct investment towards sustainable development objectives. For these purposes, it is crucial that home and host States of investors cooperate in reviewing and redesigning IIAs, covering both existing and future agreements, with a view towards reclaiming policy space and balancing the rights and obligations of investors. Withdrawing from treaties that cannot be corrected as such ought to remain an option in the process of re-envisioning and re-directing the objectives driving the investment governance regime.

11 Addressing Corporate Power

THE world's largest corporations increasingly extract profits from the economy and achieve huge financial gains without adding a commensurate level of decent jobs, innovative advancement or societal returns.¹⁶⁹ Furthermore, the concentration in market power driven by corporate giants has resulted in declines in the share of labour in income.¹⁷⁰ This creates a situation in which corporate power shifts the burden of pandemic crisis response to the poor (particularly in developing countries) and fosters inequality in access to vaccines and other pandemic response medical equipment.

A. Global value chains as crisis burden-shifting mechanisms

Global value chains (GVCs), as a dominant form of capitalism today, have been a vehicle for entrenching the concentration of economic resources and power in the hands of multinational corporations.¹⁷¹ In the context of the COVID-19-related economic and health crisis, these chains have been an avenue for exporting part of the economic crisis to developing countries, thus deepening inequalities, whereby impoverished workers are left to lift part of the burden off the shoulders of multinational companies.

Much has been written about the breakdown in global supply chains during the current crisis, and the challenges of managing supply chain risk and disruption, especially emanating from over-dependency on certain markets. However, much less has been said about the strains and burdens exported to the lower end of the value chain, where the most vulnerable entities reside. These are often suppliers in developing countries employing

thousands who, without these jobs, are left on the brink of the poverty line if not below it. These are constituencies who rarely earn enough to accumulate savings, which means that without their jobs, their families' access to food and education would be jeopardized.

It has been reported that suppliers in the garment industry value chains have been facing mounting challenges as a result of unreasonable demands from big clients, mainly corporations in the United States and the United Kingdom. These include cancellations of orders and contracts for goods that are ready or are in the manufacturing phase. They also include requests for discounts on outstanding payments and for goods in transit, and extensions on previously agreed payment terms that could reach up to 120 days.¹⁷² For example, between the time that the coronavirus pandemic took hold and March 2020, "more than half of Bangladesh suppliers have had the bulk of their in-process, or already completed, production cancelled",¹⁷³ despite the contractual obligations underpinning these orders. Many of the corporate clients utilize "*force majeure* clauses" to justify their violations.

In several developing countries, the garment manufacturing industry is a major employer, particularly among women. For example, the sector accounts for more than half of all manufacturing jobs in Bangladesh and 60% in Cambodia. Overall, the International Labour Organization estimates that there are 450 million people working in global supply chains across multiple sectors including the car industry, garment manufacturing, jewelry and food. This is in addition to the untold numbers working in domestic supply chains. The latter are also significantly impacted as a result of decisions taken by multinational corporations, especially those that shape the practices of their subsidiary companies in developing countries.

These pressures on the lower end of the global value chains come from big corporations that are probably accessing support from stimulus packages offered by their governments. Such behaviour from large companies in industrialized economies is tantamount to exporting part of the burden of the economic crisis down the value chain to entities that do not have the access

to liquidity and government subsidies enjoyed in the United States and European countries. In effect, these trends reflect an upholding by big corporations of their commitment to primacy of shareholder value at the expense of workers whose sweat enabled the profits accruing to those on the top of the value chain.

What has been witnessed during the COVID-19 crisis is part of the continuous story of fragilities and vulnerabilities in the lives of those who depend on jobs at the lower end of global value chains. These pressures that multinational companies have been exerting through squeezing down on the lower end of the supply chain have often been reflected in multiple pressures on the economic conditions of developing countries, including through factory closures, unpaid workers and clampdown on government tax revenue, which in turn means less investment in public systems and support to local workers and the local industry.¹⁷⁴ In the current crisis, they will be reflected in a spike in unemployment and consequently poverty across many developing countries. Where jobs are retained and operations are still ongoing, these pressures could mean that manufacturers will not be in a position to provide needed gear to protect the health of their workers or organize the workplace in accordance with needed safety measures.

These situations show that private ordering is not enough to guarantee rights in such a context where power imbalances are entrenched. Indeed, it reveals the hollowness of the “responsible sourcing” narrative and voluntary commitments to human rights due diligence that we often hear of and read about in corporate reports. The imbalances and pressures we witness are enabled by contracts that lack required guarantees, particularly those pertaining to full respect of workers’ rights. Even where companies are abusing the *force majeure* clauses in contracts, their contractual counterparts (i.e., the suppliers in developing countries) will probably not be in a position to pursue legal action in quest of their rights.

These situations are also the result of lack of action by the home States of multinational corporations in regard to clarifying the obligations of their companies when operating abroad

through subsidiaries or through contractual arrangements with suppliers. States do have existing obligations under international human rights law to regulate the conduct of their businesses when operating domestically or abroad.¹⁷⁵ Furthermore, the responsibilities of business in regard to respecting human rights including labour rights and undertaking human rights due diligence throughout their chain of operations have been solidified by the UN Guiding Principles on Business and Human Rights (GPs). These principles have received the consensus of the international community and have come to be described as “a blueprint for the steps all states and business should take to uphold human rights”.¹⁷⁶

The concept of human rights due diligence, as developed under the GPs, covers the “business relationships” of business entities, which are understood to include “relationships with business partners, entities in [their] value chain, and any other non-State or State entity directly linked to [their] business operations, products or services”.¹⁷⁷ This notion therefore extends beyond the corporate legal structure to cover relationships within the GVC. Yet, the main shortcoming of the GPs has been the casting of human rights due diligence as an expectation and not an obligation. In that sense, it does not depart from the mainstream orthodox economic theory that situates the role of the State as a facilitator of business, that sets expectations of business but does not actively engage in regulating business. Such an approach has created confusion and has been identified as potentially problematic in practice. Bonnitcha and McCorquodale have pointed out that this approach creates uncertainty about the extent of businesses’ responsibility to respect human rights and about “how that responsibility relates to businesses’ correlative responsibility to provide a remedy in situations where they have infringed human rights”.¹⁷⁸ Since the GPs were released, there have been a limited number of interventions by States to develop their domestic legal frameworks in a way that reflects this global consensus and clarifies the obligations of companies when conducting business domestically or internationally, including through GVCs.¹⁷⁹

Discussions pertaining to an international legally binding instrument on business and human rights, taking place at an intergovernmental working group established under the auspices of the UN Human Rights Council,¹⁸⁰ could potentially address this shortcoming of the GPs. Such a treaty, if agreed, could potentially clarify States' obligations to enact domestic regulations with extraterritorial reach in order to regulate the conduct of their national businesses when investing and operating abroad. The treaty, as proposed in the second revision of the draft negotiation text,¹⁸¹ would provide that "State Parties shall regulate effectively the activities of all business enterprises domiciled within their territory or jurisdiction, including those of a transnational character. For this purpose States shall take all necessary legal and policy measures to ensure that business enterprises ... within their territory or jurisdiction, or otherwise under their control, respect all internationally recognized human rights and prevent and mitigate human rights abuses throughout their operations".¹⁸² It also would provide that the due diligence obligation should cover any actual or potential human rights abuses that may arise from a business entity's "own business activities, or from their business relationships".¹⁸³

B. Financialized corporate strategies undermine fair and equitable access to COVID-19 vaccines and therapeutics

Public money has been central to the research and development going into the search for COVID-19 vaccines and therapeutics, with the major beneficiaries from these public contributions being the big multinational pharmaceutical corporations.¹⁸⁴ For example, on 16 March 2020, the European Commission approved a financial support package of €80 million to CureVac, a Germany-based biotech company, to develop and produce a vaccine. Another pharmaceutical multinational, Moderna, is getting \$483 million from the US government's Biomedical Advanced Research and Development Authority to develop a vaccine.¹⁸⁵ Similarly, Gilead received about \$70 million from the US National Institutes of Health to run clinical trials on the drug remdesivir as a potential treatment for COVID-

19,¹⁸⁶ and AstraZeneca said it secured \$1 billion in funding from the US health department.¹⁸⁷ Since the beginning of the pandemic, multiple billions of dollars have been advanced and paid through the use of advance purchase agreements entered into by (mostly developed-country) governments with vaccine developers and producers.¹⁸⁸

Corporations benefiting from these public monies are already seeing returns in the form of higher stock value. For example, as a result of the announcement pertaining to the US government's contribution to Moderna, the company's shares blasted off around 13.7%, recording a 52-week high leading it to surge up to 136% during 2020.

Such public contributions that enable and underpin the pharmaceutical industry's innovation and manufacturing are not specific to the COVID-19 crisis period. A 2018 study¹⁸⁹ found that all 210 drugs approved in the US between 2010 and 2016 benefitted from publicly funded research, either directly or indirectly.¹⁹⁰

At the same time, pharmaceutical corporations have been increasingly driven by financialized strategies that care less about innovation and value addition to global public health and instead focus on maximization of shareholder value. These financialized corporations have primarily allocated profits for buybacks of their own corporate stock for the purpose of manipulatively boosting their stock prices and consequently serving their primary purpose of "maximizing shareholder value". For example, between 2006 and 2015, 18 drug companies listed on the S&P 500 index in January 2016, and publicly listed from 2006 through 2015, distributed 99% of their profits to shareholders over the decade, 50% as buybacks and 49% as dividends.¹⁹¹ These include some of the major corporations taking part in the search for COVID-19 vaccines and medications, such as Johnson & Johnson, Gilead and Pfizer.¹⁹²

Furthermore, the interests of senior executives of such financialized pharmaceutical corporations, who make decisions on pricing and licensing policies, are well intertwined with those of shareholders. This is the result of the model of stock-based compensation that rewards these executives for increases in their

companies' stock prices.¹⁹³ The higher the stock prices go, the bigger their compensation packages will be. Executive compensation is not structured to reward the success of the pharmaceutical company in generating new medicines at affordable prices, and thus generating societal added value of a collective nature, but is pegged to private profit.

Representatives of the pharmaceutical industry have already voiced opposition to steps towards lifting the potential barriers emanating from the intellectual property regime established under the TRIPS Agreement and other trade agreements. Thomas Cueni, Director General of the International Federation of Pharmaceutical Manufacturers and Associations, has argued against the utilization of flexibilities built into the TRIPS Agreement and available for countries as part of their rights under this treaty.¹⁹⁴ He proposed a "light touch coordination mechanism", implying that States' legal interventions through the use of TRIPS flexibilities or other ways of taking regulatory steps pertaining to access to COVID-19 medicines and vaccines will be unwelcomed by the pharmaceutical industry.¹⁹⁵

In this context, and without effective governmental intervention, the actual access to COVID-19 vaccines and therapeutics could be potentially undermined by such financialized corporate strategies. In such a scenario, patents will give these corporations control over the pricing, manufacturing and distribution of most of these innovations. Economist Joseph Stiglitz and his co-authors have pointed out that "commercial pharmaceutical companies have for decades been privatizing and locking up the knowledge commons by extending control over life-saving drugs through unwarranted, frivolous, or secondary patents, and by lobbying against the approval and production of generics."¹⁹⁶ It has been repeatedly pointed out that the experience of previous pandemics shows that unless deliberate steps are taken by States, universal access will not be possible¹⁹⁷ and the most vulnerable will be left out. In the absence of effective State intervention, more lives will be lost, particularly in developing countries.

Civil society groups have stressed that equitable access will be compromised without addressing the obstacles faced by

developing and least developed countries,¹⁹⁸ underlining the importance of ensuring that intellectual property rights do not affect or hinder efforts to curb the COVID-19 outbreak. Doctors Without Borders has called for “no patents or profiteering on drugs, tests or vaccines” for COVID-19.¹⁹⁹ Governments have agreed a resolution at the 73rd World Health Assembly, held on 18-19 May 2020, in which they called for equitable access to and fair distribution of all essential health technologies and products to combat the virus.²⁰⁰

Yet, governments have not provided answers regarding the interventions and legal tools they will utilize in order to ensure fair and equitable access to vaccines and medications for treating COVID-19. While the focus is on sharing data and knowledge that would enable rapid research and development of medicines and vaccines, there is no clarity yet on mechanisms for access to the outcomes, and ensuring fair and equitable benefit sharing.²⁰¹ Without effective preemptive interventions by governments to collectively address intellectual property and other potential barriers to access, profit strategies by pharmaceutical companies could yet again prove incompatible with public health and could hijack the quest towards containing the pandemic and related economic crisis. As discussed in Chapter 9, a group of developing-country members of the WTO have requested a waiver from the implementation, application and enforcement of certain provisions of the TRIPS Agreement in relation to prevention, containment or treatment of COVID-19. While this proposal has received widespread support from developing countries, international organizations in the health field, health professionals, academics, civil society organizations and health activists, a few developed countries are blocking the proposal from moving forward.

If serving public health and the broader public good is the collective objective pursued by the international community, then States should secure guarantees from pharmaceutical companies geared towards ensuring availability and affordability of any resulting vaccines and therapeutics to all in need worldwide, including in developing and least developed countries. Corporations receiving public funds ought to be prepared to

guarantee the necessary technology transfer arrangements to manufacturers worldwide in order to rapidly scale up access.

Furthermore, States ought to utilize intergovernmental mechanisms and legal tools available through multilateral platforms such as WHO and the WTO to ensure effective cooperation and lifting of barriers emanating from intellectual property. Otherwise, governments could in effect be funding a corporate model based on profiteering from the crisis. We could potentially face a scenario where saving lives could be undermined by the financialized corporate models and strategies of pharmaceutical corporations.²⁰²

12 Rethinking Ideology to Reorient the Role of the State

ONE of the major lessons from this pandemic is that austerity measures have led to a systematic shrinking of the strength and resilience of public systems, which has in turn led to the lack of State capacity to adequately respond to the pandemic itself. Without capacity and resources, the legitimacy of the State comes into jeopardy.²⁰³ The pandemic invokes the need to rethink the ideology that shapes the role of the State and the social contract between State and citizen.

Governments today find themselves in the driver's seat, steering the entirety of their national economies for the first time in a generation. There is an opportunity now to restructure the balance of power between States and markets in order to salvage the social contract between government and people. A task of this order involves a deeper examination of how the role of the State has been positioned.

Contrary to the widespread perception that the role of the State has been rolled back since the rise of neoliberal economic policies in the 1970s, the State has been effectively deployed to encase and protect the market through the development of institutions and universal rules, policy norms and legal protections. The neoliberal ideology in practice, as opposed to theory or concept, does not necessarily enact the self-regulation of markets as autonomous entities. The core of 20th-century neoliberal ideas involves the establishment of a specific set of conditions for safeguarding the market at the global scale.²⁰⁴

The neoliberal project is focused on developing strong private-sector-supportive and market-oriented institutions, not to liberate markets but rather to strategically support them through a deliberate design of policies, laws and institutions.²⁰⁵

Such meta-economic formations have re-routed the role of the developmental State from guiding economic development, retaining ownership of key sectors, such as industry and banking, and using resources to meet the social and economic needs of its people.²⁰⁶

Where the developmental State plays a strategic role in shaping the output and structure of the economy while balancing growth and social well-being, the neoliberal State is disciplined by international institutions to normalize policy frameworks that allow markets to own key sectors, control resources and shape decision-making. Disciplinary mechanisms include, for example, the risk ratings produced by the three global credit rating agencies (Moody's, Fitch and Standard & Poor's), the assessments provided by the IMF's macroeconomic surveillance reports and the World Bank's Doing Business Indicators. Together, they construct a constellation of ratings, rankings and signals that generate conformity to the particular policy ideas of austerity, deregulation and privatization.

The neoliberal turn promoted by British Prime Minister Thatcher and American President Reagan in the 1980s ushered in an era of structural adjustment programmes. The one-size-fits-all straightjacket of deregulatory supply-side policies, also labelled the Washington Consensus, created a structural legacy of impoverishment and inequality through loan conditions and policy advice to privatize public services and State-owned enterprises, liberalize trade in goods and services, and deregulate capital flows and financial transactions, among other policies.

Structural adjustment underscores "fiscal fundamentalism" over economic and social equality and fulfilment of human rights. This is seen in how governments prioritize reducing their fiscal deficits as a first-order priority, even when history shows that government intervention is indispensable to pull economies out of recession.²⁰⁷ A Keynesian fiscal perspective follows that the State must act as a "counterweight" to regulate the magnitude of economic recessions.²⁰⁸ In the Keynesian analysis, the government implements the social contract that binds individuals and institutions in a pact of accountability, responsibility and mutual trust. During times of economic recession, governments

should increase public spending in order to stimulate the economy with an influx of labour and wage-led economic momentum.

The global pandemic demands that the centrality of public financing, regulation and coordination can no longer be deliberately obscured. The international community can no longer look the other way when the State protects the market at the expense of its people. Left unchecked, the pandemic endangers three decades of progress in reducing poverty and expanding economic sectors and employment across the developing world.

It is now time to revive the leadership role of government in establishing the framework of economic strategy, setting the boundaries for the private sector and defining the nature of collaboration, the direction of compliance and the distribution of resources and benefits.

13 The Way Forward: Global Recovery Calls for a New and Bold Multilateralism

THE COVID-19 pandemic reveals how fractured and precarious the hegemonic economic structures and norms are. Institutional power imbalances and the primacy of the financial economy over the real economy have generated exponential inequalities, economic and social rights violations, an unequal gender division of labour, climate change, migration and refugees, and the transgression of ecological boundaries, among other failings.

The way forward must entail both a resuscitation and a reboot, one rooted in the principles of equality, rights, historical responsibility, feminist and ecologically just values, and international cooperation and solidarity.

There are two broad imperatives to consider:

- First, urgent responses to an economic recession of historic magnitude through a renewed and strengthened multilateralism for health and economic recovery in developing countries. Specific policy actions have been outlined by both UNCTAD and by global civil society and progressive academics and analysts.
- Second, systemic and transformative change to global economic and financial governance and policy paradigms consonant with the reality of climate change. Such systemic reform must tackle unregulated finance and corporate power that pursues profit without accountability for social and environmental harm and abuse.

Ultimately, if broader structural issues are not addressed to remediate the conditions that led to the COVID-19 health pandemic and the social and economic impacts arising from it, any financial response package put together to address the pandemic's impacts will not be sufficient. Responses to the pandemic must go beyond mitigation and containment measures and towards reforming the very structural conditions of the global economy that enable the crisis to take hold and worsen.

The health and economic crisis triggered by COVID-19 is first and foremost defined by its human and social toll. With a projected half-billion people forced into deeper poverty, the origin points of global poverty must be located in the structural inequalities within and between countries. These inequalities are generated by an exploitative global and gendered division of labour and the historically skewed distribution of wealth and resources, where the G7 developed countries possess about 58% of the world's total wealth and 46% of the global GDP.²⁰⁹ Women are being disproportionately affected by the crisis through multiple channels, including the unpaid care economy, employment in the informal sector, export processing zones, domestic work, migrant work and the healthcare sector, and greater reliance on public services and social protection systems.

In light of the deeply sobering forecast for the deepest global recession since World War II, it is morally imperative that the international community shows political will and action through bold multilateral measures and equitable economic and financial governance. To actualize this, the universal participation of member States within the United Nations is essential. It is also critical to ensure that the responses to the crisis of poverty, livelihoods, health and economy are coherent with international human rights law, Agenda 2030 for Sustainable Development, the outcomes of the Financing for Development conferences, the Beijing Declaration and Platform for Action, and the Paris Agreement on climate change.

This is the time for the UN and all global governance institutions, particularly the Bretton Woods Institutions of the IMF and World Bank, to uphold a global transformation in the current unequal structures of finance. Just as it responded to the

signs of the times at its founding moment 75 years ago, the UN should also take leadership today. The counterfactual is an intertwined health pandemic and economic recession that will leave long-lasting scars and pose entrenched global challenges for equality, rights and justice. The time to act is now.

Integrating the call by UNCTAD for a composite \$2.5 trillion package of measures²¹⁰ as well as key elements of civil society recommendations entails, but is not limited to, the following actions at the international level that need to be taken in order to assist developing countries in addressing the economic, social and environmental impacts of the pandemic and other global crises (such as climate change and biodiversity loss):

1. **A \$1 trillion liquidity injection** through reallocating existing SDRs at the IMF and issuing a new allocation that will need to go considerably beyond the 2009 allocation made in response to the global financial crisis. Scaling up grants and other highly concessional financing is also necessary.

2. **A debt jubilee for distressed economies.** An immediate debt standstill on sovereign debt payments should be followed by significant debt relief. A benchmark could be the German debt relief administered after World War II, which cancelled half of its outstanding debt. On that measure, around \$1 trillion should be cancelled in 2020 overseen by an independently created body.

- 2.a. The Civil Society 20 group proposes that all principal, interest and charges on sovereign external debt due in 2020 and 2021 should be **cancelled immediately and permanently**, and should therefore not accrue into the future. The proposed debt relief should involve official bilateral and multilateral banks (both global and regional ones) and private creditors. All debt relief should be designed without economic reform conditionalities attached, while ensuring funds and public expenditure are targeted at protecting the rights and needs of populations, especially to maintain and increase social protection and health spending for those most in need in response to the crisis. The provision of emergency additional finance should not create additional debt.

2.b. **Private creditors** should also participate in the cancellation of debt servicing by developing countries due in 2020 and 2021 to allow for health and economic recovery. The coordination of private lenders and investors should be facilitated by the donor countries.

2.c. There is a need for a **debt restructuring framework**, as reflected in the renewal of discussions in the UN system to design a global solution for the fair, effective and efficient restructuring of sovereign and private debt. A formal sovereign debt workout mechanism grounded in an international legal framework has been considered a serious deficit or missing link in the international financial architecture. Systematic support for States to cancel or restructure their debts to prioritize investments in quality public services is needed. Debt restructuring should be based on debt sustainability assessments that consider fulfilment of human rights obligations, SDGs and climate financing.

3. A **health recovery** for developing countries funded from some of the missing official development assistance (ODA) long promised but not delivered by development partners. UNCTAD estimates that an additional \$500 billion – a quarter of the last decade’s missing ODA – largely in the form of grants should be earmarked for emergency health services and related social relief programmes.

4. **Capital controls** should be given their legitimate place in any policy regime to curtail the surge in capital outflows, to reduce illiquidity driven by sell-offs in developing-country markets and to arrest declines in currency and asset prices.

5. Official recognition and use of **countercyclical fiscal stimulus policies** as the most effective and equitable means to stimulate economic recovery, job creation and equity-enhancing redistribution through public transfers is needed. An expansionary fiscal policy toolkit includes, for example, establishing universal social protection floors, extending coverage of social security, including for informal sector workers, progressive taxation, tapping into foreign exchange reserves for some middle-income developing countries and so on. Countries that use fiscal policy tools for economic recovery should not experience adverse

impacts in access to capital markets, terms of borrowing, debt sustainability or credit ratings.

6. Fiscal deficits generated by public spending necessary for health and economic recovery **should not result in a new round of austerity measures** in the name of fiscal credibility to restore investor confidence and attract new capital investments. The fiscal policy response to the pandemic must recognize that austerity measures have in large part resulted in underfunded, under-capacity public healthcare systems and social safety nets. A rethink is required on fiscal discipline norms and rules to increase and maintain public spending for universal health systems, social protection and decent work.

7. **Progressive tax measures** can raise additional financial resources to address the economic fallout of the pandemic and are effective channels for human-rights-based revenue mobilization strategies. These measures include increasing the effective tax rate of systemically important global banks and large investment and financial firms and progressive income taxation on the wealthy in society. Progressive taxation also includes targeting the private sector actors that have disproportionately benefited from the global lockdowns, such as the big tech sector and delivery and distribution services. Essentially, taxing the banking and investment sector, big corporations, and individuals with high incomes, wealth, inheritance, real estate and financial assets has the potential to feasibly generate financial resources in the near term. A UN Tax Convention can address tax havens, tax abuse by multinational corporations and other illicit financial flows through a universal and intergovernmental process.

8. A **Global Fund for Universal Social Protection** to support the most vulnerable countries in responding to the pandemic should be established.

9. A global ban on short selling among all financial markets and significantly increased **financial regulation** of high-frequency trading with the objective of limiting speculation and arresting declines in currency and asset prices.

10. **Halt further multilateral, plurilateral and bilateral trade liberalization negotiations.** Global trade has contributed much

to the spread of COVID-19 due to the movement of goods and people across national borders, especially dictated by the current global trade framework. But trade also matters for the policy choices to deal with the crisis. To attempt to liberalize key sectors in the name of combating the pandemic by espousing the “free market” as the ultimate solution, is to repeat the mistakes of the past. History, and recent history even more so, has clearly shown there is no “free market” nor “free trade”. Those with economic power will dictate, and developing countries and LDCs need to develop at least partial self-reliance in key products. They need to retain and not give away their policy flexibility in order to survive; abstaining from making further commitments in trade deals may be the best option until the world arrives at its new normal.

11. The potential for a course correction on the economic, social and ecological fronts depends in big part on whether States are ready to utilize the policy, institutional and legal tools available to them in order for **States to curb corporate power and profiteering and align private profit making with the broader public good**. For these purposes, the State’s role cannot be merely as a rescuer and facilitator of corporate activities whatever these activities are and whatever impact they have on society. If so, States would be enabling a corporate culture focused on shareholder profit, including profiteering from a public crisis, at the expense of individual and collective rights.

12. Undertake a **systematic evaluation of the mechanisms used to mobilize and disburse the financial relief and support packages for pandemic response**. While it is important to advocate for immediate relief and support, it is just as important to shine a spotlight on the framework of public finance and international development cooperation that will mobilize pandemic-related funds. Given that there is no opportunity for substantive reform of the system during the crisis, it is imperative that existing mechanisms are used to monitor, track and account for the financial packages while at the same time taking the first steps towards a radical revision of the rules and premise of international public finance. Moving forward, any disbursement of financial resources should take into account the resources that have already

been extracted from the Global South to the Global North, including financial resources (e.g., capital remittances), natural resources (e.g., commodities) and labour resources (e.g., migrant medical personnel and care workers).

13. A renewed commitment to bold multilateralism in the United Nations. No country alone can or should finance a global plan. It needs to be built as part of a progressive multilateralism and global solidarity that centres the values of equity, rights and justice. The nature of the coronavirus clearly implies that no country can heal and recover alone, as the virus would surely find its way across borders. A failure to address the health and economic needs of the most vulnerable communities in the developing world would cost both lives and damage to the world economy.²¹¹ Renewed commitment to multilateralism and global solidarity is the safest path forward. In particular, the 2009 UN Conference on the World Financial and Economic Crisis and Its Impact on Development sought to establish the UN itself as a forum to address long-term systemic issues of economic governance. The discussions of the conference highlighted that if a small number of countries grouped in the G8 or G20 can agree on actions regarding the IMF and World Bank or on systemic issues of financial regulation and flows, it is then unacceptable for leading members of these groups to prevent the UN, as a universal and legitimate body, from similarly proposing actions concerning global economic governance.²¹² To respond to the economic fallout of COVID-19, international civil society has called for an International Economic Reconstruction and Systemic Reform Summit under the aegis of the UN, to take place either in late 2020 or in early 2021.²¹³ The summit should be an ambitious UN and Financing for Development-centred process to assess the current economic crisis and agree on responses. The aim is to advance short- and medium-term solutions to strengthen multilateral cooperation and ensure adequate fiscal and policy space for all countries, with attention to developing economies, to tackle the health, food, social, economic and financial dimensions of the crisis.

14. Enhance South-South solidarity and cooperation. Developing countries can coalesce in like-minded coalitions,

equipped with a vision and will to catalyze new consensus for a way forward. Such consensus can pave the path to systemic reform and a rethinking of the ideological bias and assumptions in global economic governance. In the 1970s, developing countries came together in what economist Mahbub ul Haq called a “trade union of the poor nations.”²¹⁴ They employed the forum of the UN General Assembly to pass resolutions on a New International Economic Order (NIEO) and a Charter of the Economic Rights and Duties of States in 1974, calling for redistributive justice, colonial reparations, permanent sovereignty over natural resources, stabilization of commodity prices, increased aid, and greater regulation of transnational corporations. In the aftermath of the 2008 global financial crisis, the G77 and China group of developing countries in the UN General Assembly initiated the abovementioned UN Conference on the World Financial and Economic Crisis and its Impact on Development in June 2009.²¹⁵ The outcome document of the conference included a comprehensive range of action items: avoiding a new debt crisis, initiating the establishment of a sovereign debt restructuring mechanism, ensuring policy space, mobilizing additional financial resources for development purposes (such as SDRs), reform for a more efficient global reserve system, financial regulation with respect to all major financial centres, instruments and actors, international cooperation in tax matters, IMF and World Bank governance reform, a more even-handed and effective IMF role in surveillance and avoidance of procyclical conditionalities in IMF lending facilities, and strengthening the role of the UN and its member States in economic and financial affairs. These action items are still relevant today and can and should be employed in the policy actions and institutional reforms to address the COVID-19 crisis.

15. The use of **ex-ante and ex-post participatory human rights impact assessments**, with data disaggregated by gender and social groups, is essential to ensuring economic equity relevant to local contexts, as are transparent, participatory and gender-responsive budgeting processes.

14 Conclusion: Global Interdependence and Historical Responsibility

THE neoliberal variant of capitalism, to which the prevailing global economic system and the system of international public financing are linked, is well known for being founded from an individualistic premise. Distributive justice, equity among nations and human rights, however, require a collective premise, where solidarity is not construed merely as altruism but rather as moral responsibility and awareness of global interdependencies.

The pandemic is highlighting the urgent need to rethink the rationales and the institutional and regulatory model of international public finance and the global economic system within which it operates. The current model of financing for collective public good, including fighting pandemics and intervening in financial crises, relies on discretionary aid contributions by developed countries and private donors rather than on collective and mandatory pooling of funds. This model is not sustainable, accountable or redistributive. It continues instead to reproduce already existing global inequalities.

Solidarity, meanwhile, has been increasingly replaced by philanthropy which is sustained by unequal economic relations. Current global economic structures continue to enable the industrialized States to extract resources and accumulate profits from developing countries. International public finance has been routinely used to mitigate the social and economic externalities of this highly unequal relationship, including financial crises, ecological disasters and health epidemics, but has not been utilized to properly redistribute global wealth. The responses to the pandemic illustrate this very well.

Today, it is incumbent that the principles of historical responsibility and interdependency of recovery guide the actors of economic power to support the health and economic recovery of the most vulnerable regions of the Global South. Ultimately, pandemic response measures (as well as response measures to climate change and other global crises) should also be located within an overall process of rethinking and reforming the international legal and regulatory architecture that governs the global economy. As advocated by activists, community organizations and South-focused scholars, there is a critical need to centre health, social protection, human life and the environment above profit and power.

The counterfactual is a lost development decade or more for the vast majority of the human race living in the Global South, and the disappearance of any hope of human societies being able to effectively and equitably adapt and respond to the adverse effects of climate change, biodiversity loss and other global crises.

Endnotes

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RETHINKING GLOBAL ECONOMIC POLICY

Proposals on Resilience, Rights and Equity for the Global South

The COVID-19 crisis has thrown into stark relief the inequities and iniquities of an international economic order that consigns the Global South to the development margins while augmenting the power of rich countries and firms. Redressing this demands a bold multilateralism to support public health and economic recovery in developing countries and, beyond this, an overhaul of the unjust structures underpinning the global economy. This report surveys a myriad of areas – from trade, debt and public finance to investment and intellectual property rights – where fundamental reform and rethink of international policy regimes is urgently required for the developing world to emerge stronger and more resilient from the present turmoil.

TWN

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