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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **The interplay between the economic policies and safeguards of international financial institutions and good governance at the local level**

### **Report of the Independent Expert on the promotion of a democratic and equitable international order\***

#### *Summary*

The Independent Expert on the promotion of a democratic and equitable international order devotes his third thematic report to the Human Rights Council to the interplay between the economic policies and safeguards of international financial institutions and good governance at the local level.

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\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



## I. Introduction

1. The present report of the Independent Expert on the promotion of a democratic and equitable international order, Livingstone Sewanyana, is submitted to the Human Rights Council in accordance with Council resolutions 18/6 and 42/8. It is the third report of the current mandate holder since his appointment by the Council at its thirty-seventh session, in 2018.

2. In paragraph 17 of its resolution 42/8, the Human Rights Council invited the Independent Expert to examine the impact of financial and economic policies pursued by international financial institutions on a democratic and equitable international order. He has decided to devote his present report to the interplay between the economic policies and safeguards of international financial institutions<sup>1</sup> and good governance at the local level.

3. The Independent Expert believes that among the key tenets of a democratic and equitable international order is the principle of good governance. In fact, several components of what constitutes good governance, which will be elaborated upon in the present report, may be found in the successive Council and General Assembly resolutions pertaining to the promotion of a democratic and equitable international order. For instance, the Council and the General Assembly have referred to the aspirations of all peoples for an international order based on the principles enshrined in the Charter of the United Nations, including promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self-determination of peoples, peace, democracy, justice, equality, the rule of law, pluralism, development, better standards of living and solidarity.<sup>2</sup> Furthermore, the Council and the General Assembly have recognized that democracy, respect for all human rights, including the right to development, transparent and accountable governance and administration in all sectors of society, and effective participation by civil society are an essential part of the necessary foundations for the realization of social and people-centred sustainable development.<sup>3</sup>

4. The international financial institutions referred to in this report are the World Bank, the International Monetary Fund (IMF), the African Development Bank (AfDB), the Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), the European Investment Bank and the Inter-American Development Bank (IDB). These institutions provide loans, credits and grants to developing countries, policy advice, technical assistance, and global public goods. They aim, inter alia, at reducing global poverty and achieving sustainable economic, social and institutional development, and most of them have committed to supporting the 2030 Agenda for Sustainable Development. Through their activities, international financial institutions can have a direct influence on how national authorities deliver on good governance and therefore abide by their obligation to respect the human rights of their population. All the institutions studied in this report have adopted safeguards relevant to good governance in their activities, and the Independent Expert does not question their commitment to this principle. He intends to look at the various provisions, policies and practices of international financial institutions and propose ways towards improvement whenever deemed pertinent.

5. For the purposes of this report, and owing to the word limit, the Independent Expert has decided to focus on the following key issues, which relate to some of the thematic priorities laid down in his vision-casting report (A/HRC/39/47): stakeholder engagement and issues of public participation, transparency and reprisals; State responsiveness to the needs of the population and retrogressive measures; and the fight against corruption. The issue of accountability is addressed throughout the report. The Independent Expert wishes to focus mainly on State responsibility in upholding good governance and human rights: that is, through loans by international financial institutions to, and other interventions aimed at, the public sector. While this report was being prepared, the coronavirus disease

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<sup>1</sup> For the purposes of the present report, the expression “international financial institutions” covers multilateral development banks and development finance institutions.

<sup>2</sup> For example, Council resolution 42/8, tenth preambular paragraph.

<sup>3</sup> For example, Council resolution 42/8, sixteenth preambular paragraph.

(COVID-19) pandemic struck throughout the world, taking a heavy toll on the world's population, including the most vulnerable people. It is therefore impossible to ignore this dire context in the present report.

6. In preparing the report, in addition to extensive research and desk review, the Independent Expert held several teleconferences with various stakeholders in lieu of the in-person consultations that he had planned to hold in two regions and that had to be cancelled owing to the COVID-19 pandemic. He also used material and notes that he had gathered during his visit to Geneva, Paris and Washington, D.C., in May 2019, which were relevant to the topic of the report. He is grateful to everyone who took the time to engage with him and contributed to the report in spite of these challenging circumstances.

7. The report is not intended to be an exhaustive study of the present topic, but rather an overview of some of the main issues at stake, which could pave the way for further reflection. The Independent Expert hopes that his report will provide useful observations and recommendations to all stakeholders involved in upholding, contributing to or monitoring good governance and human rights at the local level, with a view to achieving a democratic and equitable international order.

## II. Activities

8. In September and October 2019, on the margins of the forty-second session of the Human Rights Council and the seventy-fourth session of the General Assembly, the Independent Expert held a series of bilateral meetings with representatives of Member States and civil society in Geneva and New York. In addition, he had exchanges with representatives of the Right to Development Section and the Human Rights, Economic and Social Issues Section at the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva, and with the Special Adviser to the Secretary-General's Envoy on Youth in New York.

9. During the reporting period, half of which was marked by travel restrictions due to the COVID-19 pandemic, the Independent Expert took part in a number of events, including:

(a) The 2019 Asia Pacific Forum on Women, Law and Development's regional consultation on "Shaping a peoples' trade agenda", held in Kuala Lumpur (26 to 28 August 2019);

(b) The Human Rights Defenders Forum, on the theme "Building solidarity toward equality for all", organized by the Carter Center, held in Atlanta, United States of America (12 to 15 October 2019);

(c) An international conference on the theme "Social media: challenges and ways to promote freedoms and protect activists" organized by the National Human Rights Committee of Qatar in cooperation with OHCHR, the European Parliament, the Global Alliance of National Human Rights Institutions and the International Federation of Journalists, held in Doha (16 and 17 February 2020);

(d) A workshop on the theme "Representation and elections in Africa" organized by Aarhus University and held in Aarhus, Denmark (28 to 29 February 2020).

10. The Independent Expert is once again pleased with the increased interest in his mandate expressed by his various interlocutors, and the inspiring discussions held around the thematic priorities that he intends to pursue during the remaining part of his tenure.

11. The expert issued six communications and 19 press releases jointly with fellow special procedure mandate holders. Several of these press releases related to human rights challenges arising from the COVID-19 pandemic.

### III. Good governance, human rights and sustainable development

12. As pointed out by OHCHR, there is no comprehensive definition of “good governance”, as it encompasses a multitude of notions that vary depending on the field of study and context, such as respect for human rights, the rule of law, effective participation, political pluralism, transparent and accountable processes and institutions, an efficient and effective public sector, political empowerment, equity and sustainability. However, a significant degree of consensus exists that good governance is related to political and institutional processes and outcomes that are deemed necessary to achieve the goals of development. Critically, the true test of good governance is the degree to which it delivers on the promise of human rights: civil, cultural, economic, political and social rights.<sup>4</sup>

13. The 2030 Agenda similarly recognized good governance as a cornerstone of the construction of peaceful, just and inclusive societies with a view to achieving sustainable development.<sup>5</sup> Sustainable Development Goal 16 epitomizes the very idea of good governance, and more largely encompasses the human rights dimension of the 2030 Agenda, by stressing the importance of, *inter alia*, promoting the rule of law, reducing corruption, developing effective, accountable and transparent institutions, ensuring responsive, inclusive, participatory and representative decision-making, and ensuring public access to information and protecting fundamental freedoms (targets 16.1–16.10).

14. The Human Rights Council, in its successive resolutions on the role of good governance in the promotion and protection of human rights, has delineated the scope of what good governance is and clearly articulated the interconnection of good governance, human rights and sustainable development. In its latest resolution on the matter, the Council recognized that transparent, responsible, accountable, open and participatory government, responsive to the needs and aspirations of the people, was the foundation on which good governance rested, and that such a foundation was one of the indispensable conditions for the full realization of human rights, including the right to development.<sup>6</sup> Fundamentally, it further recognized the importance of a conducive environment, at both the national and international levels, for the full enjoyment of human rights and fundamental freedoms and of the mutually reinforcing relationship between good governance and human rights.<sup>7</sup>

15. The Independent Expert followed with great interest the Council’s intersessional seminar, organized by OHCHR and held on 14 June 2019, on the role of good governance in the promotion and protection of human rights and best practices in the implementation of the Sustainable Development Goals, including Goal 16 in this regard. This seminar was an occasion for experts and other participants to underline that good governance, human rights and achievement of the Goals were indeed interrelated and mutually reinforcing, and that good governance and Goal 16 were the cornerstones of the 2030 Agenda (A/HRC/43/34, paras. 43–44).

16. The concept of good governance is firmly grounded in international human rights law as it requires the realization of several human rights principles and standards, including the right to participate in public affairs, the right to access to information, the rights to freedom of opinion and expression, peaceful assembly, and association, and the right to a remedy. Importantly, it is also linked to the obligations of States to respect and ensure the rights recognized in the International Covenant on Civil and Political Rights, and to take steps with a view to achieving progressively the full realization of the rights recognized in the International Covenant on Economic, Social and Cultural Rights by all appropriate means.

17. As observed by the Committee on Economic, Social and Cultural Rights, citing a decision of the International Court of Justice, international financial institutions are “bound

<sup>4</sup> OHCHR, “Good governance and human rights”. Available at [www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx](http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx).

<sup>5</sup> General Assembly resolution 70/1, para. 35.

<sup>6</sup> Council resolution 37/6, ninth preambular paragraph.

<sup>7</sup> *Ibid.*, eighth preambular paragraph.

by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties". As a result, they are obligated to uphold human rights, as listed in particular in the Universal Declaration of Human Rights, that are part of customary international law or of the general principles of law (E/C.12/2016/1, para. 7). In addition, the Committee has stressed that the respective Articles of Agreement establishing IMF and the International Bank for Reconstruction and Development, which are specialized agencies of the United Nations, cannot be interpreted as not requiring these organizations to include human rights considerations in their decision-making (ibid., para. 8).

18. Over the years, international financial institutions have elaborated and updated environmental and social safeguard frameworks to manage the related impacts and risks associated with investment lending. These safeguards cover a number of issues, including environmental and social assessment, labour conditions, land acquisition, indigenous peoples, public participation and access to information. In order to implement their safeguards, international financial institutions have devised due diligence processes to assess environmental and social risks, as well as impacts associated with the project context, the project itself and the client.

19. In 2018, the World Bank launched its environmental and social framework, which includes its 10 environmental and social standards. Also in 2018, the European Investment Bank updated its environmental and social standards. In 2019, EBRD adopted its new environmental and social policy. At the time of drafting the present report, IDB was in the process of reviewing its safeguard policies,<sup>8</sup> and the European Investment Bank was to start the review of its environmental and social statement and standards.

20. The importance that international financial institutions attach to human rights in their respective safeguard frameworks varies. For instance, the European Investment Bank recognizes its own responsibility to apply human rights in its own due diligence, while the World Bank and AfDB refer to support for human rights in aspirational rather than operational terms and recognize the responsibility of clients to comply with human rights. The International Finance Corporation, the private sector arm of the World Bank, considers respect for human rights as solely the responsibility of its clients.<sup>9</sup> The Independent Expert believes that human rights compliance should be key in the architecture of international financial institutions' safeguard systems.

## **IV. The interplay between the economic policies and safeguards of international financial institutions and good governance at the local level**

### **A. Stakeholder engagement**

#### **1. Public participation**

21. Often large in scale, development activities funded by international financial institutions can threaten in a deep and irreversible manner the livelihood of communities, including indigenous peoples. It is therefore crucial that communities be involved in the design, implementation and evaluation of plans and programmes for development that may have a direct effect on them. In the case of a development project that will affect land owned, occupied or used by indigenous peoples, their free, prior and informed consent should be sought. It is worth noting that meaningful and early involvement is a key element in a strategy to prevent tensions between different actors and violence against

<sup>8</sup> OHCHR, "Benchmarking study of development finance institutions' safeguards and due diligence frameworks against the UN Guiding Principles on Business and Human Rights", draft study report, 20 September 2019, p. 1.

<sup>9</sup> Ibid., p. 9.

environmental human rights defenders, through recognition of their legitimate role in decision-making (A/71/281, para. 66).

22. The Independent Expert notes that all international financial institutions have adopted environmental and social safeguards that address stakeholder engagement, and that some institutions, such as the World Bank, the European Investment Bank and EBRD, have adopted specific standards on the subject, requiring borrowers to engage in an open and transparent manner with stakeholders affected by the project.<sup>10</sup> These are important standards, whose aim must always be the meaningful participation of stakeholders. To this end, the Independent Expert refers to the emerging good practices among development finance institutions regarding requirements on participation, as identified by OHCHR, with a view to these institutions strengthening their existing safeguard provisions and practices. These requirements include the following: a participation plan, supported by resources, that establishes a systematic approach to stakeholder engagement across the project life cycle, starting at the earliest possible stage; an overarching objective of obtaining broad community support for all projects; mapping of the different types of stakeholders to identify the people who have human rights entitlements related to a project; representativeness and equitable participation, and accessibility and the inclusion of disadvantaged groups and others who may be discriminated against, ensuring that women's perspectives are obtained and taken into account; and targeted capacity-building and/or other assistance to empower the individuals and communities affected.<sup>11</sup> The Independent Expert also refers to the guidelines and recommendations on the practical implementation of the right to development, developed by the Special Rapporteur on the right to development, which stress the importance of meaningful participation in setting development priorities and enjoying development benefits, including where development banks are concerned (A/HRC/42/38, paras. 50–51).

23. However, despite these overall sound safeguards, stakeholder engagement at the project level reportedly remains a regular problem in many countries, which is of serious concern to the Independent Expert. These experiences have been documented in many reports by civil society<sup>12</sup> and by independent accountability mechanisms in charge of receiving grievances from stakeholders about projects funded by international financial institutions. It is reported that 57 per cent of complaints received by such mechanisms up to 2015 dealt with infrastructure projects, and one of the most commonly raised concerns was about inadequate consultation and disclosure.<sup>13</sup> Importantly, the requirements of international financial institutions for consultations fail to address the inherent power imbalances that exist between the borrower and the communities affected by the project. This is all the more problematic as the responsibility to carry out consultations lies with the borrower, including the public sector.<sup>14</sup>

24. Another hurdle to the effective public participation of communities is the extensive use by international financial institutions of financial intermediaries, such as equity funds and commercial banks. Civil society actors have complained to the Independent Expert that they have little to no information on the identity of the financial beneficiaries (whether company or project), and public participation is therefore impossible. While the international financial institutions require their financial intermediaries to abide by their

<sup>10</sup> See [www.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/environmental-and-social-standards](http://www.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/environmental-and-social-standards), [www.eib.org/en/publications/environmental-and-social-standards-overview.htm](http://www.eib.org/en/publications/environmental-and-social-standards-overview.htm) and [www.ebrd.com/who-we-are/our-values/environmental-and-social-policy/performance-requirements.html](http://www.ebrd.com/who-we-are/our-values/environmental-and-social-policy/performance-requirements.html).

<sup>11</sup> OHCHR, "Benchmarking study", draft study report, p. 41.

<sup>12</sup> See, for instance, International Accountability Project, *Back to Development: A Call for What Development Could Be* (2015). Available at <https://accountabilityproject.org/wp-content/uploads/2017/09/IAP-Back-to-Development-Report.pdf>.

<sup>13</sup> Caitlin Daniel and others, eds., *Glass Half Full? The State of Accountability in Development Finance* (Centre for Research on Multinational Corporations, Amsterdam, 2016), p. 17.

<sup>14</sup> Submission received from the Coalition for Human Rights in Development.

own standards when investing, there is reportedly no information pertaining to compliance with such standards.<sup>15</sup>

25. More generally, an enabling environment at the local level where international financial institutions decide to invest is critical. Free and unhindered exercise of the rights to freedom of opinion and expression, freedom of peaceful assembly and freedom of association, as guaranteed under international human rights law, is the bedrock of meaningful public participation in decision-making processes. However, assessment of the enabling environment for such participation at the project and country levels is often not covered as part of due diligence under international financial institutions' existing safeguards prior to making an investment decision, which is of serious concern to the Independent Expert.<sup>16</sup> He echoes the recommendation made by OHCHR and civil society actors that due diligence should cover the enabling environment for the participation of stakeholders, in law, policies and practice, and more generally the human rights situation, taking into consideration the space for dialogue and the power dynamics at the project and country levels.<sup>17</sup> This should be done not only at the beginning, but throughout the project.

26. The Independent Expert supports the emerging practice led by some international civil society organizations to empower communities affected by a project to conduct their own due diligence on the impact of the project, as they are best placed to inform such a process. Evidently, the enabling environment for community-led human rights due diligence should be secure. If it is not, as with any assessment, the international financial institutions should question the appropriateness of their investment in that country.<sup>18</sup>

## 2. Transparency

27. Early and timely access to information for stakeholders affected by development projects is of paramount importance so that they can meaningfully engage in the development process at stake. Several international financial institutions have put in place disclosure policies pertaining to access to information for the projects that they fund. These policies cover the proactive sharing of information, as well as reactive responses to requests for information. The right to access to information, as guaranteed under international human rights law, is explicitly recognized by some international financial institutions, such as ADB.<sup>19</sup> The Independent Expert regrets that it is not currently the case with other institutions, such as EBRD or IDB. The recognition of this right is key in framing the balance between commercial interests and the rights of communities potentially affected by projects supported by international financial institutions.<sup>20</sup> OHCHR and several civil society organizations have produced thorough commentaries on the disclosure policies of international financial institutions, including AfDB, the European Investment Bank, EBRD and IDB.<sup>21</sup>

<sup>15</sup> Ibid.

<sup>16</sup> OHCHR, "Benchmarking study", draft study report, p. 15.

<sup>17</sup> Ibid., p. 17; and the joint statement by more than 150 civil society organizations entitled "Responsibility of international financial institutions to ensure meaningful and effective participation and accountability within their investments, and to foster an enabling environment for freedoms of expression, assembly, and association" (11 July 2016), as provided by the Coalition for Human Rights in Development.

<sup>18</sup> Submission received from the Coalition for Human Rights in Development.

<sup>19</sup> OHCHR, "Benchmarking study", draft study report, p. 48.

<sup>20</sup> OHCHR, "Benchmarking study", draft study report, p. 48.

<sup>21</sup> Submission received from Stichting Both Ends on the AfDB disclosure policy; submission received from Counter Balance on the European Investment Bank's Environmental and Social Principles and Standards; Ishita Petkar, "Will the EBRD make a better offer on public information disclosure and engagement?", CEE Bankwatch Network, 28 March 2019; OHCHR, "Recommendations for EBRD access to information policy", 6 March 2019; and joint statement by the International Accountability Project, Bank Information Center, Fundeps and Accountability Counsel entitled "Comments and recommendations on the Inter-American Development Bank's update to the access to information policy profile", 24 December 2019.

28. The Independent Expert was informed of issues pertaining to confidentiality whereby, under the pretext of protecting “business-sensitive” information, the interests of clients reportedly prevailed over the right to access to information for affected communities. Another issue of concern raised related to the translation of documents into a language understood by those communities, in the absence of an overarching authority within each international financial institution in charge of performing that task.

29. The Independent Expert deems it useful to refer to the good practices among international financial institutions regarding requirements on access to information, as identified by OHCHR. These requirements include the following: recognition of the right to seek and receive information, the presumption of transparency with limited, specific exemptions and a requirement to justify any restrictions, and recognition of a duty of proactive disclosure; proactive measures to promote access to information, including dissemination of institutional information and project-level information; clear time frames for responding to requests for access to information, narrow and specific reasons for denial, and procedures for appeals; a policy of permitting information disclosure where a legitimate interest, such as where human rights are at stake, outweighs a protected interest; and guidelines on translations and a commitment to communication in formats and languages accessible to communities and in formats accessible to persons with disabilities.<sup>22</sup> The Independent Expert calls on all international financial institutions to replicate these good practices.

30. The Independent Expert also commends the good work of the civil society-led Early Warning System, including the first database of its kind, which summarizes projects at 13 development finance institutions and provides information, advice, tools and resources to communities.<sup>23</sup>

### 3. Reprisals in the context of development activities

31. Those seeking participation in consultations around development projects funded by international financial institutions, critics or plain opponents of such projects – be they community members, indigenous peoples, farmers, land activists, workers, or members of civil society organizations – have increasingly been the subject of egregious acts of reprisal. These acts range from acts of intimidation, stigmatization (such as labelling as “anti-development” and “terrorist”), criminalization and judicial harassment to physical attacks and killings.<sup>24</sup> These instances occur in different parts of the world, against the backdrop of the global closing of civil society space.

32. The Independent Expert is extremely concerned by such disturbing instances of reprisals and expresses his solidarity with all victims, their relatives and their colleagues. By way of an illustrative example, among many others pertaining to projects funded by international financial institutions, he and other special procedure mandate holders raised concerns in 2019 with the World Bank about alleged death threats and attempted kidnappings against a human rights defender, and allegations of possible acts of reprisal for his cooperation with the World Bank and its Inspection Panel for documenting and denouncing human rights violations related to the World Bank-funded High-Priority Roads Reopening and Maintenance Project (ProRoutes) in the Democratic Republic of the Congo.<sup>25</sup> The World Bank responded that it was taking the allegations very seriously and clarified several points contained in the letter. A delegation of the World Bank further briefed the Independent Expert on the tools developed by the institution to combat reprisals.

<sup>22</sup> OHCHR, “Benchmarking study”, draft study report, pp. 48–49.

<sup>23</sup> See <https://ews.rightsindevelopment.org/about>.

<sup>24</sup> See, for instance, A/71/281 and A/HRC/39/17; Human Rights Watch, “At your own risk: reprisals against critics of World Bank Group projects”, 22 June 2015; Global Witness, *Defenders of the Earth: Global Killings of Land and Environmental Defenders in 2016* (London, 2016); and Coalition for Human Rights in Development, *Uncalculated Risks: Threats and Attacks against Human Rights Defenders and the Role of Development Financiers* (2019).

<sup>25</sup> See the letter dated 12 April 2019 from the group of special procedure mandate holders (OTH 16/2019) and the response dated 7 June 2019 from the World Bank, available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.



The Independent Expert notes the commitment expressed to fight reprisals, and the subsequent public statement issued in March 2020, in which the World Bank stressed that it did not tolerate reprisals and retaliation against those who shared their views about Bank-financed projects, and that it worked with appropriate parties to address any complaints brought to its attention.<sup>26</sup>

33. The Independent Expert further notes that some other international financial institutions and their independent accountability mechanisms have voiced publicly their opposition to reprisals, and have developed specific protocols to address risk of reprisals against defenders. For example, instances of reprisals in the context of projects financed by EBRD fall into the category of coercive practice under the Bank's Enforcement Policy and Procedures,<sup>27</sup> and guidance on reprisals has been developed by the World Bank Inspection Panel and the ADB Accountability Mechanism.<sup>28</sup> AfDB, however, does not have clear policies or statements on reprisals.<sup>29</sup> The Independent Expert notes with particular interest the practical toolkit on reprisals commissioned by the IDB Independent Consultation and Investigation Mechanism, which provides very useful guidance for the independent accountability mechanisms of international financial institutions on how to assess, prevent and respond to reprisals.<sup>30</sup> As stressed by the United Nations High Commissioner for Human Rights, this toolkit, which she has endorsed, is in fact a valuable resource for all development organizations.<sup>31</sup>

34. While the Independent Expert welcomes these positive developments, the several cases of reprisals of he was apprised remain of the utmost concern. He calls for further concrete progress across the spectrum of international financial institutions in that area. Most notably, international financial institutions have a key role to play, and in fact a lot of leverage, in pushing local authorities to investigate acts of reprisals and bring the perpetrators to justice. These institutions should recognize publicly the legitimate role of civil society and intervene firmly whenever an alleged act occurs in connection with a project that they fund directly or indirectly, and should not hide behind their clients' discretion or the use of financial intermediaries.

35. The aforementioned due diligence process, in its coverage of the enabling environment for stakeholder participation, should systematically include a chapter on reprisals in the context of development projects funded by international financial institutions, specifically how to assess threats and how to take appropriate action.<sup>32</sup> Importantly, the priority should be to avoid reprisals in the first place. International financial institutions should incorporate into their loan agreements with clients clauses preventing reprisals and develop an urgent response system to deal with reprisal threats.<sup>33</sup>

36. The context of the COVID-19 outbreak appears to worsen some of the issues described above. The Independent Expert was informed that some communities who had raised concerns about projects and sought to monitor progress were now unable to do so owing to the lockdown, whereas the international financial institutions had reportedly been supporting the continued development of the projects concerned. Furthermore, some States have used these exceptional circumstances to further curtail the enabling rights of those, such as journalists and doctors, who have been critical of the response to the pandemic by

<sup>26</sup> World Bank, "World Bank commitments against reprisals", March 2020.

<sup>27</sup> See [www.ebrd.com/our-values/integrity-and-compliance/enforcement-committe.shtml](http://www.ebrd.com/our-values/integrity-and-compliance/enforcement-committe.shtml).

<sup>28</sup> World Bank Inspection Panel, "Guidelines to reduce retaliation risks and respond to retaliation during the panel process" (2016); and ADB Accountability Mechanism, "Guidelines for the protection of key stakeholders during the Accountability Mechanism process" (2018).

<sup>29</sup> Submission received from Stichting Both Ends.

<sup>30</sup> Tove Holmström, *Guide for Independent Accountability Mechanisms on Measures to Address the Risk of Reprisals in Complaint Management: A Practical Toolkit* (Washington, D.C., IDB, 2019).

<sup>31</sup> OHCHR, "Roundtable of multilateral development banks and independent accountability mechanisms: addressing the risk of reprisals in development finance", statement by the United Nations High Commissioner for Human Rights, 12 April 2019.

<sup>32</sup> OHCHR, "Benchmarking study", draft study report, p. 17.

<sup>33</sup> Joint statement by civil society organizations, "Responsibility of international financial institutions", para. 5.

their Governments, which are recipients of emergency funding from international financial institutions. The lockdown reportedly makes it easier for the authorities to target these individuals. Limited Internet shutdowns hampering the dissemination of information, as well as intrusive surveillance technologies through tracing applications, have also been reported.<sup>34</sup> The Independent Expert expresses his strong concern and will monitor this situation with his fellow mandate holders.

#### 4. Accountability

37. Most of the international financial institutions have set up independent accountability mechanisms, which receive grievances from communities that are, or fear that they will be, affected by projects funded by international financial institutions. These mechanisms, most of which reportedly operate independently, can investigate allegations of non-compliance with the institutions' policies and standards, including those in place to uphold good governance, and propose remedial measures to bring a project back to compliance. By doing so, independent accountability mechanisms foster a culture of accountability towards the proper implementation of such policies and standards, and can suggest areas for improvement at the provision and implementation levels.<sup>35</sup> The Independent Expert supports the idea that independent accountability mechanisms, in order to enhance good governance, should be legitimate, accessible, predictable, equitable, transparent and rights-compatible, in accordance with the effectiveness criteria for non-judicial grievance mechanisms set out in principle 31 of the Guiding Principles on Business and Human Rights.<sup>36</sup> To fulfil their functions, it is key that independent accountability mechanisms are provided with sufficient powers and resources and, more importantly, that international financial institutions and clients abide faithfully by the mechanisms' decisions by making them enforceable.<sup>37</sup>

38. The Independent Expert was informed that AfDB was in the process of reviewing its independent accountability mechanism, the Independent Review Mechanism. He supports the calls made to address the substantive delays throughout the complaints process, improve outreach to communities by the independent accountability mechanism, remove a number of requirements for approval by the AfDB Board of Directors in the complaints process, and develop protocols for the mechanism and AfDB to protect individuals linked to the complaint.<sup>38</sup>

39. The Independent Expert wishes to refer to the emerging good practices among independent accountability mechanisms as identified by OHCHR, which should be replicated, such as the following: having the specific objective of providing remedy; authorizing a wide range of remedies, including but not limited to compensation; adopting a no-tolerance position on retaliation against anyone who may file a complaint or otherwise engage with the mechanism; simplifying accessibility requirements and ensuring that complainants are free to select compliance review, or dispute resolution or mediation, according to their needs; and effectively promoting awareness of the mechanism by requiring client disclosure of its existence to local communities.<sup>39</sup>

40. Another avenue of redress exists at the project level, whereby grievance mechanisms are set up by the client, but the independence of such mechanisms is highly questionable. It is therefore important to obtain consensus from the communities affected by a project as to

<sup>34</sup> Submission received from the Coalition for Human Rights in Development.

<sup>35</sup> Submission received from Accountability Counsel.

<sup>36</sup> Ibid. See also A/HRC/44/32, annex, paras. 7.1–12.4.

<sup>37</sup> See Daniel and others, eds., *Glass Half Full?*, for a set of good practices of independent accountability mechanism and a comparison of mechanisms.

<sup>38</sup> Submission received from Stichting Both Ends.

<sup>39</sup> OHCHR, "Benchmarking study", draft study report, pp. 46–47. See also the OHCHR Accountability and Remedy Project ([www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx)).

the design and membership of such a grievance mechanism.<sup>40</sup> Communities should always feel comfortable when reaching out to accountability mechanisms in general.

## **B. State responsiveness to the needs of the population**

### **1. Maximum use of available resources**

41. During the Human Rights Council intersessional seminar on the role of good governance in the promotion and protection of human rights and best practices in the implementation of the Sustainable Development Goals, the member of the Committee on Economic, Social and Cultural Rights, who was on the panel, linked good governance to the obligation of States parties under article 2 (1) of the Covenant to take steps, to the maximum of their available resources, with a view to achieving progressively the full realization of all economic, social and cultural rights (A/HRC/43/34, para. 23). This is an overarching obligation under the Covenant, but States parties may find themselves in a position where they are not able to comply with it owing to the retrogressive measures that they are compelled to take, dictated by loan conditionalities imposed by international financial institutions. These measures include privatization and deregulation, as well as austerity measures, which require substantial reductions in public spending and/or tax increases in an effort to control public sector debt and enable economic growth. As a result, such measures can have – and indeed have had – a detrimental impact on the enjoyment of a whole set of rights covered by the Covenant, including the right to work (article 6), the right to just and favourable conditions of work (article 7), the right to social security (article 9), the right to an adequate standard of living, including the right to food and the right to housing (article 11), the right to health (article 12) and the right to education (articles 13 and 14).

42. As stressed by the Committee, among those disproportionately affected by austerity measures in the form of job cuts, minimum-wage freezes and cutbacks in social assistance benefits are low-income families and workers with the lowest qualifications. Similarly, women bear a disproportionate cost when austerity measures affect childcare or family support services (E/C.12/2016/1, para. 2). Other disadvantaged and marginalized groups disproportionately affected include children, persons with disabilities, older persons, people with HIV/AIDS, indigenous peoples, ethnic minorities, migrants, refugees and unemployed persons (E/2013/82, para. 49).

43. The adverse effects of austerity measures on the enjoyment of economic, social and cultural rights have been well documented by human rights mechanisms and civil society. For instance, the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, in his report to the General Assembly in 2019 on the responsibility for complicity of international financial institutions in human rights violations in the context of retrogressive economic reforms, presented a series of compelling examples highlighting how the conditions attached to loans by such institutions have hindered the enjoyment of economic, social and cultural rights for the population, including a number of disadvantaged and marginalized groups. The examples were taken from some of the country visits undertaken by that Independent Expert, as well as the doctrine and jurisprudence of United Nations treaty bodies (A/74/178, paras. 45–55).<sup>41</sup> The former Independent Expert on the promotion of a democratic and equitable international order, in his 2017 report to the General Assembly on the impact of the conditionality of loans from IMF on development and human rights, studied several country cases (A/72/187, paras. 31–54). He called on IMF and the World Bank to embrace new so-called

<sup>40</sup> Submission received from the Coalition for Human Rights in Development.

<sup>41</sup> See also Isabel Ortiz and Matthew Cummins, *Austerity: The New Normal – A Renewed Washington Consensus 2010–24* (New York, Initiative for Policy Dialogue; Brussels, International Trade Union Confederation; Ferney-Voltaire, Public Services International; Brussels, European Network on Debt and Development; and London, Bretton Woods Project, 2019).

“smart” lending practices with a view to promoting development and human rights, for the benefit not only of bank and speculators, but billions of human beings (*ibid.*, para. 87).

## 2. Warning against retrogressive measures in the context of the COVID-19 pandemic

44. The Independent Expert, in light of the above unequivocal assessment of retrogressive measures, strongly cautions against the imposition of retrogressive measures, attached to loan conditionalities, which is likely to undermine the enjoyment of economic, social and cultural rights in the current context of the COVID-19 pandemic. At the time of finalizing the present report, over 15 million people had been infected and over 620,000 people had died.<sup>42</sup>

45. The economic fallout of the current pandemic is foreseen to be far greater than the 2008 global financial crisis, which resulted in a sharp increase in unemployment and poverty and further inequalities, affecting the realization of economic, social and cultural rights. National and international economic and financial systems will be acutely affected and a deep global recession most likely inevitable. IMF predicts an abysmal \$12 trillion shortfall in the global economy.<sup>43</sup>

46. As the Committee on Economic, Social and Cultural Rights stressed in a statement in April 2020, all States parties should, as a matter of urgency, adopt special, targeted measures to protect and mitigate the impact of the pandemic on vulnerable groups such as older persons, persons with disabilities, refugees and conflict-affected populations, as well as communities and groups subject to structural discrimination and disadvantage (E/C.12/2020/1, para. 15).

47. Furthermore, States must make every effort to mobilize the necessary resources to combat COVID-19 in the most equitable manner, in order to avoid imposing a further economic burden on these marginalized groups, and allocation of resources should prioritize the special needs of these groups (*ibid.*, para. 14). In this regard, the Special Rapporteur on the right to development, endorsed by the Independent Expert and other special procedure mandate holders, pointed out the importance of States and international actors gathering adequate data on the impact of the COVID-19 crisis – disaggregated at least by gender, age, disability, income, race and ethnicity – in order to identify those who have been left behind and thus inform specifically targeted policies, with a view to ultimately upholding the commitment under the 2030 Agenda to leave no one behind.<sup>44</sup>

48. The Independent Expert believes that it is crucial that economic reforms attached to international loans and introduced after the emergency phase to address the pandemic’s large-scale and most likely long-lasting human rights impact, including austerity measures, be carefully assessed against human rights standards in order to avoid potential retrogressive measures and ensure that the maximum available resources are indeed devoted to the realization of economic, social and cultural rights. Such human rights impact assessments should be undertaken by both lending and borrowing States (E/C.12/2016/1, para. 11), but similarly by international financial institutions prior to granting loans with conditionalities (A/HRC/42/38, para. 131). In this regard, the Independent Expert wishes to refer to the guiding principles on human rights impact assessment of economic reforms, designed by the Independent Expert on foreign debt, which set out the human rights principles and standards that apply to States, international financial institutions and creditors when designing, formulating or proposing economic reforms (A/HRC/40/57, principles 14 and 15).

<sup>42</sup> Center for Systems Science and Engineering, Johns Hopkins University, COVID-19 Dashboard. Available at <https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6> (accessed on 27 July 2020).

<sup>43</sup> Larry Elliott, “Global economy will take \$12tn hit from coronavirus, says IMF”, *Guardian*, 24 June 2020.

<sup>44</sup> OHCHR, “‘Leave no one behind’ – Don’t forget your commitments in your response to the COVID-19 crises, UN expert urges States”, 9 April 2020.

49. The Committee on Economic, Social and Cultural Rights also highlighted the crucial importance of international assistance and cooperation in this dire context, a core principle enshrined in the Covenant (E/C.12/2020/1, para. 19).<sup>45</sup> In this regard, the Independent Expert on foreign debt issued a statement on 20 March 2020, calling on international financial institutions to urgently mobilize their financial resources to help countries combating the pandemic.<sup>46</sup> The Independent Expert (on the promotion of a democratic and equitable international order) welcomes the prompt and coordinated response of the international community to the COVID-19 pandemic in evidence at the time of writing the present report. In May 2020, the Secretary-General, together with the Prime Ministers of Canada and Jamaica, convened a high-level event on financing for development in the era of COVID-19 and beyond, with a view to advancing concrete solutions to the emergency triggered by the pandemic, including in relation to expanding liquidity in the global economy and addressing debt vulnerabilities for all developing countries requesting support.<sup>47</sup> IMF has mobilized \$100 billion in emergency financing, and its Executive Board has offered immediate debt service relief to 29 countries under its revamped Catastrophe Containment and Relief Trust.<sup>48</sup> The World Bank has committed to providing up to \$16 billion in financing over 15 months,<sup>49</sup> and the emergency response packages that it and regional development banks have adopted amount to more than \$200 billion for emerging and low-income countries.<sup>50</sup> It has announced that its operations will emphasize social protection, poverty alleviation and policy-based financing.<sup>51</sup> The Group of 20 has announced a time-bound suspension of debt service payments for the poorest countries that request forbearance, and has encouraged multilateral development banks to work closely together and with development partners at the country level to ensure consistency, optimize the use of resources, ensure that debt remains sustainable and maximize the development impact.<sup>52</sup>

50. The Independent Expert is certainly encouraged by these announcements. He stresses the importance of international financial institutions – through the funding that they are providing to States in their COVID-19 response, and as called for by civil society and in line with the aforementioned recommendations of the Committee on Economic, Social and Cultural Rights – ensuring the following: that immediate relief measures are effectively taken by funding beneficiaries in the areas of access to medical care, food, water, adequate housing, education, social protection, decent labour, among other essentials, in an inclusive and equitable manner for the most vulnerable groups; that public institutions are strengthened as a matter of priority to support the social determinants of health; that socioeconomic programmes aimed at tackling rising poverty and inequality are put in place; that the debt profile of beneficiary countries will not be exacerbated by the support provided; and that support during the COVID-19 response and recovery will not result in cutbacks in public expenditure that will be detrimental to the realization of human rights.<sup>53</sup>

<sup>45</sup> See also OHCHR, “UN expert urges adoption of draft declaration on international solidarity”, 6 May 2020.

<sup>46</sup> OHCHR, “An immediate human rights response to counter the COVID-19 and the global recession ahead is an urgent priority”, 20 March 2020.

<sup>47</sup> See [www.un.org/en/coronavirus/financing-development](http://www.un.org/en/coronavirus/financing-development). See also United Nations, Inter-Agency Task Force on Financing for Development, “Press release: *Financing for Sustainable Development Report 2020*”, 9 April 2020.

<sup>48</sup> IMF, “How the IMF can help countries address the economic impact of coronavirus”, 20 May 2020.

<sup>49</sup> World Bank, “How the World Bank Group is helping countries with COVID-19 (coronavirus)”, 11 February 2020, updated on 8 June 2020. Available at [www.worldbank.org/en/news/factsheet/2020/02/11/how-the-world-bank-group-is-helping-countries-with-covid-19-coronavirus](http://www.worldbank.org/en/news/factsheet/2020/02/11/how-the-world-bank-group-is-helping-countries-with-covid-19-coronavirus).

<sup>50</sup> Group of 20, “Communiqué: G20 Finance Ministers and Central Bank Governors Meeting – 15 April 2020 (Virtual)”, April 2020, p. 7. Available at [https://g20.org/en/media/Documents/G20\\_FMCBG\\_Communique%C3%A9\\_EN%20\(2\).pdf](https://g20.org/en/media/Documents/G20_FMCBG_Communique%C3%A9_EN%20(2).pdf).

<sup>51</sup> World Bank, “How the World Bank Group is helping countries with COVID-19”.

<sup>52</sup> Group of 20, “Communiqué”, p. 7.

<sup>53</sup> See Coalition for Human Rights in Development, “Statement to development finance institutions regarding COVID-19 response”, 18 May 2020.

### C. Fight against corruption

51. IMF and the World Bank define corruption as the abuse of public office for private gain.<sup>54</sup> This pervasive phenomenon, which manifests in different forms, such as the payment of bribes, embezzlement and public service fraud, nepotism or cronyism, and influence-peddling and conflicts of interest,<sup>55</sup> is found in all countries in the world.

52. The international community, at the United Nations and in other forums,<sup>56</sup> has over the years paid increased attention to corruption, which has had a detrimental impact on the realization of human rights. In 2003, the General Assembly adopted the United Nations Convention against Corruption, the main international anti-corruption treaty, which entered into force in 2005. In its latest resolution on the negative impact of corruption on the enjoyment of human rights, the Human Rights Council recognized that good governance, democracy and the rule of law, and the promotion and protection of human rights and fundamental freedoms, were essential in domestic efforts to prevent and fight against corruption.<sup>57</sup> The Council also acknowledged that the poor, marginalized and vulnerable groups of society were at particular risk of suffering from the adverse impact of corruption on the enjoyment of human rights.<sup>58</sup> In addition, the aim under target 16.5 of the Sustainable Development Goals is to substantially reduce corruption and bribery in all their forms.

53. Since the 2000s, international financial institutions have increasingly taken measures to combat corruption, and have become key players in global anti-corruption efforts. Previously, they took a mainly passive role, deeming the fight against corruption a matter for national authorities.<sup>59</sup> They have even joined forces in this enterprise. In February 2006, AfDB, ADB, EBRD, the European Investment Bank, IDB, IMF and the World Bank established the Joint International Financial Institution Anti-Corruption Task Force with a view to combating corruption in a consistent and harmonized manner through their respective activities and operations. In September 2006, the Task Force adopted a uniform framework for preventing and combating fraud and corruption, in which, inter alia, it agreed in principle on standardized definitions of fraudulent practices and corrupt practices, endorsed common principles and guidelines for investigating such practices in activities financed by the member institutions, and recognized the importance of the exchange of relevant information.<sup>60</sup> These are developments that the Independent Expert certainly welcomes, and he notes that international financial institutions were ahead of Governments in terms of exchange of information and coordinated enforcement against contractors.<sup>61</sup>

54. The Independent Expert strongly supports a human rights-based approach to combating corruption, as promoted notably by OHCHR and on the basis of which the anti-corruption debate is centred around international human rights entitlements, of rights holders, and the corresponding obligations of the State, the duty bearer.<sup>62</sup> Such an approach, which focuses on the victim, State responsibility, prevention and redress, complements traditional anti-corruption policies, which focused rather on the perpetrator, individual criminal responsibility and suppression (A/HRC/32/22, para. 130).

<sup>54</sup> IMF, *Fiscal Monitor: Curbing Corruption* (Washington, D.C., 2019), p. 41.

<sup>55</sup> *Ibid.*

<sup>56</sup> For instance, the Financial Action Task Force was established in 1989, the Anti-Corruption Task Team of the Organization for Economic Cooperation and Development in 1996 and the Group of 20 Anti-Corruption Working Group in 2010.

<sup>57</sup> Council resolution 41/9, eleventh preambular paragraph.

<sup>58</sup> *Ibid.*, ninth preambular paragraph.

<sup>59</sup> “Special report forum: fraud and corruption investigations in multilateral development banks”, *Financier Worldwide*, February 2016.

<sup>60</sup> Joint International Financial Institution Anti-Corruption Task Force, “Uniform framework for preventing and combating fraud and corruption”, September 2006, pp. 1–2.

<sup>61</sup> Transparency International, “TI welcomes multilateral development banks’ commitment to fight corruption together”, 9 April 2010.

<sup>62</sup> See [www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CorruptionAndHRIndex.aspx](http://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CorruptionAndHRIndex.aspx).

55. While States bear the main responsibility under international human rights law for ensuring the realization of human rights, with corruption prevented from flourishing, the role of international financial institutions, in addition to compliance by the private sector, is certainly of paramount importance for curbing corruption and therefore upholding good governance at the local level. To this end, international financial institutions mainly contribute to this struggle through governance reform in client countries, and the adoption of anti-corruption measures within their operational activities.

## 1. Governance reform

56. International financial institutions have typically been providing policy advice and technical assistance to developing member countries in several ways. For instance, the World Bank reportedly helps Governments improve public financial management, improve judicial services, train and increase the capacity of the civil service, invest in financial information systems, expand access to information for the public and reduce opportunities for administrative corruption such as bribery.<sup>63</sup> Similarly, IMF, which in 2018 approved a new framework for enhanced engagement on governance,<sup>64</sup> provides technical advice to help countries to strengthen governance in areas such as tax administration, expenditure oversight, fiscal transparency, financial sector oversight, anti-corruption institutions and asset declarations for senior officials.<sup>65</sup> AfDB has sought to strengthen the capacity of anti-corruption agencies and civil society actors to fight corruption on the continent.<sup>66</sup> ADB has been providing technical support to developing member countries with a view to them adjusting to and adopting the various international standards on anti-money laundering, countering of the financing of terrorism, tax transparency and tax integrity.<sup>67</sup> EBRD has supported the development and implementation of anti-corruption action plans and organized targeted training sessions on anti-money laundering, countering of the financing of terrorism and sanctions compliance.<sup>68</sup> IDB has been conducting integrity-related training sessions in member countries, including on integrity risk management in IDB group-financed operations for executing agencies.<sup>69</sup>

57. While the Independent Expert welcomes these measures, he is concerned that their impact may be limited in countries marred with chronic governance shortfalls whose Governments are unwilling to effectively commit to putting an end to corruption. He calls upon international financial institutions to strengthen these measures, more particularly against the ruling class.

## 2. Measures with operational activities

58. International financial institutions, which are themselves vulnerable to corruption owing to the nature and often the complexity of the projects that they finance, have also taken anti-corruption measures in their operational activities.

### (a) Prevention and mitigation

59. Zero tolerance of corruption has been widely promoted across international financial institutions. Internally, this translates into the adoption of high ethical and integrity

<sup>63</sup> World Bank, “Anticorruption fact sheet”, 19 February 2020. Available at [www.worldbank.org/en/news/factsheet/2020/02/19/anticorruption-fact-sheet](http://www.worldbank.org/en/news/factsheet/2020/02/19/anticorruption-fact-sheet).

<sup>64</sup> IMF, “IMF Executive Board approves new framework for enhanced engagement on governance”, 22 April 2018.

<sup>65</sup> Transparency International, “The IMF on corruption and COVID-19: an interview with Kristalina Georgieva, Managing Director, IMF”, 16 June 2020.

<sup>66</sup> AfDB, Office of Integrity and Anti-Corruption, “Annual report 2017”, p. 13.

<sup>67</sup> ADB, “Fighting corruption in Asia and the Pacific”, video and transcript, 1 April 2019.

<sup>68</sup> EBRD, “Integrity and anti-corruption report 2018”, p. 19.

<sup>69</sup> IDB, Office of Institutional Integrity and Sanctions System, *Annual Report 2019* (Washington, D.C., 2020), p. 28. Available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-1138756496-278>.

standards for all staff within the institutions.<sup>70</sup> Furthermore, international financial institutions have reportedly established guidelines to support their staff to work in accordance with good practices in the areas of disclosure, public financial management, contract monitoring and procurement.<sup>71</sup> Another significant aspect of prevention is the anti-corruption due diligence undertaken by international financial institutions in relation to the projects in which they are involved. However, it is reported that the types of efforts that international financial institutions pursue in the field of anti-corruption diligence vary considerably, which is of concern to the Independent Expert.<sup>72</sup>

60. All international financial institutions have adopted whistle-blower protection provisions to address instances of reprisals linked to the denouncing of corruption in projects funded by these institutions. These provisions deal primarily with the protection of internal whistle-blowers, reportedly with varying degrees of success. While the Independent Expert welcomes these provisions, he calls upon international financial institutions to extend protection to external whistle-blowers when it is not yet in place, and allow whistle-blowers to appeal the outcome of investigations through a legal protocol.<sup>73</sup> Furthermore, it is crucial that national authorities be systematically informed of and pressed to act on allegations of reprisals against external whistle-blowers.

61. In this connection, it is essential that anti-corruption activists be able to work in a safe environment that is conducive to the exercise of fundamental rights and freedoms, free from acts of intimidation, attacks and retaliation. As a result, as stressed in section A, international financial institutions must equally be vocal and reactive in protecting civil society actors who are targeted because of their anti-corruption work. They should similarly press the national authorities to investigate allegations of reprisals against civil society actors reporting on allegations of corruption.

62. More generally, the Independent Expert stresses the significant role that civil society can and should play in the fight against anti-corruption, including in the design, implementation, monitoring and evaluation of anti-corruption measures, through a sustained, participatory and inclusive stakeholder engagement with access to information.<sup>74</sup> Civil society has voiced concern that IMF does not have a coherent policy for engaging civil society in country reviews and that different member countries take different approaches.<sup>75</sup> At a meeting with an IMF delegation in 2019 in Washington, D.C., the Independent Expert was told that this concern was known to IMF and that there was good will on its side and room for improvement. The Independent Expert is hopeful that IMF will address this valid concern.

#### **(b) Investigations and sanctions**

63. International financial institutions have set up independent bodies to investigate allegations of corruption and apply administrative sanctions to entities found guilty. AfDB has the Integrity and Anti-Corruption Department, ADB the Office of Anti-Corruption and Integrity, EBRD the Office of the Chief Compliance Officer, IDB the Office of Institutional Integrity, and the World Bank Group the Integrity Vice-Presidency. These bodies, which report directly to the heads of the respective institutions, can impose sanctions under the form of debarment from operations financed by international financial institutions and

<sup>70</sup> Matthew Jenkins, “U4 Expert Answer: multilateral development banks’ integrity management systems”, U4 Anti-Corruption Resource Centre, 14 September 2016, pp. 8–9. Available at [www.u4.no/publications/multilateral-development-banks-integrity-management-systems-2.pdf](http://www.u4.no/publications/multilateral-development-banks-integrity-management-systems-2.pdf).

<sup>71</sup> *Ibid.*, p. 8.

<sup>72</sup> “Special report forum”, *Financier Worldwide*.

<sup>73</sup> See Transparency International EU, *Investing in Integrity? Transparency and Accountability of the European Investment Bank* (Brussels, 2016).

<sup>74</sup> Marie Chêne, “U4 Expert Answer: mainstreaming anti-corruption within donor agencies”, U4 Anti-Corruption Resource Centre, 27 January 2010, p. 9. Available at [www.u4.no/publications/mainstreaming-anti-corruption-within-donor-agencies.pdf](http://www.u4.no/publications/mainstreaming-anti-corruption-within-donor-agencies.pdf).

<sup>75</sup> M. Emilia Berazategui, “The IMF post-Lagarde: how to keep up anti-corruption momentum”, Transparency International, 11 September 2019.



possible referral to national law enforcement authorities.<sup>76</sup> Several international financial institutions make public their debarment decisions. For instance, the World Bank keeps an updated list of all debarred companies on its website, and, similarly to EBRD, publishes the full decisions of its sanctions board.<sup>77</sup> In 2010, AfDB, ADB, EBRD, IDB and the World Bank agreed to mutually enforce debarment decisions with respect to firms and individuals found guilty of fraud or corruption in projects that they financed, another welcome collaborative effort by international financial institutions in the global fight against corruption.<sup>78</sup> The Independent Expert looks forward to further international financial institutions participating in this agreement.

64. It must be noted that international financial institutions do not have criminal law enforcement powers in relation to alleged corruption. Through the publication of debarment decisions by international financial institutions, national law enforcement can proactively decide to investigate and prosecute instances of fraud and corruption. The Independent Expert is of the opinion that international financial institutions should, in fact, as a principle, automatically flag such instances directly to the national authorities. In this regard, he supports the recommendation of civil society that a revised European Union anti-fraud policy should make it compulsory for the European Investment Bank to refer suspected prohibited conducts directly to national authorities and prosecutors, even when outside of the European Union.<sup>79</sup> In the event that these authorities show unwillingness to review the cases brought before them, the international financial institutions should put pressure on the authorities to take the required action. Such action towards achieving accountability at the local level is key in the global fight against corruption.

### 3. Situation linked to the COVID-19 crisis

65. The Independent Expert deems it important to stress that sustained attention to the fight against corruption should by no means be lessened during the COVID-19 outbreak. As international financial institutions are making available colossal sums of money to States on an emergency basis to respond to the COVID-19 crisis (as discussed in the previous section), there is a heightened risk that the funds allocated may be misused or stolen through criminal schemes, with potentially devastating consequences for the populations in need, especially the most vulnerable groups.

66. In this regard, the Independent Expert joins the call made in April 2020 by three civil society organizations to IMF to make sure that the funds that it is providing to its member countries during this crisis are actually used to save lives, safeguard public health and support livelihoods. To this end, they highlight the need for IMF to establish basic measures to ensure that such funds are spent in a transparent and accountable manner and to reduce the risks of misuse and corruption. They identify four areas: articulation and demonstration of IMF commitment to anti-corruption; transparency in public procurement; audits by internal audit bodies and third parties; and implementation of existing anti-corruption and anti-money laundering frameworks.<sup>80</sup> The Independent Expert notes the response of the IMF Managing Director, Kristalina Georgieva, in an interview with Transparency International in June 2020, in which she emphasized that the message of IMF to Governments receiving emergency funds had been to uphold accountability, and that

<sup>76</sup> Jenkins, "U4 Expert Answer: multilateral development banks' integrity management systems", pp. 2 and 4-5.

<sup>77</sup> See [www.worldbank.org/en/projects-operations/procurement/debarred-firms](http://www.worldbank.org/en/projects-operations/procurement/debarred-firms).

<sup>78</sup> See [www.adb.org/sites/default/files/institutional-document/32774/files/cross-debarment-agreement.pdf](http://www.adb.org/sites/default/files/institutional-document/32774/files/cross-debarment-agreement.pdf).

<sup>79</sup> Xavier Sol, *Is the EIB Up to the Task in Tackling Fraud and Corruption?* (Brussels, Counter Balance, 2019), p. 49; see p. 58 for the response of the European Investment Bank to this recommendation.

<sup>80</sup> Letter dated 8 April 2020 from Transparency International, Human Rights Watch and Global Witness addressed to the IMF Executive Board, regarding the urgent need for anti-corruption measures in the IMF response to the COVID-19 crisis. Available at [https://images.transparencycdn.org/images/TI\\_HRW\\_GW\\_Letter\\_IMF\\_COVID19\\_Emergency\\_Funding.pdf](https://images.transparencycdn.org/images/TI_HRW_GW_Letter_IMF_COVID19_Emergency_Funding.pdf).

several steps were being taken to ensure, as far as possible, that IMF financing was not misused.<sup>81</sup>

67. In this connection, the Independent Expert wants to express his support for another call made by international, regional and local civil society organizations to IMF to empower them by formally recognizing their role as independent monitoring groups and strengthening civil society groups' capacities for monitoring work.<sup>82</sup> Evidently, as stressed earlier, a safe environment that is conducive to the work of civil society at the local level is fundamental to this role.

## V. Conclusions and recommendations

68. **International financial institutions are important actors in the financing of development and the achievement of the Sustainable Development Goals. Through the various policies that they pursue and the safeguards that they have put in place, they have a direct influence on how good governance is realized at the local level – including with regard to stakeholder engagement, responsiveness of the needs of the population and the fight against corruption – and ultimately on the enjoyment of a democratic and equitable international order.**

69. **International financial institutions must systematically take all the measures necessary to ensure that their activities and the projects that they support do not lead to human rights violations, including those committed by clients, whether in the public or private sector. They must similarly use their substantial leverage to ensure that those clients respect human rights and the principle of good governance.**

70. **While international financial institutions should always aspire to be actors of positive change on the ground, it is first and foremost the responsibility of States, in particular in their capacity as clients of international financial institutions, to ensure that good governance and respect for human rights on the ground. This responsibility starts with ensuring a safe environment that is conducive to the exercise of fundamental rights and freedoms, and pursuing accountability.**

71. **Crucially, respect for human rights, good governance and the interests of local communities must be at the very heart of what drives sustainable development. This requirement is all the more important in the context of the current COVID-19 pandemic, which has exacerbated several of the challenges identified in the present report and increased the vulnerability of groups at risk.**

72. **In the spirit of continuing the constructive dialogue that he has held with various stakeholders since the beginning of his tenure, the Independent Expert wishes to offer the following general recommendations, in addition to the several specific ones made and the good practices identified throughout the report.**

73. **The Independent Expert recommends that international financial institutions:**

(a) **Ensure that their safeguard frameworks contain a clear commitment to respecting human rights and to conducting human rights due diligence, and to requiring their clients to respect human rights and conduct human rights due diligence;**

(b) **Include assessment of the enabling environment for the participation of communities and civil society, of potential reprisals and, more generally, of the human rights situation in project- and country-level engagement in due diligence processes;**

(c) **Engage with clients and States on the importance of ensuring a safe environment that is conducive to the exercise of fundamental rights and freedoms;**

<sup>81</sup> Transparency International, “The IMF on corruption and COVID-19: an interview with Kristalina Georgieva”.

<sup>82</sup> Letter dated 4 May 2020 from 97 civil society organizations to the IMF Managing Director.

- (d) Ensure that continued operations during the COVID-19 pandemic are safe and are in line with the good practices identified with respect to stakeholder engagement; concerning new projects approved during the COVID-19 pandemic, raise the bar as to the safety of stakeholders and the strict enforcement of applicable safeguards;
- (e) Provide adequate space and concrete support for community-led human rights due diligence;
- (f) Provide information on how financial intermediaries comply with the institutions' safeguards;
- (g) Explicitly recognize the right to access to information;
- (h) Enforce the presumption of proactive disclosure of information, with limited, specific exemptions;
- (i) Translate all documents in a language understood by affected communities;
- (j) Take proactive measures to prevent the occurrence of reprisals, systematically and publicly denounce instances of reprisals and push local authorities to investigate promptly and thoroughly such instances and bring the perpetrators to justice;
- (k) Give independent accountability mechanisms sufficient powers and resources and make their decisions enforceable;
- (l) Obtain consensus from the affected communities as to the design and membership of grievance mechanisms at the project level;
- (m) Conduct human rights impact assessments prior to imposing loan conditionalities that compel States to take retrogressive measures;
- (n) Embrace a human rights-based approach to combating corruption that focuses on the victim, State responsibility, prevention and redress;
- (o) Strengthen measures on governance reform in client countries;
- (p) Conduct robust anti-corruption due diligence processes;
- (q) Extend whistle-blower protection to external whistle-blowers when it is not yet in place;
- (r) Automatically flag instance of corruption to the national authorities and, as necessary, put pressure on them to take the required action;
- (s) Establish basic measures to ensure that the emergency funds given to States in the context of the COVID-19 pandemic are spent in a transparent and accountable manner;
- (t) Formally recognize the role of civil society as independent monitoring groups in the fight against corruption and strengthen their capacities in this respect.

74. The Independent Expert recommends that States:

- (a) Ensure a safe environment that is conducive to the participation of communities and civil society;
- (b) Promptly and thoroughly investigate instances of reprisals and bring the perpetrators to justice;
- (c) Allocate the maximum available resources to the progressive realization of human rights and avoid potential retrogression;
- (d) Conduct human rights impact assessments before considering taking retrogressive measures;
- (e) Systematically investigate instances of corruption flagged by international financial institutions;

(f) Spend all the emergency funds received from international financial institutions in the context of the response to COVID-19 pandemic in a transparent and accountable manner and only for the benefit the population in need;

(g) Ratify the United Nations Convention against Corruption;

(h) As shareholder countries of international financial institutions, hold them accountable for respecting human rights in their activities.

75. The Independent Expert recommends that local communities and civil society:

(a) Continue actively participating, or seeking participation, in projects related to international financial institutions;

(b) Continue their strong human rights monitoring of projects related to international financial institutions;

(c) Empower the communities affected by development projects to conduct their own due diligence on the impact of such projects.

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