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Covid-19 pandemic

Fighting COVID-19: Why and How to Suspend Debt Repayment Immediately

- IV Online magazine - 2020 - IV543 - April 2020 -

Publication date: Thursday 16 April 2020

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The territorial spread of the coronavirus pandemic has resulted in a global health crisis which has created a completely new situation. The human suffering caused by the spread of the virus is enormous. It adds to other public health tragedies that affect, more particularly, countries dominated by major powers and big capital, with the complicity of their dominant classes. Significant amounts of financial resources must be made available urgently, incurring new debts as little as possible.

There is a simple way to free up financial resources: it consists of immediate suspension of public debt repayment. The savings made can then be directly channelled to priority health needs. There are other measures that are quite easy to take to free up financial resources: establishing a crisis tax on the wealthy and very high incomes, imposing fines on companies responsible for large-scale tax evasion, freezing military budgets, putting an end to subsidies to banks and big companies ... We come back to the suspension of debt payments because it is in most cases the central lever that can very quickly improve a state's financial situation.

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The suffering and the death toll have clearly been aggravated by underfunding of public health in both Southern and Northern countries. States, with very few exceptions, have systematically, under the pretext of repaying debt and achieving a reduction of budget deficit, imposed restrictions on public health spending. If they had rather strengthened the key instruments of a good public health policy in terms of staffing, infrastructure, medicine stocks, equipment, research, production of medicines and treatments, and health coverage for the population, the coronavirus crisis would not have reached the current proportions and would not be developing so drastically.

What has happened in China, where the authorities were slow to take containment measures and increase tests, then in several European countries (Italy, Spain, France, Belgium, the Netherlands, Great Britain), in the United States and elsewhere, indicates what is likely to happen in other countries as the virus continues to spread. In the richer countries, with much more developed public health systems, the combined effects of 40 years of neoliberal policies and the lack of preparedness of public authorities have had tragic effects. It is easy to imagine what this can lead to elsewhere. Countries in Africa, Latin America and the Caribbean, and Asia have begun to be heavily affected by the health crisis.

Urgent action is needed to build the capacity to fight the coronavirus and, beyond that, to improve the health and living conditions of populations.

Governments and major multilateral institutions such as the World Bank, the IMF and regional development banks have used public debt repayment as a tool for applying policies that have deteriorated public health systems: job cuts

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in the health sector, precarious employment contracts, reduction of hospital beds, closure of local health centres, increase of health care costs and of prices of medicines, under-investment in infrastructure and equipment, privatization of various health sectors, under-investment by the public sector in research and development of treatments for the benefit of the interests of large private pharmaceutical groups.

Even before the outbreak of the COVID-19 epidemic, these policies had already resulted in enormous loss of life and protests by health workers around the world.

Urgent action is needed to build the capacity to fight the coronavirus and, beyond that, to improve the health and living conditions of populations.

The call for suspension or the cancellation of debt payments has come to the fore again in the context of the global health crisis. In mid-March 2020, a dozen former Latin American presidents launched an appeal to this effect (See the english version on <https://www.celag.org/la-hora-de-la-condonacion-de-la-deuda-para-america-latina/>). On 23 March, a large majority of members of the National Assembly of Ecuador called for a union of Latin American governments to suspend debt payments (<https://www.cadtm.org/Will-Ecuador-once-again-set-an-example-of-courage-in-the-face-of-creditors>). At the end of March, representatives of CEMAC (Economic and Monetary Community of Central Africa, which includes 6 countries) asked for the cancellation of their countries' external debt (<https://www.businessincameroun.com/economy/3003-10143-cemac-ministries-of-finance-and-economy-suggest-cancellation-of-external-debts-to-deal-with-covid-19-and-relaunch-post-pandemic-economies>). On 4 April, Senegal's President Macky Sall called for the cancellation of Africa's public debt (<https://www.en24.news/n24/2020/03/macky-sall-seeks-cancellation-of-debt-owed-by-africa-due-to-coronavirus.html>).

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The United Nations Conference on Trade and Development (UNCTAD) has just published a report in which it warns about the scale of the fateful impacts of the crisis, particularly in economic terms. In a passage of this document, UNCTAD argues, in diplomatic language, that indebted countries should be able to unilaterally and temporarily freeze their debt repayment. It also states that creditors can't be the ones to decide whether or not indebted countries have the right to suspend debt payments [1].

This is a position that has long been upheld by the CADTM in clear terms. This position is shared by many social and political organizations around the world. Several appeals have been launched to this effect by social movements in Latin America and the Caribbean (<http://www.cadtm.org/Call-of-the-indigenous-peoples-afro-descendants-and-peoples-organizations-of>), In Africa, where social movements in southern Africa are calling on "*SADC (Southern African Development Community) governments to apply a debt moratorium and to devote resources earmarked for debt repayment to rebuilding the public health system and investing in essential social service sectors, including energy, water, sanitation and housing infrastructure, in order to strengthen the capacity of the people of SADC to withstand the impact of the crisis.*" (COVID-19 pandemic: Statement by the Southern African People's Solidarity Network (SAPSN), <https://cadtm.org/COVID-19-pandemic-Statement-by-the-Southern-African-People-s-Solidarity-Network>). NGOs and coalitions such as Eurodad (Europe) (<https://eurodad.org/Entries/view/1547157/2020/03/24/A-debt-moratorium-for-Low-Income-Economies>), Latindad (Latin America), Jubilee Debt Campaign (Britain), the Debt and Development Platform (France) also support the need to declare a moratorium on debt payments.

What are the legal arguments to support a unilateral decision to suspend payments in this case?

When a state invokes a state of necessity, fundamental change of circumstance or force majeure to suspend payment of the debt, it is irrelevant whether the debt is legitimate or not.

The State of Necessity: a state may waive further debt repayment because the objective situation (for which it is not responsible) poses a serious threat to the population and the continued payment of the debt prevents it from meeting the most urgent needs of the population. This is exactly the situation that many states of the world are now facing: the lives of the inhabitants of their countries are under direct threat if they are unable to fund a whole series of urgent expenditures to save as many human lives as possible.

"The State of Necessity" is a legal concept used by international tribunals and defined in Article 25 of the Draft Articles on State Responsibility of the United Nations International Law Commission (ILC). As explained in the commentary to Article 25, "State of Necessity" is used to refer to those exceptional cases where the only way for the State to safeguard an essential interest against a grave and imminent peril is, for the time being, the non-performance of an international obligation of lesser weight or urgency. Under international law, the destruction of the state as such or the endangering of the lives of persons are two circumstances in which a state of necessity may be invoked to suspend international obligations such as the implementation of agreements (such as an austerity programme between a state and its creditors) and the repayment of debts. [2]

The Student Tribunal for International Dispute Settlement (STIDS), composed of international law students intending to apply their theoretical knowledge to a real situation, issued the following opinion in the case of Greece in 2016: "*Greece is facing an extreme financial situation that does not allow it to provide essential medical services to its population, whose mortality is consequently increasing substantially. Accordingly, the Tribunal considers that Greece is indeed in a material situation which constitutes a grave and imminent peril within the meaning of Article 25 of the ILC's Draft Articles, and that it may therefore legitimately invoke a state of necessity.*"

Fundamental change of circumstances: The performance of a debt contract (or international treaty) may be suspended if circumstances change fundamentally beyond the debtor's control. Case law on the application of international treaties and contracts recognises that a fundamental change of circumstances may prevent the performance of a contract. In the case of the current crisis, in the last two months, circumstances have changed fundamentally:

- a very serious epidemic is in full swing;
- commodity prices are collapsing (oil prices have halved in a month) and a whole series of debtor states are dependent on the income from raw materials exports to earn dollars needed to pay off their external debts;
- economic activity is dropping sharply and very rapidly;
- the countries of the South are victims of the decision of large companies and investment funds from the North to withdraw their capital from the country to repatriate it to their parent company and put it into a tax optimisation scheme.

Force majeure: the circumstances described above are examples of *force majeure*. A state may invoke these circumstances which prevent it from executing a contract.

It is fundamental that an audit of the debt with active citizen participation be organised in order to identify the illegitimate, odious and illegal parts that must be cancelled definitively

When a state invokes a state of necessity, fundamental change of circumstance or *force majeure* to suspend payment of the debt, it is irrelevant whether the debt is legitimate or not. Even if the debt claimed from the country is legitimate, that does not prevent the country from suspending payment. What is fundamental, then, is that the population ensures that the money actually saved by the non-payment of the debt is used to fight the coronavirus and the economic crisis. This implies that people must exercise strict control over the government's action, that they must mobilize and be ready to express their discontent strongly if the government does not act in their best interests, and be ready to overthrow it if necessary.

Furthermore, from the point of view of the majority of the population, it is fundamental that an audit of the debt with active citizen participation be organised in order to identify the illegitimate, odious and illegal parts that must be cancelled definitively. It is also necessary to audit all state expenditure to check whether it is really justified in the fight to overcome the health, economic and ecological crisis.

Statements by current heads of states or heads of international organizations on the necessity for debt cancellation should, obviously, not be taken seriously. Their sole purpose is to get public visibility. The heads of states will always be able to resort to the excuse that they tried to obtain debt cancellation, but were unsuccessful, so payments will have to continue. As for the IMF, it has used the same old refrain for decades: it periodically states that creditors must cancel part of the debts, but at the same time it says that, as an international institution, it cannot forgo the recovery of everything owed to it. This is not the first time that the most powerful institution has made fine speeches but each time, there has been zero effect on the well-being of the population.

Actions speak louder than words: immediate and unilateral suspension of debt payments

This is the primary means that a state can use to find, under popular pressure and control, the financial resources needed to combat coronavirus and the brutal effects of the worsening global economic crisis.

Indeed, a radical increase in public health spending will also have very important beneficial effects in combating other diseases that are plaguing mainly the countries of the global South

Reorienting debt repayment and other expenditures (military spending, expenditure on luxuries, mega-infrastructure spending that must be abandoned or can be postponed) by giving priority to public health can kick-start fundamental and healthy change.

Indeed, a radical increase in public health spending will also have very important beneficial effects in combating other diseases that are plaguing mainly the countries of the global South.

According to the latest World Malaria Report, published in December 2019, 228 million cases of malaria were detected in 2018 and an estimated 405,000 people died from the disease. In addition, tuberculosis is one of the 10 leading causes of death worldwide. In 2018, 10 million people contracted tuberculosis and 1.5 million people died from it (including 251,000 with HIV). These diseases could have been successfully combated if governments devoted sufficient resources to them.

Other complementary measures could also combat malnutrition and hunger, which destroy the daily lives of one in

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nine human beings (more than 800 million people worldwide). Approximately 2.5 million children worldwide die each year from undernourishment, either directly or from diseases related to their low immunity due to undernourishment.

Similarly, if investments were made to massively increase the supply of drinking water and sewage disposal/sanitation, there could be a drastic reduction in deaths from diarrhoeal diseases, which amount to more than 430,000 per year (source: WHO 2019).

As a reference point of comparison, as of 7 April 2020, the official estimate is of approximately 75,000 deaths caused by the coronavirus since the beginning of the epidemic in December 2019. It is high time to act, using as a priority the powerful leverage of suspension of payment or cancellation of debt.

It is essential that the various organizations and activist networks mobilize to obtain the suspension of debt payments. We must collectively reflect on new ways to consolidate and broaden our struggle in the current exceptional circumstances.

The author would like to thank the following for rereading the text and/or documentary research: Omar Aziki, Anne Sophie Bouvy, Sushovan Dhar, Damien Millet, Brigitte Ponet, Claude Quemar et Renaud Vivien.

Translation for the [CADTM](#) by Sushovan Dhar and Vicki Briault Manus.

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[1] "UNCTAD has long argued that *such standstills should be triggered by the unilateral decision of debtor countries* to declare their need to freeze debt repayments temporarily, and should subsequently be sanctioned by an independent panel of experts, rather than creditor organisations.", see https://unctad.org/en/PublicationsLibrary/gds_tdr2019_covid2_en.pdf

[2] This paragraph is excerpted from Renaud Vivien, "How can we question the Greek austerity program, one year after it was signed?" also see : "State of Necessity reflects an international customary rule according to which a factual situation of grave and imminent peril for the essential interests of a State would legally justify a breach of an international obligation by such State as the only means to safeguard such essential interests. The issue of necessity arises within the framework of the 'secondary rules' of State responsibility, as a circumstance precluding the wrongfulness of a conduct in breach of an international obligation.",

<https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1071>