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

### **Report of 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**

### **Development of guiding principles for assessing the human rights impact of economic reform policies**

#### **Note by the Secretariat**

The Secretariat has the honour to transmit to the Human Rights Council the report of 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, Juan Pablo Bohoslavsky, prepared pursuant to Human Rights Council resolution 34/3.

In the report, the Independent Expert discusses the development of guiding principles for assessing the human rights impact of economic reform policies.



## **Report of 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**

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## I. Introduction

1. The latest global financial crisis (2007–2008) is widely considered the worst of its kind since the Great Depression. A decade later it continues to take a toll through fiscal austerity that dampens recovery and reduces the scope for economic and social transformation that is needed to generate more inclusive, rights-based societies with access to decent work, social services and social protection for all.<sup>1</sup>
2. The contagion of the financial crisis that was ignited in the United States of America was fuelled by what has been described as “hyperglobalization”, which brought both benefits and increased vulnerability to societies around the world. It also opened the way for financialization, a process that enabled financial institutions and markets to increase in size and influence. The United Nations Conference on Trade and Development (UNCTAD) concluded that the continuation of that process, along with deepening inequalities, increased the likelihood of a financial crisis recurring.<sup>2</sup>
3. Financial crises can be caused by many different factors, including massive bailouts of private financial institutions, unfair trade agreements, external economic shocks, irresponsible lending and borrowing, weak resource mobilization and tax collection, tax evasion and avoidance, corruption and bad economic policies that are not aligned to inclusive social development and the realization of human rights. In addition, the absence of a system for resolving debt distress situations in a timely, fair, predictable and human rights-compliant manner has exacerbated problems. Irrespective of whether financial crises are caused by external or internal factors or a combination of both, there is need to develop frameworks for solving them which put respect for human rights at the centre.
4. Since the 1980s, there has been growing consensus that economic crises and many structural adjustment policy packages that have been implemented to prevent or overcome them can cause severe adverse human rights impacts. It is then not surprising that economic reform policies have been increasingly associated with initiatives to mitigate adverse impacts on the livelihoods of poor communities. Yet, for a number of reasons, these initiatives have often been far from being considered successful.<sup>3</sup> While it has been acknowledged that structural adjustment and fiscal consolidation policies can have massive adverse impacts on persons in situation of vulnerability, most of those policies have not been designed or implemented in a manner that would promote or safeguard human rights.<sup>4</sup> Often the focus has been limited to mitigating the worst social impacts, rather than implementing reforms that would prevent or dampen future crises. Reforms would also protect and promote the realization of economic and social rights through investment in people, thereby making them more sustainable over the medium term.
5. Countercyclical responses that invest in social development are both feasible and associated with a more equitable and sustainable economic recovery. However many States and international financial institutions do not seem to have learned those lessons; austerity has been the predominant response to the recent financial crisis, and fiscal consolidation policies have largely remained human rights blind, with their principal focus on ensuring balanced public budgets at all costs.<sup>5</sup> International and regional human rights mechanisms have pointed out that budget cuts in various countries have affected the rights to health, education, food, housing, work, social security, water, as well as political and civil rights, such as access to justice, the right to participation, the freedoms of expression, assembly

<sup>1</sup> See Isabel Ortiz and others, “The decade of adjustment: a review of austerity trends 2010–2020 in 187 countries”, Extension of Social Security Working Paper No. 53 (Geneva, International Labour Office (ILO), 2015); also United Nations Conference on Trade and Development (UNCTAD), *Beyond Austerity: Towards A Global New Deal, Trade and Development Report 2017*.

<sup>2</sup> See UNCTAD, *Beyond Austerity*.

<sup>3</sup> For more details, see A/71/305 and A/HRC/23/37.

<sup>4</sup> See, for example, E/2013/82 and A/HRC/17/34.

<sup>5</sup> See Juan Pablo Bohoslavsky and Kunibert Raffer (eds.), *Sovereign Debt Crises: What Have We Learned?* (Cambridge, United Kingdom, Cambridge University Press, 2017).

and association. They have also resulted in worsening detention and prison conditions. The right to life and personal integrity has not been spared; economic crises further entrenched by austerity policies have triggered an increase in suicides in some countries, resulted in the exclusion of individuals from life-saving public health care and weakened public health-care systems to such extent that they have been ill-equipped to respond to epidemics.<sup>6</sup>

6. Women, persons with disabilities, children in single-parent families, migrants and refugees and other social groups at risk of marginalization have often been disproportionately affected. For example, the reduction in public services, including childcare facilities, disproportionately affect women. Women are also often the first to be laid off when labour legislation is made more “flexible”.<sup>7</sup>

7. Austerity policies are often justified by an overly simplified or misleading diagnosis — in particular, blaming excessive public expenditure<sup>8</sup> for fiscal crises without even considering other relevant factors, such as external shocks, insufficient revenue streams, financial deregulation, widening inequalities, depressed wages among low- and middle-income households or other failures owing to globalization.<sup>9</sup> Policy decisions are frequently taken without sufficient consideration of less harmful policy options and reliable analysis of foreseeable outcomes. The information is often not publicly accessible in any meaningful way nor subject to meaningful participation by groups in society that may be adversely affected. Those who typically shoulder a disproportionate part of the cost of adjustments are the most disadvantaged groups who have marginal voice and political power, which makes their situation and the impact on their rights invisible. To date, there is no general framework or methodology for adequately assessing the human right impact of economic reform policies. That makes it extremely difficult to assess the real and often cumulative effects of austerity policies on the entire population and, in particular, the most marginalized segments.

8. In the light of such experiences, in March 2017, the Human Rights Council, in its resolution 34/3, requested the Independent Expert to develop guiding principles for assessing the human rights impact of economic reform policies, in consultation with States, international financial institutions and other relevant stakeholders. To that end, the Independent Expert solicited input from a wide range of stakeholders to inform the development of the guiding principles.<sup>10</sup> He would like to thank them for their responses.

9. To complement those efforts, the Independent Expert, with the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR) undertook a mapping of the social and human rights impact assessment tools used by States, international organizations and non-State actors. Their responses are available on the website of the Independent Expert.<sup>11</sup> On 9 November 2017, the Independent Expert, in collaboration with OHCHR, organized an expert workshop in Geneva to inform the present report, take stock, share experiences and initiate discussion on the scope and content of the guiding principles. It is expected that developing guiding principles that build on the extensive groundwork laid by United Nations experts with regard to the impact of the

<sup>6</sup> See Center for Economic and Social Rights, “Assessing austerity: monitoring the impact of fiscal consolidation”, annex A (forthcoming) for a summary of adverse human rights impacts of adjustment measures identified by human rights bodies, organizations and scholars.

<sup>7</sup> See A/HRC/34/57. A more comprehensive discussion of these issues will be included in the forthcoming report of the Independent Expert to the General Assembly, which will focus on how austerity impacts human rights from a gender perspective.

<sup>8</sup> See Robert Boyer, “The four fallacies of contemporary austerity policies: the lost Keynesian legacy”, *Cambridge Journal of Economics*, vol. 36, No. 1 (2012), pp. 283–312.

<sup>9</sup> See Suzanne Konzmann and others, “Assessing austerity”, *Cambridge Journal of Economics*, vol. 38, No. 4 (2016).

<sup>10</sup> Submissions can be found at [www.ohchr.org/EN/Issues/Development/IEDebt/Pages/DebtAndImpactassessments.aspx](http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/DebtAndImpactassessments.aspx).

<sup>11</sup> The Independent Expert would like to thank Margaret Wachenfeld and Eva Jespersen and his support team at the Office of the High Commissioner for Human Rights (OHCHR) for their research assistance.

financial crisis<sup>12</sup> and the methodology of human rights impact assessments will contribute to the design of more sustainable responses to financial crises over the short and long term.

10. Through conducting human rights impact assessments, States will be prompted to consider and analyse alternatives that would increase the likelihood of realizing human rights as part of their broader aim of achieving macroeconomic stability and growth. Human rights obligations suggest social investments that can serve as countercyclical tools to address economic downturns. They require a departure from policies that focus solely on achieving short-term macroeconomic targets regardless of the human rights impacts, or which only try to mitigate the most extreme social impacts. Such specific guidance has not yet been adequately developed, but the present report demonstrates the existence of relevant tools, experience and research on which guiding principles for assessing the human rights impact of economic reform policies could be built.

11. In the present report, the Independent Expert describes the evolution in structural adjustment responses to financial crises and the mitigation of adverse social impacts up to the 2007–2008 financial crisis and explains how structural adjustment programmes affect human rights. He argues that, for both economic and legal reasons, economic reform programmes must be inclusive and advance human rights. He identifies the main challenges of developing guiding principles for assessing human rights impacts, including their basis, scope, content, issues related to timing, and some reflections on how to proceed. He concludes with some preliminary recommendations for discussion on the content and format of the guiding principles and proposes the next steps towards developing them.

## II. Evolution in structural adjustment responses to financial crises and mitigation of adverse social impact

12. While the 2007–2008 international financial crisis was the worst in decades, the origin of the debt crises in Latin America in the 1980s, which had spread globally, was also tied to domestic policy concerns in the United States of America and other developed countries. Following the Latin American crises, advanced economies sought to tackle their high levels of inflation and attract investments by increasing interest rates, which escalated interest payments for borrowers in the developing world. Debtor countries turned to the International Monetary Fund (IMF) to bridge finance and for advice on how to deal with the financial impacts of the crises. The structural adjustment policy package that came to be characterized as the “Washington Consensus” became the dominant remedy. As a condition for accessing IMF financing, the reduction or reform of public spending and the liberalization of markets by removing controls and barriers, including on the movement of capital, were proposed.

13. By the mid-1980s, governments, researchers and an emerging international civil society community had begun to voice their concerns about the severe, adverse impact of such policy prescriptions on the ability of countries to promote inclusive growth, develop human capabilities and strengthen fair opportunities for all members of society. The United Nations Children’s Fund (UNICEF) gave those concerns an official voice with the 1987 publication, *Adjustment with a Human Face: Protecting the Vulnerable and Promoting Growth*.<sup>13</sup>

14. For its part, the Committee on Economic, Social and Cultural Rights had already expressed concern, in 1990, about the adverse impact of the debt burden and of the relevant adjustment measures on the enjoyment of economic, social and cultural rights in many countries. The Committee recognized that adjustment programmes would often be

<sup>12</sup> For a comprehensive summary of concluding observations, general comments and recommendations of United Nations human rights treaty bodies and mechanisms on the impacts on human rights, see OHCHR, “Promoting a rights-based approach to economic stabilization, recovery and growth”, background paper, annex II (April 2013), pp. 16–62.

<sup>13</sup> See Giovanni Andrea Cornia and others (eds.), *Adjustment with a Human Face: Protecting the Vulnerable and Promoting Growth* (Oxford, Oxford University Press, 1987).

unavoidable and that they would frequently involve a major element of austerity. However, it noted that, under such circumstances, endeavours to protect the most basic economic, social and cultural rights became more, rather than less, urgent.<sup>14</sup> Since 1990 also, the Human Development Reports of the United Nations Development Programme (UNDP) have been emphasizing the need for people-centred approaches to advance sustainable human development.

15. Nonetheless, the traditional macroeconomic policy recommendations of market liberalization and structural adjustment continued to dominate, while a number of initiatives were developed in parallel to mitigate their adverse social impacts. In the late 1980s, the international financial institutions launched “social funds” as temporary social assistance or social protection facilities. That initiative gave rise to the development of the early social impact assessment tools. However, those mechanisms were often not sufficient and the turnaround and resumption of inclusive growth often failed to materialize in the short and medium term.

16. The debt crisis deepened, especially in many low-income countries. A coalition of civil society organizations and some international agencies called for broad debt relief, arguing that many governments had been enticed into taking loans that did not deliver as promoted and the international economy did not evolve as anticipated. In 1996, the Heavily Indebted Poor Countries Initiative became a reality, whereby governments would have to prepare Poverty Reduction Strategy Papers, meet a number of economic management and performance targets, undertake economic and social reforms, and may receive extensive debt relief when they reached the completion point. Resources thus freed up could be directed towards poverty-reducing spending.<sup>15</sup> Following the United Nations Millennium Summit in September 2000, Poverty Reduction Strategy Papers became the instruments required by international financial institutions to support countries’ progress towards achieving Millennium Development Goal 1 on poverty reduction.

17. With the new millennium, the international development community turned more decisively to strengthening the agency of the actual beneficiaries beyond social service delivery systems. Attention shifted to social protection as a means of securing livelihoods for the elderly and people living with disabilities, facilitating access to nutrition, health and education for children, as well as generating household incomes during adjustment and transition periods. Social protection floors and conditional cash transfers became major trends in social development cooperation in the early 2000s, favoured by a wide range of governments. Conditional cash transfers have not been without some controversy given their explicit conditionality in contrast to simple cash transfers as social assistance. The distinction between the IMF’s support for means-tested cash transfers and strong targeting of social protection benefits to meet fiscal targets and the Social Protection Floors Initiative supported by the United Nations and the International Labour Organization, which emphasizes universal coverage and the human right to social security is apparent.<sup>16</sup> Yet, no consistent and comprehensive rights-based framework for conducting human rights impact assessments of economic reform programmes has emerged.

### III. Human rights impacts of austerity

18. Today, more than two thirds of countries across the world are contracting their public purses and limiting, rather than expanding, their fiscal space.<sup>17</sup> Countries are

<sup>14</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 2 (1990) on international technical assistance measures, para. 9.

<sup>15</sup> See International Monetary Fund (IMF) Survey: IMF Helping Countries on Health, Social Spending Policies (2008) available at <https://www.imf.org/en/News/Articles/2015/09/28/04/53/sopol072508a>.

<sup>16</sup> Thomas Stubbs and Alexander Kentikelenis, “Targeted social safeguards in the age of universal social protection: the IMF and health systems of low-income countries”, *Critical Public Health* (June 2017).

<sup>17</sup> See Isabel Ortiz and others, “Fiscal space for social protection and the SDGs: options to expand social investments in 187 countries”, Extension of Social Security Working Paper No. 48 (Geneva, ILO, 2017).

struggling to protect hard-fought gains in improving social protection and coverage. Those gains were the subject of extended advocacy over almost thirty years, but have become increasingly at risk of being reversed.

19. A 2015 study<sup>18</sup> indicated that austerity was expected to impact more than two thirds of all countries during 2016 to 2020, affecting more than six billion people or nearly 80 per cent of the global population by 2020 and that, contrary to public perception, austerity measures were not limited to Europe; many of the principal adjustment measures featured most prominently in developing countries.

20. Fiscal consolidation policies have varied from one country to another. Nevertheless, seven of the most common fiscal consolidation measures are: (a) public expenditure cuts affecting human rights-sensitive fields such as public health care, social security and education; (b) regressive tax changes; (c) wage bill cuts and caps and reduction of positions in the public sector; (d) pension reforms; (e) rationalization and further targeting of safety nets; (f) privatization of public utilities and service providers and introduction of user fees; and (g) reduction in food, energy and other subsidies affecting the prices of essential goods and services such as food, heating and housing.<sup>19</sup> Fiscal consolidation measures are often accompanied by structural reforms, such as deregulation, labour market flexibilization, reduction in labour rights and various administrative and legal reforms. While these measures are ostensibly aimed at facilitating future economic growth, reducing unemployment and increasing tax revenues, they have often directly affected the enjoyment of human rights, including access to justice.<sup>20</sup>

21. In some countries, only one or two of the above measures have been implemented. Increasingly, those reforms have not been implemented in response to an acute financial crisis, but rather in a preventive manner with the aim of reducing growing budget deficits or increasing the financial sustainability of public health-care and social security systems. However, in some countries, all of the above measures were introduced simultaneously.

22. Not all efforts to reduce public spending are harmful to human rights. Improving access to essential medication by better medication management in the public health system and replacing expensive medical products by similarly effective, but less expensive, generic products can actually improve the accessibility and affordability of health care and thus strengthen the realization of the right to health. Cutting public spending on unnecessary military hardware can free up much needed revenue for human rights investments.<sup>21</sup> Furthermore, reforming pension systems by encouraging part-time work for retirees and increasing the retirement age depending on job category, individual choice or personal health may be ways to ensure the sustainability of pension systems and inter-generational justice and guarantee the right to social security for current and future generations over their entire, longer life cycle.

23. Numerous United Nations bodies and human rights mechanisms have concluded that the financial crises have threatened government expenditure on a wide range of social welfare services when and where they were most needed.<sup>22</sup> Austerity measures have contributed to prolonging the economic crisis and compounded the threat to human rights beyond that posed by the crisis alone.<sup>23</sup>

<sup>18</sup> See Isabel Ortiz and others, “The decade of adjustment”.

<sup>19</sup> Ibid. See also Center for Economic and Social Rights, “Assessing austerity”.

<sup>20</sup> See Center for Economic and Social Rights, “Assessing austerity”.

<sup>21</sup> Ibid.

<sup>22</sup> See, for example, E/2013/82; A/HRC/17/34; A/HRC/28/59/Add.1; A/HRC/31/60/Add.2; A/HRC/34/57/Add.1; A/HRC/25/54/Add.2; A/HRC/34/51/Add.2; E/C.12/GBR/CO/6; E/C.12/2016/1; reports of the Council of Europe Commissioner for Human Rights, available at <https://www.coe.int/en/web/commissioner/thematic-work/economic-crisis>; ILO World Social Protection Report 2017–2019, pp. 181–184; and United Nations Children’s Fund, *Children of Austerity: Impact of the Great Recession on Child Poverty in Rich Countries* (Oxford, Oxford University Press 2017).

<sup>23</sup> See OHCHR, “Promoting a rights-based approach to economic stabilization”, annex II; also UNCTAD, *Beyond Austerity*.

24. Measures were very often characterized by horizontal, indiscriminate cuts across policy areas in order to meet financial savings that were determined in advance, rather than based on assessments of who would be impacted, whether and how the enjoyment of rights would be affected and whether alternative measures were available. Short-term measures have often been justified on the basis of their outcome in the long run, but there is a lack of empirical evidence that austerity measures have contributed to improved enjoyment of human rights for all in the long run. In fact, short-term measures that supposedly promise future social benefits may harm individuals in an irreversible manner and affect their rights, capabilities or health in a persistent manner. Austerity policies have contributed to increased social exclusion, as evidenced by long-term unemployment, an increase in homelessness and other manifestations for which there are no easy cures. Addressing such consequences costs governments much more than investing in their prevention. It seems obvious that understanding and monitoring the human rights impact of economic reform policies are critical for preventing and mitigating short- and long-term impacts and for building resilience to future crises.

## **IV. Why human rights should guide economic reform programmes**

### **A. Legal imperatives**

25. In the context of situations of financial stress, States' obligations to promote the realization of human rights can be broadly categorized as: (a) relating to policy measures at the international, national and local levels to prevent financial crises; and (b) relating to minimizing and mitigating the human rights impact of financial crises once a crisis occurs. The two categories are related. The first category is likely to entail a far wider range of measures — from specific measures to boost employment and social protection and reduce inequality, so as to improve banking regulation and strengthen resilience and preparedness for the next crisis, to more general measures such as addressing the underlying causes of financial crises through changes in the international financial architecture. While the present report focuses more on the second category, the two are interlinked and cannot be completely separated.

26. Human rights do not dictate the specific policy measures that States should take in response to crises or other financial stress. States have the discretion to select and adopt policy measures according to their specific economic, social and political circumstances. Yet, this discretion is not without bounds; fiscal adjustment must be designed in line with specific substantive and procedural human rights obligations, which draw certain redlines that should not be crossed.<sup>24</sup>

27. While States have the primary responsibility to comply with international human rights treaties and standards, international financial institutions and other international organizations are also bound to respect human rights. States and relevant United Nations agencies should ensure that the protection of the most basic economic, social and cultural rights is, to the maximum extent possible, built into programmes and policies aimed at promoting adjustment.<sup>25</sup> Like any other subject of international law, international financial institutions are bound by the obligations incumbent upon them under the general rules of international law, under their constitutions or under the international agreements to which they are parties. They are therefore obligated to comply with the human rights set out in the Universal Declaration of Human Rights and in international human rights treaties, which

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<sup>24</sup> See Center for Economic and Social Rights, "Assessing austerity"; and Aoife Nolan, "Not fit for purpose? Human rights in times of financial and economic crisis", *European Human Rights Law Review*, vol. 4 (2015) pp. 360–371.

<sup>25</sup> See *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 73, at p. 89, para. 37; E/C.12/2016/1, paras. 7–9; and Committee on Economic, Social and Cultural Rights, general comment No. 2 (1990), para. 9.

have become part of customary international law and which reflect the general principles of law.

28. While many human rights norms are subject to qualifications and limitations, fiscal consolidation and economic reform measures should never violate the minimum core content of economic, social and cultural rights, nor be directly or indirectly discriminatory or result in the adoption of impermissible retrogressive measures in terms of the enjoyment or implementation of economic, social and cultural rights. The prohibition of impermissible retrogression in human rights law is the key economic, social and cultural rights standard for assessing rights-harming fiscal consolidation and economic reform measures. Retrogressive measures — that is, taking steps that would reduce the enjoyment of economic, social and cultural rights — are only permissible under certain strict circumstances (see below).

29. The onus is on governments to demonstrate that their proposed response measures will meet their human rights obligations. States, and if applicable, international financial institutions, must therefore exercise human rights due diligence before implementing far-reaching economic reforms that have the potential to undermine the enjoyment of human rights. There is growing international recognition, confirmed by decisions, general comments, concluding observations and statements of human rights mechanisms and academic literature, that potentially retrogressive measures could be regarded as acceptable only if they are:

- (a) Temporary, in that they remain in place only as long as they are necessary;
- (b) Legitimate, with the ultimate aim of protecting the totality of human rights;
- (c) Necessary, in that they must be justifiable after the most careful consideration of all other less restrictive alternatives;
- (d) Reasonable, in that the means chosen are the most suitable and capable of achieving the legitimate aim;
- (e) Proportionate, in the sense that, the adoption of any other policy or failure to act would be more detrimental to the enjoyment of economic, social and cultural rights;
- (f) Not discriminatory and can mitigate the inequalities that can emerge in times of crisis; and they ensure that the rights of disadvantaged and marginalized individuals and groups are not disproportionately affected;
- (g) Protective of the minimum core content of economic, social and cultural rights; based on transparency and genuine participation of affected groups in examining the proposed measures and alternatives;
- (h) Subject to meaningful review and accountability procedures.<sup>26</sup>

30. Non-discrimination is a core principle of international human rights law and is embodied in all international human rights treaties. In human rights law, discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment on an equal footing or exercise of all rights and freedoms by all persons. It also includes any action or omission that, whether intended or not, disproportionately affects members of a particular group. In order to eliminate de facto discrimination, States may be under an obligation to take special

<sup>26</sup> See E/C.12/2016/1; Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007) on the right to social security, para. 42; Letter dated 16 May 2012 addressed by the Chairperson of the Committee on Economic, Social and Cultural Rights to States parties to the International Covenant on Economic, Social and Cultural Rights; Aoife Nolan (ed.) *Economic and Social Rights After the Global Financial Crisis*, (Cambridge, United Kingdom, Cambridge University Press, 2014); and Center for Economic and Social Rights, “Assessing austerity”.

measures to reduce or eliminate discrimination,<sup>27</sup> such as affirmative action. It is therefore essential that the human rights impact of austerity measures and economic reform policies on different groups in society is not only assessed, but those groups must also participate in a meaningful manner in the assessment. That includes, in particular, groups at risk of marginalization or vulnerably, such as women, children, the elderly, ethnic, national, linguistic, religious or other minorities, migrants, persons with disabilities and others. Based on context-specific circumstances, the human rights impact of economic reform policies on other social groups at risk, such as indigenous peoples, refugees or internally displaced persons, also needs to be assessed and the participation of those groups in the assessment should be ensured. Particular attention must be given to intersecting patterns of discrimination and inequality that compound each other.

31. States and international financial institutions have a duty to assess the impact of proposed and implemented economic reform measures, in particular, when significant adverse human rights impacts are expected.<sup>28</sup> Both the Guiding principles on foreign debt and human rights<sup>29</sup> and the Guiding principles on extreme poverty and human rights<sup>30</sup> enjoin States and international financial institutions to carry out human rights impact assessments in relation to their respective policies. Treaty bodies have underlined in their general comments the obligation of States to undertake human rights impact assessments in the context of budgeting, business activities, trade and investment agreements and privatization of public services, including in relation to potential extraterritorial human rights impacts.<sup>31</sup>

32. The guiding principles for assessing the human rights impact of economic reform policies do not aim to create new international legal obligations, but rather highlight the implications of existing international human rights norms and standards applicable to States and international financial institutions in the context of economic reform measures. While United Nations human rights bodies have already highlighted key human rights principles and standards against which adjustment policies should be reviewed, there is need to develop more practical guidance on how to design and implement a human rights impact assessment in practice. That would enable the move from human rights on paper to human rights in action. The guiding principles for assessing the human rights impact of economic reform policies should assist States, international financial institutions and other stakeholders in designing, implementing and monitoring economic reform programmes with the aim of ensuring the protection of human rights. They should be useful to States for designing economic reform measures aimed at preventing financial crises, but also in more complex situations, such as when a country is already facing a financial crisis and is dependent on international financial assistance from international financial institutions.

## B. Economic imperatives

33. Respect for human rights and social inclusive economic growth are not necessarily in opposition, as popular view holds, but can reinforce each other. Economic growth and development are essential to progress in human development and the realization of human rights, such as generating jobs and income opportunities as well as resources for investment in social and economic infrastructure, among others. However, the quality and orientation of economic growth matter as wide inequalities in and of themselves can dampen growth. It

<sup>27</sup> See also Guiding Principles on human rights impact assessment for trade and investment agreements (A/HRC/19/59/Add.5), appendix, para. 2.5.

<sup>28</sup> See E/C.12/2016/1, paras. 4 and 11; also A/HRC/31/60/Add.2, paras. 81 (a) and 83 (b); A/HRC/34/57/Add.1, para. 83; E/C.12/PRT/CO/4, para. 20; CRC/C/GRC/CO/2-3, para. 29; CEDAW/C/GRC/CO/7, para. 40; E/C.12/GRC/CO/2, paras. 14, 24 and 32.

<sup>29</sup> See A/HRC/20/23, annex.

<sup>30</sup> See A/HRC/21/39.

<sup>31</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, paras. 17 and 21–22; and Committee on the Rights of Children, general comment No. 19 (2016) on public budgeting for the realization of children's rights, para. 47.

has been argued that inequality causes underdevelopment.<sup>32</sup> It has also been argued that, since economic growth can strengthen human rights, explicit integration of a human rights orientation into growth strategies is an “opportunity approach”<sup>33</sup> that would enhance the quality and equity of economic growth, including through equitably advancing the right to education, health, food, water, housing and social protection, akin to a human development approach.

34. Wealth and income inequalities had been widening within countries over the two to three decades prior to the latest financial crisis, both in the developing world and among the more developed economies. In a previous report, the Independent Expert found that economic inequality was both a result of and a contributor to financial crises.<sup>34</sup> In 2015, an analysis by the Organization for Economic Cooperation and Development (OECD) showed that income inequality had a negative and statistically significant impact on medium-term growth. The analysis also indicated that a main factor behind inequality hurting growth is failure to make adequate education opportunities available to poorer households.<sup>35</sup> The authors of a related IMF study referred to a “tentative consensus ... that inequality can undermine progress in health and education, cause investment-reducing political and economic instability, and undercut the social consensus required to adjust in the face of shocks, and thus that it tends to reduce the pace and durability of growth”.<sup>36</sup>

35. Equally critical to economic recovery and human development is the expansion of income and work opportunities for all. Poverty and exclusion from the labour market have been described as a waste of human resources with adverse impact on economic growth both through lack of their contribution to the economy and by their need for additional protection. The right to work and the maintenance of a dynamic labour market are critical to the health of a national economy. In that perspective, the United Nations Development Programme 2015 Human Development Report on work recommended that targets for job creation for women and men should be included among the indicators that finance departments and central banks monitor regularly to ascertain economic prospects.<sup>37</sup>

## V. Using human rights impact assessments to strengthen policy responses to financial crises

36. An impact assessment is a structured process for identifying, understanding, assessing and addressing the potential or actual adverse effects of policies, laws, programmes or projects. It can be carried out *ex ante* — to predict foreseeable impacts of proposed policy changes — or *ex post* — that is, looking back to assess and address the actual impact of policy change and implementation. While a human rights impact assessment builds on other types of impact assessments, it focuses on human rights standards, which offer a specific basis for assessing actions in the light of a State’s international obligations, and provides the following specific added value.

37. A human rights impact assessment can support governments and international financial institutions in complying with their international human rights obligations when carrying out economic reforms by providing a specific framework and process for testing how proposed policy responses and related budgetary adjustments measure up against those

<sup>32</sup> William Easterly, “Inequality does cause underdevelopment: Insights from a new instrument”. *Journal of Development Economics*, vol. 84, No. 2 (2007), pp. 755–776.

<sup>33</sup> See Sigrid Alexander Koob and others, “Human rights and economic growth: an econometric analysis of freedom and participation rights”, *Matters of Concern: Human Rights Research Papers No. 2017/1*, Danish Institute for Human Rights.

<sup>34</sup> See A/HRC/31/60.

<sup>35</sup> See OECD (2015), [www.oecd-ilibrary.org/employment/in-it-together-why-less-inequality-benefits-all\\_9789264235120-en](http://www.oecd-ilibrary.org/employment/in-it-together-why-less-inequality-benefits-all_9789264235120-en); and OECD (2014), [www.oecd.org/newsroom/inequality-hurts-economic-growth.htm](http://www.oecd.org/newsroom/inequality-hurts-economic-growth.htm), <https://www.oecd.org/els/soc/Focus-Inequality-and-Growth-2014.pdf>.

<sup>36</sup> Jonathan D. Ostry and others, “Redistribution, inequality, and growth”, *Staff Discussion Note (SDN/14/02)* (IMF, February 2014).

<sup>37</sup> UNDP, *Human Development Report 2015: Work for Human Development* (2015).

obligations. Such an exercise contributes to evidence-based policymaking as it provides an analytical basis for forecasting potential human rights impacts when choosing among policy options. Just as the Basel Committee on Banking Supervision and European Central Bank have developed financial stress tests to model how financial institutions may respond to future financial stress, one could think of human rights impact assessments as social stress tests that, on the basis of evidence-based policymaking, help to assess the ability of a country's social and economic infrastructure to respond to an economic crisis.<sup>38</sup>

38. A human rights impact assessment makes potential human rights impacts of policy choices more visible and explicit to a wider population and their representatives, and makes policy choices and their consequences more explicit for policymakers. A human rights-based approach, unlike other more technocratic approaches, provides normative guidance to policymakers about which choices they should make or avoid.

39. The human rights principles of interdependence and interrelatedness mean that the human rights impact assessment should focus on the full range of harms resulting from fiscal consolidation measures. It is most often the combination and accumulation of individual government decisions that cause the most damage if the decisions fall, one on top of the other, on the same population groups.<sup>39</sup> A human rights-based approach can help to identify how people confronting intersecting inequalities may be affected. Some of the analyses carried out have incorporated an explicit rights-based approach.<sup>40</sup>

40. Fiscal policymaking is complex and technocratic and, even at the best of times, it is often impenetrable to the general public unless governments make particular efforts to explain and involve the public in policy changes. That would “transform the seemingly technical arena of fiscal policy into a terrain of public scrutiny and democratic deliberation, making the ultimate path taken more legitimate and sustainable”.<sup>41</sup>

41. Particular attention to accountability in the human rights framework provides greater imperatives for the implementation of prevention, mitigation and redress measures than traditional social impact assessments. The emphasis of the human rights framework on access to remedy, both as a right in and of itself and as a component of accountability, indicates the need for stronger focus on remedy in a human rights impact assessment than what may be required or expected in other types of impact assessments.<sup>42</sup>

42. A human rights impact assessment could also serve as a tool for advocacy and negotiation. While the most common approach for carrying out a human rights impact assessment may be within or accompanying a regulatory impact assessment carried out by a government, the process also makes the evidence available to those affected and their representatives so that they engage with the government. If done in advance of negotiations with international financial institutions or other debt renegotiation processes, the evidence base can provide governments with a stronger and more objective analysis that could strengthen its negotiations on areas that should be protected from reduction in government spending.

<sup>38</sup> See Center for Economic and Social Rights, “Assessing austerity”.

<sup>39</sup> Howard Reed and Jonathan Portes, “Cumulative impact assessment: A research report by Landman Economics and the National Institute of Economic and Social Research for the Equality and Human Rights Commission”, Equality and Human Rights Commission Research Report 94 (United Kingdom, 2014). For the most recent data see, United Kingdom, Equality and Human Rights Commission, “Distributional results for the impact of tax and welfare reforms between 2010–17, modelled in the 2021/22 tax year”, Interim findings (November 2017).

<sup>40</sup> United Kingdom, Office of the Children’s Commissioner, *An Adequate Standard of Living: A Child Rights Based Quantitative Analysis of Budgetary Decisions 2010–13*, Final report (June 2013).

<sup>41</sup> See Center for Economic and Social Rights, “Assessing austerity”.

<sup>42</sup> Danish Institute for Human Rights, “Human rights impact assessment guidance and toolbox” (2016).

## VI. Building on what exists already

### A. Conceptual foundations and tools in existing approaches

43. There is a wide range of impact assessment tools that have been developed since the approach was first introduced in the 1970s to address environmental impacts. Human rights impact assessments are among the newer tools, but the literature has already articulated the value added of a human rights approach.

44. The specific purpose of a human rights impact assessment is to help policymakers identify potential inconsistencies between pre-existing human rights obligations and economic reform policies, irrespective of whether they are pursued exclusively, based on their own merits, or in response to lending conditionalities imposed by international financial institutions. The purpose of such an assessment is to ensure that they do not face obstacles in realizing the human rights that they have made a commitment to guarantee as States parties to international human rights treaties. Applying a human rights impact assessment approach to situations of and in response to financial stress would be new in the context of economic reform. A human rights impact assessment would provide a framework and normative guidance that would prompt analysis of the deeper causes of a crisis as well as serious consideration and analysis of alternative responses to crises that can provide a more sustainable path to longer-term growth.<sup>43</sup> Such an assessment would also provide normative guidance for considering trade-offs and hard choices, strengthen the legitimacy and local ownership of choices made through inclusive and accountable decision-making that could contribute to reducing social conflict and supporting longer-term stability.<sup>44</sup>

45. Several States have incorporated human rights aspects into their social or regulatory impact assessment approaches. That demonstrates a general recognition that human rights require attention as part of the policymaking process. The challenge is to ensure that a human rights perspective becomes an integral part of economic policymaking.

46. The purpose of and steps for carrying out a human rights impact assessment based on classic impact assessment approaches are well-established. They include (a) preparation and screening of possible human rights impacts in consultation with affected groups; (b) scoping; (c) evidence gathering and data collection using qualitative and quantitative methods; (d) analysing impacts; (e) formulation of recommendations aimed at preventing adverse human rights impacts or ensuring that they are mitigated; (f) reporting and presentation of findings; and (g) ongoing evaluation and monitoring of actual impacts.

47. Important lessons can be learned from the reactions to the 2007–2008 financial crisis over the past ten years. The impact — both direct and indirect — of economic policy change on human rights is complex and multidimensional and policymakers could draw on lessons learned from developing a multidimensional approach to poverty. The communication of policy impacts to households via transmission channels captured in the Poverty and Social Impact Analysis used by both the Asian Development Bank and the World Bank also provide a potentially relevant analytical tool for understanding how economic reform and fiscal consolidation measures could impact the enjoyment of human rights. Such techniques could contribute to the introduction of a more rigorous analysis of how policy impacts are transmitted and how they affect human rights, well beyond the more traditional human rights analyses that consider only direct governmental violations.

48. Other tools used in Poverty and Social Impact Analyses and budget analyses include distributive impact analysis, benefit incidence analysis, fiscal incidence analysis<sup>45</sup> and similar impact analysis tools that can model who — in terms of socioeconomic groups,

<sup>43</sup> See, for example, the comprehensive Outcomes, Policy Efforts, Resources and Assessment (OPERA) framework developed by the Center for Economic and Social Rights.

<sup>44</sup> See Center for Economic and Social Rights, “Assessing austerity”.

<sup>45</sup> See Nore Lustig (ed.), *Commitment to Equity (CEQ) Handbook: Estimating the impact of fiscal policy on inequality and poverty* (New Orleans, CEQ Institute, Tulane University, June 2017).

quintiles, regional areas — receive what benefit from State services; the impact of projected cuts on poverty rates, consumption and income, among others; and potential adaptive strategies.<sup>46</sup> Those tools provide important quantitative analyses to support a human rights impact assessment. They can also provide equally warranted assessments of burden-sharing and fairness in relation to benefits. However, since not all human rights impacts can be measured adequately by quantitative indicators, such as income, unemployment or poverty rates, such quantitative analyses should be complemented by a qualitative analysis based on the normative content of human rights.

49. A human rights impact assessment can very usefully incorporate or be accompanied by a budget analysis. This may include rights-based budget audits. A number of organizations have carried out more systematic analyses of budgets and benefit packages from a human rights point of view. However, most governments do not appear to have developed principles or tools that are specifically focused on the human rights implications of fiscal consolidation measures.

50. A far wider range of organizations have prepared or commissioned one-off reports analysing the impact of financial crises. For example, the former President of the Hellenic Parliament established the Truth Committee on Public Debt to analyse the human rights impact of the Greek debt crisis, and the Civil Liberties, Justice and Home Affairs Committee of the European Parliament commissioned an extensive comparative analysis of the impact of financial crises on the fundamental rights of individuals in several European Union member States.<sup>47</sup> Human rights agencies,<sup>48</sup> international organizations<sup>49</sup> and United Nations human rights bodies<sup>50</sup> have also carried out such analyses. Their reports significantly enrich the understanding of the types of impacts on human rights and how those impacts are transmitted to the population to support future human rights impact assessments. None, however, was specifically designed as a tool that could be replicated and applied to future situations. Indeed, insofar as standard tools do exist or have been used — such as in the case of the European Commission’s social impact analyses of the third adjustment programme of Greece — they are not based on human rights standards.<sup>51</sup>

## **B. Particular challenges in developing and applying a human rights impact assessment to potentially impermissible retrogressive measures**

51. What was lacking until the 2007–2008 financial crisis was an analysis of the multiple ways in which fiscal consolidation measures could impact human rights. Policymakers need more detailed guidance that could help to combine that knowledge with analytical approaches that would allow human rights impact assessments to be carried out in a timely and solid manner and improve policy responses to financial crises by ensuring that they prevent, minimize and mitigate adverse human rights impacts. Combining rigour and comprehensiveness with usability will be a particular challenge in developing a human rights impact assessment approach.

52. Ensuring participation is essential for human rights impact assessments. A key challenge is how to identify, reach and understand the depth and breadth of impacts on

<sup>46</sup> See <http://wbi.worldbank.org/boost/tools-resources/topics/sector-analysis/benefit-incidence-analysis>.

<sup>47</sup> See Aleksandra Ivanoković Tamamović, “The impact of the crisis on fundamental rights across member States of the EU: comparative analysis”, European Parliament Think Tank (2015), available at [www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL\\_STU\(2015\)510021](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2015)510021).

<sup>48</sup> Notably, the European Union Agency for Fundamental Rights has published numerous reports on different fundamental rights dimensions of the crisis. See, for example, “The European Union as a Community of values: safeguarding fundamental rights in times of crisis” (2013), available at <http://fra.europa.eu/en/publication/2013/european-union-community-values-safeguarding-fundamental-rights-times-crisis>.

<sup>49</sup> Council of Europe, “Safeguarding human rights in times of economic crisis,” Issue paper, Commissioner for Human Rights (2013).

<sup>50</sup> See, for example, A/HRC/34/57/Add.1; and A/HRC/31/60/Add.2.

<sup>51</sup> See, for example, European Commission “Assessment of the social impact of the new Stability Support Programme for Greece” (SWD(2015)162/F1) (2015).

different groups at risk of marginalization or vulnerability, such as women, children, the elderly, persons with disability, national, ethnic, linguistic and religious minorities or other groups that may be at risk in a given national context, such as indigenous peoples, refugees or internally displaced persons.<sup>52</sup>

53. Reliable and disaggregated data are needed to strengthen modelling or at least inform a more detailed analysis. The momentum to widen and strengthen the collection and analysis of relevant and timely data that can be disaggregated to ascertain progress in the reduction in inequality among societal groups has grown in the context of the 2030 Agenda and the 17 Sustainable Development Goals. While the indicators of the Goals may not necessarily be rights based and the resulting data may not provide a comprehensive overview of all aspects of human rights, such data-collection processes could serve as a useful information resource to those working in a human rights impact assessment context.

54. Once the analysis of potential impacts is done, a core part of a human rights impact assessment is designing prevention, mitigation and compensation measures to counteract adverse impacts. This is done by selecting alternative measures, modifying proposed measures through compensating for impacts (e.g., providing cash payments to the poorest to compensate for the removal of fuel subsidies). The experience of the application of regulatory impact analyses by the OECD indicated the risk for overall outcomes of relying on mitigation measures that must be adopted by another part of government that does not have a mandate to compel the adoption of such measures. Offsetting negative impacts through separate policy actions is likely to give rise to political difficulties in many cases, as there may be limited confidence that the promised “policy offsets” will actually be delivered by other parts of government.<sup>53</sup> That points to the need to carry out a human rights impact assessment on fiscal consolidation and/or economic reform packages at the national level that would involve a whole-of-government approach.

55. Deciding whether to integrate a human rights impact assessment into a broader government review, such as a regulatory impact assessment, or carry out a stand-alone assessment is an important question that should draw on experiences from other areas. A recent regulatory impact analysis review conducted for OECD considered the integration of a specific focus — such as environmental or social issues — into a broader regulatory impact analysis versus conducting a stand-alone impact assessment. The review of literature found that, in sum, the majority of authors remarked on the relatively poor performance of both impact assessment options — that is, the integrated regulatory impact analysis, on the one hand, and separate environmental, social or regulatory impact analyses, on the other — in ensuring that identified social and environmental impacts were taken into account in determining policy outcomes. The literature on impact assessment has generally advocated integration as a means of making policymaking more effective.<sup>54</sup>

56. Finally, it is important to acknowledge that any tool needs to be adaptable to potentially different levels of data availability and overall capacity to carry out a human rights impact assessment, so that the tool can be used in a wider range of circumstances.

## **VII. Designing a human rights impact assessment to assess potentially impermissible retrogressive measures**

57. This section sets out key points that need to be addressed and considered in designing a human rights impact assessment. The guiding principles for assessing the human rights impact of economic reform policies would be a set of substantive human rights principles and procedural guidance on how to conduct a human rights impact assessment of potentially impermissible retrogressive measures.

<sup>52</sup> See, for example, A/HRC/28/59/Add.1.

<sup>53</sup> See Rex Deighton-Smith and others, “Promoting inclusive growth through better regulation: The role of regulatory impact assessment”, OECD Regulatory Policy Working Papers, No. 3 (2016), p. 45.

<sup>54</sup> *Ibid.*

58. **Legal basis of the guiding principles:** The guiding principles will be based on the normative guidance as set out in human rights treaties and standards and their authoritative interpretation by the treaty bodies and other human rights mechanisms. Given the significant amount of analyses of the recent financial crisis (and subsequent responses) there is an emerging set of principles developed by authoritative bodies that could be used as the basis for assessing the human rights compliance of policy choices and proposed measures.

59. **Scope:** A key issue to consider is what should trigger the application of the guiding principles. The normative human rights framework indicates that a human rights impact assessment should apply to economic reforms that may result in impermissible retrogression of economic, social and cultural rights. As noted above, economic reforms are not per se problematic under human rights law. Human rights law sets out standards to evaluate whether the processes and substance of economic reform measures are aligned with human rights.

60. Particularly where States implement a combination of measures, the human rights impact assessment should review the potential cumulative impact of those measures, given that it is their accumulation that often results in the most severe impacts. The accompanying human rights impact assessment guidance should propose a set of modules applicable to the different areas of reform so as to provide more specific information and criteria.

61. **Timing:** The guiding principles will focus on ex ante human rights impact assessments, which should be started as early as possible in the policymaking process if they are to be able to influence the analysis and choice of alternative policy options while also highlighting the importance of regular, ex post reviews.

62. **Addressing different situations:** The guiding principles will need to provide guidance on how the principles can be applied to the different and particular situations in which potentially retrogressive economic reforms may unfold, for example: (a) acute crisis situations in response to severe economic shocks, where the risk of adverse human rights impacts is heightened and in which the economic and financial crisis requires an urgent response. In such cases, a human rights impact assessment conducted within a short time frame and addressing only the most significant impacts may be all that can be accomplished; (b) medium-term reforms — as is currently experienced where austerity measures stretch into multi-year processes; and (c) accompanying the systematic review of budgets and their distributional assessments, such as those carried out by the Government of the United Kingdom or the annual review of the economic policies of all the European Union member States in the context of the European Semester.

63. In times of acute crisis and rapid policy responses, conducting a sufficiently rigorous analysis requires a dose of realism and some balancing. Depending on the sophistication of the process and the analytical tools chosen, a human rights impact assessment, together with its participatory processes, may take some time to conduct. The guiding principles and accompanying human rights impact assessment methodology would suggest ways in which the assessment could be adjusted to meet tighter time schedules in order to respond in the most acute circumstances. Even where consultation cannot be carried out, governments can nonetheless apply human rights principles to guide basic choices that can be benchmarked against longer-term planning that is supported by participatory processes, such as hearings and committee work on national and sectoral development plans, and annual budget allocations. Where governments have regulatory or social impact assessments in place as part of the planning processes that are used to address fiscal and economic policy reforms, adapting them to address human rights may be an effective short-term approach to ensuring that human rights considerations are taken into account.

64. As governments move into medium-term planning to respond, a human rights impact assessment can be used to both look back and evaluate the short-term measures already taken and propose adjustments and provide evidence for medium- to longer-term planning going forward.

65. For longer-term reforms and more regular reforms, a human rights impact assessment can help governments to focus on building resilience so as to better address the next crisis.

66. **What should be covered:** The human rights impact assessment should include: (a) review of all the policy options for tackling a crisis, including countercyclical measures; (b) analysis of how policy changes and proposed budget cuts and other adjustment measures are likely to affect the population, in particular the most vulnerable groups — using a variety of quantitative and qualitative tools; (c) analysis of the extent to which budget, policy, legislative and other changes may contribute to fulfilling the State’s human rights obligations or potentially undermine them; and (d) a (non-exhaustive) list of preventive or mitigating measures to take to respond to the analysis that are in line with the government’s human rights obligations.

67. **Who should conduct the human rights impact assessment:** Who carries out the process will have important implications for the uptake of the results, the expertise brought to bear, potential conflicts of interest, the depth of the consultations carried out, the degree to which recommendations are challenged and justified, or whether the process simply becomes a validation of decisions already taken.<sup>55</sup> There is no one optimal solution for conducting human rights impact assessments. Whether it is the government ministry or ministries responsible for the reform, international financial institutions, bodies with human rights expertise, such as a national human rights institution or a civil society organization, all have trade-offs. The guiding principles would build on the criteria developed in the Guiding principles for human rights impact assessments of trade and investment agreements,<sup>56</sup> which set out specific criteria for the conduct of human rights impact assessments, such as the independence of the body carrying out the assessment; appropriate expertise and funding; and the status accorded to the assessment so that the results are actually considered in the final decision-making processes.<sup>57</sup>

68. **How data and information should be collected:** The norms that underpin human rights duties must be translated into more concrete, objective and measurable criteria for assessing how policy choices impact rights fulfilment.<sup>58</sup> The norms must then be further “translated” into tests that can guide a meaningful analysis. A human rights impact assessment to assess economic reform measures will often be complex as it involves both quantitative and qualitative analyses to understand the implications of particular budget cuts and changes in taxation and social security entitlements. On the quantitative analysis side, there are well-developed approaches to modelling distributional impacts using income quintiles. In order to ensure compliance with the human rights requirement of non-discrimination and that due attention is paid to the situation of groups at risk of marginalization or vulnerability, it is essential that those indicators provide information disaggregated by gender, disability, age group, region, ethnicity and any other grounds considered relevant, based on a contextual, country-level appreciation of groups at risk.

69. **How the human rights impact assessment should be carried out:** The guiding principles for assessing human rights impacts should provide procedural guidance on how to undertake such assessment. The methodology should draw from the experience of impact assessment processes already in place. In general, it would include screening, scoping, evidence-gathering, including data collection, analysing impacts, conclusions and recommendations, including consideration of less harmful options, prevention, mitigation and management.

70. The design and implementation of the procedure should be based on the principles of transparency and inclusive participation. More specifically, active participation in addressing fiscal consolidation measures requires, as a start, access to information. Governments conducting a human rights impact assessment may have better access to information, but they must, to the greatest extent possible, make information available to the stakeholders in the human rights impact assessment process.<sup>59</sup>

<sup>55</sup> See Center for Economic and Social Rights, “Assessing austerity”.

<sup>56</sup> See A/HRC/19/59/Add.5, appendix.

<sup>57</sup> The criteria also include transparency and inclusive participation, which will be addressed below.

<sup>58</sup> See Center for Economic and Social Rights, “Assessing austerity”.

<sup>59</sup> The Government of the Plurinational State of Bolivia has developed a set of human rights indicators that enable the State and civil society to have official, updated and disaggregated statistical

71. A human rights impact assessment should ensure meaningful participation of all stakeholders, including relevant government departments, business and trade union representatives and, in particular, affected population groups and their representatives, such as women, children, the elderly, persons with disabilities, minorities and other groups at risk of marginalization in the national context, such as indigenous peoples. Active participation in addressing fiscal consolidation measures also requires the appropriate time frame for both authorities and those affected and their representatives to be able to prepare and evaluate policy alternatives. Given the technical complexities of fiscal consolidation measures, a certain level of expertise is needed for engaging in the actual evaluation. That is where the role of civil society organizations, think tanks and academics is particularly valuable as they can provide expert evaluation. They can play an important role in engaging with affected groups to ensure that their experiences and concerns are incorporated in the analysis and in “translating” the findings of the impact analysis to a wider audience.

## **VIII. Conclusions and recommendations**

### **A. Conclusions and way forward**

72. Neither the lessons learned from responses to earlier crises about the importance of protecting social spending nor the increasing emphasis on the instrumental role of human rights in improving development outcomes appear to have played a sufficiently explicit role in the analyses or structuring of responses by governments and international financial institutions to the recent financial crisis. The conclusions drawn in 1990 by the Committee on Economic, Social and Cultural Rights in response to earlier crises remain equally valid today. Although the severe human rights impacts of the recent financial crisis have been widely and well documented, policy responses to the crisis revealed a deep-seated structural neglect of human rights in economic policy formulation, insufficient protection of the most vulnerable and a lack of attention to participation, consultation, transparency and accountability.

73. That neglect is the driving force behind the development of guiding principles for assessing the human rights impact of economic reform programmes and the development of analytical and methodological tools to assess human rights impacts. The guiding principles will help States and international financial institutions to comply with their human rights obligations in periods of financial distress when considering fiscal consolidation measures, countercyclical initiatives and alternative economic choices. Although such human rights-specific guidance has not yet been adequately developed, relevant tools, experience and research exist to inform the efforts to do so.

74. The guiding principles should start from the premise that managing economic and fiscal affairs is a core government function and responsibility. Fiscal consolidation and wider economic reforms are not inherently incompatible with a State’s human rights duties; indeed, such measures can comply with international standards if they are designed and implemented with those standards in mind. The extent to which budget cuts may undermine human rights depends on how such cuts are implemented. For example, it makes a difference whether cuts worsen existing inequalities or not and who is affected. Cost containment measures should be planned in such a way that they do not undermine the accessibility, affordability and quality of service delivery. The aim of reforms should be to strengthen, adjust and close gaps in social protection systems, not dismantle or undermine them.

75. Timely and credible data that can be disaggregated as appropriate is critical to analysing the impacts of fiscal consolidation in a robust, useful and credible manner

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information, which allows more precise monitoring of the human rights situation and the impact of public policies on the population. See the submission at <http://sice.ine.gob.bo/HR2016/UN/index.php?r=site/index>.

for economic policymakers. The strengthening of national statistics for monitoring progress towards the achievement of the Sustainable Development Goals may facilitate efforts to monitor progress in some fields of human rights realization, but may need to be accompanied by additional indicators covering particular rights.

76. While the guiding principles will focus on important policies and processes that governments put in place in the immediate aftermath of a crisis, it is equally important to consider the measures that governments take in the medium and longer term to build transformative resilience, even during healthy economic times. Experience has shown the importance of transformative policy responses through the strengthening of institutions and policies to enable governments and people — in particular the poor and vulnerable — to weather shocks and to recover swiftly following a crisis.

77. The Independent Expert intends to circulate the draft guiding principles for assessing the human rights impact of economic reform policies to States, international financial institutions, national human rights institutions, civil society organizations and other relevant stakeholders by August 2018 with a view to obtaining written feedback in the form of comments from all stakeholders. The draft guiding principles will also be published on his official web page. He also plans to convene during 2018 a second expert meeting, circulate the revised draft based on feedback received, and hold a public consultation with States and other stakeholders. The Independent Expert would like to submit the final text of the guiding principles to the Human Rights Council for its consideration at its fortieth session.

## B. Recommendations

78. In order to advance the discussion on the development of the guiding principles for assessing the human rights impact of economic reform policies, the Independent Expert recommends that the guiding principles should:

(a) Recognize that managing economic and fiscal affairs is a core government function, while underlining the obligations of States and international financial institutions to ensure that their economic reform policies and conditionalities on financial support respect human rights;

(b) Draw on existing human rights standards relating to economic, social, cultural, civil and political rights at the international and regional levels, including core international human rights treaties, their authoritative interpretation in general comments, statements, decisions, guiding principles, concluding observations and recommendations issued by international human rights mechanisms;

(c) Set out the normative framework that has emerged from the extensive work carried out to date in relation to human rights and the financial crisis, and provide specific guidance on how to apply the framework. That should include specific guidance on assessing economic reform policies with a view to: (i) identifying positive human rights impacts; (ii) preventing or mitigating adverse impacts on the enjoyment of economic, social, cultural, civil and political rights; (iii) identifying and preventing potential violations of the core minimum obligations relating to economic, social and cultural rights; (iv) screening economic reform measures against discriminatory impacts in law and in practice that are incompatible with international human rights law; (v) identifying impermissible retrogression of economic, social and cultural rights; and (vi) clarifying the circumstances in which certain retrogressive measures may be justifiable, based on the principles of necessity, proportionality, legitimacy and reasonableness;

(d) Be applicable to different circumstances in the context of acute financial crises, in less challenging economic times, in developing countries and in highly advanced economies;

(e) Ensure prompt consideration of various policy alternatives, beyond austerity measures, in response to fiscal constraints;

(f) Complement debt sustainability analyses with a view to integrating human rights impacts and social sustainability in the assessment;

(g) Provide guidance on and references to analytical approaches that could make visible the potential impacts of reform measures and show how the burden of adjustment is shared across different income quintiles, gender, age and different social groups, including the most marginalized;

(h) Ensure that the assessment of human rights impacts is based on qualitative and quantitative data, disaggregated by gender, disability, age group, region, ethnicity and any other relevant grounds, based on a contextual, country-level appreciation of groups at risk of marginalization;

(i) Provide specific guidance for carrying out cumulative, rights-based impact assessments of various reforms measures that are often implemented in parallel as part of fiscal consolidation packages, such as taxation and public expenditure reform, so that the fuller impact on rights holders and particular groups at risk can be assessed;

(j) Set out an international standard and framework for conducting human rights impact assessments of economic reform policies that can be adjusted to the particular needs of government departments, advisory bodies, parliamentary committees, national human rights institutions, international financial institutions, international human rights mechanisms, academic institutions or civil society organizations;

(k) Include suggestions on how to integrate human rights impact assessments into existing assessment methodologies that governments, international financial institutions and other bodies may already be using;

(l) Consider the best way to carry out a human rights impact assessment in order to ensure that the results can effectively inform policy decisions, while at the same time address the independence and credibility of the assessment undertaken;

(m) Establish the criteria to be met by the assessment team;

(n) Provide guidance on how to ensure the meaningful participation of all relevant stakeholders and affected individuals and groups, including women, children, the elderly, persons with disability, migrants, minorities and other groups at risk of vulnerability, such as indigenous peoples, refugees and internally displaced persons;

(o) Set out the standards for transparency and accountability when carrying out the impact assessment and for the publication and reporting of information and the assessment;

(p) Recommend that human rights impact assessments be instituted and carried out regularly, before, during and after the implementation of economic reforms that may have the potential to cause significant adverse human rights impacts, and facilitate States' reporting obligations to the Committee on Economic, Social and Cultural Rights.

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