

HOW TO MAKE ECONOMIC REFORMS CONSISTENT WITH HUMAN RIGHTS OBLIGATIONS

Guiding Principles on Human Rights
Impact Assessment of Economic Reforms



UNITED NATIONS
HUMAN RIGHTS
SPECIAL PROCEDURES

SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

Introduction

This booklet provides state authorities, national human rights institutions, individuals, groups and communities, non-governmental organizations, media, and civil society groups working with groups in situation of vulnerability, with a user-friendly introduction to the Guiding Principles on Human Rights Impact Assessments of Economic Reforms ([A/HRC/40/57](#)) (Guiding Principles).

The United Nations Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights (Independent Expert), Juan Pablo Bohoslavsky, developed the Guiding Principles to help governments understand how to use human rights impact assessments (HRIAs) to promote human rights compliant economic reform policies. They can also be used by non-state actors to assess how well their government's economic reforms comply with their human rights obligations and how they can assist their governments to develop and implement human rights consistent economic reforms.



In March 2019, the Human Rights Council adopted [Resolution 40/8](#), taking note with appreciation of the Guiding Principles and encouraging States, United Nations bodies, specialized agencies, funds and programmes and other intergovernmental organizations to take them into account in developing and implementing economic reform policies. They also encouraged international organizations, national human rights institutions and non-governmental actors to give due consideration to the Guiding Principles in their work.¹

¹ <https://undocs.org/en/A/HRC/40/57>.



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Context

The ultimate goal of economic reforms is to change the structure and functioning of an economy. They have the potential to affect both the amount of resources available to the reforming country and the human rights situation of the population.

For example, a government confronting a debt crisis, whether acting on its own initiative or under pressure from its creditors, may cut its budget, implement tax reforms, or privatize some of its State owned enterprises in order to generate the funds that it needs to pay its creditors. Governments operating in less dire circumstances may seek to make their economies more sustainable and inclusive by incentivizing banks to lend more to small enterprises and not to fund coal projects. They may also amend the regulations applicable

to specific sectors of the economy to make them more competitive and more open to new entrants.

Each of these reforms may help improve some people's economic situations and their ability to participate in the social and political life of their society. They may also result in some people having reduced access to employment, education, healthcare, social welfare and less time and capacity to participate in the social and political life of their society.

2016 – 2017

119 countries cut their budgets leading to an average **reduction in GDP of 2.4%** affecting on average **48.5% of population.**

2016 – 2017

(Sub-Saharan Africa)

29 countries cut their budgets leading to an average **reduction in GDP of 3.0%** affecting on average **58.2% of population.**

2018

2 billion people (**30% of global population**) were adversely affected by cuts in public expenditures. Projections indicate that austerity could affect approximately 5,8 billion persons by 2021—**about 75% of the global population.**

2018 – 2019

86 countries were considering pension reforms that would result in individuals having to make **larger contributions, delays** in people getting pensions, or people getting **reduced pensions.**

Health Care Reforms

33 countries were considering health care reforms that would result in higher payments by individuals. It is anticipated that more countries will be forced to cut public expenditures in the future. It is possible, depending on economic developments over the next two years, that by 2021, **93 developing countries** and **37 high income countries** could be forced to **cut public expenditure.**

Taken from I. Ortiz and M. Cummins, "Austerity: The New Normal – A Renewed Washington Consensus 2010-24" Working Paper October 2019 (Initiative for Policy Dialogue)



Overview of the Guiding Principles

The Guiding Principles consist of 22 principles that are divided into the following five categories:



PRINCIPLES 1 TO 4

Obligations of national and subnational governments with respect to economic policies and human rights

PRINCIPLE 1

The Guiding Principles provide guidance for economic policymaking, in compliance with international human rights obligations to respect, protect and fulfil all human rights.

PRINCIPLE 2

Governments have an obligation to respect, protect and fulfil all human rights at all times in their fiscal policies and their economic reform policies.

PRINCIPLE 3

The burden of proof is on the government and its economic partners to demonstrate that the proposed economic reform measures will help realize and not undermine the human rights of the state's population.

PRINCIPLE 4

These obligations are applicable whenever economic reform policies may have an adverse impact on human rights. They apply to all levels of government in the relevant State including local governments.



2

PRINCIPLES 5 to 10 Applicable human rights standards

PRINCIPLE 5 – 6

States and their creditors must be guided by all applicable human rights law relating to civil, cultural, economic, political and social rights. Moreover, they must be cognizant of the fact that all these rights are indivisible and interdependent.

PRINCIPLE 7

All human rights can be adversely affected by economic reforms and governments must take measures to ensure that all these rights are respected and protected at all times and that they are always making efforts to fulfil them. In addition, the States have an obligation to ensure that their economic reforms do not discriminate against any part of the population.

PRINCIPLE 8

Economic reforms should prevent any kind of discrimination based on gender, promote transformative gender equality and HRIAs should always include a comprehensive gender analysis.

PRINCIPLE 9

States must design their economic reform policies in such a way that they allocate maximum available resources to the progressive realization of human rights and that they do not result in any impermissible retrogression in the realization of human rights .

PRINCIPLE 10

Retrogression should be avoided even in extreme economic conditions. Measures that would result in a deterioration in economic social and cultural rights are only permissible if they meet certain criteria. They must be temporary, legitimate in the sense that they are designed to contribute to the ultimate realization of human rights, reasonable, necessary, proportionate, non-discriminatory, protective of the minimum core content of economic, social and cultural rights, and designed and adopted consistent with the requirements of transparency, participation and accountability.



3 PRINCIPLES 11 to 12 Articulation of policies

PRINCIPLE 11

States should ensure that all relevant government departments and State agencies take the State's human rights obligations into consideration in developing and implementing economic reforms and that over time all these efforts should be well coordinated. In other words, there should be coherence between the economic, fiscal, monetary, social, environmental and financial sector aspects of the economic reforms and any other policies or governmental actions that are relevant to the efficacy of the reforms.

PRINCIPLE 12

The State must ensure that its debt strategies and debt sustainability analyses incorporate HRIAs and the issues that arise therefrom.

*“there should be coherence
between the economic, fiscal,
monetary, social, environmental
and financial sector aspects of
the economic reforms and any
other policies or governmental
actions that are relevant to the
efficacy of the reforms”*



4

PRINCIPLES 13 to 16

Other obligations of States, international financial institutions and private actors

PRINCIPLE 13

All States have an obligation to cooperate, including providing assistance, in promoting the full realization of human rights for all human beings.

PRINCIPLE 14

Non-state actors such as financial institutions, have the responsibility to contribute to these efforts. The Guiding Principles specify that other States and non-State actors should refrain from exerting undue influence over the State undertaking the reforms. They should respect each State's need for policy space to deal with its economic challenges in a way that is consistent with its human rights obligations.

PRINCIPLES 15 – 16

The State's donors and creditors, both official and private, should not attach conditions to their financing that could undermine the State's ability to respect, protect and fulfil its human rights obligations.

The State's donors and creditors, both official and private, should assess the human rights impacts of the terms and conditions of their proposed transactions with the reforming state and of any advice they may provide to the State.



5

PRINCIPLES 17 to 22 Human Rights Impact Assessments (HRIAs)

PRINCIPLE 17

States should conduct HRIAs during both times of economic crisis and more normal times.

PRINCIPLE 18

The purpose of these HRIAs should be to assess the short, medium and long term human rights impacts of proposed policies. In order to do so, States should conduct HRIAs before they adopt a policy so that they can assess its potential impacts.

States should monitor the implementation of the policies so that they can identify and, when appropriate, respond to their actual impacts.

PRINCIPLES 19 – 20

The process of doing HRIAs should comply with the principles of participation, access to information, and accountability. It is vital to allow for and seek the broadest national dialogue possible, with the effective, timely and meaningful participation of all, including marginalized groups and those particularly at risk. Genuine participation can only be possible if comprehensive and accessible information on all aspects of public finance is provided in a timely manner.

PRINCIPLE 21

Access to justice and the right to an effective remedy for actions and omissions in the design and/or implementation of economic reform policies must be guaranteed.

PRINCIPLE 22

HRIA's should be the responsibility of the institution best qualified to produce independent, credible HRIAs that conforms to the applicable standards in that country and that are responsive to gender considerations.

Human Rights Impact Assessment in Action

The following are some examples of HRIAs being conducted in connection with economic reform policies. In some cases they have been conducted by States, in some others by non-state actors, including regional organizations, national human rights institutions and civil society organizations:



The **European Commission** carries out impact assessments to inform its trade policies. For example it carried out such assessments in connection with the negotiation of the European Union - New Zealand Free Trade Agreement.² The Commission developed guidelines for the conduct of these impact assessments. It has developed additional guidelines to assist in the analysis of the potential impacts of trade policy initiatives on human rights in both the EU and the partner country/ies.³



Canada and **Colombia** have carried out annual human rights assessments in the course of implementing their free trade agreement pursuant to the Agreement Concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia, in 2011.⁴



Thailand's National Human Rights Commission conducted an *ex-ante* assessment of the human rights impacts of the Thailand-US trade agreement and published a draft report on the matter in 2006.⁵



The **UN Economic Commission for Africa**, the Friedrich Ebert Stiftung Foundation and UN Office of the High Commission for Human Rights jointly commissioned an *ex ante* assessment of the human rights impacts of the Africa Continental Free Trade Area (CFTA).⁶



In 2017, the **Equality and Human Rights Commission of Great Britain** commissioned a cumulative impact assessment (CIA) of the distributional impacts of tax and spending decisions on people sharing different protected characteristics.⁷



The **Government of Scotland** undertakes an annual equality impact assessment of its budget.⁸



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South Africa's Social and Economic Impact Assessment System (SEIAS) assesses the socio-economic impact of policy initiatives, legislation and regulations before they are submitted to Cabinet for adoption in order to minimise and mitigate the adverse consequences of these initiatives.⁹ These assessments include some elements of HRIAs as they pay particular attention to the potential impacts on specific social groups.



The **European Union** conducted a social impact assessment in 2015 of Greece's third economic reform programme.¹⁰



The **Center for Economic and Social Rights (CESR)** has developed a methodology for assessing the human rights impacts of fiscal consolidation policies, and has conducted analyses of the impacts of austerity measures in countries including Brazil, South Africa and Spain, in partnership with national civil society organizations.¹¹

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- 2 Trade Sustainability Impact Assessment in support of FTA negotiations between the European Union and New Zealand Draft Inception Report 13th of March 2019 is available at: http://trade-sia-new-zealand.eu/images/reports/EU-NZ_SIA_Draft_Inception_Report.pdf. Additional examples of these impact assessments are available at: https://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/impact-assessments/#_IAs.
 - 3 These guidelines are available at: https://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/impact-assessments/#_methodology. https://www2.ohchr.org/english/issues/food/docs/report_hria-seminar_2010.pdf.
 - 4 https://www.ohchr.org/Documents/Issues/Globalization/TheCFTA_A_HR_ImpactAssessment.pdf.
 - 6 <https://www.ohchr.org/Documents/Issues/Development/IEDebt/WomenAusterity/EqualityHumanRightscommission%20GreatBritain.pdf>.
 - 7 <http://www.scottishhumanrights.com/economic-social-cultural-rights/impact-assessment/>.
 - 8 A general overview of SEIAS is available at: <https://www.dpme.gov.za/keyfocusareas/Socio%20Economic%20Impact%20Assessment%20System/Pages/default.aspx>.
 - 9 European Commission, document SWD(2015) 162 final.
 - 10 Center for Economic and Social Rights, "Assessing Austerity: Monitoring the Human Rights Impacts of Fiscal Consolidation" (CESR, 2018), available at: <http://www.cesr.org/assessing-austerity-monitoring-human-rights-impacts-fiscal-consolidation>. See also CESR, "Brazil: Human Rights in Times of Austerity" , "South Africa: Austerity in the Midst of Inequality Threatens Human Rights" and "Spain: Visualizing Rights".
 - 11 The most recent annual report is the 2018 annual report available at: https://www.canadainternational.gc.ca/colombia-colombie/bilateral_relations_bilaterales/rep-hrft-co_2018-dple-rapp.aspx?lang=eng.

Moving forward

Certain issues
to address
when using
economic
reforms HRIAs



1

Should HRIAs be stand-alone assessments or should they be incorporated into broader environmental and social impact assessments?

There are arguments that can be made for both options. The argument for stand-alone HRIAs is that, while there are overlaps between social impact and human rights impact assessments, they are sufficiently different in focus that they deserve separate treatment. Social impact assessments are focused on determining what are the actual or expected impacts of the proposed policy on various social dimensions, as compared to the current baseline situation and what trade-offs need to be made in regard to mitigating or avoiding these impacts. HRIAs are concerned with how does the proposed policy comply with the State's international legal obligation to respect, protect and fulfil the human rights of its population. These differences in focus are sufficiently significant as to justify separate studies. The arguments in favour of incorporating HRIAs into broader social assessments are largely pragmatic and relate to costs and the duplication of skills and resources needed to conduct both assessments.

2

Are HRIAs necessary if the State or the international organizations to which it belongs conducts human rights audits?

States are required to conduct human rights audits of the implications of their policies as part of their contributions to the universal periodic reviews conducted by the UN Human Rights Council. They may also do so in connection with their reports to such UN human rights bodies as the Economic Social and Cultural Rights Committee. A human rights audit, however, is backward looking in the sense that it is focused on identifying the issues where the State is not complying with all the applicable human rights standards so that corrective measures can be taken. The HRIA is

forward looking. It is primarily concerned with identifying the potential adverse human rights impacts relating to a particular policy initiative so that the state can take measures to avoid them.

3

Should HRIAs focus only on avoiding negative human rights impacts or should they also seek to maximize positive human rights impacts?

It would be incompatible with the State's obligation to respect and protect human right to fail to take measures to address any foreseeable negative human rights impacts. Consequently, the primary objective of any HRIA has to be to identify all negative human rights impacts. However, States also have a positive obligation to fulfil the human rights of the population. In addition, pursuant to Article 2 of the International Covenant on Economic Social and Cultural Rights, States are required to allocate maximum available resources to the progressive realization of the economic, social and cultural rights of all individuals, groups and communities within their jurisdiction. Consequently, the State, in conducting the HRIA, also has an obligation to identify all positive human rights impacts and ensure that it is maximizing the positive benefits of these impacts.

4

Who should conduct the HRIA?

The guiding principles are flexible enough to be adjusted to the particular needs of government departments, local and regional governments, advisory bodies, parliamentary committees, national human rights institutions, courts, international financial institutions, private creditors, international human rights mechanisms, academic institutions or civil society organizations. In other words, according to the criteria set by the Guiding Principles, a broad range of stakeholders could carry out a HRIA.



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Further background information

The development process of the Guiding Principles started in 2017 and combined main building blocks, including thematic reports of relevance. A first step was to undertake a mapping report, aiming at consolidating existing human rights and other relevant impact assessment tools ([A/HRC/37/54](#)). This report was informed by a call for contributions. Additional building blocks included: the report of the Independent Expert on the impact of economic reform policies on women's human rights ([A/HRC/179/73](#)), also informed by a call for contributions and presented to the United General Assembly in October 2018 and; his report on labour rights in the context of economic reform and austerity measures ([A/HRC/34/57](#)), presented to the Human Rights Council in March 2017.

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