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including the right to development**

Guiding principles on human rights impact assessments of economic reforms

Report of the 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

Summary

In his report the 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, presents guiding principles on human rights impact assessments of economic reforms, which set out the human rights principles and standards that apply to States, international financial institutions and creditors when designing, formulating or proposing economic reforms. Based on the existing human rights obligations and responsibilities of States and other actors, the guiding principles underline the importance of systematically assessing the impact of economic reforms on the enjoyment of all human rights before decisions are taken to implement such reforms, as well as during and after their implementation. Economic policymaking must be anchored in and guided by substantive and procedural human rights standards, and human rights impact assessments are a crucial process that enables States and other actors to ensure that economic reforms advance, rather than hinder, the enjoyment of human rights by all.



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Guiding principles on human rights impact assessments of economic reforms

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Preamble

1. In its resolutions 34/03 and 37/11, the Human Rights Council requested 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, to develop guiding principles for assessing the human rights impact of economic reform policies, in consultation with States and all other relevant stakeholders, for submission to the Council at its fortieth session. The present guiding principles distil over two years of research and collective and participatory work with a dedicated focus on the human rights impacts of economic reforms on the human rights of millions of people around the globe and lessons learned over decades.¹
2. Obligations under human rights law should guide all efforts to design and implement economic policies. The economy should serve the people, not vice versa.
3. While economic reform policies that could negatively affect human rights are more commonly found in the context of economic and financial crisis responses, these reforms have also been observed in less challenging economic times. This is why it is crucial to know to what extent human rights are effectively protected and respected both in times of economic crisis and in other circumstances.
4. Not all economic reform policy responding to economic crises is intrinsically against human rights, and economic reforms that are carefully formulated based on human rights can contribute to the betterment of human rights. In fact, responding to economic crises often requires actions by the Government that are dictated by the urgency to protect resources and assets that will, in the long term, serve to protect and fulfil human rights. Above all, Governments must ensure that measures put in place serve to pursue economic recovery for the benefit of the whole population, instead of only a few.
5. The realization of human rights is often affected by resource scarcity; hence, economic reform policies that affect availability of resources can negatively and deeply affect all human rights. As human rights are indivisible and interdependent, international human rights law needs to provide a consistent and comprehensive response to those economic reform policies.
6. Contractual obligations do not occur in a vacuum. Both the relationships between creditor and borrowing States and the relationship between States and their populations fall under the framework defined by international human rights law.² A human rights impact assessment is a structured process for identifying, understanding, assessing and addressing the potential or actual adverse effects of economic reform policies and serves to ensure that such policies are consistent with international human rights law. As they entail broad participation, transparency and accountability, human rights impact assessments also help democratize resource mobilization and spending policies.
7. More specifically, a human rights impact assessment, on the one hand, can support Governments, international financial institutions and private creditors by providing a clear and specific framework and process for assessing whether certain economic reform policies are consistent with international human rights law. On the other hand, it is an essential review and accountability procedure for the design, monitoring and implementation of economic reform policies. It contributes to evidence-based and transparent policymaking as it provides an analytical basis for evaluating potential human rights impacts when choosing among policy options. Using human rights impact assessments helps identify the institutional changes required to prevent adverse human rights impacts of economic reforms in the short/long term. This is why States should strengthen their capacity to conduct such assessments.

¹ For more information and details of all these meetings and activities, see www.ohchr.org/EN/Issues/Development/IEDebt/Pages/DebtAndImpactAssessments.aspx. The Independent Expert wishes to express his appreciation for all contributions to this process.

² See A/70/275.

8. The present guiding principles aim to identify and systematize existing human rights obligations, and also provide commentary on their implications. They thus offer guidance to States and other stakeholders to ensure respect and fulfilment of those obligations. The guiding principles are based on all core international human rights instruments, in particular, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities, and their authoritative interpretation by the treaty body monitoring mechanisms, as well as, where relevant, the contribution of special procedure mandate holders. They complement and build upon relevant development-related commitments, in particular the 2030 Agenda for Sustainable Development and the Declaration on the Right to Development. Nothing in the principles should be read as limiting or undermining the existing human rights obligations of States or other actors.

9. The guiding principles also build upon relevant commitments, in particular those referring to business and human rights,³ foreign debt and human rights,⁴ human rights impact assessments of trade and investment agreements⁵ and extreme poverty and human rights.⁶ All these principles should be considered and applied in coordination and conjunction with one another.

I. Scope and purpose

Principle 1 – Scope and purpose of the guiding principles

The present principles provide guidance for economic policymaking, in compliance with international human rights obligations to respect, protect and fulfil all human rights. They apply whenever economic reform policies may foreseeably result in impairment of human rights. These principles are likely to be most relevant in the context of acute economic and financial crises (reactive function) but will also be relevant in less challenging economic times in the course of the design and implementation of short-, medium- and long-term economic reform policies considered or/and implemented (preventive function).

Commentary

1.1 Some economic policies, such as fiscal consolidation, structural adjustment/reforms, privatization,⁷ deregulation of financial and labour markets and lowering environmental protection standards, can have adverse consequences on the enjoyment of human rights.

1.2 The guiding principles should be applied to different economic situations in which economic reform policies are considered and/or adopted. Such situations notably include: (a) acute economic and financial crises (involving sudden or gradual economic downturn and collapse of the values of public or private financial assets), where the risk of adverse human rights impacts is heightened and in which an urgent response is required; (b) medium-term economic reforms, where fiscal consolidation may stretch into multi-year processes that go beyond the immediate responses to and implications of economic and financial crises; and (c) longer-term processes, such as the systematic review of public budgets and their distributional assessments, cumulative and long-term effects of fiscal consolidation measures on human rights, or the effects of labour market reforms.

³ A/HRC/17/31.

⁴ A/HRC/20/23 and Corr.1.

⁵ A/HRC/19/59/Add.5.

⁶ A/HRC/21/39.

⁷ See A/73/396.

II. Obligations of States

Principle 2 – Obligations of States with respect to economic policies and human rights

States are obliged to manage their fiscal affairs and to adopt economic policies to ensure that they respect, protect and fulfil all human rights. Economic choices made by States, whether acting alone or as members of international financial institutions, must comply with their international human rights obligations at all times, including during times of economic crisis.

Commentary

2.1 States are responsible for carefully examining different policy options at any and all times and for determining the most appropriate measures in the light of their circumstances and their international and domestic human rights obligations.

2.2 Taking timely, effective and preventive measures is a critical part of ensuring all human rights during economic and financial crises.

2.3 In times of economic and financial crisis, States' efforts are often directed at trying to stabilize the economy. This comes with the risk of disregarding their human rights obligations with regard to those who suffer most from the economic crisis. Governmental efforts at stabilization can also exacerbate human rights violations. This approach is counterproductive because it is precisely during these periods that the population – in particular those who are disenfranchised, living in poverty or at high risk of falling into poverty – is in greatest need of State compliance with its obligations to respect, protect and fulfil human rights.⁸

2.4 These obligations apply to all branches of the State (executive, judicial and legislative) and all levels of government (national, subnational and local) within their allocated sphere of responsibilities.

2.5 Commitments to fiscal discipline policies, whether stated in domestic constitutions or in regional or international agreements, must not lead to sacrificing international human rights obligations. States should undertake full assessments of the potential impacts of fiscal discipline policies in different national and subnational contexts before committing to such policies.

Principle 3 – Burden of proof and obligation to conduct human rights impact assessments

States and other creditors, including international financial institutions, should demonstrate that their proposed economic reform measures will realize, and not undermine, States' human rights obligations. This implies a duty to carry out human rights impact assessments to evaluate and address any foreseeable effects of their economic policies on human rights. Consulting on, and making public in adequate formats the results of, human rights impact assessments are important components of complying with this obligation.

Commentary

3.1 States and other creditors, including international financial institutions such as development banks, must carry out a human rights impact assessment before recommending or implementing economic reform policies that could foreseeably undermine the enjoyment of human rights. States have to establish, through the steps

⁸ Committee on Economic, Social and Cultural Rights, general comment No. 2 (1990) on international technical assistance measures, para. 9.

outlined in the guiding principles regarding timely collection, sharing and discussion of relevant information, that their chosen response will not lead to human rights violations or abuses, or impermissible retrogression in human rights.

3.2 While human rights impact assessments should take account of the evidence and experience of civil society and experts, it is ultimately the State's responsibility to prove that its policies do not violate human rights. This requirement of proof means that States should approach the process of generating, publishing and subsequently updating impact assessments with openness to the available evidence and expertise.

Principle 4 – Obligations of local and subnational governments

Economic and financial crises should not be used to justify a reduction of the policy and fiscal space necessary at local and subnational government levels to ensure the protection of human rights. In turn, although all levels of government have human rights obligations, the central Government can in no circumstances circumvent its responsibilities for the human rights impacts of its policies by delegating economic reform-related powers or functions to local governments.

Commentary

4.1 Effective implementation of human rights cannot be achieved without the proactive involvement of local and subnational governments. International human rights law is binding on all levels of government, and is of particular relevance when taking into account the growing global phenomenon of decentralization in recent decades. Economic reforms at the central level should also take into account responsibilities assigned or delegated to local and subnational governments within the domestic spheres.

4.2 Decentralization is not always favourable to the implementation of human rights law, and it can be especially burdensome if it is not combined with sufficient resources or policy space (both internal and by facilitating community participation) for the implementation of human rights. Recognition of multilevel governance in areas such as revenue collection, tax policy, labour reforms and solidarity across regions is crucial. The national Government remains responsible for ensuring that appropriate cross-government coordination mechanisms and processes exist and that subnational governments are given the necessary resources to fulfil their human rights obligations.

4.3 When carrying out economic reforms independently, local and subnational governments have the same obligations as States with regard to carrying out human rights impact assessments.

III. Applicable human rights standards

Principle 5 – Human rights standards and pertinent law

In taking economic action or choosing the path of inaction, States and creditors must be guided by existing international human rights law relating to civil, cultural, economic, political and social rights.

Commentary

5.1 This includes core international human rights treaties, as well as their authoritative interpretation in general comments, statements, open letters, decisions, concluding observations and recommendations issued by treaty monitoring bodies. It also includes other interpretative tools, guiding principles and recommendations developed by global and regional human rights mechanisms.

5.2 In keeping with the principle *pro homine*, the most protective human rights standards (whether domestic or international) should guide States and creditors in their economic reform policies.

Principle 6 – Indivisibility and interdependence of all human rights

Economic reform policies can negatively affect all human rights (civil, cultural, economic, political and social). Therefore, States, and creditors when applicable, should ensure that all measures are taken to respect, protect and fulfil all human rights, especially in times of economic downturn.

Commentary

6.1 While concerns about the human rights impact of economic policy measures are often focused on economic, social and cultural rights, it is crucial that States also ensure that economic policies do not have a negative impact on civil and political rights. For instance, budget cuts to public services, such as law enforcement, legal aid, education, health services or social care, may result in a failure to guarantee the civil rights to a fair trial, family life, non-discrimination, freedom from torture and cruel, inhuman and degrading treatment, or even the right to life. The right of political participation may also be undermined where economic reform policies are adopted without the meaningful participation of the affected population. In practice, the multidimensional nature of economic reform policies can jeopardize a wide range of human rights. Even where a policy appears primarily to have a particular impact on one right, it may set off a chain reaction in terms of others, owing to the indivisibility and interdependence of human rights.

6.2 States may not claim a lack of resources as an excuse for failing to guarantee human rights. For example, in the case of persons deprived of liberty, States parties have the obligation to respect the bodily integrity of such persons, and they may not invoke a lack of financial resources to absolve themselves of this obligation.⁹

6.3 It is of crucial importance to underline that certain economic measures – for example, restrictive loan conditionalities or constraints imposed by trade agreements privileging corporate interests – are clearly and directly linked to States' abilities to address phenomena that are manifest violations of multiple human rights, such as pollution, prevalence of life-threatening diseases, widespread hunger and malnutrition, extreme poverty and homelessness, among others.

Principle 7 – Equality and combating multiple and intersectional discrimination

Economic reform policies and measures must not be discriminatory, and they must endeavour to ensure equality and non-discrimination for all. For this purpose, the directly and indirectly discriminatory impact of economic reform policies on the most disenfranchised or marginalized individuals has to be assessed, and alternative measures evaluated.

As part of the requirement to prevent economic reforms from having discriminatory impacts, human rights impact assessments should seek to identify and address the potential and cumulative impacts of measures on specific individuals and groups and protect them from such impacts. In doing so, it should be borne in mind that women are particularly exposed to multiple and intersectional discrimination. Direct, indirect, multiple and intersectional discrimination – particularly for disenfranchised or marginalized groups within society – needs to be carefully assessed and prevented.

⁹ Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 25.

Commentary

7.1 It is most often the combination and accumulation of individual economic decisions, such as the combination of fiscal consolidation, reforms of the labour market, taxation and public expenditure, that cause the most damage if the impacts of the decisions fall on the same population groups, simultaneously or over time. A human rights impact assessment can help identify how people confronting cumulative and/or intersecting inequalities may be affected and how to protect them from the discriminatory impact.

7.2 Identifying the particular individuals and groups that are most marginalized and discriminated against in a particular country and in specific circumstances requires a profound and sophisticated understanding of the various population groups and of the context in which a particular measure is to be taken. Groups that are frequently discriminated against include women; lesbian, gay, bisexual, transsexual and intersex persons; persons with disabilities; children; older persons; indigenous peoples; migrants; refugees; internally displaced persons; people living in poverty; the unemployed and those with precarious jobs; single parents; and ethnic, national, linguistic, religious or other minorities.

7.3 The meaningful participation of all relevant stakeholders and affected individuals and groups, including those groups at risk of vulnerability and exclusion in economic reform policy formulation, implementation and review, should be ensured across all stages of the assessments, including impact assessments. Where needed, appropriate adjustments should be made to facilitate the participation of such groups. Importantly, the participation of relevant stakeholders should also be ensured during the monitoring and evaluation phases to determine whether findings have sufficiently informed implementation or revision of policy measures.

Principle 8 – Non-discrimination based on gender and substantive gender equality

Economic reforms should prevent any kind of direct and indirect form of discrimination based on gender, in law or practice, and should promote substantive and transformative gender equality. Human rights impact assessments should always include a comprehensive gender analysis.

Commentary

8.1 The current dominant economic system is, for the most part, based on and perpetuates gender inequality and discrimination in the labour market, worsening the potential adverse human rights impacts on women. In particular, unpaid care work (i.e. care for children, older people and others) is overwhelmingly undertaken by women and often invisible in current economic analysis. Further, women are generally overrepresented in public sector positions and in precarious, informal and low-paid jobs.

8.2 Therefore, economic reforms which encourage, among other things, labour market flexibilization, reductions in the coverage of social protection benefits and services, cuts to public sector jobs and the privatization of services tend to have a negative impact on women's enjoyment of human rights.¹⁰ Economic reform should aim to prevent gender discrimination and transform existing inequalities, instead of creating such situations.

8.3 Policies that might improve overall social indicators might not do so for women, or for particular groups of women. Human rights impact assessments, incorporating a clear gender focus and women's central participation in the assessment process, can support the realization of women's human rights in practice

¹⁰ See A/73/179.

through contextualized analysis aimed at identifying and preventing direct and indirect discrimination; addressing structural socioeconomic and sociocultural barriers; redressing current and historical disadvantage; countering stigma, prejudice, stereotyping and violence; transforming social and institutional structures; and facilitating women's political participation and social inclusion.

8.4 During times of economic crisis, public investment in childcare and elder care can create virtuous cycles by which the investment not only addresses the care deficit through the delivery of crucial care services, but also kick-starts a multiplier effect in generating jobs and/or other effects.

Principle 9 – Progressive realization and maximum available resources

In relation to economic, social and cultural rights in particular, States are obliged to progressively realize such rights by all appropriate means, which requires States to:

(a) **Design and implement fiscal, tax, debt, trade, aid, monetary and environmental policies in conjunction with other measures, so that they are deliberately directed towards the realization of human rights;**

(b) **Demonstrate that every effort has been made to mobilize all available resources, even in times of economic crisis. In particular, States must generate, adequately allocate and make use of the maximum of their available resources to move as expeditiously and effectively as possible towards the achievement of the full realization of economic, social and cultural rights.¹¹**

Commentary

9.1 In assessing potential economic policies in the light of these obligations, States should consider the following guiding factors: the extent to which the measures are deliberate, concrete and targeted towards the fulfilment of economic, social and cultural rights; whether the State party is exercising its discretion in a non-discriminatory and non-arbitrary manner; whether the State party's decision (not) to allocate available resources is in accordance with international human rights standards; where several policy options are available, whether the State party adopts the option that least restricts the enjoyment of rights; the time frame of the State's steps; whether the measures take into account the precarious situation of disadvantaged and marginalized individuals or groups; and whether the measures prioritize grave situations or situations of risk.¹²

9.2 States must not only use existing resources to fulfil this obligation but also generate potential resources in a sustainable way when the former are not sufficient to ensure the realization of rights. This requires, for example, seeking international assistance and cooperation, mobilizing domestic resources in ways compatible with environmental sustainability and with the rights of people affected by extractive industries, as well as regulating the financial sector.

9.3 States' obligation to mobilize resources includes: tackling tax evasion and avoidance; ensuring a progressive tax system, including by widening the tax base with regard to multinational corporations and the richest; avoiding international tax competition; improving the efficiency of tax collection; and reprioritizing expenditures to ensure, among other things, adequate funding of public services.

¹¹ Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations, paras. 9–12; and general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 23.

¹² E/C.12/2007/1, para. 8.

9.4 Available resources must also be measured in the light of international cooperation requested by States in cases where States cannot guarantee the enjoyment of human rights with their own resources, with such requests for international cooperation to be made as soon as possible.

9.5 Mobilizing resources to ensure the progressive realization of rights is also critical to address the minimum core content of economic, social and cultural rights as a minimum floor for protection. States cannot attribute their failure to meet their minimum core obligations to a lack of available resources, unless they demonstrate that every effort has been made to use all resources that are at its disposal.¹³ Ensuring achievement of the minimum core content can serve to address the most egregious situations, such as extreme poverty, homelessness or acute malnutrition. However, minimum core content should not be construed to mean a ceiling in the efforts that are required of States.

Principle 10 – Prohibition of retrogression

Any proposed economic reform that may result in impermissible retrogression in terms of the realization of economic, social and cultural rights is considered a *prima facie* violation of such rights. Measures that would result in backward steps in terms of the achievement of these rights is permissible only if States can prove that such retrogressive measures are:¹⁴

- (a) **Temporary, in nature and effect, and limited to the duration of the crisis;**
- (b) **Legitimate, with the ultimate aim of protecting the totality of human rights;**
- (c) **Reasonable, in that the means chosen are the most suitable and capable of achieving the legitimate aim;**
- (d) **Necessary, in that the adoption of any other policy alternatives or the failure to act would be more detrimental to the enjoyment of economic, social and cultural rights, especially if there are less harmful alternative financing mechanisms;**
- (e) **Proportionate, in that the measures chosen do not unduly restrict human rights and their costs do not outweigh their benefits;**
- (f) **Non-discriminatory, and have the ability to prevent or 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 at all times;**
- (h) **Based on transparency and the genuine participation of affected groups in examining the proposed measures and alternatives;**
- (i) **Subject to meaningful review and accountability procedures, including human rights impact assessments.**

¹³ Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 10.

¹⁴ See, for reference, “Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights: statement by the Committee on Economic, Social and Cultural Rights” (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; and “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”.

IV. Articulation of policies

Principle 11 – Policy coherence

States should ensure that governmental departments, agencies and other State-based institutions that take part in and/or shape economic reform policies take into account States' human rights obligations when fulfilling their respective mandates, and that policy coherence is guaranteed for short-, medium- and long-term economic reforms, in order to protect all human rights. In particular:

- (a) Adequate financial resources should be allocated for the effective implementation of social policy, fully taking into account the economic situation of the population. Social policy should be designed to address and reverse the effects of economic downturns, while ensuring respect for human rights;
- (b) Fiscal policy should be used as a countercyclical tool to prevent and/or manage crises, as well as to equalize opportunities and maximize the realization of human rights;
- (c) Monetary policies should be coordinated and consistent with other policies with the aim of respecting, protecting and fulfilling human rights;
- (d) Financial sector regulation is required to identify, prevent, manage and fairly allocate the human rights risks created by financial instability and illicit financial flows;
- (e) Debt policies should be consistent with broad goals related to sustainable economic development and the realization of human rights;
- (f) Proposed economic reform measures should be informed by and align with individual and collective State measures to facilitate national and global environmental protection, recognizing the interdependence between human rights and a healthy environment.¹⁵

Commentary

11.1 Social policy includes a wide range of policies, from social security (retirement/pensions and insurance, including unemployment) to labour,¹⁶ education and health. Other areas are often affected – either directly or indirectly – by privatization of services traditionally provided for by the State, such as water and sanitation services, social housing, prisons and detention centres, and migration management. Some social policies are directed to specific population groups, such as persons with disabilities, refugees and asylum seekers or persons living in poverty. All have a clear gender component that has to be included to avoid increasing the gender divide in access to resources (education, health services, housing, labour market, etc.).

11.2 Fiscal policy can play a major role in achieving equality, tackling discrimination and strengthening governance and accountability, as well as combating poverty and funding development. Fiscal policy also has a clear and well-documented effect on economic growth: while pro-cyclical contractionary fiscal policy reduces economic growth, expansionary fiscal policy during downturns increases growth. Positive and negative changes in government expenditure are likely to have a higher than proportional impact on growth. In turn, changes in economic growth will affect the tax revenue of Governments. Domestic resource mobilization can be a tool to ensure the realization of human rights and promote inclusive growth. Increasing government revenue more directly depends on robust redistributive and progressive taxation regimes. The respective impact of revenue

¹⁵ A/HRC/37/59, paras. 11 ff.

¹⁶ See A/HRC/34/57.

and expenditure variations should be evaluated in terms of the associated outcomes for economic growth, human rights and long-term debt sustainability.

11.3 Decisions on fiscal policy should not result in expenditure cuts that curtail the guarantee of rights, mainly in sectors such as education, health and social insurance – particularly important for women, children and persons with disabilities – or in deepening social or economic inequality and poverty through indirect and regressive taxes, such as value added tax.

11.4 Direct and progressive taxes should be prioritized. Tax policy should promote the redistribution of wealth to overcome the disadvantaged situation of the population in situations of social vulnerability (the poor, minorities and women, among others) and other priority care groups, notably older adults, children and persons with disabilities.

11.5 Tax reform measures include, for example, taxing higher-income categories and wealth more strongly; taxing certain financial transactions; shoring up the tax base; and enhancing tax collection, the efficiency of the tax administration and the fight against tax evasion and avoidance. International, binational or regional regulation is crucial for efficiency in combating evasion, avoidance, tax fraud and illicit financial flows. All States should support global norms and agreements to prevent international tax avoidance and evasion. In this regard, it is necessary that Automatic Exchange of Financial Account Information agreements be effective in order to acknowledge the final beneficiary of a transaction and establish responsibilities in cases of loss of useful resources needed to guarantee rights. Full participation and access to such information to all countries should be ensured.¹⁷

11.6 Decision-making processes around tax and fiscal policies need to be open to genuine public debate informed by processes of inclusive, broad, transparent and deliberative social dialogue, which should include a wide range of economic theory and evidence, expressed in language accessible to the public. These provisions also apply to tax exemptions (including tax exclusions, deductions, credits, concessions, preferential rates or deferral of tax liabilities), which reduce the public revenues that can be accrued from taxes.

11.7 Central banks are State institutions and, as such, they are obliged to comply with international human rights law and standards. Inflation and employment targets, among other targets, need to be in line with the State's human rights obligations in order to avoid any impermissible retrogressive measures.

11.8 Authorities that coordinate massive responses that stabilize the financial sector as well as those which opt for doing little to address a sovereign debt crisis need to demonstrate if and to what extent their strategies would help protect and respect human rights.

11.9 Accumulation of foreign reserves and restrictions on short-term capital inflows and outflows can often be considered effective monetary policies. However, massive accumulation of foreign reserves beyond those recommended in the rules of international financial institutions, leading to large unutilized amounts of reserves accumulated in central banks, should be balanced against the immediate needs of the State, especially from a social investment and human rights perspective. On the other hand, limiting speculative financial movements may open up space to pursue policies to facilitate the realization of human rights.

11.10 States should have a transparent and democratically discussed bailout and interest rate formation regime established by law. States should use a mix of tools to ensure appropriate global and domestic financial market regulation with the aim of curbing excessive credit growth. This mix should include measures of prudential regulation, debt sustainability analysis and capital controls.¹⁸

¹⁷ See A/HRC/31/61.

¹⁸ See A/HRC/31/60.

11.11 States should consider how proposed economic reforms may impact directly on or otherwise reduce a State's ability to address national ecological conditions and significant global ecological thresholds which affect the realization of human rights.

Principle 12 – Debt sustainability, debt relief and restructuring

Independent debt sustainability analysis should incorporate human rights impact assessments. Findings of human rights impact assessments should be used to inform debt strategies, debt relief programmes and restructuring negotiations, potentially triggering the latter where actual or potential adverse impacts are identified. Debt audits can contribute valuable information in conducting such assessments.

Commentary

12.1 Structural adjustment programmes are often only oriented towards short-term fiscal targets to regain debt sustainability. Debt sustainability analysis is still based on a narrow understanding of sustainability, focusing primarily on the ability of a country to pay back its public debt without having to resort to exceptional financing or major policy adjustments.

12.2 The result is that sometimes a stock of public debt may be considered "sustainable" even if its service entails the State's failure to comply with its human rights obligations because the resources necessary for servicing its debt deprive it of the financial means to realize human rights. Debt service payments should not compromise the promotion and fulfilment of human rights over time.

12.3 A more comprehensive definition of debt sustainability incorporates economic, social and environmental sustainability, meaning that debt sustainability is only achieved when debt service does not result in violations of human rights and human dignity and does not prevent the attainment of international development goals.

12.4 Debt cannot be called "sustainable" if the social and human rights dimensions of sustainability are ignored. Projections of repayment capacities of borrowing States need to ensure that the obligations of States to promote the Sustainable Development Goals and progressively realize economic, social and cultural rights can be effectively fulfilled.

12.5 Identification of actual or potential adverse impacts can guide decision-making on revision of repayment terms, on the volume of debt relief necessary to ensure that the obligations to respect, protect and fulfil all human rights can be met by States, and on the size and the distribution of losses incurred by different creditors' groups.

12.6 Systematic, independent human rights impact assessments carried out within regular debt management work and sustainability assessments can also support early identification of where constraints on fiscal space due to debt servicing are leading to an undermining of States' human rights obligations, notably towards women and other groups in situations of vulnerability. Findings can thereby contribute to timely debt restructuring, and mitigate the gravity and prevent adverse human rights impacts of economic crises.

12.7 In particular, in the context of – but not limited to – privatizations, it should be noted that States have an obligation to ensure that the fiscal risk of all debt is properly accounted for and on balance sheet and that private creditors similarly have an obligation to ensure that they do not undermine this obligation of any public-sector counterparty. The process and criteria by which States calculate the fiscal impact of certain privatization projects should be in accordance with industry-recognized best practices.

12.8 Creditors and debtors should also engage in debt relief and restructuring negotiations with the aim of supporting the freeing up of fiscal space to safeguard the capacity of States to meet their human rights obligations.

12.9 Ensuring that the findings of impact assessments systematically play a role in debt restructuring reflects the shared responsibility of creditors and debtors for sovereign debt burdens.

12.10 The environmental assessment implies an analysis of the commitment of the country's natural resources, mainly its strategic resources such as minerals and water. The social impact, the environmental remediation and the contribution to climate change must be established in the case of public debt payments based on the extraction of natural resources.

12.11 Lenders have an independent duty to ensure, to the best of their ability, that government officials are authorized under applicable domestic law to enter into the agreements and that the arrangement is otherwise consistent with such law.

V. Other obligations of States, international financial institutions and private actors

Principle 13 – International assistance and cooperation

States have an obligation to provide international assistance and cooperation in order to facilitate the full realization of all rights. As part of their obligations with regard to international cooperation and assistance, States have an obligation to respect and protect the enjoyment of human rights of people outside their borders. This involves avoiding conduct that would foreseeably impair the enjoyment of human rights by persons living beyond their borders, contributing to the creation of an international environment that enables the fulfilment of human rights,¹⁹ as well as conducting assessments of the extraterritorial impacts of laws, policies and practices.²⁰

Principle 14 – External influence and policy space

States, international or regional financial institutions and other non-State and State actors should not exert undue external influence on other States so that they are able to take steps to design and implement economic programmes by using their policy space²¹ in accordance with their human rights obligations, including when trying to cope with economic or financial crises. The systematic use of transparent and participatory human rights impact assessments in the design of economic reform programmes attached to international loans can serve to support debtor States in implementing a programme of crisis response free of undue external pressure and demonstrating national ownership that allows them to meet their human rights and environmental obligations.

Commentary

14.1 Undue external influence means direct or indirect intervention in the economic affairs of a State through the use of economic and/or political measures seeking to influence States to adopt certain economic policies or to secure from them

¹⁹ Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), para. 37; and Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2011).

²⁰ Guiding principles on extreme poverty and human rights (A/HRC/21/39), para. 92.

²¹ See Sustainable Development Goal 17.15; Addis Ababa Action Agenda of the Third International Conference on Financing for Development, annex, sect. I, para. 9; and General Assembly resolution 25/2625.

advantages of any kind that undermine the ability of States to respect, protect and fulfil their human rights obligations. Economic measures can include both conditionalities attached to financial assistance programmes and implicit conditionalities informally urged by international or regional institutions.

14.2 States in difficulty following a debt crisis or other adverse economic event may temporarily lose access to some sources of funds. In these situations, the remaining lenders have a responsibility not to use their enhanced bargaining power to exercise influence on the borrower that could lead to human rights violations. Instead, lenders actually have an enhanced responsibility with regard to the human rights impacts of their loans and the conditions attached to them.

14.3 States should also be able to design and implement economic policies, including responses to financial and economic crises, in accordance with their human rights obligations. In doing so, they should be free from undue influence from corporations or those working to further their interests that seek to privilege corporate economic interests over, or otherwise disrupt, the realization of human rights or the environmental well-being necessary for such realization. States must take action to identify and prevent such conflicts of interest by developing a regulatory framework that ensures, among other things, that relevant interactions are transparent and accountable. Such a regulatory framework could include regulation regarding the financing of political parties and the prevention of corruption.

14.4. Host States should enact foreign investment laws in such a way that includes an obligation on investors to undertake human rights impact assessments through neutral entities in a transparent and inclusive manner. Host States and investors should undertake to use such assessments as a means of enhancing the sustainability and development impact of investments in such a way that is beneficial to all stakeholders, including investors.

Principle 15 – Obligations of public creditors and donors

International financial institutions, bilateral lenders and public donors should ensure that the terms of their transactions and their proposals for reform policies and conditionalities for financial support do not undermine the borrower/recipient State's ability to respect, protect and fulfil its human rights obligations.²²

States, whether acting alone or within international financial institutions, as well as international financial institutions themselves, should not compel borrowing/receiving States to compromise satisfying their international human rights obligations or contribute to such compromise, either directly or indirectly. As a consequence, international financial institutions, bilateral lenders and other public donors, when granting a loan or giving policy advice in the context of economic reform measures, have an obligation to assess the human rights impact of those measures.

Commentary

15.1 Human rights impact assessments should be a mandatory element in the design of all economic reform and adjustment programmes and avoid human rights violations. This applies also to programmes developed with international financial institutions, bilateral lenders and public donors in the context of debt management and financial assistance activities. All proposed measures and loan conditionalities should be subject to a human rights impact assessment. These should be prepared prior to the conclusion of the agreements and in time to influence the outcomes of the negotiations, and include an analysis of the impact of policies on commonly marginalized groups. In urgent situations at least, flexible instruments should be considered to allow for sufficient space to develop well-tailored adjustment

²² E/C.12/2016/1, para. 8.

measures that respect human rights. Release clauses with regard to specific conditions should be put in place where actual or potential adverse human rights impacts are identified.

15.2 The obligations mentioned in the previous paragraph include, for example, participating in debt relief programmes and restructuring negotiations in good faith through a formal process of deliberative policy engagement and social dialogue.²³ They also include actively seeking debt agreements that are financially sustainable and respect human rights. Creditors should refrain from predatory or obstructive behaviour that could compel States to act in contravention of their human rights obligations in order to repay debts or directly impact States' capacity to meet these obligations.

15.3 States cannot escape responsibility for actions or the exercise of functions that they have delegated to international institutions or private parties (re blended finance and privatization): delegation cannot be used as an excuse to fail to comply with human rights obligations, in abnegation of the extraterritorial character of these obligations.

15.4 Bilateral lenders and other public donors, including Government-guaranteed financial institutions or private institutions extending loans with government guarantees, have extraterritorial human rights obligations governing their decisions in the context of economic reform measures of the concerned States.

Principle 16 – Obligations of private creditors

Private creditors, when negotiating transactions with States or other public entities, including taking decisions in the context of economic reforms, should not undermine the State's ability to respect, protect and fulfil its human rights obligations. Among other things, these creditors should assess the human rights impacts of their own actions as well as those of the activities financed by them, unless they have ascertained that debtor States or international and regional financial institutions have carried out effective assessments, including with regard to gender equality and the environmental impact.

Commentary

16.1 In order to identify, prevent, mitigate and account for adverse human rights impacts of certain actions or inactions, private creditors should carry out human rights impact assessments. This requirement should be further elaborated in national action plans on business and human rights.²⁴

16.2 In connection with principle 13 and commentary 15.3, host and home States' obligations to protect human rights, including their extraterritorial obligations, require the establishment of adequate safeguards against negative human rights impacts resulting from the conduct of private companies.

16.3 Private creditors' obligations include the obligation to act in good faith, as established for public creditors.²⁵ In addition, private parties bringing vague investment treaty-based claims against States in situations of debt distress could violate this good-faith principle, particularly when such claims are brought with the

²³ General Assembly resolution 69/319.

²⁴ See Guiding Principles on Business and Human Rights (A/HRC/17/31); and Committee on Economic, Social and Cultural Rights, general comment No. 24, para. 5. "Private creditors" include private bondholders, private banks, other private financial institutions, and manufacturers, exporters and other suppliers of goods that have a financial claim.

²⁵ United Nations Conference on Trade and Development, *Principles on Promoting Responsible Sovereign Lending and Borrowing*, 10 January 2012, principle No. 7.

hope or intent of extracting more favourable settlements than for the rest of the creditors and/or investors.²⁶

VI. Human rights impact assessments

Principle 17 – Basis and purposes of a human rights impact assessment

States and creditors should carry out human rights impact assessments of economic reform policies considered and taken in response to acute economic and financial crises that are likely to cause adverse human rights impacts. States should also carry out regular and periodic human rights impact assessments of short-, medium- and long-term economic reform processes in less challenging economic times. A human rights impact assessment of economic reform policies should:

- (a) **Prompt investigation of and analyse the extent to which the proposed measures, in combination with other economic measures and policies being or to be implemented, could contribute to fulfilling the State's human rights obligations or potentially undermine them;**
- (b) **Serve to demonstrate how proposed measures, jointly with other economic measures and policies being or to be implemented, could impact the human rights of the whole population, particularly the individuals and groups most disenfranchised or at risk;**
- (c) **Identify any *prima facie* retrogressive measure as well as alternative economic policy options that could be the least restrictive of human rights and avoid any impermissible retrogression;**
- (d) **Establish a (non-exhaustive) list of preventive and mitigating measures to ensure conformity of the economic reform policies considered with the State's human rights obligations.**

Commentary

17.1 An ex ante human rights impact assessment is a structured process to review alternative policy options and analyse the impacts of proposed measures on human rights.²⁷ The process contributes to evidence-based policymaking by making human rights impacts more visible on the basis of historical experience, and provides a firmer basis for forecasting potential impacts and assessing the effects of proposed prevention, mitigation and compensation measures.

17.2 Human rights impact assessments can provide empirical evidence to properly assess the proportionality and legitimacy of economic measures from a human rights perspective and ensure that women's rights will be taken into account. Hence, all States should prepare human rights impact assessments in order to determine whether the economic reforms under consideration are consistent with their human rights obligations. States' decisions on economic policies should be consistent with the outcome of human rights impact assessments. These assessments should be widely published in accessible forms and discussed with affected people, and include options discussed and agreed upon.

17.3 Considering ways to prevent or tackle an economic crisis includes, for example, countercyclical measures, full or partial debt relief and medium- or long-term suspensions of the creditors' payments, and tax policy reviews.

17.4 The analysis should include various policy options, including budget cuts, new tax measures, monetary policies and other adjustment measures such as labour

²⁶ See A/72/153 and Corr.1.

²⁷ See Center for Economic and Social Rights, *Assessing Austerity: Monitoring the Human Rights Impacts of Fiscal Consolidation*, briefing, February 2018.

market deregulation, that are likely to affect the population, in particular those members of the population who would be expected to suffer or have suffered a unique or cumulative impact of the measures and the groups in the most vulnerable situations. It should use a variety of quantitative and qualitative tools and methods, including participatory ones, and carefully compare the human rights impact of different scenarios including budget cuts, tax increases and measures against tax evasion and avoidance, and a review of tax expenditures.

17.5 An analysis that looks at the potential (and cumulative) distribution of impacts is necessary to ensure that the most vulnerable are not disproportionately affected by the crisis due to specific contextual and/or global conditions and that, on the contrary, they are protected from impacts, to the maximum of the available resources from the State and international community.

17.6 Taking measures during times of economic crisis requires a State to balance competing priorities and make appropriate trade-offs under conditions of potentially severe financial, political and time pressure. A human rights impact assessment can help States to justify hard choices if they are aligned with the normative guidance of human rights and aim to avoid discriminatory measures and minimize disproportionate impacts across the population.

17.7 The process should also include the design of economic policy responses that prevent, mitigate or provide redress (including but not limited to compensation) for impacts that cannot be avoided, taking a comprehensive view of all measures taken to respond to a crisis. Responses to a crisis may involve a range of measures that cumulatively and collectively affect the whole population. Policy responses should indeed protect all human rights of all people, and in particular those of the most vulnerable.

17.8 Human rights impact assessments of economic reforms shall incorporate complementary tools designed for and implemented in related areas. A human rights impact assessment, if carried out properly, can incorporate regulatory, environmental and social impact assessments and should contain a human rights-based budget analysis. For example, when a human rights impact assessment pursuant to the present guiding principles is conducted, the fiscal and economic sustainability of trade and/or investment agreements must be incorporated. In particular, since compliance with the obligations imposed under trade and/or investment agreements typically is ensured by the threat of economic sanctions or reparations authorized or awarded by an agreement-specific dispute settlement mechanism or international arbitral tribunal, attention must be given to the impact that such enforcement obligations, including the potential cumulative impact of such obligations, may have on public budgets.²⁸

Principle 18 – Ex ante and ex post assessments

Human rights impact assessments should form a regular part of decision-making processes with respect to economic reform policies or loan conditionality, and should be carried out at regular intervals. They should be carried out both ex ante – to assess the foreseeable impacts of proposed policy changes – and ex post – that is, looking back to assess the actual impacts of policy change and implementation, in order to address such impacts.

Commentary

18.1 Human rights impact assessments should be a regular element of economic reform policies. They should be incorporated in the policy continuum, from design to monitoring to implementation. They should be started as early as possible in the policymaking process so that they can influence the choice of alternative policy

²⁸ A/HRC/19/59/Add.5, appendix, para. 1.3.

options, and prior to the conclusion of agreements on programmes with creditors in time to influence the outcomes of negotiations. They should serve to look back and evaluate the short-term measures already taken and to propose adjustments as well as to provide evidence for medium- to longer-term planning going forward.

18.2 In the context of an acute financial or economic crisis in which the Government is forced to make decisions under extreme time pressures, it may not be possible for the State to carry out a thorough human rights impact assessment before deciding on its response to the crisis. In these situations, the Government is obliged to complete and publish a human rights impact assessment to the extent possible under the circumstances before taking any policy decisions or actions. The Government should also (a) publicly explain why it is unable to do a full ex ante impact assessment; (b) undertake a fully compliant ex post human rights impact assessment as soon as conditions allow; and (c) take steps to remedy all adverse human rights impacts identified in either impact assessment as promptly as possible.

18.3 For mid- to longer-term reforms, a human rights impact assessment can help States and international financial institutions to create capacities for adaptation to necessary changes in the economy, so as to better address the next economic and financial crisis and to ensure a robust sense of social inclusion. This is particularly worthwhile for women in situations where they are usually excluded from decision-making. Thorough and well-documented scrutiny will also contribute to evidence-based decision-making by the same or other States in future crises.

18.4 Throughout the policy cycles, economic reform programmes should be evaluated in accordance with whether they have ensured a fair and equitable distribution of social adjustment burdens, and not only whether they have reduced budget deficits and restored debt sustainability or economic growth. Such evaluations should assess the extent to which reform programmes have protected human rights, in particular those of the groups in situations of vulnerability or at risk of greater impacts, and identify gaps to be addressed.

18.5 Human rights impact assessments should not be limited to considering potential or actual adverse human rights impacts, but should also be used to identify steps to advance the enjoyment of human rights and opportunities for duty bearers to further the realization of human rights within the implementation of economic reforms.

18.6 Capacity-building in conducting human rights assessments is of crucial importance as it would make the exercise less time-consuming, more predictable, less costly, and help assessments to become increasingly accurate and comprehensive. Governments should build the systems to ensure that necessary data and information are produced and published and closely work with members of civil society during “good times” so that they are equipped to participate promptly in human rights impact assessments when necessary, whether on a regular or extraordinary basis.

Principle 19 – Participation

The right to participate should be embedded in the process of conducting human rights impact assessments. It should also be central in the consideration of policy options, in the outcome document(s) (publication and reporting of information and the assessment), in the implementation of policy responses and in the monitoring of the impact of such responses.

Commentary

19.1 In formulating measures requiring human rights impact assessments, States and international financial institutions must allow for and seek the broadest possible national dialogue, with the effective, timely and meaningful participation of all individuals and groups, including marginalized groups and those particularly at risk

of vulnerability from such policies. As women, children and persons with disabilities are generally underrepresented in both the political and economic spheres, special efforts must be made to ensure their capacity to co-decide the measures by using innovative methods of participation. Civil society organizations and actors in the broadest sense should also have adequate and timely channels for participation.

19.2 Different levels of government should also be adequately informed and consulted, and corresponding channels of communication and information should be followed, including within the legislative branches and administrative mechanisms in place for interaction among different levels of local and subnational governments.

19.3 Genuine participation can only be possible if Governments provide timely, comprehensive and accessible information on all aspects of public finance, including budgets and macroeconomic performance. Governments should also provide adequate justifications of policy choices to the population in general, and specifically to those most likely to be affected by the reform.

19.4 Several human rights should be protected in order to ensure effective and meaningful participation, including freedom of expression and access to information, freedom of the press, the right to peaceful assembly and freedom of association.

19.5 Economic reform policy measures should be adopted by the competent bodies following the procedures established by domestic law. They should be scrutinized and discussed by parliament to allow for effective political participation and necessary checks and balances.

19.6 Where labour market reforms are being contemplated, particular efforts should be made to consult, as early as possible, with local and national trade unions and employers' associations using, where they exist, national mechanisms for social dialogue. As any labour reform must include efforts to overcome horizontal and vertical gender segregation, women's representatives should also be part of this social dialogue.

19.7 Public debate and oversight over policies should start at the earliest possible moment and apply not only to policies and initiatives carried out by the State, but also to agreements with supranational institutions and/or lenders. Conditionality packages attached to financial assistance programmes should be subjected to ample discussion, ensuring the participation of the population, and oversight and discussion by parliament.

Principle 20 – Access to information and transparency

In order to guarantee the right to freely impart, seek and receive information in a transparent manner, a human rights impact assessment of economic reforms requires a diverse range of both quantitative and qualitative data. States should endeavour to ensure that such information is available, accessible and delivered in a timely and transparent manner, and that its analysis assists in understanding the implications and impacts of the economic reform policies.

Commentary

20.1 Global and regional human rights standards guarantee not only the right to freely impart information but also the right to freely seek and receive it as part of the freedom of expression.

20.2 Obstacles to access to information can undermine the enjoyment of both civil and political rights, in addition to economic, social and cultural rights. Core requirements for democratic governance, such as transparency, the accountability of public authorities or the promotion of participatory decision-making processes, are unattainable in practice without adequate access to information.

20.3 The validity and credibility of the data collected need to be assessed in the light of clearly articulated and transparent standards that reflect the principles of non-discrimination, equality, inclusion and participation. 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 the indicators used provide information disaggregated by gender, disability, age group, region, ethnicity, income segment and any other grounds considered relevant, based on a contextual, country-level identification of groups at risk of marginalization.²⁹

20.4 There are a number of methods for quantitative analysis. Well-developed approaches to modelling distributional impacts using income quintiles and deciles can be used. 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 in line with what is indicated in the previous paragraph. These human rights impact assessment standards need 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.

20.5 The 2030 Agenda for Sustainable Development includes a large number of indicators. Reliable and disaggregated data are needed to strengthen modelling, or at least to inform a more detailed analysis. While the indicators of the Sustainable Development 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 source of useful complementary information to those working in a human rights impact assessment context. However, the validity of data reported through the Sustainable Development Goals process should be carefully examined before using the data as a basis for decisions and economic policies.

20.6 In terms of qualitative data, targeted studies, surveys, testimonies and consideration of other types of analysis are paramount, including, when available, on administrative complaints, case law and jurisprudence on individual and collective cases, as they also offer a glimpse of the type of violations, trends and limitations encountered when accessing assistance, reparation and justice. Even in contexts where disaggregated data are readily available, they should always be triangulated with qualitative data on discriminatory situations.

20.7 Qualitative analyses need to ensure that contingencies in the use of quantitative models are recognized and, if possible, avoided. Such contingencies might stem from reliance on historical data, the choice of variables, etc.

20.8 International cooperation can be particularly relevant in this regard for countries with limited resources for data collection.

20.9 Transparency and wide dissemination of information are also critical when carrying out the impact assessment, including by publishing the findings in their entirety and reporting on the assessment, its conclusions and recommendations.

Principle 21 – Access to justice, accountability and remedies

States must ensure that access to justice and the right to an effective remedy are guaranteed, through judicial, quasi-judicial, administrative and political mechanisms, with regard to actions and omissions in the design and/or implementation of economic reform policies that may undermine human rights. States should ensure that the population is fully informed about the procedures, mechanisms

²⁹ For guidance, see, e.g., Organization of American States, *Progress Indicators for Measuring Rights Under the Protocol of San Salvador*, 2015; and Office of the United Nations High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation*, 2012.

and remedies available to them and that these mechanisms are physically and financially accessible to all.

Commentary

21.1 The right to an effective remedy includes reparations and guarantees of non-repetition. An independent, well-financed and proactive judicial branch is essential to both preventing economic reforms from harming human rights and to providing effective remedies should harm occur. A human rights impact assessment can serve to ensure that accountability procedures exist and mechanisms are in place by requiring clearly articulated and justified policy choices that have been developed through inclusive participation of the potentially affected population.

21.2 Engaging in an inclusive and accountable decision-making process strengthens the legitimacy and ownership of the choices made. Furthermore, it is likely to reduce social conflict, which can undermine democratic institutions and the rule of law. A functioning system of national, regional and international human rights accountability mechanisms, including independent and empowered national human rights institutions, is critical to this aim. States should take all measures to implement the recommendations of national, regional and international human rights bodies.

21.3 Measures covered by the present guiding principles should be agreed at all governmental levels, paying special attention to the ways in which burdens are distributed over and financial resources allocated to local authorities, which are often the main providers of social services to the population. These measures should also be open to oversight, including judicial scrutiny of applicable law, and public officials involved in the design and adoption of such measures should be accountable for any policy decisions that endanger the enjoyment of human rights.

21.4 Since corruption can play a role in the design, implementation and monitoring of economic reform policies, clear measures and mechanisms to prevent and combat corruption must be put in place with a view to ensuring accountability.

Principle 22 – Who should conduct the assessment(s)

Human rights impact assessments of economic reform policies should be independent, robust, credible and gender responsive. In this regard, each country should decide which institution(s) is/are best suited to be in charge of carrying out this exercise, based on applicable criteria.

Commentary

22.1 The present guiding principles are flexible enough to be adjusted to the particular needs of government departments, advisory bodies, parliamentary committees, national human rights institutions, courts, international financial institutions, private creditors, international human rights mechanisms, academic institutions or civil society organizations.

22.2 The appropriateness of the institution or team conducting the impact assessment should be measured against pre-established criteria, which should include, as a minimum, the following aspects: its independence from the executive branch and any creditor/creditor-aligned institution; appropriate expertise; adequate funding;³⁰ diversity of members of the team or body in charge of carrying out the assessment and, notably, gender parity; engagement of affected communities; and credibility and legitimacy in the eyes of different stakeholder groups such as government agencies, international actors and civil society.

³⁰ See A/HRC/19/59/Add.5.

22.3 Independence from any creditor or creditor-aligned institution responsible for designing adjustment programmes is necessary in States' own assessments, given that findings can be used to inform borrowing policies and debt management, as well as triggering debt-restructuring activities. This does not preclude the participation of these actors in an assessment, or in undertaking assessments in the context of their own decision-making.

22.4 States should develop a domestic, professional and independent policy analysis capacity within the public sector to avoid dependence on private providers. Clear, rigorous and transparent criteria for appointment, regulation and accountability mechanisms should be created in advance, with independent oversight within the State, for private parties to be appointed to carry out human rights impact assessments. These private parties/corporations should be considered to be as responsible as any other entity performing a public service function. The State's delegation of a private corporation or third party does not, in any way, free the State from any of its obligations under international human rights law nor the private actor from applying all legal substantive and procedural standards enumerated in the present principles.

22.5 States should take steps to support the ability of affected communities and civil society generally to provide parallel information to assessment processes and, as far as possible, to conduct human rights impact assessments directly.
