

ASSESSING AUSTERITY

Monitoring the Human Rights Impacts
of Fiscal Consolidation

BRIEFING



CENTER FOR ECONOMIC AND SOCIAL RIGHTS

TWENTY FIVE YEARS FIGHTING FOR SOCIAL JUSTICE THROUGH HUMAN RIGHTS AT

25

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of Fiscal Consolidation

BRIEFING

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Executive Summary

In the decade since the 2008 global economic crisis, fiscal austerity has become the new normal. In the name of fiscal discipline, governments in more than two-thirds of countries throughout the world have enacted drastic austerity measures like severe public expenditure cuts, regressive tax changes, and labor market and pension reforms, effectively disinvesting in human rights. Draconian fiscal adjustments have undermined human rights of all types—from the rights to education, food, health and housing to the rights to decent work, fair wages and social security; and from freedom of expression to the rights to life and personal security. In the process, these unnecessary and unjustified policies have also aggravated disparities such as those of income, gender, race, age, disability and migration status.

This briefing paper argues that another lost decade for human rights is impermissible. Drawing on lessons learned from monitoring austerity over the past ten years, this paper outlines practical guidance for policymakers, oversight bodies, civil society actors and others seeking to assess and address the foreseeable human rights consequences of austerity. It offers an adaptable methodological framework to inform the content and process of conducting effective Human Rights Impact Assessments (HRIAs) of fiscal consolidation measures. Further, the briefing demonstrates why a human rights assessment of austerity is at once necessary, feasible and ultimately quite valuable in advancing a suite of alternative policies that would prevent harmful forms of fiscal consolidation in the future.

Why Assessing Austerity is Necessary

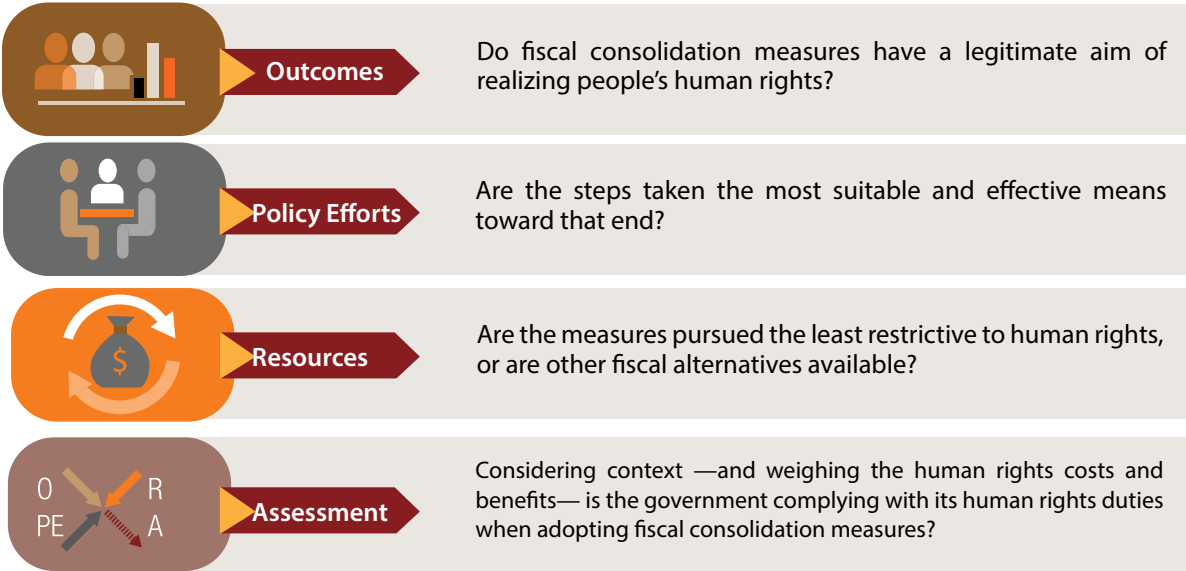
Assessing austerity through HRIAs is indispensable for a variety of reasons. These assessments can help re-center human rights as the ultimate objective of economic policy, even in times of fiscal stress. While fiscal discipline and concomitant economic growth may be one means toward that end, deficit reduction has too frequently been claimed as an ultimate policy objective—spawning a series of blunt, blind and excessive adjustment measures that not only undermine people’s human rights, but also prevent a more buoyant, inclusive and sustainable economic recovery. HRIAs can act as social “stress tests,” providing real-time facts and forecasts for evidence-based policymaking. By focusing explicitly on the human impact of fiscal consolidation, which so often gets overshadowed by technocratic debates about economic impact alone, HRIAs can help ascertain more precisely the ability of a country’s social and economic infrastructure to absorb the shock of fiscal adjustment. HRIAs can also provide a more holistic and coherent “whole-person” perspective to understanding the gamut of harms particular groups of people face from fiscal contractions that are generated by various government decisions. An HRIA takes a cumulative look across policy areas, rights and particular groups to better understand the scale, scope and disproportionate burdens of adjustment, thus clarifying the nature of the trade-offs and the choices involved in any proposed reform. Finally, HRIAs are fundamental tools for strengthening the accountability of economic decision makers. *Ex post facto* assessments help identify the particular conduct and parties responsible for harming human rights and then help determine proper remedies. *Ex ante* HRIAs can provide a preventative function by explicitly drawing attention to foreseeable risks to human rights before they occur and providing a realistic roadmap for policy alternatives.

Making Austerity Assessments Feasible

This briefing seeks to fill a gap in the practical tools available to policymakers and others who want to assess fiscal consolidation measures for compliance with international and domestic human rights obligations. States rightfully enjoy a margin of discretion in designing their own fiscal policies but this discretion is not without bounds. Fiscal adjustment, if it occurs, must be aligned with specific substantive and procedural human rights duties, in particular the prohibition of retrogressive measures, or steps which lead to backsliding in

the enjoyment of economic, social and cultural rights, and the principle of non-discrimination. Together, these and other human rights norms provide a universal yet adaptable framework of guiding principles and operational standards to inform a methodology for assessing both the substance of fiscal consolidation and the process governing it. Drawing on authoritative interpretations from international, regional and domestic human rights bodies, this briefing distills a set of four practical, evaluative questions that fit into a holistic framework methodology (OPERA: Outcomes, Policy Efforts, Resources, Assessment—see figure below) for assessing austerity through human rights. As groundwork for adapting this framework to varying national contexts and users, a set of guiding questions and illustrative assessment techniques are provided for each of the steps. These questions and techniques translate the norms underpinning human rights duties into more concrete, objective and measurable criteria for assessing how policy choices in times of fiscal stress impact rights fulfillment.

ASSESSING AUSTERITY: A FOUR-STEP FRAMEWORK



Looking at a range of practices in the impact assessment field, the briefing offers guidance for assembling a transparent participatory, independent and influential HRIA process that takes into account the varied economic and political contexts of different countries. The briefing offers input from various experts suggesting best practices for the seven discrete phases of the HRIA process. Recognizing the difficult trade-offs that governments often face in times of fiscal crisis, the paper offers a balancing test to assess the proportionality of fiscal consolidation measures in light of their human rights impacts, while stressing that human rights duties impose some clear redlines beyond which governments cannot cross.

Despite the ubiquitous and self-perpetuating mantra that fiscal consolidation is necessary because the welfare state is deemed no longer affordable, several alternatives to harmful austerity measures are available. Some countries have raised revenue through progressive taxes, tackling tax abuse and strengthening the ability to collect taxes, including financial transaction taxes. Others have renegotiated debts, explored deficit spending and reallocated military expenditures to social spending. Unearthing the frequently hidden human costs of fiscal adjustment is a vital means by which fundamental economic debates can be influenced by the experiences of those most affected. This process also challenges outdated economic assumptions, helps restore public trust during fragile historical moments, and adjusts economic policies to people’s human rights, rather than the other way around.

1 | Austerity 10 years on from the crisis: Causes, consequences and policy choices

Almost ten years ago, a global economic and financial crisis rocked governments in North America, Europe and Japan. Policymakers portrayed the options to address this crisis starkly: either backstop the failing financial institutions through incurring public debt, or let them implode—with potentially systemic effects across the global economy. Governments decided to rack up sizeable public deficits. To varying degrees and through differing policy mixes, these governments then decided—controversially—to make fiscal adjustments to reduce the spiking level of public debt. This in turn contracted their economic growth potential. The result was declining economic demand globally, decreased global trade, and tightening development assistance, each of which carried adverse knock-on effects on countries around the world.

Today, more than two-thirds of countries across the globe are estimated to be contracting their public purses, and limiting their fiscal space through other means. While the pursuit of austerity on the European continent garnered most attention, fiscal consolidation has featured prominently across the world since the spread of the economic and intellectual contagion of the 2008 economic crisis. An analysis of fiscal projections in 187 countries shows that approximately 124 countries will be affected by this adjustment shock in 2018, with 138 countries increasing consumption taxes in this period (ILO, 2017). The global South will be worst affected, with 81 developing countries set to reduce public spending up to 2020 (Ortiz et al., 2015). In Latin America, much of the adjustment has occurred through significant reductions in public capital expenditures (ECLAC, 2017; ECLAC, 2016), although countries such as Brazil are already seeing spikes in deep fiscal consolidation through severe cuts to social spending (CESR, INESC, Oxfam Brazil, 2017). Against the intended aim of these adjustments, public debt has grown significantly around the world since 2008, with over 100 countries in the Global South estimated to experience the type of critical debt loads that often lead to aggressive fiscal consolidation (Erlassjahr, 2017; UNCTAD, 2017).

Critically, the 2008 global economic crisis was hardly a one-off affair. While large by comparison, the type of financial crises which lead to sovereign debt shocks and fiscal consolidation are cyclical and predictably recurrent events throughout history, with their intensity and level of harm determined largely by government behavior in the lead up to, and the recovery from, such crises (Reinhart and Rogoff, 2009).

Fiscal consolidation, adjustment or constriction measures (more commonly referred to as austerity measures) can be defined as legal or policy changes which aim to lower public expenditure and tame growing sovereign debt burdens (OECD, 2011). The nature and mix of fiscal consolidation policies vary from one country to another. Nevertheless, four of the most common fiscal consolidation measures are: a) **public expenditure cuts**, b) **regressive tax changes**, c) **labor market reforms**, and d) **pension reforms** (OECD, 2011; Ortiz et al., 2015; CoE, 2013). In some countries, all four of these measures have been implemented simultaneously as a bulk package of economic crisis measures. Other governments have staggered these measures over time. And in still other countries, only one or two of these measures were implemented. Yet, despite the differences, this four-part typology of fiscal consolidation provides a useful analytical framework for assessing adjustment measures—be they acute or more chronic over time.

Not all fiscal constrictions are inherently harmful. Governments expand and contract the level and type of public financing to manage constantly changing social and economic climates. Cutting truly wasteful public spending, for example on unnecessary military hardware, can provide much-needed revenue for human rights investments. Further, demographic changes and aging populations in many parts of the world pose

particularly vexing budget dilemmas. As such, not all expenditure cuts or structural reforms are inherently harmful to people's enjoyment of human rights, just as not all increases in public expenditure are necessarily beneficial to human rights.

However, many of the fiscal consolidation measures put in place throughout the 1980s and 90s, as well as more recently since 2008, have posed adverse effects on a variety of human rights, both directly and indirectly through their negative economic impacts (OHCHR, 2016; ITUC, 2017; CoE, 2013; FRA, 2013; Ginsborg, 2017; Engstrom, 2015; Balakrishnan et al., 2016). As the International Labour Organization (ILO) has pointed out, short-term fiscal consolidation reforms are undermining long-term development efforts (ILO, 2017).

Austerity's social and economic effects intersect with deepening political inequalities. The lack of voice and political power of the most disadvantaged in society contributes to their invisibility to policymakers charged with designing adjustments. Unsurprisingly, the disproportionate costs they bear are too often hidden. Left uninterrogated are the less harmful alternatives which would place more of the burden of adjustment on those with higher capacities to pay and more responsibility for the causes of the crisis.

Box 1.1. Human rights during sovereign debt crises: Causes, consequences and policy choices

Causes: The decision to undertake harmful austerity measures often stems from an overly-simplified diagnosis that "excessive" public spending is what prevents governments from servicing their debt (Boyer, 2012). In reality, the causes of sovereign debt crises emerge not from over-spending, but most often from a combination of quickly eroding revenue streams, bailouts of financial actors, deregulation and failures in financial sector accountability, widening inequalities, depressed wages and demand among low- and middle-income households and other failures in economic globalization (UN IE Debt, 2017; Konzelmann et al., 2016). A human rights approach prompts deeper analysis of the structural causes and abuses of power underlying any sovereign debt crisis—with special emphasis on ensuring accountability from the public and private parties ultimately responsible.¹

Consequences: Cutting social spending or placing the burden of recovery on low- and middle-income families by tax hikes or market-oriented labor and pension reforms is typically taken as collateral damage in the quest for economic "recovery" (usually portrayed as simple return to GDP growth). Yet, austerity has serious and avoidable human rights impacts. Fiscal consolidation poses *direct* risks to both economic, social and cultural rights and civil and political rights by depriving people of basic goods, liberties, power, voice and opportunities. Likewise, fiscal adjustment often poses *indirect* risks by undermining the state's capacities to respect, protect and fulfill human rights. (See below and Annex I). A human rights impact assessment of austerity challenges the complacency about these human impacts, and points toward other, more protective possibilities.

Choices about alternative policy responses: How countries respond to economic crises, who benefits and who is burdened, are ultimately political choices. A human rights analysis of a sovereign debt crisis compels governments to seek all other alternative policies before embarking on fiscal consolidation measures. Rather than knee-jerk cuts to key social services and state capacities, a litany of feasible policy alternatives exist in most countries to prevent the need for austerity to begin with (See below and Ortiz et al., 2017).

¹ In line with the UN Guiding Principles on Foreign Debt and Human Rights issued by the UN Independent Expert on Debt (2011: para. 23), HRIAs are incumbent on creditor states and institutions, as well as debtor states.

1.2 Aims and structure of this paper

This briefing contributes practical guidance to policymakers, civil society actors and others who seek to assess fiscal consolidation measures for compliance with international and domestic human rights obligations. The publication was drafted to help to fill the widespread gap in practical tools for monitoring the human rights impacts of economic reform measures identified by the UN Independent Expert on Foreign Debt and Human Rights, Juan Pablo Bohoslavsky (UN IE Debt, 2017). This briefing proposes an adaptable methodological framework and set of guiding questions to help inform the content and process of conducting effective Human Rights Impact Assessments (HRIA) of fiscal consolidation measures.

This briefing concentrates on situations of particular fiscal emergency or sovereign debt crisis (loosely defined as heavy deficit levels alongside increasing borrowing costs) where time is of the essence. The causes—and political manipulation of—economic crises are fundamental to understanding the emergence of widespread austerity measures, as well as to determining responsibility and to preventing their recurrence in the future. While in some cases governments are genuinely unable to roll over their debt, more often the invocation of a “crisis” is a subjective, political act used to evade channels of public accountability. Once a “crisis” is declared, the scope for dialogue over alternative policy formulations shrinks. What’s more, a fiscal “state of emergency” has been used in many countries to suspend certain human rights guarantees and democratic processes. Hence human rights analyses of debt crises must challenge the manipulation of crises for political and economic gain. Nonetheless, for the purposes of this particular paper, we do not probe into the causes of sovereign debt crises, nor do we interrogate the claims in particular cases that the requirement to pay bondholders objectively represents a debt crisis.

After this introduction, **Section 2** explains the value of conducting a human rights impact assessment in the context of fiscal adjustment. Drawing on a number of experiences across the globe, **Section 3** maps out the foreseeable risks that the above-mentioned fiscal consolidation measures—individually and cumulatively—present for different rights, and for different population groups, with illustrative country examples. **Section 4** describes how human rights norms help guide fiscal policy in times of economic crisis and sketches out a methodological framework for conducting HRIAs grounded in these norms. **Section 5** draws lessons learned from existing practice to propose procedural guidance for conducting HRIAs of fiscal consolidation measures. **Section 6** concludes.

2 | Why a human rights impact assessment of fiscal consolidation?

Human rights—be they civil, political, economic, social, cultural or environmental—require resources. The space a government has to conduct fiscal policy, and the principles which inform its policy choices, set the material conditions within which governments can, or cannot, realize human rights. Human rights law implies legal duties on states to enact tax and fiscal policies which enable adequate resourcing of public goods and services, which tackle inequality and discrimination, and which are designed, implemented and reviewed in an accountable and participatory manner (UN SR Poverty, 2014).

An HRIA is a tool that can be used by different actors, including governments, civil society, human rights experts, as well as international and regional institutions. Most HRIAs conducted by governments and civil

society to date have sought to assess the human rights impacts of particular investment *projects*, such as an open-pit mine or a hydroelectric dam. A few HRIAs have been conducted to assess particular government *policies* in the fields of trade and investment. Yet, to date, only a few assessments have been implemented to evaluate the human rights impacts of fiscal consolidation.²

What is the value of conducting specifically human rights impact assessments in the fiscal consolidation context? Scholars and practitioners have offered a number of rationales. The specific objectives will vary depending on *who* is conducting the HRIA, and for *what* purposes. In some countries, governments and independent oversight bodies like national human rights institutions may be the key implementers of the impact assessments. In others, civil society, judiciaries, human rights treaty bodies, UN Special Procedures, academics, international or regional institutions might be better placed to assess and address the human rights impacts of austerity. Annex II explores the specific aims and challenges of the various relevant actors that might consider monitoring fiscal adjustment. Nevertheless, there are a number of broad observations that can be made about the value of conducting HRIAs of fiscal adjustment measures.

First, a primary aim is to position human rights realization as the essential objective of economic policy. Economic growth may be one means toward that end, especially in low-income countries, but HRIAs help re-center economic decisions around human dignity as the principal end. In this sense, HRIAs can help fiscal policymakers set out more legitimate economic policy objectives (aimed at human rights realization) rather than being merely driven by technocratic considerations that translate technical means and tools (such as public debt management rules) into ends themselves. As has been evidenced in country after country (see Portugal and Iceland cases below), protecting human rights as the ultimate aim of fiscal policy in times of economic downturn can also result in more buoyant, inclusive and lasting economic recovery (UN IE Debt, 2017). As this briefing illustrates below, empirical evidence shows that key human rights investments such as social protection and early education programs have very high multiplier effects (some of them at low cost), and so maintaining them in times of austerity is justified for economic reasons, as well as for compliance with legal human rights norms.

Second, unlike so many other types of impact assessments, an HRIA evaluates particular fiscal consolidation measures against a set of specific legal obligations to which the vast majority of countries—creditor and debtor alike—have agreed to be bound.³ This offers a helpful yardstick to compare different countries' conduct and can also provide the basis for legal accountability, to compel government duty-bearers to justify their policies and change conduct which is out of line with their legal duties under constitutional or international human rights law (UN IE Debt, 2017; Harrison et al., 2010). It also moves beyond a narrow focus on impacts to include a clear-eyed assessment of the policy decisions made which lead to these impacts.

2 Some illustrative examples include: UNICEF (2017); UK Women's Budget Group (2016); UK Trade Unions Congress (2011); University of Warwick and Coventry Women's Voices (2011); Reed and Portes (2014) for the UK Equality and Human Rights Commission (2017).

3 These legal norms are set out in: a) the core international human rights conventions [International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); International Covenant on Economic, Social, and Cultural Rights (ICESCR); International Covenant on Civil and Political Rights (ICCPR); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Convention on the Rights of the Child (CRC); International Convention on the Rights of Persons with Disabilities (ICRPD)], b) the core fundamental ILO labor standards, including freedom of association and right to collective bargaining (ILO Conventions 87 and 98); elimination of all forms of forced or compulsory labor (ILO Conventions 29 and 105); elimination of discrimination in respect of employment and occupation (ILO Conventions 100 and 111); and the effective abolition of child labor (ILO Conventions 138 and 182, c) relevant regional human rights conventions, and d) national-level constitutional rights protections.

Third, impact assessments provide tangible facts and forecasts for evidence-based policymaking, helping to overcome the uncertainty which often reigns in times of economic crises. In this sense, one could think of HRIAs as social “stress tests.” By focusing explicitly on the human impact of fiscal consolidation, which so often gets overshadowed by debates about the economic impact, HRIAs can help detect, with more precision, the ability of a country’s social and economic infrastructure to absorb the shock of fiscal adjustment. *Ex ante* HRIAs in particular aim to assess the future foreseeable human rights risks before they occur, with the express aim of preventing harmful policy decisions in the first place.

Fourth, HRIAs can provide a holistic and more coherent approach to understanding the gamut of harms particular groups of people face from fiscal contractions. This comprehensiveness is especially important in the fiscal consolidation context as it is most often the combination and accumulation of various government decisions which pose the most damage. Rather than piecemeal assessments of particular policy reforms by particular ministries in isolation from others, therefore, an HRIA should look across policy areas, across rights and across particular groups to better understand the scale, the scope and the differentiated burdens of human rights infringements stemming from adjustment measures. In doing so, HRIAs can better clarify the nature of the tradeoffs and the choices involved (but often obscured), and then better inform both the substance and process of agreeing on, and managing such trade-offs.

Fifth, HRIAs—with both social and economic equality at their heart—insist on drawing out the disproportionate and sometimes discriminatory effects of fiscal adjustment between social groups, and privileging the interests of the most disadvantaged groups in the country in question. In practice, the fiscal policymaking process too often invisibilizes precisely those people who bear the deepest burdens. HRIAs can serve to identify and visibilize those communities most adversely affected with the objective of rebalancing the costs of adjustment toward those more responsible, or more able to bear it.

Sixth, a properly-designed HRIA prioritizes transparency and participation of rights holders affected by fiscal consolidation policies and those who advocate on their behalf, transforming the seemingly technical arena of fiscal policy into a terrain of public scrutiny and democratic deliberation, making the ultimate path taken more legitimate and sustainable. Rather than a one-size-fits-all cookie-cutter approach to debt crisis management adopted from international institutions, HRIAs which allow for the full voice of affected communities can help economic policymakers tailor their response to the particular economic and social context and set of actors most likely affected.

Finally, HRIAs are central tools to strengthen the accountability of economic decision makers. As mentioned earlier, *ex ante* HRIAs have an essential preventative function by explicitly drawing attention to foreseeable risks to human rights before they occur and providing a roadmap for policy alternatives. *Ex post facto* assessments meanwhile can help seek redress or effective remedy for human rights infringements by identifying the harmful conduct, delineating the responsible parties and assessing whether their conduct stands up to international human right standards.

This briefing contends that devising in advance the right sort of framework of analysis, alongside a proper process, can help achieve many of these aims simultaneously.

3 | What human rights are at risk from fiscal consolidation?

Fiscal consolidation—in particular, public expenditure cuts, regressive tax changes, labor market reforms, and pension reforms—poses serious human rights risks. Especially important have been the combined, or accumulated, impact of these measures on the lives of people, especially the most disadvantaged. The compound effects of social spending cuts, consumption tax increases, setbacks in decent work opportunities and pension reforms have in many circumstances deepened poverty and accentuated inequality along the lines of income, wealth, gender, ethnicity, age, sexual orientation, disability and immigration status (See Annex I).

Box 3.1. Spain: A legacy of exclusion without recovery

Despite several warnings from human rights bodies, Spain's response to the economic crisis involved harsh austerity measures, including deep budget cuts to key social sectors and structural reforms to labor rights, which have disproportionately affected those already disadvantaged in society, including youth and migrants (CESR et al., 2018; CESR, 2015). Spain is the European country with the highest increase in inequality in the last decade (Oxfam Intermón, 2018). Since 2008, 1 out of 3 people newly at risk of poverty in the European Union are living in Spain (Eurostat, 2017a). Unemployment meanwhile has remained at levels more than two times higher than the EU average in 2017 (Eurostat, 2018). Since 2009, wage precarity in Spain has increased, while the share of wages on national income has fallen by 4 points of GDP (Instituto Nacional de Estadística, 2018). Almost 10 years after the beginning of the crisis, Spain's economy has still not fully recovered. In the last 4 years of weak economic recovery, 29 of every 100 euros from economic growth have gone to citizens in the top 10% of income earners, while only eight out of every 100 euros have been left to the poorest 10% (Oxfam Intermón, 2018). Despite positive predictions for the near future by the International Monetary Fund (IMF), disadvantaged populations are far from reaching the levels of rights enjoyment before the adoption of consolidation policies (CESR et al., 2018).

The right to health, for instance, has come under increased threat, impacting migrants acutely. The Royal Decree Law (RDL) 16/2012, enacted in April 2012 as part of measures to rationalize health spending, stripped immigrants with irregular status—estimated at some 873,000 people—of their previously guaranteed right to public healthcare, with only limited exceptions such as for children and pregnant women. REDER—a network of groups, movements, organizations, and people involved in defending universal access to healthcare—has recorded 3,784 cases of exclusion from the national health system since 2014, including 364 cases of exclusion from emergency services or illegal billing by emergency units, 158 cases involving pregnant women and 270 involving children (REDER, 2017). Various human rights bodies have concluded that RDL 16/2012 is disproportionately harmful, unnecessary in light of various financing alternatives, and thus in breach of the human rights standards applicable to fiscal consolidation measures (HRC, 2015; CEDAW, 2015; CECSR, 2013; CESCR, 2012b).

3.1 Multiple human rights affected, in multiple ways

Drawing on a comparative reading of a variety of particularly harmful fiscal consolidation measures in various regions of the world (Annex I), the four most common fiscal consolidation measures pose multiple risks to distinct human rights, through various pathways.⁴

⁴ **Annex I** provides a more comprehensive picture of the particular human rights risks stemming from the four most common fiscal consolidation measures, some of their pathways along with various country examples and all sources of this information.

Budget cuts to essential public services have been found to directly thwart a number of economic and social rights to health, education, food, housing, water, sanitation, a healthy environment, and social security. Cuts to prison facilities erode the rights of prisoners to safe conditions. Refugee rights are also affected when governments use economic crises as pretexts to cut refugee receiving services, and in too many contexts indiscriminately detain asylum seekers and refugees. Regular governance channels are often closed during crises, undermining the rights to public participation, and when people take to the streets to demonstrate against harmful cuts, governments have chosen to restrict the freedom of expression, even subjecting protestors to arbitrary arrest and detention. Further, various governments have cut expenditure in the justice system, including preventative and detective services which protect people’s human right to life and personal security, as well as legal aid services essential to allowing the most disadvantaged to seek effective remedy when facing crisis-induced human rights harm.

Rapid increases in **regressive taxes**—a second common adjustment measure—have been found to decrease the disposable income of low-income households disproportionately while increasing their costs of living, with particularly adverse impacts on the right to an adequate standard of living and exacerbating economic, gender and other inequalities.

Crisis-induced **labor market reforms** pose particular harm to human rights at work. In the name of fiscal prudence, these labor reforms may undermine the right to fair remuneration and a basic decent wage by reducing real and minimum wages. Labor precarity intensifies with an increasing move to contracts that are temporary and without benefits. Various restrictions to the right to collective bargaining and to strike have been included in fiscal adjustment packages. Safe and healthy working conditions have also been threatened by cuts or weakened labor inspections. Further, the macroeconomic multiplying effects of pro-cyclical austerity measures have often dampened aggregate demand, and deepened already high levels of un/under-employment—posing challenges to the right to work.

Meanwhile, **pension reforms**—be they through contract renegotiations, eligibility age increases or other measures—have often diminished social security rights of older people, especially older women.

All in all, fiscal adjustment has adversely affected a variety of human rights—from civil and political to economic, social, cultural and environmental. Because of its disproportionate impact on already disadvantaged sectors of the population, fiscal consolidation undermines the crosscutting right to **freedom from discrimination** on grounds such as gender, race, age, disability and migration status. In many of these cases, the rights of women have been deeply affected, especially those that belong to another disadvantaged group and so suffer doubly or triply from intersectional discrimination.

Table 3.1. Human rights at risk from fiscal adjustment⁵

Measure	Rights at risk	Some common pathways
Budget Cuts	<i>Economic and social rights</i>	
	• Health	Wage bill cuts or layoffs of medical personnel; increase in co-pays, other out-of-pocket expenses; rationing treatments; altering benefit packages or eligibility criteria for services; disrupted access to insurance or public health rolls; cuts to mental health services; other adjustment measures affecting the social determinants of health
	• Education	Wage bill cuts or layoffs (e.g. of teachers); increase in user fees; generalized social insecurity limits the benefits of education
	• Food	Reduction of food subsidy/assistance programs, or changes on eligibility criteria; reduced capacities of food inspectors
	• Housing	Under-funding of temporary housing/shelters; reduction of housing subsidies or social housing projects; increases in evictions
	• Water and sanitation	Poor infrastructure maintenance leading to water shortage or water poisoning; user fees limit access
	• Healthy environment	Cuts to environmental protection agency capacity
	• Social security/protection	Unemployment support cuts; benefit freezes; child tax credit reductions; overly-tight targeting of social transfers
	<i>Civil and political rights</i>	
	• Political participation	“Crisis” invoked to centralize unilateral executive discretion, by-passing legislative and participatory process; national decisionmaking thwarted by international or regional economic bodies; fiscal oversight boards can sideline democratic decisionmaking; excessively strict fiscal rules
	• Freedom of information/ expression	Cuts to staff, even closures of public media institutions; retaliatory layoffs of independent journalists
	• Access to justice/remedy	Cuts to independent judiciaries and legal aid services alongside increases in court fees and mergers/downsizing of oversight bodies such as National Human Rights Institutions
	• Freedom of association, assembly	Demonstrations against austerity measures forcefully constrained, criminalization of dissent against austerity
	• Refugee rights	Cuts to migrant and refugee receiving and integration services; increased detention of asylum seekers and refugees and deteriorating conditions in detention centers
• Life, personal security	Cuts to criminal justice system; cuts to emergency/preventative services (e.g. to combat violence against women, prevent homicide); cuts to penal system leading to over-crowded prisons	
Regressive tax changes	• Adequate standard of living	Consumption tax hikes; gutting of pro-poor tax expenditures; imposition of discriminatory taxes

⁵ A more in-depth analysis, with sources, is included in **Annex I**.

Measure	Rights at risk	Some common pathways
Labor reforms	• Fair remuneration	Real lowering of minimum wages; reduction of real median wages
	• Security at work	Increased temporary, part-time, seasonal labor contracts; ease of firing; particular impacts on women's labor rights
	• Collective bargaining	Restricting extension of sector agreements, pushing the bargaining process down to the workplace level; permitting bargaining with non-union representatives
	• Safe and healthy work conditions	Cuts to labor inspectors
	• Right to work	Pro-cyclical fiscal measures deepen un/underemployment
Pension reforms	• Social security	Lowering pension benefits; eligibility age increases; increased waiting times to receive pensions

3.2 Assessing the net, cumulative effect of adjustment

Individual adjustment measures can pose deep harm to peoples' enjoyment of human rights. A cut to food security programs can make nutritious meals more expensive for lower-income families, for example. Funding cuts to education, likewise, can pull teachers out of the classroom, increasing class size, and in turn eroding the quality of a child's education. Yet, it is often the accumulation of a whole package of adjustment measures that is particularly pernicious. The food insecurity of that child from a low-income household—compounded by a double hit in the cuts to the food assistance program and a sudden increase in consumption taxes—worsens an already-difficult learning environment at an overcrowded school, especially if teachers are worried about the possibility of being fired, or their retirement savings being used to pay off government debts to bondholders. As another example, withdrawal of public childcare services compounds upon increases in consumption taxes and decreased enforcement of labor standards to the detriment of women's access to equal wages and decent work (Donald and Lusiani, 2017).

Likewise, undermining labor protections often leads to more precarious work, higher wage gaps, and increased unpaid care burdens. In various countries, for example, poorly-designed, pro-cyclical adjustment measures have stymied economic recovery by constraining economic demand. This leads to completely avoidable and foreseeable spikes in un/under-employment, especially amongst young people, though this effect may never have been foreseen by analyzing public expenditure cuts or labor reforms independently. What's more, fiscal adjustment in many countries is associated with a level of increased mental health disorders, mortality and suicide rates which would be hard to detect by narrow analyses of health expenditure cuts alone (Kentikelenis, 2017).

Assessing the enjoyment of human rights doesn't start from a particular policy, but with particular people. This **"whole-person" perspective** is particularly relevant in the fiscal consolidation context, as it suggests that an effective HRIA must measure the cumulative impacts of the main fiscal consolidation measures in their sum, rather than seeing each of the measures in isolation. These measures may be staggered in time, and some might not be implemented at all. Yet, wherever possible, the net cumulative effects of adjustment measures should be analyzed as together these measures can outweigh the sum of their individual effects.

Box 3.2. United Kingdom: Assessing the cumulative gender impacts of fiscal consolidation

Austerity measures imposed in the United Kingdom since 2010 have posed significant challenges to human rights and equality. The UK Equality and Human Rights Commission (EHRC)—the country’s National Human Rights Institution—has shown through microsimulation tools how the combination of tax and welfare changes since 2017 have deepened economic disparity in Great Britain, while disproportionately affecting ethnic minority households, women, people with disabilities, lone parents and older persons (EHRC, 2017). This study followed previous modelling work by the UK Women’s Budget Group and Landman Economics which assessed the distributional effects of both tax changes and public spending cuts (in health, transport, education and social care) and over the period 2010-20. While low-income households did not lose out more on each measure in isolation, the poorest families in the UK were shown to suffer disproportionately from the compounding of all these measures. Further, the cumulative impact of tax and benefit changes during the UK fiscal consolidation between 2010-2015 were far more dramatic for women at every economic level, amounting to losses of 50 percent more than men in cash terms, and twice as much as a proportion of income (Women’s Budget Group, 2016). In October 2017, the Women’s Budget Group released a second analysis of the gender and racial impacts of austerity, showing that the living standards of single mothers are set to fall by 18% on average from tax and benefit changes and lost services in the UK, and that black and Asian families will lose more in public services than white families (Women’s Budget Group, 2017).

These new findings underscore the importance of detecting cumulative and overlapping impacts, and illustrate the way that gender inequalities intersect with racial inequalities to create even more disproportionate impacts for certain people and groups facing multiple forms of discrimination. What’s more, the EHRC report attests to something as important: National Human Rights Institutions (NHRIs) can start playing a key role in independently assessing the net, cumulative human rights impacts assessments of fiscal consolidation.

Fig. 3.1. Cumulative impact of UK tax and welfare measures as % of net income by income decile from 2010-2017 (EHRC, 2017)

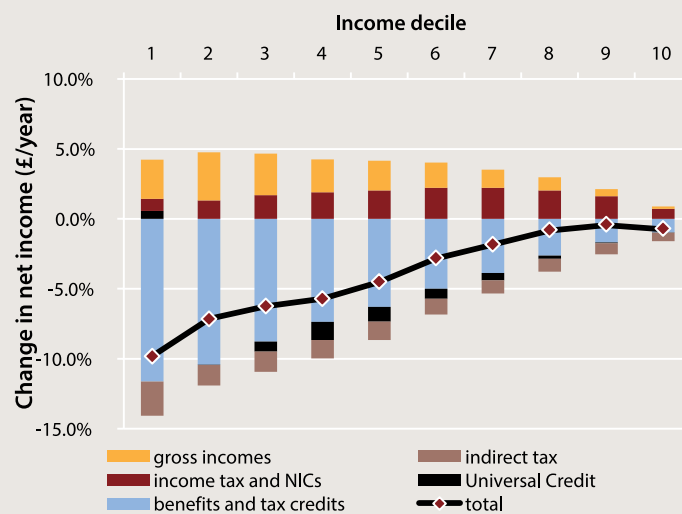
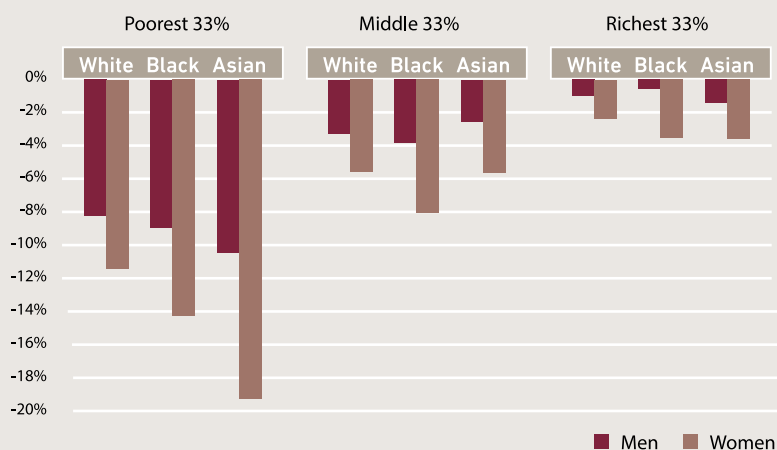


Fig. 3.2. Cumulative impact of UK changes in taxes and benefits as % of net income by income, gender and ethnicity from 2010-2020 (WBG, 2017)



3.3 Assessing the disparate and intersecting human rights impacts

From this “whole-person” perspective, another key lesson becomes abundantly clear: not all adjustment measures affect everyone equally. Groups facing underlying disadvantages before the crisis are very often forced to pay disproportionately for the costs of adjustment (see Annex I) while they are often simultaneously the least responsible for the crisis, and the least able to exert their voice and power during fiscal emergencies.

Women, for example, often bear more of the burden of budget cuts. As their economic security and access to essential services decline, women’s burden of unpaid care work often increases as allocations for public provision of care for children and older persons are cut (Donald and Lusiani, 2017; WBG, 2017; WILPF, 2017). Persons with disabilities face a litany of asymmetric reductions to their independence and living conditions, as do older people (Hauben et al., 2012). Fiscal consolidation has in various instances hardened the structural barriers that racial and ethnic minorities face to a life of dignity (UN SR Racism, 2012). Migrants and refugees have faced worsening conditions as a result of opportunistic adjustment measures denying them fair treatment and due process, as well as undermining integration programs (Barrass et al., 2015). Children and youth have also suffered disproportionately from specific education and food security program cuts, alongside general adjustment-driven spikes in poverty and unemployment (UNICEF, 2017, 2011; Bradford, 2014; PACE, 2012). LGBTQI people also face particular challenges from specific budget cuts to certain health services, and the concomitant weakening of anti-discrimination protections. Fiscal consolidation has economically distributive effects as well, increasing income and wealth inequality while exacerbating poverty. Low-income/wealth households have suffered disproportionately (Woo et al., 2017; Matsaganis, 2014). Finally, fiscal consolidation can exacerbate certain regional disparities within countries—privileging people living in certain sub-national governments over others (Vammalle et al., 2013; CoE, 2011).

Not only does adjustment affect people differently, it accumulates to the detriment of particular people already confronting intersecting inequalities. For instance, women that are part of a minority racial group often suffer doubly because of hidden racial and ethnic biases filtering into fiscal decisions (WBG, 2017). Low-income, disabled women, likewise, often experience triple the burden of adjustment. To understand the full risks that people (with multiple intersecting identities) face, and the real scale of fiscal adjustment’s impact on their standard of living and human rights enjoyment, impact assessments must dedicate special efforts to exploring how the intersections of people’s multiple social and economic groups (e.g. race, class, and gender) are affected by the four most common adjustment measures.

At present, most governments’ fiscal adjustment models are blind to the disparate and cumulative effects they cause (Bohoslavsky et al., 2017). In many cases, adjustment measures would not even be politically or economically viable were these hidden costs actually assessed—creating only an illusion of efficiency. It is thus incumbent on any HRIA of fiscal adjustment to unmask these concealed costs upon the most disadvantaged in society so that future adjustments are sensitive to disparity, and properly assign risk and burden according to who can most bear it.

Box 3.3. Brazil: Constitutionalizing austerity

In December 2016, the Brazilian Congress approved a constitutional amendment to freeze real, federal public spending over the next two decades, posing a significant risk to social spending per capita without addressing the main causes of Brazil's fiscal deficit (Donald & Lusiani, 2017). Prof. Phillip Alston, UN Special Rapporteur on Extreme Poverty and Human Rights, deemed the reform "a radical measure, lacking in all nuance and compassion," which clearly violates Brazil's human rights obligations (OHCHR, 2016). The Inter-American Commission on Human Rights also considered that this amendment may well be in violation of Brazil's legal obligations under regional treaties (IACHR, 2016). While data is not yet available to assess conclusively, the budgetary impacts of the amendment are already beginning to emerge. The share of health and education spending within the federal budget dropped 17 and 19 percent, respectively, in the first year of the amendment alone. The budget for violence-against women and women's autonomy programs meanwhile was cut by 52 percent in 2017. As a consequence, the number of specialized services offered to women suffering from violence have already reduced by 15 percent. Budget cuts have led to the closure of around 314 public pharmacies in 2017, leaving one-third of its beneficiaries without access to medicines, disproportionately affecting the poorest regions of the country. Real budget cuts to food security programs over the period 2014-2017 reached 69 percent, creating all the conditions for a return risk of malnutrition in Brazil, threatening Brazil's last decade of meaningful progress in tackling poverty and inequality and fulfilling social rights, with foreseeable and disparate impacts on doubly or triply disadvantaged populations such as Afro-descendent women. What's more, this constitutionalization of austerity is projected to fail in its own aims of restoring economic growth and fiscal balance (CESR, INESC, Oxfam Brazil, 2017).

3.4 Assessing the lifelong effects of fiscal consolidation

Alongside these cumulative and disparate effects, harmful adjustment measures can have long-term, lifelong and sometimes even intergenerational impacts. Just as different austerity measures compound upon themselves simultaneously, they also compound **over time** to slowly erode people's life chances. Even temporary measures—such as a two-year cut to nutritional assistance for example—can have dramatic effects on young children throughout the rest of their lives. Malnutrition early in life has been proven to weaken learning capacities of young children and actually depress their living standards later in life as parents (Chittleborough, 2016; Haynes, 2016). Harmful adjustment measures can, in other words, disrupt the life trajectory of low-income children—trapping them in poverty as adults—with effects across generations.

A fourth cornerstone of the "whole-person" perspective to assessing austerity would pay special attention to the effects of adjustment across the life-course. Evidence shows that special emphasis on safeguarding social, labor and health protection of mothers and young families, alongside early education services and protection for childcare and for caregivers (including grandparents with pensions) can help cushion against the worst effects of austerity (Marmot et al., 2012). Monitoring the lifelong effects of specific timebound adjustment measures is not only limited to care for children, but is equally incumbent in other areas. Long-term unemployment, for example, has been shown to erode people's skill base, and carries a social and employment stigma from which it can be difficult to recover. Special attention should be paid to pro-cyclical fiscal adjustment measures which extend the length and depth of economic downturns, and thus precipitate unnecessarily long bouts of unemployment.

4 | How to assess fiscal consolidation? Human rights norms and methods

The multiple human rights affected by adjustment, as well as their cumulative and disproportionate impacts on various groups, present particular challenges when it comes to monitoring. While the starting point of any human rights evaluation is the lived experience of rightsholders, empirical outcomes alone do not capture the full effects of adjustment measures. Nor does the traditional focus on assessing impacts alone take into account the various obstacles national governments face in their decision making—be that from onerous loan conditions, erratic investor sentiment or regional fiscal rules. What’s more, deploying individual methods and tools to assess impacts in isolation from each other prevents a more holistic understanding of the cumulative impacts which are so often bigger than the sum of their parts. An overarching framework that weaves together this wide variety of different tools and techniques—tracing economic and social deprivations back to the actions or omissions of the state in question—is needed in order to give a comprehensive picture of impacts, and the degree to which governments are upholding their human rights duties.

This section describes how human rights standards can be applied to fiscal policy in times of economic crisis. Organized around these norms, this part goes on to sketch out an adaptable methodological structure—based on CESR’s OPERA framework—for conducting HRIAs of fiscal consolidation measures.

4.1 Human rights norms and standards in times of fiscal consolidation

Human rights norms provide a universal yet adaptable framework of guiding principles and operational standards to inform a methodology for HRIAs of fiscal consolidation measures. States rightfully enjoy a margin of discretion in designing their own fiscal policies. Yet, this discretion is not without bounds; fiscal adjustment must be designed in line with specific substantive and procedural human rights duties, which set down certain red lines which should not be crossed, in particular the prohibition of retrogressive steps, or measures which lead to backsliding in the enjoyment of economic, social and cultural rights. Under international law, there is a strong presumption that retrogressive adjustment measures constitute a prima facie violation of the International Covenant on Economic, Social and Cultural Rights. While not an absolute ban, states bear the burden of proving any deliberately retrogressive measures can be fully justified by reference to the totality of the rights provided for in the Covenant (CESCR, GC 3). Over the years, the Committee on Economic, Social and Cultural Rights (CESCR), other treaty bodies, regional human rights bodies and national courts have developed various criteria to assess upon which basis retrogressive measures might be legally justified (Courtis et al., 2014). Permissible limitations on rights are enshrined and interpreted in different ways in national, regional and international law (HRC, 1984; Cianciardo, 2010). These norms are codified and interpreted slightly differently in different legal traditions. Nevertheless, we can draw on these normative advances to distill a series of criteria to judge retrogressive fiscal adjustment measures (Courtis et al., 2014). Consolidation measures can only be justified when they are:

1. **Temporary** in nature and in effect, and limited to the duration of the crisis
2. **Legitimate**, with ultimate aim of protecting the totality of human rights
3. **Necessary**, with all alternative financing measures comprehensively examined and exhausted

4. **Reasonable**, with the means chosen the most capable of achieving the legitimate aim
5. **Proportionate**, in that their human rights benefits outweigh their costs
6. Not directly **nor indirectly discriminatory**, according priority attention to disadvantaged groups to ensure they are not disproportionately affected
7. Protective of the **minimum core** content of economic, social and cultural (ESC) rights
8. Based on **transparency** and genuine **participation** of affected groups in examining the proposed measures and alternatives, subject to meaningful review and **accountability** procedures

Fiscal consolidation measures which affect the enjoyment of ESC rights “should be a **temporary** measure covering only the period of crisis” (CESCR, 2012). That is, any harmful measures should be brought to a complete end once the crisis ends. Constitutional amendments, for example, which lock in certain fiscal adjustments and have longlasting effects beyond the foreseeable period of fiscal crisis, would not qualify as temporary measures. Substantive structural reforms to labor protections, with longlasting effects on the enjoyment of rights at work, would also qualify as temporary measures. Likewise, this norm questions any temporary measures which have longlasting effects. After all, short-term, one-off budget cuts sometimes have enduring, even permanent, effects. A cut to budget support for essential medicines, for example, can have catastrophic, at times fatal, effects on poor people living with HIV/AIDS who rely on antiretroviral therapy, no matter whether the government reinstates the previous funding line in its next annual budget.

Legitimacy refers to the validity of the ultimate ends pursued through fiscal consolidation. In the field of ESC rights, international human rights law establishes that any limitation to those rights must be “compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society,” (ICESCR, Art. 4) as well as “justified by reference to the totality of Covenant rights” (CESCR, 1990: para. 9). According to OHCHR, the State will only be able to justify austerity when “factors beyond its control” have decreased available resources, making it necessary to reduce “some benefits of those who are in a better-off position, in order to maintain the existing level of enjoyment of the rights recognized in the Covenant for the more vulnerable.” (OHCHR, 2013: para. 16). The State cannot justify austerity measures “simply by referring to fiscal discipline or savings: it needs to show why the austerity measures were necessary for the protection of the totality of the rights provided for in the Covenant.” (Ibid.). In this sense, the ultimate end-goal of any fiscal measures—whether expansive or contractionary—must be the realization of human rights.

Necessity refers to a much stricter connection between means and ends; fiscal consolidation measures must be assessed against all financing alternatives available (see box below). In CESCR’s words it means that “the adoption of any other policy, or failure to act, would be even more detrimental to the realization of human rights” (CESCR, 2012). As OHCHR has stated “States bear the burden of proving that austerity measures have been introduced after the most careful consideration of all other less restrictive alternatives, including adjustments in tax policy, for example” (OHCHR, 2013: para. 18).

Box 4.1. Austerity is not destiny: Options to expanding fiscal space

Despite the ubiquitous and self-perpetuating mantra that fiscal consolidation is necessary because the welfare state is deemed no longer affordable, several alternatives to harmful austerity measures are available, even in the poorest of countries. There is a growing consensus that at a time of fragile global recovery, the need to create fiscal space has never been greater (ILO, 2017: 184). A joint ILO, UNICEF and UN WOMEN paper documents a plethora of options that countries have implemented to finance social protection, even in times of economic constraints where some voices claimed that austerity measures were the only possible response (Ortiz et al., 2017). Some countries have raised more revenue through **progressive taxes** (i.e. increasing personal income taxes or property taxes) to fund social investments and indeed, human rights-promoting programs (De Schutter, 2017). **Tackling tax abuse and strengthening the ability to collect taxes** also represents a promising alternative to austerity. In Kenya, for example, a modest investment in the tax administration led to an increase of USD 33 million in increased tax revenue over a one-year period in 2012, representing a rate of return of USD 1,650 for each dollar spent (OECD, 2014: 174). More than 60 countries have successfully **renegotiated debts**, and more than 20 defaulted/repudiated debt, such as Ecuador, Iceland and Iraq, using savings from debt servicing for social programs. A significant number of developing countries have used **deficit spending** and more **accommodative macroeconomic frameworks** during the global recession to attend to pressing demands at a time of low growth, and to support socioeconomic recovery. Costa Rica and Thailand **reallocated military expenditures** for universal health; Indonesia, Ghana and many other developing countries are reorienting **fuel subsidies** to finance social protection programs; Bolivia, Mongolia and Zambia are financing universal old-age pensions, child benefits and other schemes from **improved taxes on mining and gas**; Algeria, Mauritius, Panama, among others, have complemented social security revenues with high **taxes on tobacco**; Brazil used in the past a **financial transaction tax** to expand social protection coverage; Chile, Norway and Venezuela, among others, are using **fiscal reserves** to support social development; some lower income countries are receiving North-South and South-South transfers, like El Salvador and Guinea-Bissau, while other countries are cracking down on **tax abuses** of various kinds, from personal tax evasion to corporate tax avoidance. Each of these examples point to a menu of options governments of all types have to enact before engaging in fiscal consolidation at all (Ortiz et al., 2017).

Reasonableness refers to whether the means chosen are the most suitable and capable of achieving the legitimate aim. The CESCR has defined some criteria that it will take into account in determining the reasonableness of measures taken by a state. Measures should be “deliberate, concrete and targeted towards the fulfilment of economic, social and cultural rights,” non-arbitrary, non-discriminatory, and take into account “the precarious situation of disadvantaged and marginalized individuals or groups.” (CESCR, 2007: para. 8).

Proportionality means that the measures chosen must fit certain substantive and procedural limits, and that their costs cannot outweigh their benefits.⁶ This is a key norm to prevent human rights from being unduly restricted due to extraordinary economic demands (Contiades, 2012). In the words of the UN Special Rapporteur on Extreme Poverty and Human Rights, “immediate negative effects need to be balanced with potential longer-term gains” (OHCHR, 2016). Section 4.3, below, interprets this key criterion in more detail.

⁶ For the last twenty years, constitutional courts have applied the principle of proportionality to evaluate the permissibility of restrictions on rights in order to protect other rights or higher values. In the common law systems, the principle is usually called “principle of reasonableness.” In the context of constitutional law, necessity, reasonableness and even legitimacy are embedded into proportionality tests. So, a proportional measure will be: a) adequate to a legitimate end; b) the least restrictive of the human rights among all the adequate options that could be applied; and, finally, c) proportional *stricto sensu*, that is, it must keep the balance between its costs and its benefits (Cianciardo, 2010). See also Lopez-Bruce (2009).

Two key substantive limits which are immediately applicable no matter the economic situation involve ensuring that they are not **discriminatory**, nor do they undercut the **minimum core content** of ESC Rights (CESCR, 2012). The prohibition of *de jure* and *de facto* discrimination, and the protection of the minimum core content, should be considered redlines in the sense that there is no justification for states to infringe upon them.

Finally, **fiscal consolidation measures must respect the procedural principles of transparency, participation and accountability**. To protect human rights under fiscal adjustment, transparency, participation and accountability principles should apply at all stages of the fiscal adjustment cycle—from assessment, analysis, planning, implementation and monitoring to evaluation (OHCHR, 2013; CESCR, 2008). Importantly, the accountability principle applies not only to states' domestic affairs, but also to their influence upon other countries, be it directly or as members of international financial institutions (CESCR, 2016; Salomon & De Schutter, 2015).

Box 4.2. Portugal: Quicker recovery, fairer results through alternatives to austerity

Like Greece, Portugal was bailed out by international creditors after the financial crisis hit hard in 2008, leading to a stringent package of consolidation measures which included public sector wage cuts, pension benefit reform, labor market flexibilization and VAT increases. Each of these measures constrained the buying power of low- and middle-income households, creating a drag on the economy as a whole. As a consequence, unemployment reached explosive levels, people became more dependent on public assistance. Inequality grew and the economy stalled (Oxfam, 2013). But then, lessons were learned. After public protests, various rulings by the country's Constitutional Court and an election in 2015, Portugal took the decision to "turn the page on austerity"—with very positive outcomes. The new administration reversed the regressive tax increases, increased social security spending for poor families, reintroduced four cancelled public holidays and restored state pensions, wages and working hours to pre-bailout levels (Jones, 2013). Far from driving public debt up, public investment has jumped and the economy has grown for 14 successive quarters (OECD, 2017). The economic impact of these measures brought the deficit down to 2.1% of GDP in 2016 (The Economist, 2016), making Portugal compliant with European Union's fiscal rules without eroding human rights. This case attests to the fact that protecting the human rights of low- and middle-income households throughout economic downturns, as well as being a legal obligation, has the added value of preventing the worst economic outcomes by providing a layer of shock absorption for people and the economy as a whole.

4.2 The OPERA Framework: Assessing fiscal consolidation against human rights norms

Drawing on authoritative interpretations of economic, social and cultural rights standards and principles and other international human rights norms by the UN treaty bodies, regional human rights bodies and courts in different jurisdictions, this section teases out how these criteria can be made operational, and suggests how they could fit together, in the context of determining whether limitations on rights imposed by fiscal consolidation measures can be justified. In particular, these norms can be distilled into four key overarching questions:

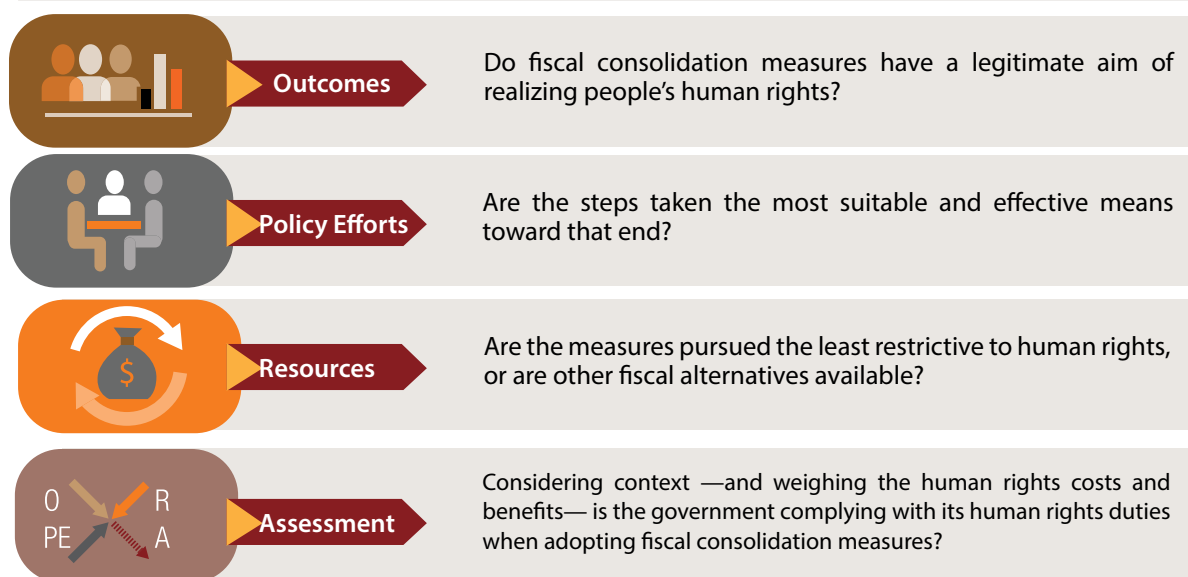
- 1. Do fiscal consolidation measures have a legitimate aim of realizing human rights?**
- 2. Are the steps taken the most suitable and effective means toward that legitimate end?**

3. **Are the measures pursued the least restrictive to human rights, or are other fiscal alternatives available?**
4. **Considering context, and considering costs and benefits in human rights, is the government complying with human rights law when adopting fiscal consolidation measures?**

To answer these four questions, this section aims to translate the norms that underpin human rights duties into more concrete, objective and measurable criteria for assessing how policy choices in times of fiscal stress impact rights fulfillment. This adaptation embeds the norms discussed above in a broader analysis of a state’s compliance with human rights law, with the understanding that these questions are very difficult to assess without a more holistic analysis that goes beyond a limited focus on empirical outcomes. For a more comprehensive assessment of human rights compliance, an analysis of outcomes needs to be triangulated with an assessment of government legal/policy efforts, resource decisions and other factors impinging on a state’s capacity to uphold its human rights duties. To do so, CESR developed OPERA—an analytical framework that groups the normative standards and principles underpinning states’ obligation to fulfill economic, social and cultural rights into four dimensions: Outcomes, Policy Efforts, Resources and Assessment (CESR, 2013). The OPERA framework outlines research questions that help measure each dimension systematically, while also suggesting tools and techniques for how to answer them, adapted to the particular context being analyzed—in this case fiscal consolidation.

Figure 4.1. Standard policy assessments and OPERA’s human rights policy analysis

ASSESSING AUSTERITY: A FOUR-STEP FRAMEWORK



The following section details how OPERA can be used to frame and develop a methodology for conducting an HRIA of fiscal consolidation. The tables below adapt the framework’s standard questions and suggested assessment techniques in each step to the specific norms and policies being assessed when looking at fiscal adjustments. Importantly, the steps in the framework are not meant to be rigid, nor are the techniques shared anything but illustrative. The definitions, and the resulting monitoring questions posed, are not a one-size-fits-all picture, nor are they exhaustive. Instead, this general framework aims to provide a groundwork for adapting to varying national contexts. Experience from impact assessment practice shows that flexibility and adaptability in both design and implementation of HRIAs are critical to ensure the tool adequately assesses

the economic and political context in different countries, the differing policy levers, relevant political actors, audiences, etc. (World Bank, 2013). Depending on the specific objective of the specific actor (see Annex II), and the timing of the HRIA before or after a consolidation, it may be necessary to zoom in on, or zoom out from, particular steps or sub-steps or to reorder them as suitable. Finally, not all of these norms will be directly applicable if assessing austerity's impacts on civil and political rights.

OUTCOMES | Do fiscal consolidation measures have a legitimate aim of realizing people's rights?

The first step starts with the human impacts of fiscal consolidation. Specifically, it measures relevant socioeconomic outcome indicators, such as unemployment rates or primary school completion, to assess levels of enjoyment of economic and social rights in practice. These indicators help uncover whether minimum core obligations are being met and expose disparities in the enjoyment of these rights across population groups. Tracking these indicators across time meanwhile provides a measure of whether or not people are experiencing backsliding in socioeconomic rights enjoyment.

Table 4.1. Outcomes

Human rights norm	Question to assess	Illustrative assessment techniques
<p>REDLINE: Minimum core Deepening deprivations suggest obligations are not being met.</p>	<p>Are/will minimum core content of economic and social rights be affected by the consolidation measures?</p>	<ul style="list-style-type: none"> • Select socioeconomic indicators that are relevant measures of minimum content of rights enjoyment (e.g. social protection floor) and compare data (actual or modelled) to relevant benchmarks and over time. • For example, the percentage of the population living below poverty line pre- and post-adjustment could be an indicator to measure the impacts on the minimum core content of the right to an adequate standard of living.
<p>REDLINE: Non-discrimination Differences in rights enjoyment raise concern about possible discrimination—in law (<i>de jure</i>) or in practice (<i>de facto</i>).</p>	<p>Have disparities in rights enjoyment increased from fiscal consolidation, or are they likely to?</p>	<ul style="list-style-type: none"> • Compare data (actual or modelled) on relevant socioeconomic indicators disaggregated by income decile and protected population groups, to uncover particular, cumulative and intersecting disparities. • Groups commonly at risk during economic crises include: women; ethnic minorities; older persons; children; people with disabilities; people living in poverty; migrants and refugees; LGBTQI people. • It is important to take into account that these identities are not static, homogenous or binary, and to take an approach which analyzes how inequalities along these lines intersect, overlap and manifest at the individual and population levels.
<p>Non-retrogression Backsliding in rights enjoyment is considered a <i>prima facie</i> violation.</p>	<p>Has/will fiscal consolidation lead to backsliding in rights enjoyment?</p>	<ul style="list-style-type: none"> • Compare data on relevant socioeconomic indicators (actual or modelled) over time. • Measure the cumulative impact of measures on these outcome indicators over time through distributional modelling of tax, spending, labor and/or pension reforms (e.g. Reed & Portes, 2014).

POLICY EFFORTS | Are the steps taken the most suitable and effective measures toward that end?

Going beyond traditional impact assessments which only assess outcomes, the second step seeks to assess whether the country in question is complying with the duty to “take steps” that are “deliberate, concrete and targeted” toward the legitimate aim of upholding human rights. This involves analyzing a government’s constitutional and legislative provisions, as well as the implementation of the policies that embody them. The extent to which adjustment measures affect the availability, accessibility, acceptability and quality (“AAAQ”) of goods and services necessary for human rights enjoyment is also assessed in this step to determine if the measures are reasonable in that they deploy the appropriate means toward their legitimate aim. Finally, the processes through which policies are formulated and implemented are also analyzed to determine whether they abide by the principles of participation, accountability and transparency, while respecting civil and political rights.

Table 4.2. Policy efforts

Human rights norm	Question to assess	Illustrative assessment techniques
<p>Legitimacy To be justified, limitations on rights must have the ultimate aim of protecting the totality of human rights.</p>	Do the fiscal consolidation measures have as an ultimate aim the realization of human rights?	<ul style="list-style-type: none"> Review official justifications to determine whether the explicit or implicit aims of the fiscal consolidation measures are justified in human rights terms.
<p>Temporary Any harmful fiscal adjustments must be temporary in effect.</p>	Are the fiscal consolidation measures, and their harmful effects, limited to the period of adjustment alone?	<ul style="list-style-type: none"> Analyze the durability of the restrictive legal and policy measures taken over time. Identify whether the fiscal consolidation measures do, or would, formally rescind or override existing human rights guarantees (e.g. by enshrining deficit or spending caps as a constitutional norm, or by dissolving national human rights institutions or other bodies). Analyze the longer-term and irreversible human rights effects of these measures, for example on children or the long-term unemployed.
<p>Reasonableness The means chosen to pursue the legitimate end must be suitable.</p>	<p>Are the adjustment measures chosen the most suitable to meeting their legitimate aim?</p> <p>Are the measures the most capable to realizing human rights through their impacts on key goods and services?</p>	<ul style="list-style-type: none"> Evaluate if the measures are capable of realizing human rights, especially through their effects on the availability, accessibility, acceptability and quality (“AAAQ”) of key goods and services, for particular groups and over time, in order to assess whether the measures taken are meeting the legitimate aims.

Human rights norm	Question to assess	Illustrative assessment techniques
Participation, transparency, accountability, assembly and effective remedy	<p>Are relevant decision-making processes transparent and participatory?</p> <p>Do/will people who suffer rights infringements have a method of seeking redress in a fair and open manner?</p>	<ul style="list-style-type: none"> • Evaluate whether the legal and policy context enables people to be fully informed about, meaningfully engaged in to challenge the fiscal consolidation measures affecting them. • Collect feedback on the extent to which these process principles are applied in practice (e.g. through interviews or other qualitative methods and quantitative indicators, if available). • Evaluate whether rights to free expression, assembly and peaceful protest are respected. • Analyze the impact of the fiscal consolidation measures on the justice system and particularly the possibilities of most disadvantaged people to seek effective remedy if harmed.

RESOURCES | Are the measures pursued the least restrictive to human rights or are other fiscal alternatives available?

Fiscal crises are often portrayed as involving hard decisions about extraordinary levels of resource scarcity. In some cases, there are few resources available. Yet, in most cases, resources are just hiding out of sight. As critical to assessing outcomes and policy efforts generally, a HRIA of fiscal consolidation must also interrogate the government's claims of having no other alternative but to constrict. This fourth step then assesses holistically the sufficiency of government revenue generation and expenditure, the equitability and efficiency of budgets, as well as whether the budget cycle respects the principles of participation, non-discrimination, transparency and accountability.

Table 4.3. Resources

Human rights norm	Question to assess	Illustrative assessment techniques
Necessity Limitations on rights can only be justified if <i>less restrictive alternatives</i> have been considered and exhausted.	Have all financing alternatives been exhausted to prevent the need for fiscal consolidation measures?	<ul style="list-style-type: none"> • Determine what financing alternatives have been considered. These could include: • Restructuring of existing debt, e.g. back-loading consolidation, debt restructuring, debt relief • Reallocating current expenditures • Tackling tax evasion and avoidance • Increasing top-end income tax rates and base • Raising luxury, financial transaction, property and other wealth/capital taxes • Seeking development assistance • Use of fiscal and foreign exchange reserves
Take steps to the maximum available resources Includes an obligation to <i>mobilize</i> resources effectively	Has/will the state's capacity to generate public resources be undermined in ways that affect state's ability to realize rights?	<ul style="list-style-type: none"> • Assess the effects of the consolidation measures on the ability of the state to generate resources (e.g. through decreased capacity of tax administrations), comparing to relevant benchmarks. • Compare revenue intake to see how the sufficiency of resources has evolved over time from pre-adjustments levels, taking into account economic growth over the period. • Consider the revenue impacts of pro-cyclical fiscal measures.

Human rights norm	Question to assess	Illustrative assessment techniques
<p>Take steps to the maximum available resources Includes an obligation to <i>allocate</i> resources effectively</p>	How has/will the fiscal consolidation measures affect the allocations of public expenditure for human rights?	<ul style="list-style-type: none"> Assess the effects of the consolidation measures on the percentage of the state's budget allocated to the specific right at risk, comparing to pre-adjustments levels and relevant benchmarks. Compare allocations to see how allocations have evolved over time.
<p>Take steps to the maximum available resources Includes an obligation to <i>spend</i> resources effectively</p>	How has/will the fiscal consolidation measures affect the spending of public expenditure for human rights?	<ul style="list-style-type: none"> Track spending to assess whether fiscal consolidation measures have or would lead to underspending or wasteful spending that diverts funds away from basic rights (e.g. through financial and performance audits). Track public expenditure to evaluate actual or likely leakages or corruption (e.g. using public expenditure tracking surveys or social audits).
<p>Minimum core A state must use "all resources that are at its disposition" to guarantee minimum core content.</p>	Has/will the tax and budget decisions drive people below the thresholds of minimum core content of ESCR enjoyment?	<ul style="list-style-type: none"> Assess whether measures to increase revenue generation (e.g. VAT taxes or decreases in income thresholds) push people beneath the poverty line, or other thresholds of minimum living standards in other ways. Analyze public budget and track actual spending to assess which basic social protection programs were funded, how much funding they receive, and which, if any, saw decreases in funding.
<p>Non-discrimination Provides that resources must be mobilized, allocated and spent <i>equitably</i></p>	<p>How has/will the fiscal consolidation measures shift the burdens and benefits of fiscal policy between groups?</p> <p>How has or will fiscal consolidation affect social and economic inequality?</p>	<ul style="list-style-type: none"> Identify which population groups are benefitting or losing out from adjustment (e.g. through perception surveys). Conduct fiscal incidence analysis (Lustig, 2017) assessing whether the fiscal burden and benefits shift across groups (e.g. from rich to poor, from capital to labor, from men to women, from one ethnic group or region to another). An intersectional approach to fiscal incidence analysis is critical to assess doubly or triply disproportionate impacts on particular people such as poor ethnic minority women. Track spending to assess if particularly disadvantaged groups are, or could be, disproportionately impacted by allocated resources being redirected or not fully spent.
<p>Participation, accountability, transparency, right to a remedy</p>	Have fiscal consolidation processes been fully transparent, participatory and subject to meaningful accountability?	<ul style="list-style-type: none"> Analyze information related to transparency of fiscal adjustment process. Collect feedback on public participation in the design, implementation and evaluation of fiscal consolidation measures (e.g. through interviews or other qualitative methods and quantitative data, if available). Analyze procedures by which decisions on taxes and budgets are adopted within the fiscal consolidation programs, and compare with ordinary procedures and/or processes in comparable countries.

ASSESSMENT | Considering context—and weighing the human rights costs and benefits—is the government complying with its human rights duties when adopting fiscal consolidation measures?

At this point, government compliance with relevant human rights norms can be determined by assessing whether and how the changes in Resources and Policy Efforts prompted by the fiscal consolidation measures produce negative Outcomes which reinforce each other and disproportionately affect specific populations. By triangulating the findings from the three steps it is possible to identify the human rights impacts of fiscal consolidation measures and the channels through which they happen.⁷ Yet, drawing final conclusions about the government’s actions prior, during and after a period of fiscal consolidation requires a consideration of contextual issues that might inhibit the government’s capacity to comply with its obligations, as well as people’s ability to claim their rights. So, this broader context is informative to ultimately judging the responsibility of the government for any human rights harm from fiscal consolidation.

Table 4.4. Assessment

Human rights norm	Question to assess	Illustrative assessment techniques
Interdependence of rights	What other constraints prevent the enjoyment of rights in contexts of economic crisis?	<ul style="list-style-type: none"> • Identify how the civil and political rights context shapes the social, economic, political or cultural conditions that deprive people from power and voice regarding the definition of fiscal consolidation policies, or from seeking redress for violations (e.g. capacity gap assessment). • Econometric methods can be used to isolate the influence of factors on outcomes other than fiscal consolidation policies.
Obligation to respect and protect rights against third parties	What domestic factors impede the state’s ability to realize rights in contexts of economic crisis?	<ul style="list-style-type: none"> • Use political economy analysis to identify how corruption, elite capture, lack of financial regulation, acts or omissions of third parties, or other power asymmetries influence decision making. • Identify in particular who has disproportionately benefitted from the economic crisis and fiscal adjustment to better understand the incentives driving these measures.
Extraterritorial obligations of other states or international actors	What external constraints are placed on the state which impede its ability to realize rights in contexts of economic crisis?	<ul style="list-style-type: none"> • Identify the degree of responsibility of external parties—such as credit-rating agencies, creditor countries, bondholders, international financial institutions—which affects the state’s ability to fulfill human rights in times of economic crisis.
Proportionality Assesses whether the human rights costs of adjustment outweigh the benefits.	Do the human rights costs of adjustment outweigh the benefits—now or in the future?	<ul style="list-style-type: none"> • See section 4.3. for a proposed balancing tool to determine proportionality.
Overall Compliance	Are the measures justified, taking into account the relevant human rights norms and standards above?	<ul style="list-style-type: none"> • Draw together findings from all of the steps, make a considered evaluation of all the evidence to determine: • Do fiscal consolidation measures have a legitimate aim in human rights terms? • Are the steps taken a suitable and effective means toward that legitimate end? • Are the measures pursued the least restrictive options available to reach this end? • Do the human rights benefits outweigh the potential human rights risks?

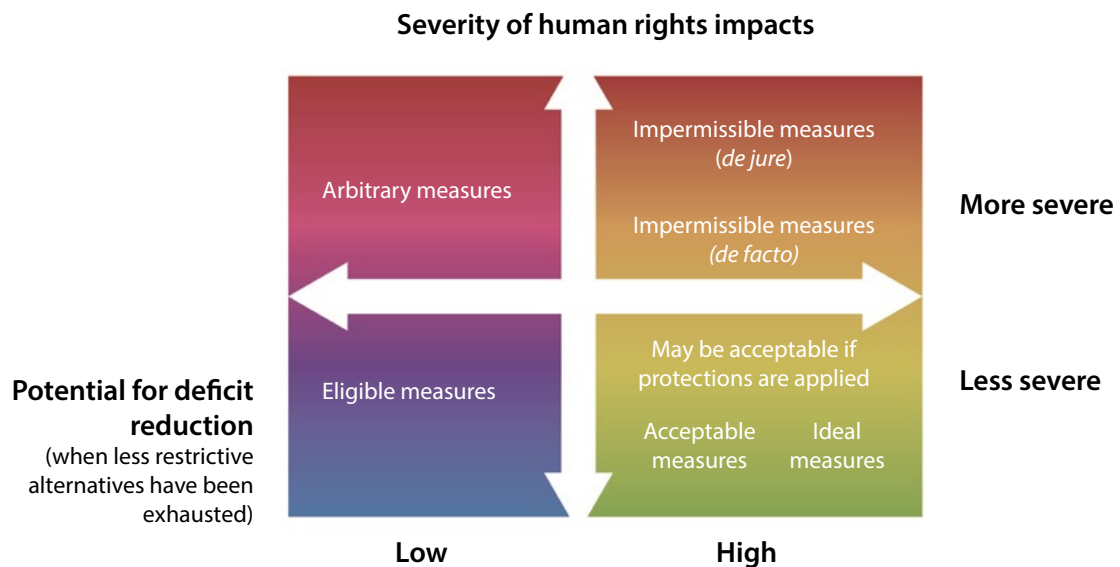
⁷ For applications of OPERA in contexts of fiscal austerity, see CESR, INESC, Oxfam Brasil (2017), CESR (2017), CESR (2015).

4.3 Assessing proportionality and making recommendations on alternatives

In light of this framework of norms, a number of fiscal adjustment measures in practice today are clearly, and unambiguously, unjustified under international human rights law, especially those which have discriminatory outcomes or impoverish groups of people below the most basic essential levels needed for a life of dignity. That being said, some decisions in times of fiscal crisis are also about trade-offs between difficult choices. HRIAs—to be ultimately successful—cannot be blind to these dilemmas. By showing who would bear the biggest burden of different policy options, conducting an HRIA can play a vital role in supporting decision makers in actually determining what would be the least restrictive alternative.

HRIAs can be very useful in revealing assumptions and opening up the possibilities of various different choices to resolve supposed trade-offs between fiscal necessity on the one hand, and human rights protection on the other. From a purely **fiscal** point of view, when the adjustment is truly imperative because less restrictive options to expand fiscal space have been exhausted, the most relevant criterion to judge a measure is the potential to achieve the fiscal consolidation goals (high or low depending on the overall effect on deficit reduction, considering multiplier effects on growth and revenue collection). From a **human rights** perspective, however, the main priority is detecting the severity of impact on human rights, with some so discriminatory or impoverishing that they are considered *prima facie* violations. In most cases, however, determining whether impacts amount to violations is more of a balancing act between both relevant criteria. Figure 4.2 provides a balancing test, placing each alternative fiscal consolidation measure within the continuum, providing a useful framework for assessing proportionality.

Figure 4.2. A balancing test for assessing proportionality of fiscal consolidation



Arbitrary measures are those which are in strict breach of human rights law, and also have poor effects on deficit reduction. These are measures that may be included in the package because of failures of design, lack of voice and representation or misbalances of power in the definition of fiscal consolidation programs (i.e. cutting low-cost essential programs targeting poor populations).

Impermissible measures are those which have a high potential to achieve fiscal consolidation targets, but must be *a priori* excluded from the package either because they are discriminatory or affect minimum core

content of the rights. Neither the longer-term benefits nor the possible positive gains to other rights can be used to justify *de jure* discrimination (e.g. deprivation of the right to health to undocumented migrants by law) or *de facto* discrimination (e.g. a steeper decline in the standard of living for women because of the cumulative effect of tax reform, benefit changes and flexibilization of the labor market), nor can it undercut the minimum essential levels of economic, social and cultural rights.

Maybe acceptable if protections are applied refers to those which would have a high or moderate contribution to fiscal consolidation targets but entail a conditionally acceptable degree of backsliding in levels of rights enjoyment (i.e. consumption tax increases, reductions in the amount of non-contributive pensions to middle class population). If mitigation mechanisms (i.e. exemptions on VAT to basic goods) or compensation mechanisms (i.e. tax credits to low-income families) are adopted to offset the concomitant social impacts, they may be deemed acceptable in the absence of other ideal measures available. However, these measures must be subjected to strict scrutiny, be temporary in the period of crisis, and must take into consideration the cumulative impacts over time.

Acceptable measures are those that have low or no adverse human rights impact, and a moderate contribution in terms of achieving fiscal consolidation targets (e.g. efficiency gains in public spending).

Eligible measures are those which have low adverse human rights impacts but also a low contribution to fiscal consolidation aims (i.e. cutting off low-cost programs in non-essential areas). However, they should be exhausted before considering measures with higher fiscal impact but also higher human rights costs.

Ideal measures are those which have positive rather than adverse human rights impacts, while also highly or moderately benefitting the aims of fiscal consolidation. Measures such as tackling tax evasion and avoidance, reducing expenditure leakage by fighting corruption or increasing revenue collection by under-utilized progressive taxes have simultaneously positive effects on addressing fiscal deficits and realizing human rights.

Box 4.3. Iceland: Adjustment with a human face

After years of deregulation, Iceland faced a major bank collapse in 2008 (De Bruijn et al., 2010). The government attempted to make public the private debt of its three biggest banks. Testifying to the power of people's participation, these measures were rejected in two referenda that took place in 2010 and 2011. Rather than cutting wages and social spending, a new administration implemented a series of heterodox policies—including debt repudiation, mild capital controls, stricter financial regulations, and currency depreciation (Ortiz et al., 2017: 44). Iceland replaced the previous flat tax system with a progressive tax structure, exactly opposite to its European counterpart Hungary, which implemented a flat tax reform. Iceland achieved many of its fiscal consolidation aims without reverting to harmful austerity measures, while worsening economic conditions forced Hungary to ask for additional external help. Iceland has since become one of Europe's top performers in terms of growth, decreasing unemployment and stable inflation (Matsangou, 2015). The UN Independent Expert on Foreign Debt and Human Rights recommended that Iceland further strengthen its legal and institutional framework in order to prevent the recurrence of a similar crisis and that attention be paid to certain vulnerable groups (UN IE Debt, 2015). Iceland regained access to international capital markets while preserving social rights and upholding the right of public participation in economic policy.

While human rights law does establish clear redlines to prevent particularly harmful forms of fiscal consolidation, the balancing test proposed above shows that an assessment of proportionality is also an issue of degree, and that there is inevitably a margin of discretion. In addition to defining some strict redlines to policymakers, a human rights approach can also inform decisions on how to choose between hard alternatives—replacing more severe measures by ideal or at least less harmful ones—in order to reduce avoidable human suffering and uphold the rights of all, without discrimination.

4.4 What counts during adjustments? Data, indicators and benchmarks

Unlike other approaches to assessing the impacts of fiscal consolidation measures, OPERA has solid normative grounding in international human rights law. Using OPERA to assess the impact of fiscal consolidation measures provides a clear set of questions to assess the compatibility of those measures with the state's international human rights obligations, as well as to identify their specific human rights impacts. As noted above, it also offers a broad set of tools and techniques for how to answer these questions. These techniques can be applied, in an iterative process, to analyze specific measures within a fiscal consolidation package, as well as the cumulative impacts of the package as a whole. *Ex ante* assessments may also require the use of specific tools such as predictive modeling, which will allow for the identification of potential impacts on rightsholders and inform analysis accordingly.

One of the most critical tools is the use of indicators, benchmarks and data to accurately measure and understand human rights impacts. Traditionally, human rights analysis has shied away from the use of quantitative data. But, for the purposes of understanding the human rights impacts of fiscal consolidation, it will be essential. Availability of on-time and disaggregated data is a particular challenge during fiscal crises.

Because inequalities of outcome in the adjustment process are often the result of specific government policies and practices, it is particularly important that discrimination-related indicators track disparities in who is benefitting from specific policy interventions. HRIAs should be able to detect both horizontal, or social inequalities (such as those between men and women, between racial groups, or between people with disabilities and the rest of the population), and vertical, or economic inequalities in terms of income/wealth. Benefit incidence tools are particularly useful, as shown in the UK example above. Yet, they depend on detailed, disaggregated information on households which is not available in many countries. It is therefore critical that governments invest in disaggregated data collection (including inner-household and time-use data, key to understanding gender inequalities) during prosperous times to ensure it is available when times turn tough. Various countries have engaged in innovations to infer disparate impacts despite imperfectly disaggregated data.

Even so, a lack of high-quality household survey data should not be a pretext to avoid a comprehensive assessment of human rights risks. In such cases, various primary data collection methods—such as surveys, focus groups, comparative examples, and other practices—can be rapidly and effectively deployed in situations where official data is not forthcoming. Primary data collected by communities and organizations that work closely with these populations can include some specific types of impacts. Direct population surveys can be very useful to produce perception-based data to better understand the various types of discrimination not easily detected through standard incident reports and event-based data (e.g. gender-based violence, or access to services by migration status which often go unreported). It is also important to keep in mind that where primary data collection is employed, it should be undertaken in a human rights-based manner—meaning that it is consensual, participatory and meaningfully includes affected communities.

Setting the right benchmark to judge government conduct against is critical. There are a variety of ways to identify the most appropriate human rights-informed benchmarks.⁸ Researchers often use a pre-crisis benchmark (e.g. of health access) as a standard to assess change from that baseline. However, this often misses the fact that the change would not be measurable, had the crisis never occurred. It is often more telling to use a benchmark based on a reasonable assessment of what progress would have occurred had the crisis never struck.

8 For a further discussion, see CESR & APF, 2015, Chapter 4.

5 | When, who and how to organize the HRIA process? Lessons learned

The substantive questions asked in an HRIA, and the methods used to answer those questions, are obviously critical. Yet, the process governing the decisions and priorities made along the way is as important to answering the right questions, from the right sources, in the right way. Because of the paucity of fiscal adjustment-focused HRIAs, it is instructive to explore best (and worst) practice in the broader field of impact assessments more generally. Looking at practice across the fields of environmental, social, human rights and regulatory IAs, this section derives a series of lessons learned to channel into procedural guidance for a successful HRIA of fiscal consolidation measures.

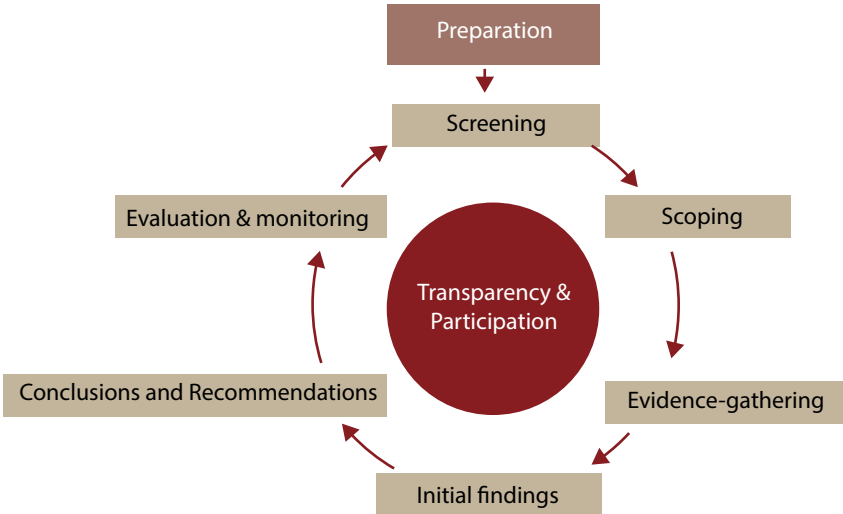
5.1 Periodic, cyclical and iterative process

If impact assessment practice is any guide, the timing of the assessment within the policy cycle is crucial in setting it up for success. *Ex post facto* evaluations can be useful to assessing—and to some degree retroactively ameliorating—the effects of policies on the ground. Yet they cannot prevent these impacts altogether as they are not factored into the design of the policy in the first place. While *ex ante* assessments tend to be more methodologically demanding, especially when addressing the foreseeability of future impacts (CCSI et al., 2014), they are essential to ensuring proper information is available in time to actually influence public discussion on the issue in key moments in the policy cycle.

Frequency is also important. Experience shows that HRIAs designed as merely one-off exercises will inevitably provide only a snapshot of short-term, easily quantifiable impacts. Instead, best practice suggests that assessments should be more of a process and a policy-learning tool, conducted in a cyclical, iterative manner with ongoing monitoring and review of the baseline study conducted over time. The frequency of HRIAs will depend on the measures proposed, but annual HRIAs—linked up in time with the fiscal policy cycle—should be expected throughout the course of the fiscal consolidation regime. Further, getting the HRIA process right at the origins can provide the foundation to begin a more systematic and routine system of monitoring and evaluating the human rights impacts of fiscal policy once the particular economic crisis has lifted.

Drawing on the work of various experts (De Schutter, 2011; Walker, 2009; Harrison, 2013; World Bank, 2013), the HRIA process can helpfully be broken down into seven discrete phases in Figure 5.1 below.

Figure 5.1. The process of assessing austerity



- 1. Preparation**—Given the frequency and recurrent nature of fiscal crises in all countries, the best way to ensure an HRIA of fiscal consolidation measures will be properly done is to prepare well ahead of time, especially during economic booms, to ensure the process is ready to kick in once a crisis occurs. This phase involves key institutional decisions about who will oversee the HRIA, who will conduct it, its timeline, and its overall parameters. The preparation phase would clarify the relevant legal, social and economic contexts, build out a monitoring and evaluation framework of the HRIA with relevant indicators, and identify the responsibilities of relevant public and private actors. Identifying and engaging with the full gamut of potentially affected groups is also essential at this stage. Equally important is to invest in the statistical capacities required to have timely, disaggregated and intersectional data to rely on once a crisis occurs.
- 2. Screening**—encompasses a broad mapping of the particular policies or measures to be assessed, the specific human rights at risk as well as the key affected groups to engage in the process. The objective is to be as comprehensive as necessary to detect any significant human rights harm, as an overly selective approach runs counter to the principle of indivisibility of rights, and might leave out the cumulative impacts of all relevant policy measures. It is critical to lock in public participation at this “narrowing-down” phase, especially amongst those most affected, to ensure that major issues are not irrevocably left out. Key decisions on the scope of the study must not be left to the discretion of the government or the assessing team, but fully justified with a broader cross-section of potentially affected communities.
- 3. Scoping**—involves a more in-depth analysis of the different ways specific measures impact specific human rights, in order to frame the questions asked. Ideally, a baseline assessment of the existing human rights situation is developed at this stage against which potential effects and actual impacts can be foreseen and measured. This step would also include the creation of an indicator framework to measure impacts against this baseline. The OPERA framework presented above may provide a particularly useful way of organizing these indicators in order to properly measure the conduct of governments alongside the empirical socioeconomic outcomes. At this stage, assessors may also want to divide into sub-groups given their specific expertise, for example, by sector (e.g. health, access to justice, labor rights) or by type of fiscal consolidation measure (e.g. budget cuts, regressive tax hike, labor reform). Yet it is essential that these specific findings come together in an overarching monitoring framework to better understand the cumulative human rights impacts of the overall adjustment regime.
- 4. Evidence-gathering**—employs mixed methods (quantitative tools such as surveys, economic and statistical modelling, as well as qualitative tools) to expose the human rights impacts of fiscal consolidation measures relative to baseline. Data is the lifeblood of monitoring and evaluation exercises, and critical to HRIAs. The preparation phase (above) is a critical time to invest in data collection, especially of groups most affected by fiscal contractions. That being said, lack of data should not be a pretext to avoid a comprehensive assessment of human rights risks. Surveys, focus groups, comparative examples, and other practices can be quickly and effectively deployed in situations where official data is not forthcoming. For more on data questions, see section 4.4. above.
- 5. Initial findings**—would then be presented for discussion and validation among affected groups before drawing out any final conclusions.
- 6. Conclusions and recommendations**—would then be presented regarding the human rights impacts of fiscal consolidation measures. Policy-specific recommendations would also be provided to either mitigate foreseeable human rights risks, or to redress existing human rights harms. It is critical that these recommendations are timed and designed to channel directly into the tax and budget policy-making process so that they affect the policies under question.

- 7. Evaluation and monitoring**—involves subjecting the HRIA itself to assessment to determine the extent to which it has met its objectives and is acceptable to stakeholders. This is a critical phase to ensure that the next iteration of the HRIA improves upon the previous attempts. If well-organized, the results of an *ex ante* HRIA can become the baseline study for a later *ex post* HRIA, thereby continuing the iterative cycle of monitoring. As mentioned above, the HRIA process itself should be seen as an opportunity to institutionalize a more systematic and routine system of monitoring and evaluating the human rights impacts of fiscal policy throughout the business cycle.

5.2 *Transparency and the right to information*

The right to information is a cornerstone principle of human rights. Yet, lack of transparency is a common bad practice of impact assessments. Many assessments are designed and implemented by a small group of technical experts. The steps, assumptions, data and judgements taken are rarely made public, and thus the study's accuracy, objectivity and even legitimacy are left unquestioned. Free from the need to justify its actions externally, group-think can be a very powerful driver of conformity in the methodologies chosen and the conclusions drawn to the detriment of an objective and valuable study (World Bank, 2013). An HRIA in the fiscal adjustment context is even more prone to closed information channels, given the time sensitivity involved. For this reason, open two-way information channels must be especially emphasized as an overriding principle, with every step of the HRIA process (see Fig. 4.1 above) subject to the highest standards of transparency. Information provided to affected groups and the public must be understandable and accessible to encourage meaningful dialogue and to build trust early on. Translating the study's recommended reforms into precise results in the daily lives of people is not only key to engaging affected groups, but also helps decision makers realize concretely the impacts of their own actions.

5.3 *Participation not just one step, but a cornerstone*

Breakdowns in public participation are common throughout the practice of impact assessments, and may be even more of a risk in the context of the urgency of many sovereign debt crises (Bond and Pope, 2012). Yet, true and meaningful participation is essential for the legitimacy and the sustainability of any needed fiscal consolidation measures. Participation requires more than a "one-way" extractive exercise of assessors taking stakeholders' information for their own purposes, but requires affected groups to actively take part in shaping the objectives and priorities of the assessment (IAIA, 2006). By restricting the debate to a small cadre of policymakers and technical experts, impact assessments with poor public participation end up often concealing, rather than revealing, the inherent value judgements, political positions and uncertainties amongst the evaluation team. Rather than a process to simply legitimize projects (Esteves et al., 2012) then, best practices engage a wide range of perspectives and affected actors for a more objective identification of where these assumptions, uncertainties and divergent value judgements lie.

In this view, "consultation" with affected groups should not be considered a particular standalone phase in the assessment, as this approach has again and again limited meaningful participation. Instead, participation, like transparency, should occur at every stage of the HRIA. Especially important is that affected groups participate in the very initial screening stages of the study when key, often irreversible, decisions are made. Ideally, members of affected groups themselves might participate in the team to provide their own "experiential expertise." Capacity building may be necessary in the preparation phase to ensure meaningful participation of some affected groups.

5.4 *Independent, interdisciplinary and well-resourced assessment team*

A perennial problem hangs over the practice of impact assessment: political pre-conditioning. The framing of the study, and in particular of the screening phase to decide on the scope of the policies and their impacts to be reviewed, is often restricted to those areas that benefit the government in power, rather than objectively chosen to determine the full scale of foreseeable or actual impacts (NEESDAC, 2006). Observers point out that *a priori* political judgements—predetermined by the techniques employed and disguised as technical rationality—often implicitly bias many social, environmental and human rights impact assessments, predisposing them to the prerogatives of power—to the point of questioning the validity of the findings. The biggest risk here is that the assessments could be used to justify *fait accompli* decisions, with the ultimate performative effect of pacifying, or eliminating the need for, further public debate, precisely opposite of what is intended (Radaelli, 2010). A related concern is often voiced about the independence and objectivity of impact assessments more broadly, particularly relevant where the impact assessment is undertaken by the government itself. Many impact assessments have suffered from poor institutional design which prevented, rather than protected, independence (Bond and Pope, 2012). Tasking a Ministry of Finance, for example, to conduct an impact assessment directly of its own behavior is not best practice, as it involves inherent conflicts of interest which prevent a full and fair assessment of harm.

Amplifying these problems, many well-intentioned impact assessments have languished as a result of a lack of time, financial, and human resources allotted (Esteves et al., 2012). Tight timelines, meager budgets, poor quality control are common critiques in impact assessment practice. Too often, the makeup of the assessment team itself fails to include relevant disciplines and perspectives, with real impacts on the findings. Teams dominated by economists have tended to concentrate more on economic impacts, while marginalizing social impacts. Impact assessment teams with less economic expertise meanwhile have tended to under-explore causality and under-predict future consequences inherent to the policy (Baxewanos, 2013).

In this context, the full independence of the assessing team is critical for the overall objectivity and validity of the HRIA process. If a government decides to carry out an HRIA of its fiscal consolidation measures, it should ensure insulation between the pressures of political prerogatives and the work of the team. Further, HRIAs cannot be done on the cheap, but should be properly resourced to ensure success. Finally, appropriate methodologies for assessing the human rights impacts of fiscal consolidation measures require mixed methods, and thus a functionally interdisciplinary team, with complementary knowledge and skills.

5.5 *Accountability and policy influence*

Finally, and perhaps most significantly, widespread concerns have arisen about the ultimate effectiveness of impact assessments in actually altering the policy choices when the assessment concludes they are harmful. Practice suggests that policy learning, and the ultimate utilization of knowledge developed by impact assessments, is relatively scarce. In many cases, impact assessments only inform policy design “at the margins” (Hertin et al., 2009; Radaelli, 2009). One reason for the limited policy impact of *ex ante* assessments may be their unduly narrow findings, stemming from the methodological difficulties of drawing causal inferences between policy change and impact assessments. This reiterates the importance ensuring a strong, interdisciplinary team. Another factor is that decision making is not linear and, therefore, “the positivist information provision model” underlying many impact assessments (i.e. more and better information must inevitably lead to better decisions) is overly simplistic (Bond and Pope, 2012). Mitigating this risk requires linking the HRIA process to an empowered accountability and follow-up mechanism and built-in trigger to ensure concrete policy action to address whatever harmful impacts are assessed.

6 | Conclusion

In the end, a human rights assessment of austerity is not an exercise in merely identifying the passive victims of harmful economic policy. Instead, an HRIA of fiscal consolidation involves exposing the all-too-often hidden human price of adjustment—costs which if embedded would often make adjustment measures politically and economically unviable. In this sense, assessing austerity is about unmasking these concealed costs to properly assign the risks and the burdens to those most responsible and most able to bear them. HRIAs in this area can offer a platform for open debate to strengthen the voice and agency of human rights holders to challenge the capture of public policies by private interests. More than a mere monitoring methodology, HRIAs are one important tool to help to restore trust in extremely fragile historical moments, to challenge orthodox economic assumptions and adjust economic policies to people's human rights, and, ultimately, to provide avenues for accountability.

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ANNEX I: Human Rights Risks from Fiscal Consolidation

Measure	Rights at risk	Some common pathways	Examples
Budget Cuts	Economic and social rights		
	Health	Wage bill cuts or layoffs of medical personnel; increase in co-pays, other out-of-pocket expenses; rationing treatments; altering benefit packages or eligibility criteria for services; disrupted access to insurance or public health rolls; cuts to mental health services; other adjustment measures affecting the social determinants of health	Cameroon, ¹ Mozambique, ² Guyana, ³ Nepal, ⁴ Antigua and Barbuda, ⁵ Greece, ⁶ Italy, ⁷ India, ⁸ Portugal, ⁹ Latvia, ¹⁰ Brazil ¹¹
	Education	Wage bill cuts or layoffs (e.g. of teachers); increase in user fees; generalized social insecurity limit the benefits of education	Thailand, ¹² Antigua and Barbuda, ¹³ Spain, ¹⁴ Ireland, ¹⁵ Estonia, ¹⁶ Portugal, ¹⁷ Finland ¹⁸
	Food	Reduction of food subsidy/assistance programs, or changes on eligibility criteria; reduced capacities of food inspectors	Brazil, ¹⁹ UK, ²⁰ Egypt, ²¹ Yemen, ²² Tunisia, ²³ Canada ²⁴
	Housing	Under-funding of temporary housing/shelters; reduction of housing subsidies or social housing projects; increases in evictions	UK, ²⁵ Greece, ²⁶ Ireland, ²⁷ Portugal, ²⁸ Spain, ²⁹ India ³⁰
	Water and sanitation	Poor infrastructure maintenance leading to water shortage or water poisoning; user fees limit access	USA, ³¹ Ireland ³³
	Healthy environment	Cuts to environmental protection agency capacity	Brazil ³⁴
	Social security/ protection	Unemployment supports cut; benefit freezes; child tax credit reductions; overly-tight targeting of social transfers	Romania, ³⁵ Ireland, ³⁶ Cambodia, ³⁷ Czech Republic, ³⁸ Portugal, ³⁹ Slovenia ⁴⁰
	Civil and political rights		
	Political participation	“Crisis” invoked to centralize unilateral executive discretion, by-passing legislative and participatory process; national decision-making thwarted by international or regional economic bodies; fiscal oversight boards can sideline democratic decision-making; excessively strict fiscal rules	Puerto Rico, ⁴¹ UK, US, ⁴² Ireland, ⁴³ Spain, ⁴⁴ other European countries ⁴⁵
	Freedom of information/ expression/free press	Cuts to staff, even closures of public media institutions; retaliatory lay-offs of independent journalists	Greece, ⁴⁶ Spain ⁴⁷
	Access to justice/ effective remedy	Cuts to independent judiciaries ⁴⁸ and legal aid services alongside increases in court fees and mergers/downsizing of oversight bodies such as National Human Rights Institutions	Croatia, Bosnia, Herzegovina, Hungary, Serbia, Lithuania, Latvia, ⁴⁹ Estonia, ⁵⁰ Germany, UK, Ireland ⁵¹ and Slovenia ⁵²
	Freedom of association / assembly	Demonstrations against austerity measures forcefully constrained, criminalization of dissent against austerity	Spain, ⁵³ Portugal, Greece, ⁵⁴ Sudan, ⁵⁵ Yemen ⁵⁶
Refugee/migrant rights	Cuts to migrant and refugee receiving and integration services; increased detention of asylum seekers and refugees and deteriorating conditions in detention centers	Greece, ⁵⁷ Czech Republic, ⁵⁸ Netherlands ⁵⁹	

Measure	Rights at risk	Some common pathways	Examples
	Life, personal security	Cuts to criminal justice system; cuts to emergency/preventative services (e.g. to combat violence against women, prevent homicide); cuts to penal system leading to over-crowded prisons	Brazil, ⁶⁰ Guatemala, ⁶¹ Portugal, ⁶² Spain ⁶³
Regressive tax changes	Adequate standard of living	Consumption tax hikes; gutting of pro-poor tax expenditures; imposition of discriminatory taxes	Jordan, ⁶⁴ Cyprus, ⁶⁵ Zambia, ⁶⁶ Ireland, ⁶⁷ UK ⁶⁸
Labor reforms	Fair remuneration	Real lowering of minimum wages; reduction of real median wages	Ireland; ⁶⁹ Czech Republic; ⁷⁰ Greece ⁷¹
	Security at work	Increased temporary, part-time, seasonal labor contracts; ease of firing; particular impacts on women's labor rights	Cote d'Ivoire; ⁷² Ireland, Czech Republic, ⁷³ Jamaica, ⁷⁴ Ecuador, ⁷⁵ Portugal, ⁷⁶ Hungary ⁷⁷
	Collective bargaining	Restricting extension of sector agreements, pushing the bargaining process down to the workplace level; permitting bargaining with non-union representatives ⁷⁸	Portugal, ⁷⁹ Greece, ⁸⁰ Spain, ⁸¹ Romania ⁸²
	Safe and healthy work conditions	Cuts to labor inspectors	Czech Republic, Germany ⁸³
	Right to work	Pro-cyclical fiscal measures deepen un/underemployment	Greece, ⁸⁴ Portugal, ⁸⁵ Czech Republic ⁸⁶
Pension reforms	Social security	Lowering pension benefits; eligibility age increases; increased waiting times to receive pensions	Italy, ⁸⁷ Greece, ⁸⁸ Ireland, ⁸⁹ Latvia ⁹⁰

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Annex II: HRIAs for Different Actors, Different Aims and Different Challenges

Who / For What?	Assessing compliance with human rights norms	Informing policy	Seeking effective remedy
Human rights bodies and experts	Assessing state performance via periodic country reviews or individual cases	Recommending less harmful alternatives	Adjudicating responsibilities for human rights violations; determining effective remedy
	Normative and methodological challenges: determining compliance	Technical challenge: providing sound and feasible policy alternatives Political challenge: being heard by policy makers	Accountability challenge: determining overlapping and shared responsibilities
Civil society organizations	Advocating for accountability of state and non-state actors	Challenging political decisions or negotiating with governments alternative courses of action	Denouncing unaddressed human rights harms; determining remedy in litigation
	Methodological challenge: determining compliance	Political challenge: being heard by policy makers	Enforceability challenge: finding avenues for legal and political accountability
International Financial Institutions (IFIs)	Ensuring that policy recommendations are compatible with human rights standards	Exploring less harmful alternatives to minimize human rights impacts of policy influence	Assuming responsibilities and shaping future conduct
	Political challenge: recognizing that IFIs should at least respect human rights	Policymaking challenge: incorporating feedback from other actors to shape policy decisions	Accountability challenge: establishing avenues for determining IFIs responsibility for fiscal-related human rights abuse
Policy makers	Ensuring that policy decisions uphold human rights duties	Designing and implementing human rights-informed economic policies	Assuming responsibilities and shaping future conduct
	Political challenge: adapting economic policies with human rights duties	Policymaking challenge: developing the right tools and processes to assess and address the human rights consequences of adjustment, informed by meaningful participation	Accountability challenge: establishing remedies for human rights impacts of economic policies

About CESR

The Center for Economic and Social Rights (CESR) was established in 1993 with the mission to work for the recognition and enforcement of economic, social and cultural rights as a powerful tool for promoting social justice and human dignity. CESR exposes violations of economic, social and cultural rights through an interdisciplinary combination of legal and socioeconomic analysis. CESR advocates for changes to economic and social policy at the international, national and local levels so as to ensure these comply with international human rights standards.

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Assessing Austerity argues that ten years on from the global financial crisis, another lost decade for human rights due to fiscal consolidation is impermissible. It outlines practical guidance for policymakers, oversight bodies, civil society actors and others seeking to assess and address the foreseeable human rights consequences of austerity. It offers an adaptable methodological framework to inform the content and process of conducting effective Human Rights Impact Assessments (HRIAs) of fiscal consolidation measures. Further, the briefing demonstrates why a human rights assessment of austerity is at once necessary, feasible and ultimately quite valuable in advancing a suite of alternative policies that would prevent harmful forms of fiscal consolidation in the future.



CENTER FOR ECONOMIC AND SOCIAL RIGHTS

TWENTY FIVE YEARS FIGHTING FOR SOCIAL JUSTICE THROUGH HUMAN RIGHTS AT

