



Human rights impact assessments for economic reform policies

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Eurodad contribution to call for contributions from UN Independent Expert on foreign debt

In response to the call for contributions from the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights (the Independent Expert), Eurodad is hereby providing input to section 5 of the call, on the content and structure of the guidelines.

Eurodad has previously highlighted the critical importance of human rights impact assessments (HRIAs) to an approach to development financing that goes beyond a do-no-harm principle to secure genuinely pro-poor development outcomes. HRIAs are necessary for ensuring the prioritisation of international and national human rights obligations in decision-making over sovereign lending and foreign investments with a developmental purpose, in line with the obligations of governments under international law. They support both borrowers and lenders in ensuring activities funded or linked to loan and investment contracts neither directly nor indirectly entail adverse human rights impacts and, ideally, embody an independent, participatory approach that promotes transparency and accountability and furthers the legitimacy and development effectiveness of these contracts. HRIAs thereby represent an essential element of responsible financing practices that promote sustainable sovereign debt burdens.¹

It follows that HRIAs are vital also to ensuring that policy measures adopted in response to sovereign debt crises and designed to support the restoration of debt sustainability and macroeconomic stability do not

subjugate a country's ability to respect, protect, and fulfil universal human rights to its ability to repay its debt. As underlined in the UN Guiding Principles on debt and human rights, the needs of a country's population must be privileged in debt management and financial assistance programmes.²

With a new wave of debt crises threatening the Global South³, there is a renewed urgency in ensuring a human rights-based framework underpins consequent policy responses. Scarce resources for essential social services are already increasingly being absorbed to service sovereign debts: between 2014 and 2016, the proportion of developing country budgets devoted to debt payments increased by 45%⁴, posing a grave risk to the progressive realisation and non-retrogression of economic and social rights, in particular. Without efforts to systematically integrate HRIAs into economic policy-making, work to realise the 2030 development agenda will, in turn, be fatally jeopardised.

While Eurodad does not itself directly undertake HRIAs, we wish to highlight briefly the following elements that should be considered in the guidelines to be produced by the Independent Expert.



Rights-based approach

It is imperative that HRIAs on economic reform and fiscal consolidation measures are based on international human rights law and labour standards: at the minimum, this means the International Covenant on civil and political rights; the International Covenant on economic, social and cultural rights (ESC rights); and the core conventions of the ILO. Such a basis allows both for a legal and normative framework against which assessment can be undertaken, strengthening the credibility, objectivity, and comparative basis of any assessment; but it also recognises the specific, legal obligations that are incumbent upon sovereign actors – creditor and debtor nations alike. The capacity of rights-holders to hold decision-makers to account for adverse impacts is thereby also strengthened, and these rights-holders should be specifically identified in any assessment. There exists, in addition, significant national and international jurisprudence explaining the content of international human rights norms upon which assessment can rely and indicators can be developed, such as in relation to the content of minimum core obligations related to ESC rights.⁵

It is critical to consider also that HRIAs do not merely entail consideration of potential or actual adverse human rights impacts: assessments should also identify steps to advance the enjoyment of human rights, and opportunities for duty-bearers to improve human rights within the implementation of economic reforms. Such steps should be taken by both sovereign lenders (acting alone or within an international institution) and borrowers: for example, a debtor nation could ring-fence health and education spending during a crisis period to ensure a minimum core level of ESC rights. Additionally, a member state involved in designing adjustment programmes as part of an international financial institution (IFI), could promote civil and political rights, by ensuring that economic reform programmes do not jeopardise the effective functioning of civil society in a debtor nation through disproportionately ending funding, or disproportionately reducing the resources allocated to public institutions charged with safeguarding human rights.

A rights-based framework also requires that HRIAs themselves respect and promote human rights. For example, the methodologies and procedures for designing and implementing a HRIA must ensure:

- effective participation of all interested and affected groups (e.g. women's rights groups, trade unions and other CSOs);

- transparency and access to timely, meaningful, and accessible information including on how a HRIA is designed, developed, and conducted and its outcomes;
- equality and non-discrimination, e.g. through using disaggregated data to measure impacts on different groups, for example;
- a necessary focus on accountability – as a purposeful element of assessing individual policies and programmes; in the focus of findings and recommendations, to empower rights-holders to claim their rights; and also in mechanisms to ensure procedural fairness in the conduct of the HRIA itself; and
- an iterative assessment process: not all of the impacts of the relevant policy measures can be anticipated. *Ex ante* HRIAs should therefore be complemented by additional, follow-up assessments performed on a regular basis. Safeguard clauses should be included in agreements between lenders and borrowers to ensure that, should subsequent assessments conclude that a debtor state is unable to comply with its human right obligations within the constraints of the agreement, the state is released from such constraints to the extent of the incompatibility.

Interdependent and cross-sector

Such a framework set within international norms and standards is comprehensive, and also recognises the interdependence and indivisibility of human rights, inviting assessment of the cumulative effects of policy measures, and broader consideration of their indirect impacts on individuals and groups. In practice, while the scope of a HRIA may be narrowly focused, on say the right to education, a rights-based framework allows consideration of a range of related rights such as the right to food or water, to engage a deeper analysis: this requires a cross-sector approach, with assessments involving, for example, not only finance ministries, but a wide range of governmental departments and agencies.⁶

Importantly, a comprehensive, rights-based approach will allow also for HRIA findings to promote greater policy harmonisation vertically across government departments (e.g. with a human rights approach being employed in the design of a specific education reform being put forward as part of a fiscal austerity programme), but also for horizontal coherence: e.g. codifying the UN Guiding Principles on debt and human rights in national law, and in turn, in individual lending and investment contracts or bond clauses.



Evidence-based

HRIAs must be evidence-based to ensure analysis is informed, and should rely on a range of tools and methods, including those developed by practitioners and CSOs: expertise on undertaking stakeholder engagement continues to be deepened in the business and human rights sector, for example, in the context of supply chain due diligence.⁷ Evidence should be based on both quantitative (including economic modelling and regression analysis) and qualitative research (including consultations with rights-holders) in order to determine impacts as precisely as possible.⁸

Equality and non-discrimination, as cornerstones of any human rights-based approach, will be further supported through a cross-sector assessment and robust evidence-gathering. Given, for example, the disproportionate gender impact that cuts in public funding for social services have had in times of austerity⁹, HRIAs should use gender-disaggregated social indicators to gather data on the cumulative effects of economic reform and fiscal consolidation measures on different sectors of a population: as such, impacts can be gauged; disproportionate effects highlighted; and recommendations developed to ensure that the rights of disadvantaged groups are not violated.

Independent

The actors responsible for HRIAs should be independent and should have a firm understanding of human rights law; they should also be in a position to operationalise a cross-sector approach. As such, national human rights institutions (NHRIs) may be in the best position to undertake assessments, provided that they are in compliance with the Paris Principles¹⁰, and are namely independent, accountable, and adequately resourced. Their expertise lends itself not only to narrowly-focused assessments, but also to the analysis of broad economic policy programmes: for example, the recommendations on the human rights impact of austerity produced by the Greek National Commission for Human Rights.¹¹

Ensuring assessments are carried out by independent actors strengthens the credibility of findings, particularly in the eyes of rights-holders. At a minimum, HRIAs should be undertaken by an actor that is fully independent from any creditor or creditor-aligned institution responsible for designing adjustment programmes, given that findings can be used to inform borrowing policies and debt management, as well as triggering debt restructuring activities.¹²

Ensuring national actors play a key role in HRIAs can support national ownership of development and poverty reduction strategies and mitigate the dominance of IFIs

and other crisis lenders in shaping adjustment programmes and the choice of economic reforms. Nonetheless, it is imperative that all relevant stakeholders perceive the findings and recommendations of HRIAs as credible. As such, consideration should be given to NHRIs undertaking HRIAs in cooperation with the UN Independent Expert – subject to a revised and expanded mandate for the latter, and the provision of adequate resources to service this function. Such a framework would ensure an objective actor – free of potential conflicts of interest – is leading assessment work. Furthermore, it allows for greater consistency in methodology and approach; comparability across assessments where relevant; and for best practice to be easily and systematically used to inform future HRIAs.

Participatory

Open and effective stakeholder engagement is a vital aspect of any HRIA, and assessors should aim to engage as wide a participation in their work as possible, across all stages: including in the design of terms of reference, relevant indicators and assessment methods, through to evidence gathering, analysis and finalisation of findings, and dissemination of conclusions. Importantly, stakeholders should also be included in evaluation phases, and in monitoring follow-up by duty-bearers to determine whether findings have sufficiently informed implementation or revision of policy measures.

National human rights institutions may again represent the most suitable actors to take forward HRIAs, given that they often have established networks of representative civil society organisations, or participatory dialogue structures which would facilitate comprehensive consultation to be carried out. Moreover, the expertise and practice embedded in these structures may support more effective assessments.

Iterative and continuous

To enable both the current and the potential human rights impacts of adjustment and fiscal consolidation programmes to be considered, *ex ante* and *ex post facto* assessments should be carried out: HRIAs should not be static, nor stand-alone exercises – with regular reviews to monitor the implementation of policies and programmes put in place. Such regular monitoring of developments, including audits of fiscal policy developments, should allow for analysis of whether measures introduced are in fact temporary and cover only the period of crisis; that they are necessary and have been implemented following exploration of all other policy options to increase government revenue, including changes to taxation; nor that they disproportionately affect or favour any particular groups



or individuals (are non-discriminatory); and that social protection floors which safeguard the universal availability of essential levels of social services, income, health care, food and housing, are maintained throughout crisis periods, or funding levels restored when available public resources allow.¹³

Mandatory and timely

HRIAs should be a mandatory element in the design of all economic reform and adjustment programmes developed with IFIs or individual creditors in the context of debt management and financial assistance activities. Moreover, they 'should be prepared prior to the conclusion of the agreements and in time to influence the outcomes of the negotiations'.¹⁴ This obligation should be codified in national legislation, and reflected in the internal procedures of IFIs. Where there is deviation from any HRIA recommendations, duty-bearers should put forward credible measures to ensure their compliance with their human rights obligations. These could include mitigation measures to 'ensure an adequate level of protection of vulnerable groups, such as – in certain cases – women'¹⁵ in cuts to public healthcare provision, for example, or steps to revise or introduce release clauses for specific conditionality clauses in IMF loan agreements.

Linked to debt restructuring

Debt financing is a legitimate tool to support a country in realising its developmental aims and in the progressive realisation of its international human rights obligations. Debt servicing should duly not compromise a country's ability to fulfil these obligations, nor should restructuring be incompatible with them. Nonetheless, retrogression has been widely documented in countries in debt crisis, and as a result of austerity measures promoted by the IMF and other creditors.¹⁶

The findings of HRIAs should duly play a key role in debt restructuring processes. In the first instance, debt sustainability analyses should include a mandatory HRIA, and findings that point to actual or potential adverse human rights impacts should serve to trigger debt restructuring processes. As such, the primacy of national and international human rights obligations, above and beyond purely financial considerations on debt servicing, can be exerted.

On the other hand, independent HRIA findings should inform restructuring processes themselves, guiding decision-making on revision of repayment terms, on the size of 'haircuts' to be taken by creditors, or on the distribution of losses incurred by different credit groups.

Ensuring HRIAs play a systematic role in debt restructuring also recognises the shared responsibility of lenders and

borrowers for sovereign debt burdens, and in part addresses the dominance of creditors in setting the agenda in economic reform and adjustment programmes by allowing for due consideration to be paid to a debtor's human rights obligations. Moreover, creditor states acting alone or within IFIs should not compel debtor states to compromise on their international human rights obligations, directly or indirectly: the extraterritorial character of states' human rights obligations extends from the International Bill of Human Rights, and has been well highlighted by the Committee on ESC rights, for example.¹⁷ Findings from HRIAs can thereby also point to the risks that creditor nations run in failing to meet their own obligations by promoting harmful austerity programmes.

Linked to loan conditionality

Austerity and liberalisation measures have been widely promoted by the IMF and other crisis lenders through loan conditionality, and Eurodad has been among the many voices highlighting the potentially adverse human rights impacts of these conditions in low income countries.¹⁸ Enjoyment of ESC rights in particular has been threatened by the imposition of measures including reductions in trade union rights, lower minimum wage levels, or cutbacks to welfare programmes and pensions.¹⁹

As emphasised above, lenders should not use their influence to compel debtor states to compromise on their national and international human rights obligations: this risks in turn a failure by lending states – acting alone or within an IFI – to meet their own obligations.

Independent, participatory HRIAs carried out with the approach proposed here, can provide a strong safeguard against these failures. In addition, they can increase the democratic legitimacy of loan agreements, and ensure the needs of a debtor nation's population are properly considered in the design of related policy measures: significantly, they also allow for the identification of policy responses that could further the enjoyment of human rights in debtor nations and promote the progressive realisation of rights. These HRIAs should therefore be a mandatory, *ex ante* component in the development of loan agreements - reflected in national legislation and the internal procedures of IFIs - with regular follow-up reviews. Assessments should be completed in a timely manner to ensure findings can fully inform their finalisation, with release clauses from specific conditions put in place where actual or potential adverse human rights impacts are identified.



Notes

¹ See Nuria Molina, 'Eurodad Responsible Finance Charter' 2011, <http://bit.ly/2v6jni6> and Bodo Ellmers, 'The evolving nature of developing country debt and solutions for change', July 2016, <http://bit.ly/2eTISOA>, pp. 19-21.

² United Nations, Human Rights Council, *Guiding principles on foreign debt and human rights: Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights*, Cephias Lumina, A/HRC/20/23, (10 April 2011), in particular paras. 6-9.

³ Eurodad member Erlassjahr.de notes that 116 countries in the Global South are critically indebted in 2017. See Erlassjahr.de, 'Global Sovereign Indebtedness Report 2017, March 2017, <http://bit.ly/2h9nB37>

⁴ See Jubilee Debt Campaign, 'The new debt crisis in the global South', March 2017, <http://bit.ly/2vPWe1g>

⁵ Council of Europe Commissioner for Human Rights 'Safeguarding human rights in times of economic crisis', November 2013, <https://rm.coe.int/16806daa3f>

⁶ Simon Walker, *The Future of Human Rights Impact Assessments of Trade Agreements*, (Antwerp: Intersentia, 2009).

⁷ See, for example, Shift, 'Bringing a Human Rights Lens to Stakeholder Engagement', New York, 2013, at <http://bit.ly/2vezCL1> and Oxfam & FIDH, 'Community-Based Human Rights Impact Assessment: The Getting it Right Tool Training Manual', 2016, at <http://bit.ly/1R2qTeG>

⁸ This is stipulated by the former UN Special Rapporteur on the Right to Food in the Guiding Principles on human rights impact assessments of trade and investment agreements. See United Nations, Human Rights Council, *Guiding principles on human rights impact assessments of trade and investment agreements: Report of the Special Rapporteur on the right to food*, A/HRC/19/59/Add.5, (19 Dec 2011), para. 7.3.

⁹ See, for example, United Nations Economic and Social Council, *Report on on austerity measures and economic and social rights: Report of the United Nations High Commissioner of Human Rights*, E/2013/82, (07 May 2013), section IV.

¹⁰ The Paris Principles were adopted by the UNGA in 1993 and set criteria to evaluate, inter alia, the competence, functioning, and independence of national human rights institutions. See <http://bit.ly/1SGrPxt>

¹¹ Greek National Commission for Human Rights, 'Recommendation on the imperative need to reverse the sharp decline in civil liberties and social rights', (8 December 2011).

¹² See Bodo Ellmers, 'The evolving nature of developing country debt and solutions for change', July 2016, <http://bit.ly/2eTISOA>, p.21, for an example illustrating the subjectivity of European Commission assessment of programmes funded by the European Stability Mechanism in Greece.

¹³ See, for example, Ariranga G. Pillay, Chairperson, Committee on Economic, Social and Cultural Rights, *Letter to States Parties*, (16 May 2012), and United Nations Economic and Social Council, *Report on on austerity measures and economic and social rights: Report of the United Nations High Commissioner of Human Rights*, E/2013/82, (07 May 2013).

¹⁴ The timeliness of HRIAs is considered in the context of trade and investment agreements in United Nations, Human Rights Council, *Guiding principles on human rights impact assessments of trade and investment agreements: Report of the Special Rapporteur on the right to food*, A/HRC/19/59/Add.5, (19 Dec 2011), para. 3.

¹⁵ Ibid, para. 3.2

¹⁶ See for example, United Nations Economic and Social Council, *Report on on austerity measures and economic and social rights: Report of the United Nations High Commissioner of Human Rights*, E/2013/82, (07 May 2013), and United Nations Human Rights Council, *Report of the Independent Expert on the effects of foreign debt and other related*



international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, A/HRC/34/57, (27 Dec 2016).

¹⁷ See for example, the International Covenant on Economic, Social and Cultural Rights, arts. 2 and 11, and Committee on Economic, Social and Cultural Rights, *General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, E/C.12/2002/11, (17 Oct 2016), paras. 31-35.

¹⁸ See Jesse Griffiths and Konstantinos Todoulos, 'Conditionally yours', April 2014, <http://bit.ly/2vQi30I> or Mark Weisbrot and Helene Jorgensen, 'Macroeconomic Policy Advice and the Article IV Consultations: A European Union Case Study', January 2013, <http://bit.ly/2vesApg>

¹⁹ See Jesse Griffiths and Konstantinos Todoulos, 'Conditionally yours', April 2014, <http://bit.ly/2vQi30I>, pp. 14-16, and Eurodad, 'IMF Conditionality Watch (May-August 2016)', 2016, <http://bit.ly/2v68IDY>



Eurodad

Eurodad (the European Network on Debt and Development) is a network of 46 civil society organisations (CSOs) from 19 European countries which works for transformative yet specific changes to global and European policies, institutions, rules and structures to ensure a democratically controlled, environmentally sustainable financial and economic system that works to eradicate poverty and ensure human rights for all.

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