

ASSESSING AUSTERITY: MONITORING HUMAN RIGHTS IN FISCAL CRISES

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**CENTER FOR ECONOMIC
AND SOCIAL RIGHTS**

Challenges monitoring human rights impacts of economic reforms

Normative

- How do universal, legal norms apply to particular economic policies?

Political

- ‘Crisis’ politics tends to concentrate power and decision-making
- Limits effectiveness/influence of HRIAs in shaping policy

Institutional

- Who should carry out the impact assessment?
- How to ensure it is a process not just one single product?

Technical

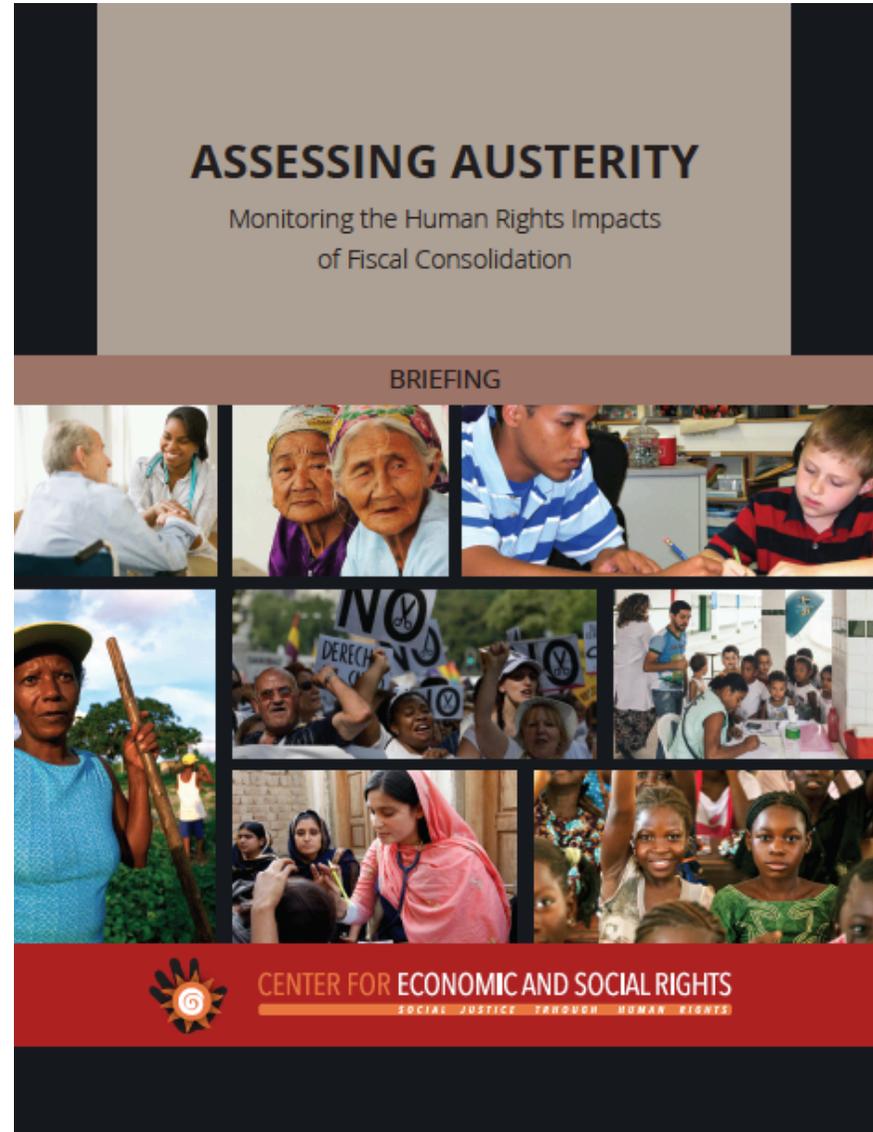
- How to evidence causality between policies and outcomes – looking backward and looking forward?

Practical

- Under genuine time crunch, how to carry out robust impact assessment?
- Data

➤ *Is an HRIA of economic reforms really feasible?*

Sharing lessons from one tool to monitor human rights impacts of fiscal adjustment

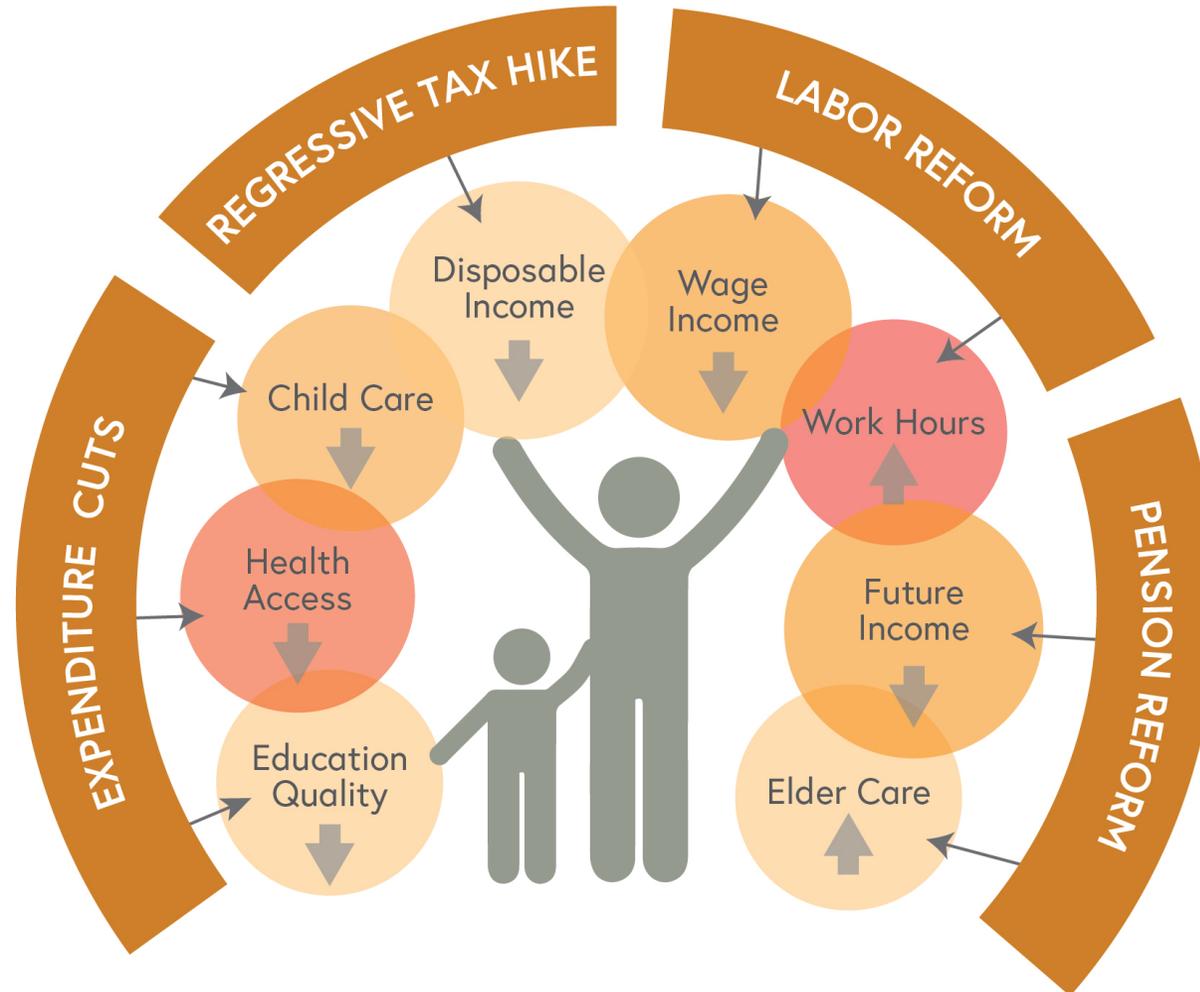


Multiple human rights at risk - from multiple pathways

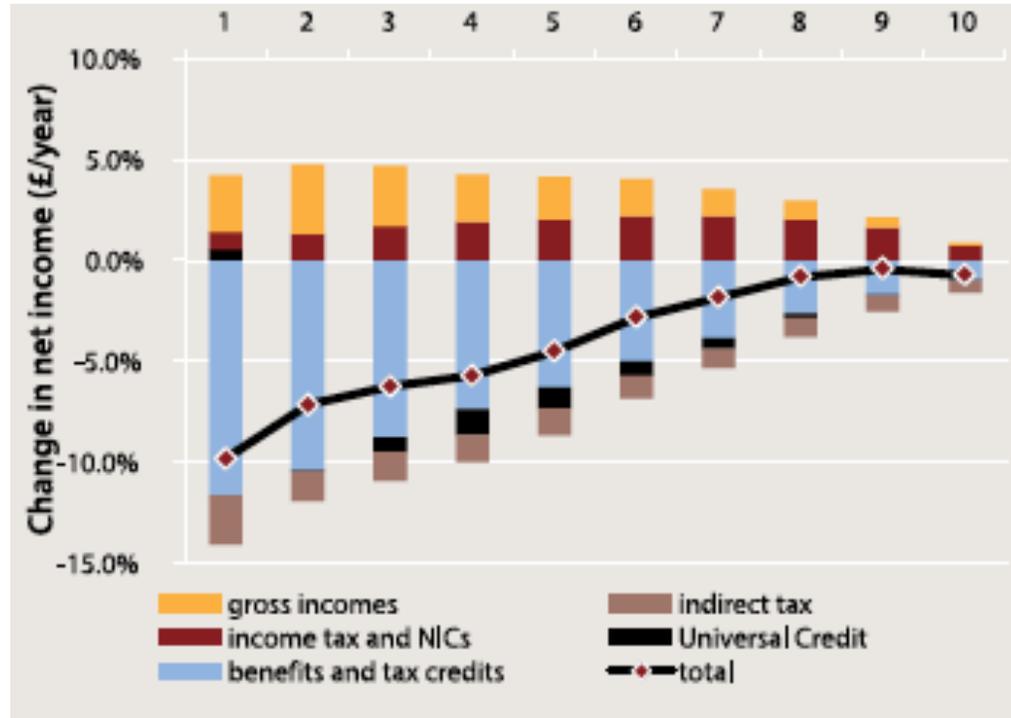
Measure	Rights affected
Public expenditure cuts	<i>Economic and social rights</i>
	○ Health
	○ Education
	○ Food
	○ Housing
	○ Water and sanitation
	○ Healthy environment
	○ Social security/protection
	<i>Civil and political rights</i>
	○ Participation
	○ Information/freedom of expression/press
	○ Access to justice/remedy
	○ Freedom of association, assembly
	○ Prison conditions
○ Refugee rights	
○ Life, personal security	
Regressive tax changes	○ Adequate standard of living
	○ Non-discrimination and equality

Measure	Rights affected
Labor reforms	○ Fair remuneration
	○ Security at work
	○ Collective bargaining
	○ Safe and healthy work conditions
	○ Right to work
Pension reforms	○ Social security

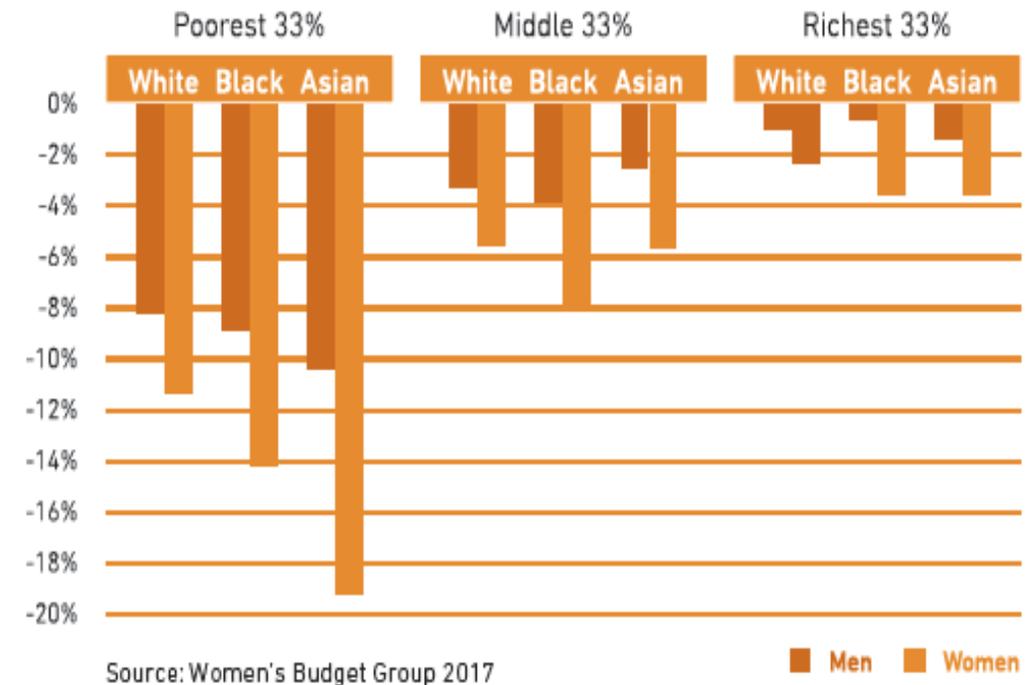
Cumulative, disparate and lifelong effects: An illustration



Cumulative and disproportionate effects in UK



Cumulative impact of tax/benefit and spending cuts by decile (2010-2017) Source: Equality and Human Rights Commission, 2017



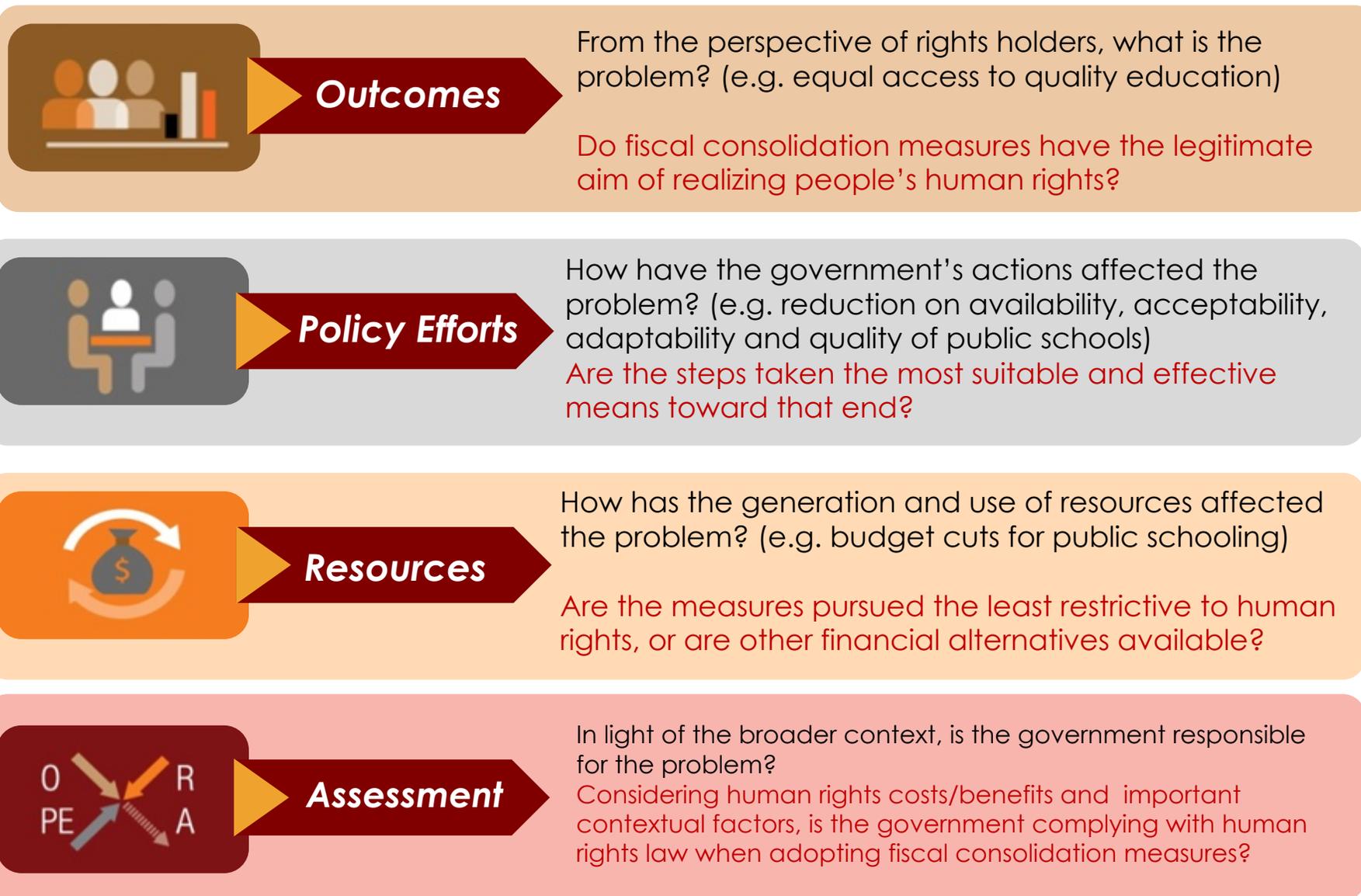
Cumulative impact of tax and benefits on living standards in % terms by income, gender and ethnicity (2010-2020) Source: UK Women's Budget Group

Human rights norms in times of fiscal crisis

Adjustment measures can only be justified when they are:

- 1) **Temporary** 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) Never directly nor indirectly **discriminatory**, according priority attention to disadvantaged groups to ensure they are not disproportionately affected
- 7) Always protective of the **minimum essential levels** of economic and social rights
- 8) Decided through **transparency** and genuine **participation** of affected groups in examining the proposed measures and alternatives, subject to meaningful review and **accountability** procedures

OPERA: A FOUR-STEP FRAMEWORK



Outcomes in people's lives

Human rights norm	Question to assess
<p>REDLINE: Minimum core obligations Deepening deprivations suggest obligations of result are not being met.</p>	<p>Are/will minimum essential levels of economic and social rights be affected by the proposed consolidation measures?</p>
<p>REDLINE: Non-discrimination Differences in rights enjoyment raise concern about possible discrimination – in law (de jure) or in practice (de facto).</p>	<p>Have disparities in rights enjoyment increased from fiscal consolidation, or are they likely to?</p>
<p>Non-retrogression Backsliding in rights enjoyment is considered a prima facie violation.</p>	<p>Has/will fiscal consolidation lead to backsliding in rights enjoyment?</p>

Policy efforts of policy-makers

Human rights norm	Question to assess
Legitimacy To be justified, limitations must have the ultimate aim of protecting the totality of rights.	Do the fiscal consolidation measures have as an ultimate aim the realization of human rights?
Temporary Any fiscal adjustments must be temporary in effect.	Are the fiscal consolidation measures, and their harmful effects, limited to the period of adjustment alone?
Reasonableness The means chosen must be suitable to pursue the legitimate end must be suitable.	Are the measures chosen the most suitable to realizing human rights through their impacts on key goods and services?
Participation, transparency, accountability, assembly and effective remedy	Are relevant decision-making processes transparent and participatory? Can/will people suffering rights infringements freely dissent and seek redress in a fair and open manner?

Resources (I)

Human rights norm	Question to assess
Necessity Limitations on rights can only be justified if <i>less restrictive</i> alternatives have been considered and exhausted.	Have all financing alternatives been exhausted to prevent the need for fiscal consolidation measures?
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 affects state's ability to realize rights?
Maximum available resources Includes an obligation to <i>allocate</i> resources effectively	How has/will the fiscal consolidation measures affect the allocations of public expenditure for human rights?
Maximum available resources Includes an obligation to <i>spend</i> resources effectively	How has/will the fiscal consolidation measures affect the spending of public expenditure for human rights?

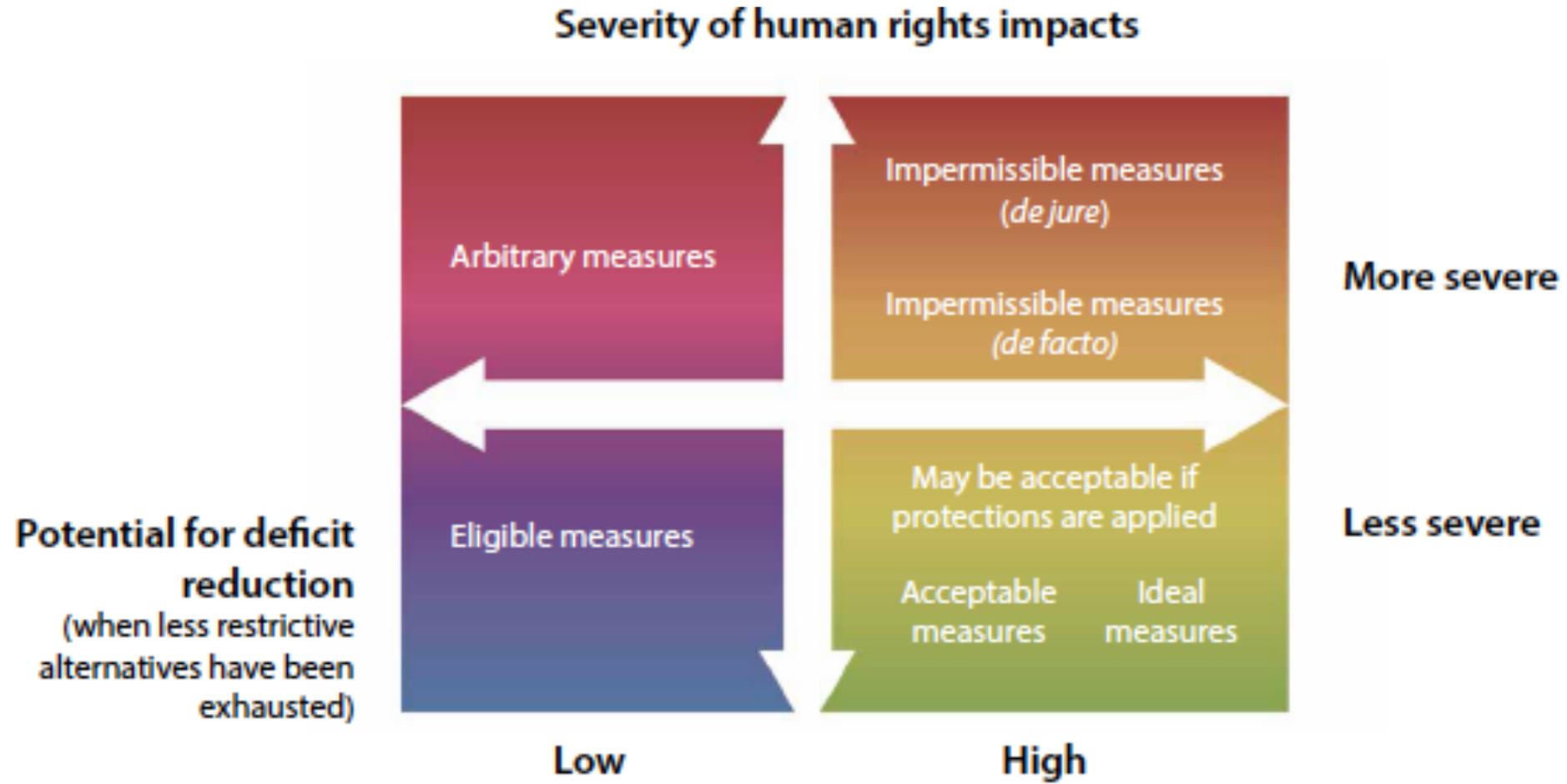
Resources (II)

Human rights norm	Question to assess
Minimum core A State must use 'all resources that are at its disposition' to guarantee minimum essential levels	Has/will the tax and budget decisions drive people below the thresholds of minimum essential levels of ESCR enjoyment?
Non-discrimination Provides that resources must be mobilized, allocated and spent equitably	How has/will the fiscal consolidation measures shift the burdens and benefits of fiscal policy between groups? How has/will fiscal consolidation affect social and economic inequality?
Participation, accountability, transparency, right to a remedy	Have fiscal consolidation processes been fully transparent, participatory and subject to meaningful accountability?

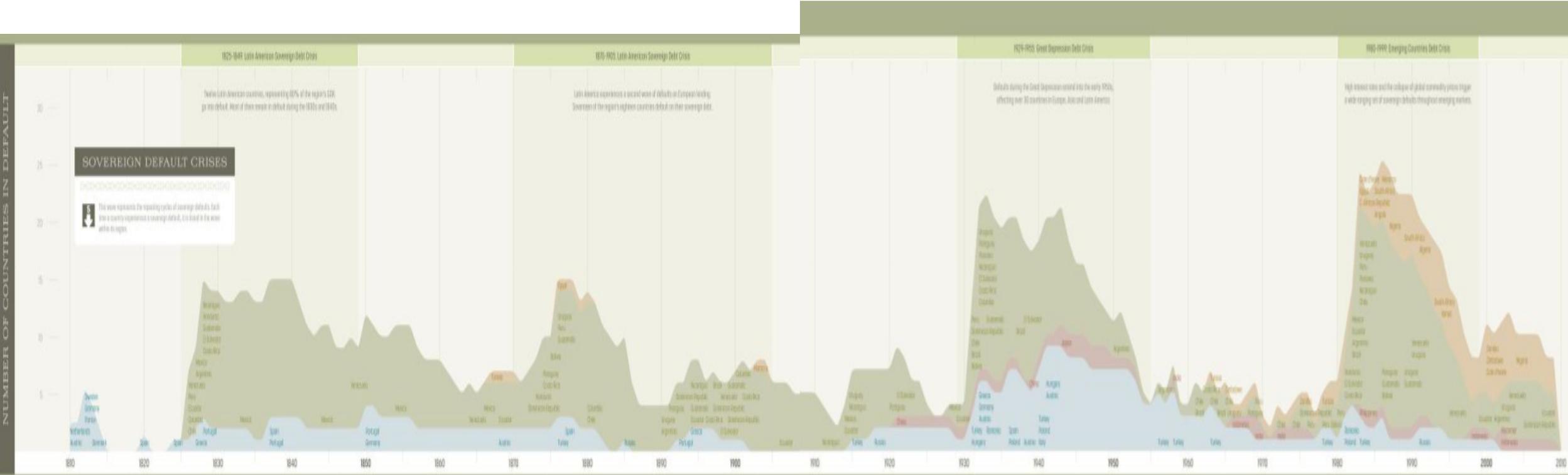
Assessment of compliance

Human rights norm	Question to assess
Interdependence of rights	What other constraints prevent the enjoyment of rights in contexts of economic crisis?
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?
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?
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?

Assessing proportionality: A balancing test



Crises Recurrent throughout History



CYCLES OF FINANCIAL CRISES: 1810-2010

In Conclusion

➤ **HRIAs of economic reforms:**

- *Necessary* for human rights holders
- *Feasible* for monitoring
- Ultimately quite *valuable* for policy makers

➤ **Guiding Principles much needed to:**

- Develop a more consolidated and shared understanding of how human rights *norms* apply to economic reforms
- *Operationalize* these norms into monitoring and policy-making
- Cultivate cross-community, inter-disciplinary *collaboration*

Thank you!

