

**UNICEF Policy and Practice Brown Bag/ Webinar Seminar**

# **Rights in Recession? A Framework for Human Rights- Centered Economic Policies**

**Tuesday, 29 November 2011 – 13.00  
UNICEF, New York**



**CENTER FOR ECONOMIC  
AND SOCIAL RIGHTS**

# Summary

1. What has the enduring financial and economic crisis meant for economic and social rights?
2. Applying the evolving human rights normative framework to economic policy
3. Exacting Human Rights Accountability
4. Some Transformative Human Rights-Centered Economic Policy Alternatives

# Impacts of the Financial and Economic Crises on Economic and Social Rights

## First Wave (2008-2009): Impacts of the crisis threaten the realization of economic and social rights

- Rights **to work** and rights **at work**, especially youth (ILO 2011)
- Right to **food**, with over 1 billion hungry in context of food price volatility (FAO 2010)
- Right to an **adequate standard of living** more broadly has been threatened as the economic crisis, and its confluence with the food and fuel crises, has forced at least 64 million more people into extreme poverty (WB 2010)
- **Civil and political rights** increasingly at threat as social protest penalized and criminalized
- **Disproportionately** affecting the most vulnerable, already marginalized from the political process.

# Impacts of the Financial and Economic Crises on Economic and Social Rights

## Second Wave (2009-2011): Whose Recovery? Whose Austerity?

- Stimulus measures given way to fiscal austerity measures in 2011.
- Economic recovery largely **jobless** and **wageless** (ILO 2011)
- Severe austerity measures, sometimes excessive, are widespread across North and South (UNICEF 2011). Austerity measures threaten human rights fulfillment, with most “cost-saving measures” involving:
  - Wage bill cuts/caps (esp. primary school teachers and nurses), affecting the rights at **work**, to **education** and to adequate **health**
  - Reducing subsidies to basic food items, affecting **right to food**
  - Rationalizing social protection schemes, pensions and targeting social safety nets, affecting right to **social security** and **adequate standard of living**

# Impacts of the Financial and Economic Crises on Economic and Social Rights

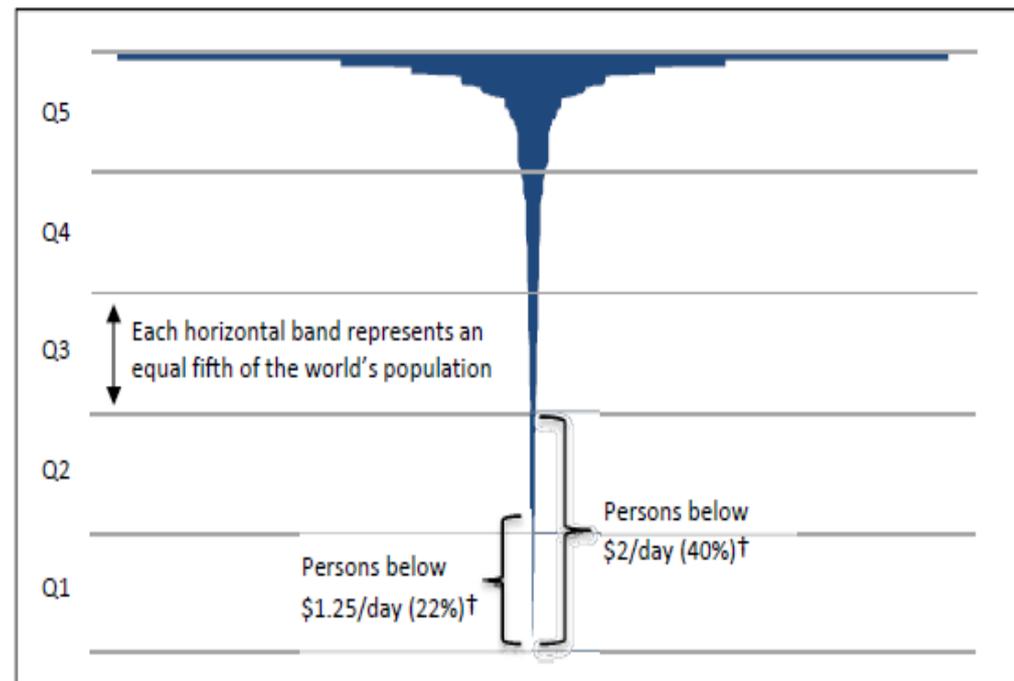
## Second Wave (2009-2011): Whose Recovery? Whose Austerity?

- ***Austerity-driven recessions*** a real risk (already happening?), with disproportionate impacts (direct and indirect) on the most vulnerable, in a vicious circle, threatening an ***austerity trap***.
- Worse than “business-as-usual” as the political will is against counter-cyclical measures, with menace of increased **inequality**, increased **financial vulnerability** and even ***deeper economic crisis***, esp. in the global North.
- Austerity measures threats to democracy—“dictatorship of the markets”?

# Impacts of the Financial and Economic Crises on Economic and Social Rights

## Structural dimensions of deprivation

- Dramatic levels *income inequality* within and between countries.
- *The richest population quintile gets 83 percent of global income, with just one percentage point for the poorest quintile (1.4 billion).*
- Some progress, but estimated to take **800 years** for bottom billion to achieve ten percent of global income. (UNICEF 2011).



Source: Adapted from UNDP (2005) using World Bank (2011), UNU-WIDER (2008) and Eurostat (2011)

\* According to the global accounting model

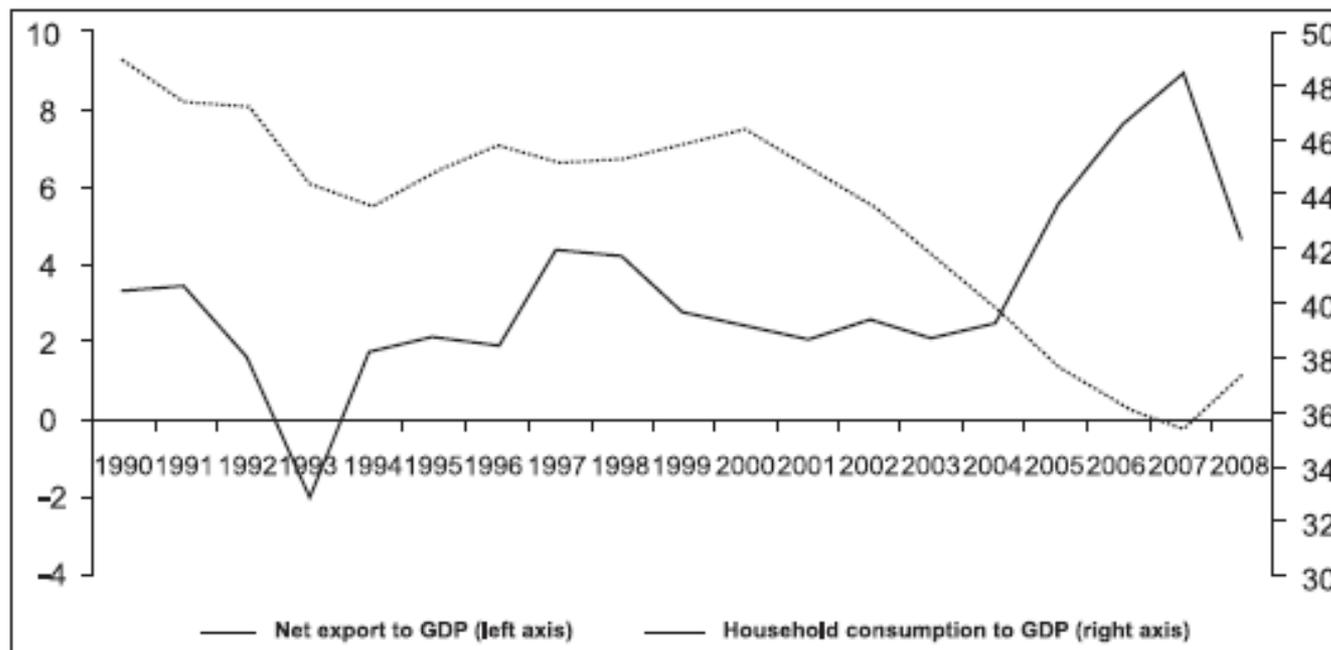
† Based on Chen and Ravallion (2008)

# Impacts of the Financial and Economic Crises on Economic and Social Rights

## Structural dimensions of deprivation

- Credit-driven (mostly US) private consumption no longer engine for **export-led, wage-suppressing growth models** (Gosh 2011)

China: Export and Household Consumption



Source: World Bank World Development Indicators online database

# Diagnosis for 2012

- Biggest downside risks in 2012: 1) ***austerity-driven recessions***, 2) ***continued vulnerabilities in financial sector***, 3) ***dysfunctional income inequality***.
- ***Emerging need for wage-led and domestic demand-led, inclusive growth model***, favoring the segment of population still striving to meet basic needs, and thus hungry to spend, with bottom-up multiplier effects across economy.
- Economic policy itself is at crisis. Moment is now for transformative economic policy alternatives. ***How can the human rights framework help?***

# Applying human rights to economic policy in crisis

Economic, social and cultural rights entail legal obligations for States to:

- **Respect:** refrain from interfering with rights
- **Protect:** prevent abuses by business and other third parties and hold those responsible to account
- **Fulfill:** create conditions for the realization of rights
- **Remedy:** guarantee effective remedy for human rights abuse

# Human rights standards and principles relevant to economic policy

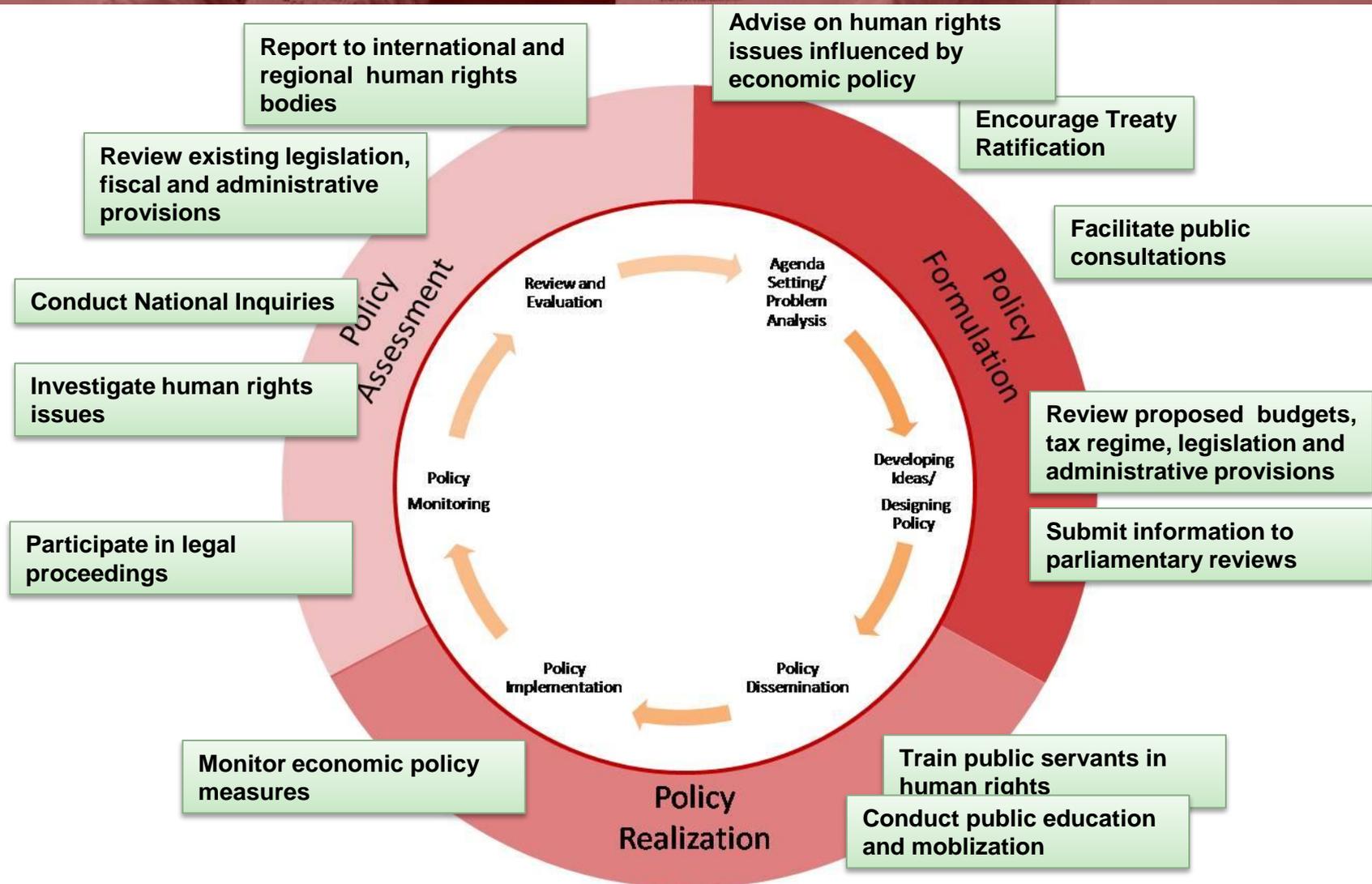
## Obligations of **conduct**:

- To take steps (legislative, judicial, budgetary, administrative and other) to fulfill ESCR, including through national planning (ICESCR, OP)
- To use **maximum available resources** to ensure progressive realization, including resources to be provided **through international cooperation** (ICESCR, OP)
- To ensure **participation, transparency and accountability** in the policy cycle (CESCR GCs)

## Obligations of **result**:

- Progressive realization: move swiftly towards increased levels of rights enjoyment, with no deliberate retrogression (“backsliding”) unless justified (ICESCR Art 2)
- Minimum core obligations: immediate duty to prioritize achieving minimum essential levels of rights enjoyment universally (CESCR GC 3)
- **Non-discrimination**: duty to ensure substantive equality in enjoyment of rights (ICESCR and GCs)
- To ensure that relevant services are available, accessible to all, acceptable and of adequate quality (CESCR GCs)

# Participation and transparency throughout economic policy cycle



# Non-discrimination and equity/equality in economic policy



- **Immediate** State obligation to end discrimination in law or in practice, in outcome and in process
- Combating disproportionate impacts on the most vulnerable, especially women and children, youth, disabled people, ethnic minorities, etc.
- Ensure substantive equality in the enjoyment of rights
- With far-reaching implications for economic policy as related to fiscal and monetary policy (More to come)

# Ensuring the maximum available resources for economic and social rights

## Five areas for maximizing available resources

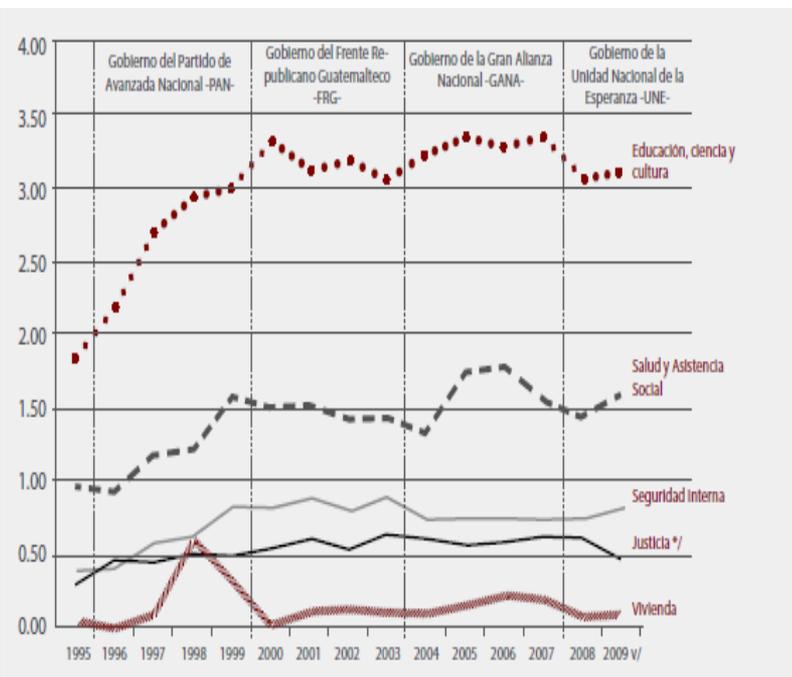
- “Availability” refers to domestic resources, and those available through international cooperation
- “Availability” refers to those under command now or in the future
- A State is in violation of the Covenant if it fails to maximize its available resources to realizing human rights in efficient and effective ways



**The Maximum Available Resource (MAR) Star (CWGL 2011)**

# Assessing 'maximum available resources': involves measuring *incidence* of spending, not just *amount*

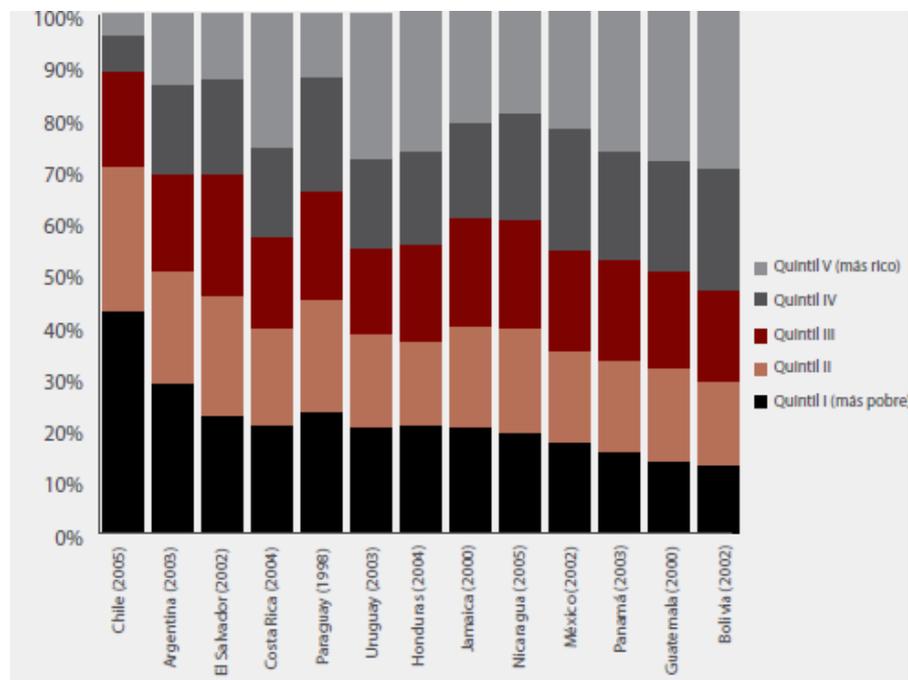
Evolution of social spending as % of GDP can serve as indicator of MDG fiscal effort



Slow progress in Guatemala's education and health outcomes since 2000 appear linked to low and stagnant social spending over this period...

Source: Ministry of Finance

Incidence analysis reveals whether spending is progressive/regressive (ie who benefits)

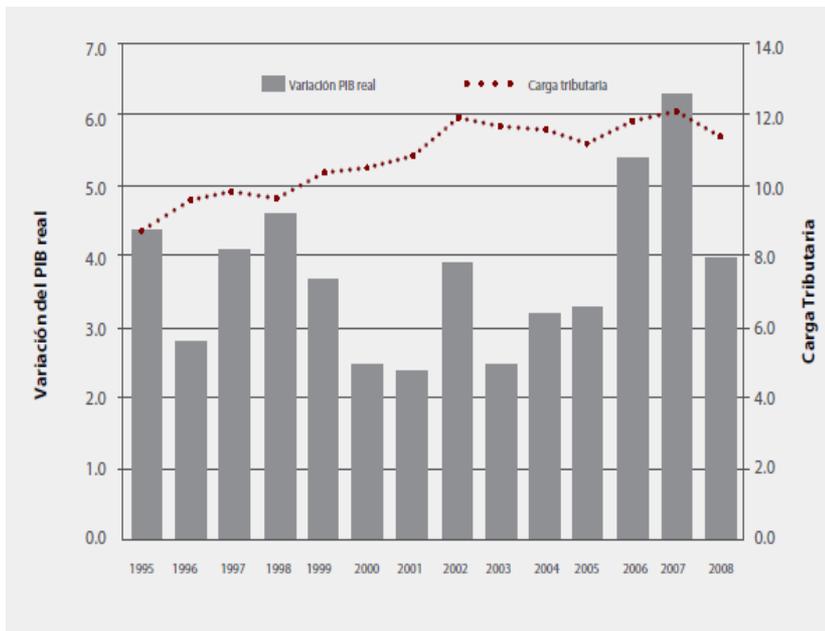


... and to the inequitable impact of social spending, which benefits the poorest least.

Source: Ministry of Finance

# Assessing 'maximum available resources': involves measuring *resource generation*, not just *expenditure*

Fiscal policy effort can be gauged comparing economic growth with growth in tax revenue

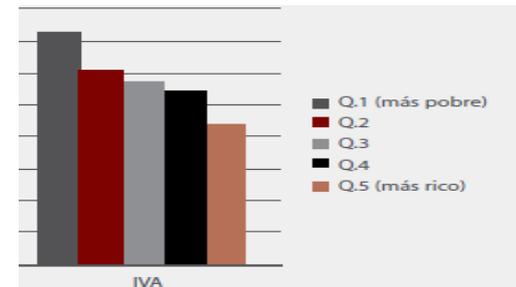


**Steadily increasing GDP growth did not lead to a sustained increase in Guatemala's low tax base**

Source: Ministry of Finance/Bank of Guatemala

...and measuring who bears the burden

- 75% of total tax revenue was based on indirect taxes such as VAT which were shown to impact most heavily on the poorest quintile.



- In contrast Guatemala's most profitable business sectors enjoyed significant tax privileges. The amount lost to the public coffers through tax exemptions in 2008 was more than twice the amount generated in income tax

# Extraterritorial obligations to economic and social rights in the context of crisis

## Sources of extraterritorial human rights obligations (ETOs)

- Extraterritorial obligations refer to conduct of a State with effects on the enjoyment of human rights in another territory, or obligations of a global character under UN Charter and other treaties
- ICESCR Art. 2.1: “Each State Party to the present Covenant undertakes to take steps, *individually and through international assistance and co-operation*, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means...”

# Extraterritorial obligations to economic and social rights in the context of crisis

## Extraterritorial obligations have been interpreted (2011 Maastricht Principles) to include duties to:

- **Respect:** “Do No Harm” *directly* or *indirectly* by impairing the ability of another State to comply with its obligations or assisting another to breach them
- **Protect:** take necessary measures to prevent abuses by business and other third parties which the territorial State is in a *position to regulate*, or otherwise exercise influence
- **Fulfill:** create an international enabling environment, and cooperate to mobilize the maximum of available resources, (including int’l assistance) commensurate with capacity and available resources for the universal fulfillment of rights
- **Remedy:** ensure availability of effective remedy for human rights abuse extraterritorially

# Human Rights Accountability in Economic Policy



## Accountability from a Human Rights Perspective

- Central concern of HRs to *regulate the exercise of power*, transform asymmetrical relationships and ensure that those who wield power are answerable to those who do not, converting passive beneficiaries of economic policy into rights-holders.
- “No human rights without human remedies”: Accessible and effective mechanisms (via courts, political institutions, or administrative bodies) should be in place to enable rights-holders to make their rights *enforceable* and to seek *remedy* and corrective action when their rights have been violated.
- Remedial and also *preventative* role of human rights accountability.

# Exacting accountability for economic policy in crisis

## National-level non-judicial human rights mechanisms

- **Parliamentary measures** to monitor & challenge economic policies
  - *Legislative* : adopting enabling legislation that provides a framework for policy to advance economic and social rights. *Budgetary*: ensuring the national budget's priorities reflect human rights priorities; monitoring Government spending. *Administrative*: scrutinizing government action, including by questions, interpellations, committees, debating reports; building up national human rights infrastructure. *Special inquiries and commissions*
- **National Human Rights Institutions (NHRIs)**

# Exacting accountability for economic policy in crisis

## National-level judicial human rights mechanisms

- **Constitutional court** challenging austerity measures
  - *Latvia*: Pensioners asserting primacy of human rights law in making economic policy decisions on fiscal allocations, fighting back against pension reductions.
- **Civil cases** demanding accountability for private impacts of crisis
  - *US*: hundreds of cases against banks for predatory lending
- **Criminal cases** demanding accountability for impacts of crisis
  - *Iceland*: Trial of former Icelandic prime minister (and others) on charges of criminal negligence for failing to prevent the banking crisis and manage its fall-out
  - *Spain*: Trial of three major credit rating agencies (Moody's, Fitch and Standard and Poor's), for unlawful price manipulation for private benefit, challenging the notion that "market forces" are too abstract and indeterminate to be held to account

# Exacting accountability for economic policy in crisis

## International human rights mechanisms

- **UN Universal Periodic Review (UPR)**

- *USA*: Bringing to light the human rights impacts of U.S. fiscal stimulus, monetary and financial policy measures, and proposing policies to protect against, prevent and remedy the worst of the financial crisis.
- *Ireland*: Advocating for practical human rights-centered alternatives to IMF-EU-imposed austerity measures which threaten to significantly undermine economic and social rights in the country, especially amongst the most vulnerable, (particularly related to the human rights to an adequate standard of living, housing, education, health and work.

- **Human Rights Treaty Bodies**

- *UN CESCR*, potentially through state reporting

- **UN Special Procedures**

- *UN Special Rapporteur on Extreme Poverty and Human Rights*
- *UN Special Rapporteur on the Right to Food*

# Transformative Human Rights-Centered Economic Policy Alternatives

- *Economic policy is public policy.*
  - Human rights norms, standards and policy can't give detailed prescriptions universally, but can provide a programmatic framework as well as operational redlines for the entire economic policy cycle.
  - Beyond human rights agnosticism on economic paradigms
- Growing convergence around the need for a **protective**, **regulatory** and **redistributive** role of the State in the economy.

# Transformative Human Rights-Centered Economic Policy Alternatives

## Fiscal Policy

- ***Inclusive Growth or Austerity Trap?*** Counter-cyclical economic policies--non-discriminatory, participatory, transparent and accountable--allow for greater fulfillment of basic ESRs of those in most need, with direct multiplying effects on growth and employment.
- ***Social Protection Floor for All:*** Embodies a human rights focus on most vulnerable, fulfilling a minimum core level of rights, serves as economic stabilizer, is affordable and builds human assets needed for productivity.
- ***Tax Justice:*** Requires maximization of available resources, by broadening fiscal space nationally and extraterritorially in progressive, non-discriminatory ways (e.g. **widening tax base from well-off, innovative financing for development (FTT), improving tax collection, combating tax evasion/havens and illicit financial flow, prioritizing social expenditures**)  
v.cesr.org

# Transformative Human Rights-Centered Economic Policy Alternatives

## Monetary Policy

- Central banks are important human rights duty-bearers, essential players in determining overall employment and the enjoyment of other economic and social rights, such as housing.
- Transparency, participation and accountability in monetary policy cycle a particular challenge, with few mechanisms to hold the central banks transparent and accountable, even to their own legal mandates.
- ***Balancing inflation stabilization with full employment-oriented targets and financial stabilization functions key , especially in relatively deflationary period***

# Transformative Human Rights-Centered Economic Policy Alternatives

## Financial Policy

- **Protecting** against human rights abuse by private actors, preventing future financial crises and holding those responsible for the financial crisis to account
  - *Gambling on famine*: Curb financial speculation contributing to commodity price volatility
  - *End Too-Big-to-Fail*: Reduce the size and complexity of systemically important financial institutions, breaking up large firms through direct regulatory intervention, if necessary
  - Strengthen *Bank Capital Requirements* to Prevent Future Human Rights Abuse
- Facilitate **rights-fulfilling financing** and directed credit toward strategic, decent-job generating sectors making economic growth more inclusive and employment-intensive.

# In conclusion...

- Human rights law and practice can provide a **programmatic framework** as well as **operational redlines** to guide the design, implementation and monitoring of economic policy.
- Embedding human rights norms and principles in economic policy necessary for **moral, legal** and increasingly **economic** reasons
- Human rights norms, principles and mechanisms provide empowering tools to battle for more **just, resilient, inclusive** and **sustainable** economic policy alternatives—globally, extraterritorially and domestically.



Thank you!

## Additional resources

- CESR briefing “*Human Rights and Economic Crisis: Causes, Consequences and Policies,*” with accompanying online resource page
- Joint ESCR-Net publication: “*Bringing Human Rights to Bear in Times of Crisis: A human rights analysis of government responses to the economic crisis,*” March 2010
- CESR Fact Sheet on Economic and Social Rights in the USA post-crisis
- Center for Women’s Global Leadership: “Maximum Available Resources and Human Rights Analytical Report” 2011
- UN Special Rapporteur on Extreme Poverty and Human Rights 2011 Report on Economic Recovery Measures
- CESR forthcoming briefing: “*Mauled by the Celtic Tiger: Economic and Social Rights at Risk in Ireland’s Recession*”
- CESR forthcoming Fact Sheet and UN CESR Submission on Austerity-Driven Economic and Social Rights Regressions in Spain
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