Human Rights and Economic Policy Reforms

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Abstract:

This article focuses on the vexed relationship between human rights and economic policy reform. It opens with an exploration of the reasons for the historic and contemporary nonalignment and disconnect between these areas. It then turns to an overview of the 2019 Guiding Principles for Human Rights Impact Assessments for Economic Reform Policies, developed under the mandate of UN independent expert on debt and human rights. Having introduced the different contributions to the Special Issue, the authors conclude by addressing the implications of the COVID-19 pandemic crisis for the relationship between human rights
and economic policy reform. Will this crisis serve as an opportunity to accelerate mutual understanding or will human rights concerns remain subordinated to economic ones?

Introduction: A brief history of human rights and economic policy reforms

The vexed relationship between economic policy reform and human rights is a hot topic, with the global and financial crises that began in 2007-8 rapidly accelerating academic, advocacy and policymaker attention to human rights and economic policy (dis)connects. These disconnects have once again come into sharp focus as the economic fallout of the COVID-19 pandemic – in the UN’s words ‘plunging the world economy into a recession with historical levels of unemployment and deprivation’ – and its potential impacts on human rights have become ever-more obvious.

It is important to recognise successes and ongoing challenges in terms of work focused on the link between human rights and economic policy to this point. On the one hand, there has been growing deployment of human rights as a discourse and a conceptual framework to critique economic policy-making inputs, outputs and processes in terms of their impact on human dignity, lived experience and life opportunities. On the other, there has been ever-greater recognition of the serious challenges with regard to leveraging human rights so as to engage meaningfully with economic policy-making – whether conceptually (in terms of standards), methodologically (in terms of tools) or in terms of practical impact.

Great strides have been taken on the conceptual front over the last decade through the development of understanding of the scope of human rights obligations from an economic policy-making perspective. This has included the elaboration and deployment of previously recognised but under-developed duties such as non-retrogression, maximum available resources and extra-territorial obligations to address the effects of economic policy-making on human rights in the context of economic globalisation. At the same time, key human rights entities (including UN treaty bodies and UN special procedures) and scholars have engaged more directly with national and supranational bodies and systems that have a central role in economic policymaking. This includes bodies that had historically been regarded (and in some instances at least had sought to portray themselves) as ‘outwith’ the human rights schema. As a result, issues such as structural readjustment, finance, sovereign debt, fiscal austerity, tax justice and aspects of international economic law can and are presented as topics of human rights concern to an ever-greater degree. In methodological terms, there has been an
This is the backdrop against which the *Guiding Principles on Human Rights Impact Assessments for Economic Reform Policies* (*Guiding Principles/GP*), the motivating factor for this Special Issue, were created and will be operationalised. It is also the context in which the contributors to this Special Issue have developed their work on human rights and economic policy reform.


The *Guiding Principles* did not emerge from nowhere, whether methodologically or normatively. The methodological origins of human rights impact assessment (HRIA) lie in the introduction of environmental impact assessment in the 1960s. From the 1980s on, there was a growing development and deployment of social impact assessment tools to identify the social consequences (for instance, in terms of poverty, inequity or health) of economic policies. Such impact assessment was particularly notable in the work of development-focused actors such as the World Bank Group, Asian Development Bank, African Development Bank and the UN.
Development Program. The 2000s saw HRIAs evolve from being included as an element of social impact assessment to constituting autonomous policy tools, with the focus on such work increasing exponentially in the last two decades.

The rising profile and employment of HRIA – encouraged by a range of international and human rights actors, including in the context of Guiding Principles developed by UN Special Procedures – coincided initially with the growing traction of economic and social rights and subsequently with growing concern about the impact of economic policy reform on human rights in the context of the financial and economic crises of the late 2000s. The last decade has seen a wide range of human rights actors, including UN Treaty bodies and Special Procedures highlighting the duty to undertake HRIAs of economic reforms specifically. However, prior to the Guiding Principles on HRIAs of Economic Policy Reforms, no consistent and comprehensive rights-based framework for conducting HRIA of economic reform programmes has emerged so far from the UN and its various human rights actors.

A Brief History of the Guiding Principles

The Guiding Principles were developed under the auspices of the mandate 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 (Independent Expert on debt and human rights/Independent Expert). This is unsurprising given that one the principal areas of the UN Special Procedures mandate on ‘debt and human rights’ since its conception has been ‘structural adjustment and its effects on human rights’. Initially, there were two mandates: that of the Independent Expert on ‘structural adjustment programs’, established in 1997, and, a year later, the Special Rapporteur on ‘the effects of external debt on the full enjoyment of economic, social and cultural rights’. In 2000, these mandates were discontinued when the mandate of the Independent Expert on the effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights was established. The 2005 broadening of the mandate from ‘the effects of structural adjustment policies’ to ‘the effects of economic reform policies’ to some degree set the scene for the broad scope of the Guiding Principles, albeit that the mandate was redefined and retitled in 2008. Since 2008, mandate-holders have looked at a range of different economic policy issues from a human rights perspective, including in reports on the impact of economic reform policies on women’s human rights, labour rights in the context of economic reforms and austerity measures, as well as the human rights impacts of tax evasion. (Indeed, these reports contributed directly to the development of the Guiding
An earlier set of Guiding Principles emanating from the mandate, on foreign debt and human rights, stressed the importance of HRIA in the context of lending activities. In 2015 and 2016, the Independent Expert paid official visits to Greece and the European Union institutions, respectively, in order to assess the impact of austerity policies on human rights. During meetings with different stakeholders in the course of those missions, questions arose with regard to the legal framework to be applied in HRIAs and the methodology to follow if such exercises were to be conducted. Reflecting these important questions, the Independent Expert’s report on his mission to the European Union highlighted the need to ‘develop particular guidelines for conducting HRIA for macroeconomic reform programmes, building on the normative components of internationally recognised economic, social and cultural rights and on existing impact assessment guidelines and tools’.

In its March 2017 session - the same one at which the Independent Expert’s report on the European Union was presented and discussed - the Human Rights Council recognised that ‘structural adjustment reform programmes and policy conditionalities limit public expenditure, impose fixed expenditure ceilings and give inadequate attention to the provision of social services, and that only a few countries manage to achieve sustainable higher growth under these programmes’. The Council proceeded to request the Independent Expert to develop guiding principles for HRIAs for economic reform policies.

The Human Rights Council considered and voted on the Guiding Principles on 5 April 2019. The relevant resolution ‘[e]ncourages Governments, relevant United Nations bodies, specialized agencies, funds and programmes and other intergovernmental organizations to consider taking into account the guiding principles in the formulation and implementation of their economic reform policies and measures’. It also encourages national human rights institutions, non-governmental organizations and the private sector to give due consideration to the guiding principles in their work. The Office of the United Nations High Commissioner for Human Rights was requested to disseminate the Guiding Principles.

Support for the resolution was not unanimous. Indeed, the voting patterns of Human Rights Council members with regard to it - effectively most high income countries in favour, low and middle income countries against, and a few states abstaining - reflects the historical geopolitical dynamics at the Council with regard to the debt and human rights Special Procedures mandate. All Global North state members of the Commission on Human Rights
voted against the mandate in 2000 and since then have continued to call for a vote and then vote against or abstain on resolutions renewing the mandate.\textsuperscript{42}

The traditional, formal explanation for high income country government resistance to the \textit{Guiding Principles} (and the mandate more generally) has been that there are already international institutions with expertise on financial affairs dealing with these issues at the global level, specifically International Financial Institutions. However, the IMF has been explicit that human rights do not fall within its mandate, including in a letter submitted in the context of the drafting process of the \textit{Guiding Principles}:

\begin{quote}
‘Nevertheless, the mandate of the IMF is defined by the Articles of Agreement and its powers and responsibilities are limited to those entrusted to it by the membership. \textit{This mandate focuses on macroeconomic and financial stability and does not, unlike the constituent documents of some other international organizations, encompass the promotion of human rights per se.} As an institution that is concerned with economic issues, the IMF is precluded from using its powers to support particular political systems or, directly engage in the promotion of human rights. (…) The IMF has not accepted the Declaration on Human Rights as the motivating principle of our operations. UN agencies have generally accepted our arguments as establishing the limits of our engagement and obligations on promoting human rights.’\textsuperscript{43}
\end{quote}

During both the drafting process and the interactive dialogue at the Council in which the \textit{Guiding Principles} were discussed, the Brazilian government asserted that the whole \textit{Guiding Principles} project was biased as it assumed \textit{ex ante} that all economic reforms (referring to austerity, fiscal consolidation and adjustment) have adverse effects on human rights. This is why the preamble of the final version of the \textit{Guiding Principles} reads:

\begin{quote}
‘Not all economic reform policy responding to economic crises is intrinsically against human rights, and economic reforms that are carefully formulated based on human rights can contribute to the betterment of human rights. In fact, responding to economic crises often requires actions by the Government that are dictated by the urgency to protect resources and assets that will, in the long term, serve to protect and fulfil human rights.’
\end{quote}

The inclusion of that statement did not however secure support for the \textit{Guiding Principles} from all Human Rights Council members. Despite coolness on the part of some states, the \textit{Guiding}
Principles were nevertheless welcomed warmly by civil society and the profile of the Guiding Principles is steadily increasing.

Unsurprisingly, the work of the debt and human rights special procedure mandate has been a key driver of the Guiding Principles. Following the Council’s endorsement of the Guiding Principles, the Independent Expert used the Guiding Principles in the context of official visits to Ukraine, Sri Lanka, Bolivia and Mongolia as a framework to assess contemplated and implemented economic reforms in those states. These reports were ultimately discussed with the relevant states during Human Rights Council sessions in 2019 and 2020.

The Guiding Principles have also received recognition from regional human rights institutions. For instance, the ‘Business and Human Rights: Inter-American Standards” issued by the Inter-American Commission on Human Rights and the Special Rapporteur on Economic, Social, Cultural and Environmental Rights in 2019, refer to the Guiding Principles as a relevant legal framework for the purposes of combating tax evasion.

Ironically, despite the refusal of any European members of the Council to endorse the Guiding Principles, May 2020 saw the European Network of National Human Rights Institutions (ENNHRI) issue a statement on economic policies and human rights in the context of the Covid-19 crisis. ENNHRI explicitly recommended the use of the Guiding Principles to assess the recovery measures in order to help protect people against discrimination and a widening of existing inequalities.

The what, how and who of the Guiding Principles

Just as the Guiding Principles did not reinvent the wheel by centring on HRIA as a methodology, nor did they seek to outline ‘new’ human rights duties. Rather, they strove ‘to identify and systematize existing human rights obligations, and also provide commentary on their implications ’in the context of economic policy reforms. This is in line with the approach of other soft law guiding principles in terms of particularising existing human rights obligations with regard to a specific thematic issue or group. The Guiding Principles are explicitly based on ‘all core international human rights instruments’, the ‘authoritative interpretation’ of such by the treaty bodies, and the contributions of special procedure mandate holders. The text of the Guiding Principles also makes clear that they are to be considered and applied ‘in coordination and conjunction’ with other Guiding Principles, in particular those referring to
business and human rights, foreign debt and human rights, HRIAs of trade and investment agreements, and extreme poverty and human rights.

While very much driven by concerns about the effects of the financial and economic crises of the late 2000s, the scope of the Guiding Principles extends to ‘whenever economic reform policies may foreseeably result in impairment of human rights’. Consistent with the notion of human rights as a proactive framework for policymaking, the Guiding Principles have both a preventive function (in the context of the design and implementation of short-, medium- and long-term economic reform policies), as well as a reactive function with regard to acute crises. This constitutes a crucial recognition that the negative impacts of economic policy are not limited to crisis contexts but extend to longer term processes such as fiscal consolidation or labour market reforms. Thus, while the Guiding Principles are applicable in the context of measures taken to address the immediate economic fallout of the COVID-19 pandemic public health crisis (for instance, short to medium-term state-funded work furlough schemes), they will also be of direct relevance to more long-term economic policy responses— including those enduring beyond the duration of the pandemic itself (for instance, proposals to amend tax systems to ensure adequate future funding for social care).

The Guiding Principles’ section on ‘Obligations of States’ makes clear that states are obliged to manage their fiscal affairs and to adopt economic policies to ensure that they ‘respect, protect and fulfil all human rights’, with their ‘economic choices’ complying with their international human rights law duties, both when they act alone or as members of international financial institutions. States and other creditors have the burden of proof of demonstrating that their proposed economic reform measures will realise, and not undermine, states’ human rights obligations. In turn, this implies a duty to carry out HRIA to evaluate and address any foreseeable effects of their economic policies on human rights. Consultation on and the making public of the results of these HRIAs are stated to be important components of complying with this obligation. The GP also respond to the risk of ‘passing the buck’ for human rights responsibility in the context of decentralisation, devolution or localisation of economic policy decision-making: they make clear that while although all levels of government have human rights obligations in the economic policy context, central government has ultimate responsibility for human rights compliance.
Consistent with concerns about the impact of financial globalisation and the potential extraterritorial impacts of domestic economic policy measures, the *Guiding Principles* devote significant attention to the obligation of international assistance cooperation in order to facilitate the full realisation of all rights. This not only entails a duty on states to respect and protect the enjoyment of the human rights of people outside their borders, it also involves contributing to the creation of an international environment that enables the fulfilment of human rights. In HRIA practice terms, this requires conducting assessments of the extraterritorial impacts of laws, policies and practices.

The *Guiding Principles* also iterate that ‘states, international or regional financial institutions and other non-State and State actors’ – including, importantly, corporations – should not exert ‘undue external influence’ on other states so as to prevent them from using their policy space to design and implement economic policies, in accordance with their human rights obligations. Undue external influence is defined as direct or indirect intervention in a state’s economic affairs through the use of economic and/or political measures in an effort to influence States to adopt certain economic policies or to secure from them advantages of any kind that undermines their ability to give effect to their human rights obligations. Examples of such measures would be conditionalities linked to financial assistance programmes or implicit conditionalities informally urged by international or regional institutions. Giving effect to this requirement necessitates states to enact foreign investment laws in such a way as to include an obligation on investors to undertake HRIA through neutral entities in a transparent and inclusive manner. Reflecting the fact that there is a particular risk of such ‘external undue influence’ where states are facing financial or other crises, the *Guiding Principles* stress the importance of the systematic use of ‘transparent and participatory HRIAs’ in the design of economic reform programmes attached to international loans.

The *Guiding Principles* focus directly on the obligations of public creditors and donors, including IFIs and bilateral lenders, to ensure that the terms of their transactions and their proposals for reform policies and conditionalities for financial support do not undermine the borrower/recipient states’ ability to satisfy their human rights obligations. HRIAs should be a mandatory element in the design of all economic reform and adjustment programmes, including in the context of debt management and financial assistance activities. *Ex ante* HRIA – conducted sufficiently early to predate the conclusion of agreements – is particularly important in this context. Furthermore, release clauses with regard to specific conditions should
be put in place where actual or potential adverse human rights impacts are identified. The *Guiding Principles* also address private creditors, who are exhorted to assess the human rights impacts of their own actions as well as those of the activities financed by them, unless they have ascertained that debtor states or international and regional financial institutions have carried out effective assessments.

In delineating ‘applicable human rights standards’, the *Guiding Principles* make clear that, when considering possible economic measures, states must be guided by existing international human rights law, including civil and political rights. In line with the fact that non-discrimination and equal enjoyment of rights are key elements of international human rights law, states are required to ensure that economic reform policies and measures are not discriminatory. This requires the assessment of the discriminatory impacts of economic reform policies – whether direct, indirect, multiple or intersectional in nature. HRIA for the purposes of the *Guiding Principles* must therefore include equality impact assessment such as to identify the potential and cumulative impacts of specific measures, to enable them to be addressed, and for alternatives to be considered. The *Guiding Principles* thus indirectly recognise and incorporate equality impact assessment. Consistent with the general direction of travel of international human rights law with regard to equality, as well as a growing understanding of the structural discrimination faced by women in the prevailing economic paradigm, the *Guiding Principles* emphasise that economic reforms should promote substantive and transformative gender equality. Methodologically, HRIAs should always include a comprehensive gender analysis.

Notably, while the primary focus of the *Guiding Principles* is on human rights, concern with the environment is a central theme, consistent with the recognised interdependence of human rights and a healthy environment. Reference is made to the need to ensure that economic policy reforms do not hamper states’ ability to meet their ‘environmental obligations’. Thus, all proposed economic reform measures should be informed by and align with individual and collective state measures to facilitate national and global environmental protection, recognising the interdependence between human rights and a healthy environment. States should also consider how proposed economic reforms may impact directly or otherwise reduce a State’s ability to address national ecological conditions and significant global ecological thresholds that affect the realisation of human rights. Methodologically, the *Guiding Principles* make
clear that a HRIA ‘if carried out properly, can incorporate regulatory, environmental and social impact assessments and should contain a human rights-based budget analysis’.  

Unsurprisingly given the resource-dependent and oriented nature of economic reforms, the *Guiding Principles* focus in some depth on the obligations of progressive realisation and use of maximum available resources set out in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights. Fiscal, tax, debt, trade, aid, monetary and environmental policies should be designed and implemented so that they are ‘deliberately directed’ towards the realisation of human rights. With regard to the latter duty, states are required to demonstrate that every effort has been made to mobilise all available resources (including though resource generation), even in times of economic crisis. Reflective of a concern to secure human rights protection during crises and other situations of resource constraint, one Principle is entirely devoted to the issue of retrogression. This delineates the conditions which economic measures that result in backwards steps in terms of economic, social and cultural rights must satisfy in order not to fall foul of the international human rights law prohibition on impermissible retrogression.

Turning to the section ‘Policy Articulation’, the *Guiding Principles* provide an important articulation of how fiscal policy, monetary policy and debt policy should be designed and deployed to ensure human rights realisation. Policy coordination and coherence is central to ensuring this. Financial sector regulation is identified as necessary to detect, prevent, manage and fairly allocate the human rights risks created by financial instability and illicit financial flows. Unsurprisingly, given the focus of the Special Procedure mandate under whose auspices the *Guiding Principles* developed, particular attention is focused on the issue of debt. The *Guiding Principles* state that findings of HRIAs should be used to inform debt strategies, debt relief programmes and restructuring negotiations. The *Guiding Principles* make the point that independent HRIAs carried out within regular debt management work and sustainability assessments can also support early identification of where constraints on fiscal space due to debt servicing are leading to an undermining of states’ human rights duties. The *Guiding Principles* assert that debt should not be understood as ‘sustainable’ if the social and human rights dimensions of sustainability are ignored.

Part IV of the *Guiding Principles* is devoted to ‘Human Rights Impact Assessments’. Principle 17 sets out the basis and purposes of a HRIA, defining an ex ante human rights impact
assessment as ‘a structured process to review alternative policy options and analyse the impacts of proposed measures on human rights’. The Guiding Principles make clear that HRIA of economic policy reform should not just identify human rights-related problems raised by specific economic reform policies (whether alone or with other economic measures or to be implemented). It should also establish a list of preventive and mitigating measures to ensure conformity of the economic reform policies under consideration with the state’s human rights obligations. In terms of methodology, HRIA should involve the use of a variety of quantitative and qualitative tools and methods, including participatory ones, and carefully compare the human rights impact of different scenarios including budget cuts, tax increases and measures against tax evasion and avoidance. Rather than being a ‘once-off’ exercise, HRIAs should be carried out regularly – i.e., both ex ante and ex post. Thus HRIA in this context is not just about the potential impacts of proposed economic policy reforms but also involves assessment of the actual impacts of policy change and implementation, thereby enabling any negative human rights impacts to be addressed. HRIA as conceptualised in terms of the Guiding Principles is not solely a critical tool focused on human rights problems; rather, it can and should be deployed to contribute to the identification of means by which human rights realisation can be advanced through economic policy reform.

HRIAs also have an accountability function. The Guiding Principles state that a HRIA can serve to ensure that accountability procedures exist and mechanisms are in place so as to secure the right to an effective remedy with regard to actions and omissions in the design and/or implementation of economic reform policies that may undermine human rights. It does so ‘by requiring clearly articulated and justified policy choices that have been developed through inclusive participation of the potentially affected population’.

While arguing for HRIA to form part of the ‘policy continuum’, the Guiding Principles are not blind to the challenges posed to policymakers by crisis situations in which decisions about economic reform measures have to be made under extreme time pressures. The fact that a ‘perfect’ HRIA exercise cannot be carried out does not result in the elimination of state obligations in this regard: rather, in such situations, the government is obliged to complete and publish a HRIA ‘to the extent possible under the circumstances before taking any policy decisions or actions’. In addition, the government should publicly explain why it is unable to do a full ex ante impact assessment, undertake a fully compliant ex post HRIA, and take
steps to remedy all adverse human rights impacts identified in either impact assessment as promptly as possible.\textsuperscript{109}

The \textit{Guiding Principles} emphasise the importance that participation, access to information and transparency be embedded in HRIA in terms of the inputs, process, outputs, and publicising of outputs of such exercises.\textsuperscript{110} This is line with commonly identified features of a human rights-based approach.

The final Principle, Principle 22, addresses the tricky question of who should carry out HRIA. On the one hand, state actors will frequently be best positioned for the purposes of accessing and collating the data and other evidence needed for a ‘robust’ and ‘credible’ HRIA.\textsuperscript{111} On the other, government or state actor conduct of HRIA of a proposed measure raises questions about whether such an exercise is in fact ‘independent’.\textsuperscript{112} This is particularly so where a state’s independence (de jure or de facto) from any creditor or creditor-aligned institution responsible for designing adjustment programmes is open to question. Reflecting an appreciation of this issue, as well as the differing capacities and aims of different actors who might carry out HRIA, the \textit{Guiding Principles} are ‘flexible enough to be adjusted to the particular needs of government departments, advisory bodies, parliamentary committees, national human rights institutions, courts, international financial institutions, private creditors, international institutions or civil society organizations’.\textsuperscript{113} However, any entity carrying out HRIA must be assessed against predetermined criteria. These should include, as a minimum, independence from the executive branch and any creditor/creditor-aligned institution, adequate funding, appropriate expertise, diversity of membership (including gender parity), engagement of affected communities, as well as credibility and legitimacy in the eyes of different stakeholders.\textsuperscript{114} Consistent with the need to ensure participation of those affected by purported or implemented economic reform policies to the greatest degree possible, states should take steps to support the ability of affected communities and civil society generally to provide parallel information to assessment processes and, as far as possible, to conduct human rights impact assessments directly.\textsuperscript{115} HRIA, as contemplated by the \textit{Guiding Principles}, therefore has a crucial empowerment aspect.

\textbf{Introducing the Special Issue Contributions}

This Special Issue brings together experts working on human rights and economic policy from a range of disciplinary perspectives, including economics, law, and development studies. The
contributions reflect a huge body of professional experience in the academic, policymaking, advocacy and practitioner fields. All of the authors have a strong awareness of the importance of inter- and multi-disciplinary engagement. This is evident from the articles themselves, which address a wide range of different (legal, normative, economic, policy) frameworks and methodologies. The Special Issue’s scope benefits enormously from this, with contributions ranging from political economy (Kendrick) to black letter international human rights law analysis (MacNaughton) to political science (Goldmann) to child rights (Hoffman) to development economics (De Schutter, Lusiani, and Chaparro).

The Guiding Principles are the driving force behind the Special Issue and contributors engage with them in a range of different ways. Corkery and Isaacs use them as a springboard to explore the challenge posed by ‘the politics of evidence’ in the context of HRIA. Hoffmann highlights how they complement long-standing work in the area of child rights impact assessment. MacNaughton reviews the Guiding Principles from the perspective of economic inequality. Goldmann approaches them as a framework for strengthening democratic decision-making. Kendrick considers how gendered ideas might affect their potential as a framework for ideational power-oriented impact assessment. De Schutter, Lusiani and Chaparro address how the Guiding Principles, as part of international human rights law, can contribute to build a more solid conception of global tax justice.

Unsurprisingly, however, the Special Issue authors go well beyond the Guiding Principles to addressing key issues arising in relation to economic policy reform, human rights and human rights impact assessment.

In the opening article, Corkery and Isaacs argue that the way that evidentiary challenges are addressed in the field of HRIA pays limited attention to the political dynamics at play in shaping the methodologies through which evidence is created, selected and interpreted. In doing so, they engage with the long-standing challenge faced by those seeking to bring human rights to bear in an economic policy context: namely, the predominance of economics in human rights/economics interactions. The authors make clear that inherited limitations from both the fields of economics and HRIA pose serious challenges to the ability of the Guiding Principles – and other HRIA tools – to advance evidence-based policymaking meaningfully. Having identified the problems posed to HRIA by technical bias in neo-classical economics in particular, the authors set out a number of strategies to assist HRIA advocates to better navigate
the politics of evidence, as well as take advantage of the space for contesting economic orthodoxies opened up by the imperative to audit economic reforms according to human rights standards.

The second piece, by Goldmann, addresses the relationship between human rights, economic policy and democracy, analysing a series of negative feedback loops between democracy and human rights in the context of economic policy reform. He details how economic reform policies driven by international and supranational financial institutions may compromise democratic self-determination and hamper the democratic participation of marginalised groups – an undermining of democratic institutions that has a knock-on effect on human rights. Arguing that such rights require a framework for legitimate redistributive decisions, the author asserts that any impairment of democratic institutions as a consequence of economic policy reforms will in the long run pose a risk to their realisation. Turning to the Guiding Principles, Goldmann outlines their potential role in strengthening human rights and democracy, particularly through their encouragement of states to subject economic policy reforms to democratic control. The author then demonstrates how the Guiding Principles can and should shape the European Union’s response to COVID-19. In doing so, he hones in on the issues of transparency, participation and policy coherence – all of which are addressed in the Guiding Principles – and the role these do and could play with regard to the EU’s pandemic-related economic reform policies.

MacNaughton’s piece centres on what she terms the ‘current crisis of extreme economic inequality’. Having outlined the existing state of play, as well as the potential impacts of COVID-19, she places the blame for this on the long-standing impacts of neoliberal economic policy reforms. The article provides a detailed analysis of vertical (income and wealth) and horizontal (status-based) inequalities, including the relationship of both to international rights law as well as Sustainable Development Goal 10 on reducing inequality in and among countries. Reviewing the Guiding Principles from the perspective of economic inequality, the author finds them wanting. In response, she argues for the inclusion of a specific principle on economic inequality to ensure that governments consider the impact of policy economic reforms on income and wealth inequality as critical causes of human rights violations. The piece as a whole makes clear the (COVID-19-reinforced) urgency of broader engagement with vertical inequality in the context of both international human rights law – including HRIA practice – and the framework for SDG 10.
Hoffman’s piece focuses on an important group-specific sub-set of HRIA: child rights impact assessment (CRIA). He outlines the history and normative underpinnings of CRIA, highlighting the central role played by the UN Committee on the Rights of the Child in promoting such practice through its presentation of CRIA as a crucial element of state efforts to give effect to their obligations under the UN Convention on the Rights of the Child. This contributes to an understanding of the key role of UN treaty bodies in encouraging (and thereby indirectly advancing) HRIA. Having outlined the elements of CRIA and how they should be applied to economic policy, Hoffman reviews *ex ante* CRIA in practice in a range of national contexts, flagging that CRIA remains underutilised as a policy tool to assess how state budgeting contributes to the realisation of children’s rights. In doing so, he provides valuable insights into methodological good practice and challenges for CRIA, including in relation to resource allocation. The significant overlap in aims and procedural steps of CRIA and HRIA renders the article’s findings directly relevant to HRIA practice more broadly.

Kendrick’s article brings us back to the issue of the political dynamics that may affect HRIA practice. She argues that, when considering the effects of economic policy reform on women’s human rights, it is crucial to consider the political economy mechanisms through which these effects operate. In doing so, she provides greater nuance to our understanding of the causal channels through which economic policy reforms impact women’s human rights than has been offered previously. The article directly challenges the treatment of the distribution of policy costs and benefits as outcomes of a given state of the world on the basis that economic policy reforms both shape and are shaped by those costs and benefits. Using a political economy model of economic policymaking, Kendrick shows how the choice of economic policy and its impacts on women’s human rights are endogenous to various gendered political-economic forces, which have interest, institutional and ideational-based dynamics. She argues further that while the gender-related standards set out in the Guiding Principles on Foreign Debt and Human Rights are an ambitious step forward in addressing possible negative impacts on women’s human rights, their relative salience in the shaping of economic policy will be mediated by those same political-economic forces.

The operationalisation of rights in the struggle to tax multinational companies is the focus of De Schutter, Lusiani and Chaparro’s contribution. Having outlined what a national human rights-aligned tax policy would look like, the authors dissect how the existing international tax
regime impedes individual states’ ability to bring their national tax policies in line with human rights. The article thus reflects a key preoccupation of several pieces in the Special Issue: the direct and indirect impacts of economic globalisation on governments’ ability to deploy their economic policy space in a human rights-aligned way. The authors discuss how international human rights law, including the Guiding Principles, can provide a stronger normative foundation to curb harmful tax competition and help resolve disputes over the right to tax multinational companies. The authors also highlight the paucity of practical tools to embed human rights norms into the process and substance of reforming international tax policies. They set out a framework of questions that policy makers and advocates can use to assess current efforts to rewrite the international tax rules so as to create an enabling environment for implementing human rights-based tax policies at domestic level – efforts that the economic impact of the COVID-19 pandemic have rendered more pressing than ever.

Fittingly, the Special Issue concludes with the text of the Guiding Principles themselves, together with a short overview of the process leading to their introduction.

**Conclusion and challenges ahead**

This Special Issue has addressed key themes in the debates on economic policy and human rights – both within the academy and beyond. It is clear, however, that while human rights and economic policy reform are as close to being on speaking terms as they ever have been, they and their proponents still often speak in parallel – and this is generally at the expense of human rights protection.

When plans for this Special Issue were drawn up and initial drafts of articles were prepared, COVID-19 had not yet reared its head. The challenges thrown up by this most recent global crisis engage directly with, and exacerbate, many of the issues raised by the authors – be it economic inequality (MacNaughton), tax rules and policy (De Schutter, Lusiani and Chaparro) the role of international and supranational institutions (Goldman), gender inequality (Kendrick), children’s invisibility’ (Hoffman) and the methodological complexities of producing and understanding information on the links between economic reforms and human rights (Corkery and Isaacs).

Depressingly, the global response to COVID-19 thus far suggests that the spheres of human rights and economic policy reform remain separate and unequal. In April 2020 the IMF’s
'Fiscal Monitor Report’ was already warning that ‘once the COVID-19 crisis is over, prudent fiscal policies call for appropriately paced, inclusive, and credible adjustments to put debt ratios on a firm downward trajectory’ and that ‘at the current juncture, making clear that support measures to address the COVID-19 crisis are temporary could help manage expectations. (…)’. The IMF’s message that ‘[o]nce the COVID-19 crisis is over, high-debt countries should, in general, pursue fiscal consolidation supported by growth-friendly measures’ bodes poorly for human rights enjoyment given past experiences of similar post-crisis measures.

But are we – as Saiz stated with regard to the financial and economic crisis of the late 2000s – in a situation where ‘despite the obvious human rights dimensions of the crisis, human rights have barely figured in the diagnoses or prescriptions proposed by the international community’? This time around, the answer is (a tentative) ‘no’. Despite the ongoing reluctance of IFIs to engage with human rights in terms of their work and its impacts, there have been significant statements on the part of international and regional actors on the need to ensure that responses to COVID-19 are consistent with human rights.

However, where recovery discussions have focused on economic policy specifically, policymaker engagement with human rights appears to dissipate. One telling example is the UN Policy Brief on policy responses to COVID-19. This document, which sets out the framework for the United Nations’ urgent socio-economic support to countries and societies in the face of COVID-19, makes frequent and explicit reference to human rights. However, the section on ‘guiding the necessary surge in fiscal and financial stimulus to make macroeconomic policies work for the most vulnerable and strengthening multilateral and regional responses’ makes no mention of human rights. This is despite references to the need to focus on vulnerable groups, as well as a repeated emphasis on the necessity to support SDG achievement and ensure ‘social and environmental sustainability within the framework of the 2030 Agenda and the SDGs’. In the same section, the need for gender analysis and to improve the evidence base for policy-making as well as the ‘conduct of comprehensive impact assessments at the household level, and to undertake context-specific socio-economic impact analyses of the crisis’ are set out. There is, however, no reference to HRIA.

That is despite the clear acknowledgement of the implications of COVID-19 and states responses thereto for human rights elsewhere in the document. This is reflected in, amongst
others things, an annexe outlining indicators for monitoring the human rights implications of COVID-19, as well as a statement in the ‘How We Will Deliver the Response’ section that,

‘the human rights implications of the pandemic call on the UNDS to be proactive in ensuring that its efforts, as well as the local, national and international efforts it supports, address human rights concerns and advance human rights in the “recover better” phase, as framed by the Secretary-General. To this end, with support and guidance from OHCHR, the UNDS will continue to assess the human rights impact of the COVID-19 pandemic and the extent to which responses respect human rights by using the 10 human rights indicators.’

This is a far cry, however, from asserting that such impact assessment should form part of the efforts of national government and other actors with central roles to play in the economic policy context. Nor do any of the indicators set out relate to economic policy.

This is one significant, albeit necessarily limited, example that highlights the ongoing gap between human rights and economic policymaking even within institutions that have human rights as part of their mandate. If human rights are not regarded as central to post-COVID-19 economic policy responses by all UN actors, then one suspects there is little hope for them featuring on the agendas of other institutions with significantly less institutional commitment to human rights. That said, this illustration also underlines the growing profile and recognition of scope for HRIA, something that can be leveraged by those seeking to advance HRIA of economic policy through the deployment of the Guiding Principles.

More positively, July 2020 saw the production of a ‘Checklist for a Human Rights-Based Approach to Socio-Economic Country Responses to COVID-19’ by the OHCHR, the UN Development Programme and the UN Sustainable Development Group. The Checklist includes a section on ‘macroeconomic response and multilateral collaboration,’ which is strongly in line with Guiding Principles. (These are expressly referred to as a resource in the document). Amongst other things, the Checklist asks whether stimulus packages ‘been developed and assessed with a human rights lens’ and whether country analyses and strategies in relation to debt distress and sustainability incorporate HRIAs. It also includes questions focused on ‘maximum available resources’ and ‘retrogression’, as well as whether measures are in place ‘to ensure IFIs and donors refrain from attaching conditions to their financing that
could undermine the state’s ability to respect, protect, and fulfil its human rights obligations in the allocation of resources and the design of policies’. Admittedly, the document proposes a rather simplistic yes/no assessment approach that needs to be further developed if it is to be line with more sophisticated and comprehensive HRIAs methodology envisaged in the Guiding Principles. However, it does demonstrate the increasing importance that the international community – or some parts of it at least – is attaching to HRIAs in the economic realm.

The COVID-19 crisis poses a real threat to human rights enjoyment. It also provides an opportunity to push ahead with the crucial task – for policymakers, for advocates, for scholars – of bringing human rights to bear on economic policy reform. The contributions to this Special Issue make clear that this opportunity is being and will continue to be seized with both hands. The Guiding Principles will have a key role to play.

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2 It should be noted that this article takes ‘reform’ to mean change or amendment – it does not understand ‘reform’ necessarily to imply ‘improvement’. This is consistent with the way in which that term is understood in the context of the UN Guiding Principles on Human Rights Impact Assessments for Economic Reform Policies.


22. For an overview of key statements of UN treaty bodies and Special Procedures with regard to HRIA, see G. MacNaughton, ‘Human Rights Impact Assessment: A Method for Healthy Policymaking’ (2015) 17(1) Health
34 For more, see MacNaughton’s contribution to this Special Issue.
36 For more on this process, see the ‘Introduction’ to the Guiding Principles in this Special Issue.
40 Human Rights Council, ‘Mandate 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’, Resolution adopted by the Human Rights Council, UN Doc. A/HRC/RES/7/4 (March 27, 2008).
44 UN Doc. A/HRC/34/57/Add.1, 28 December 2016, para. 82.b.
46 Ibid., para. 13.
48 Ibid., para. 3.
49 Ibid., para. 4.
50 In favour: Angola, Bahrain, Bangladesh, Burkina Faso, Cameroon, Chile, China, Cuba, Democratic Republic of the Congo, Egypt, Eritrea, Fiji, India, Iraq, Nepal, Nigeria, Pakistan, Philippines, Qatar, Rwanda, Saudi Arabia, Senegal, Somalia, South Africa, Togo, Tunisia, Uruguay. Against: Australia, Austria, Brazil, Bulgaria, Croatia, the Czech Republic, Denmark, Hungary, Italy, Japan, Slovakia, Spain, Ukraine, United Kingdom of Great Britain and Northern Ireland. Abstaining: Afghanistan, Argentina, Bahamas, Iceland, Mexico, and Peru.
51 Resolutions adopted in relation to the mandate and how States have voted them can be found at https://www.ohchr.org/EN/Issues/IEDebt/Pages/Resolutions.aspx (accessed September 8 2020).
UN Doc. A/HRC/43/45/Add.1, 2 March 2020.
Ibid. para. 258.
Guiding Principles, para. 8.
Guiding Principles, para. 8.
54 See above n23.
55 See above n23.
56 See above n23.
57 See above n23.
58 Guiding Principles, para. 9.
60 For a discussion of such schemes in the European context as well as the argument that emergency measures will be required in the longer term, see Financial Times, ‘How to adapt furlough schemes for Phase 2’, https://www.ft.com/content/cdf73dc8-a298-4f08-ab89-76c10068e7ef (accessed August 8 2020).
Guiding Principles, Principle 2.
64 Guiding Principles, Principle 3.
65 Guiding Principles, Principle 3.
68 Guiding Principles, Principle 13. For more on the source of this obligation, see note 6 above.
75 Guiding Principles, Principle 15.
76 Guiding Principles, Principle 15, para. 15.1.
77 Ibid.


Guiding Principles, Principle 11(f).

Guiding Principles, Principle 11, para. 11(11).


Ibid.

Ibid.

See, e.g., Committee on Economic, Social and Cultural Rights, ‘General Comment 3: The Nature of the States Parties Obligations (Art 2, par. 1)’ (December 14, 1990), para. 9 and above n4.

Guiding Principles, Principle 11(b), (c) and (e).

Guiding Principles, Principle 11.

Guiding Principles, Principle 11(d).

Guiding Principles, Principle 12

Guiding Principles, Principle 11, para. 12(6).

Guiding Principles, Principle 12, paras 12(2)-(4)

Guiding Principles, Principle 17, para. 17(1).

Guiding Principles, Principle 17.

Guiding Principles, Principle 17, para. 17(4).


Guiding Principles, Principle 18, para. 18(5).

Guiding Principles, Principle 21, para. 21(1).

Guiding Principles, Principle 18, para. 18(1).

Guiding Principles, Principle 18, para. 18(2).

Guiding Principles, Principle 18, para. 18(2).


Guiding Principles, Principle 22.

Ibid.

Guiding Principles, Principle 22, para. 22(1).

Guiding Principles, Principle 22, para. 22(2).

Guiding Principles, Principle 22, para. 22(5).


Ibid.

This is far less so when it comes to international civil society’s work in this area. For an example of a leading civil society initiative in this area, see CESR’s work on resourcing a just recovery from COVID-19. https://www.cesr.org/covid-19-recovering-rights-series-0 (accessed August 10, 2020). For an example of national human rights institution responses on this point, see ENNHRI’s statement at note 50 above.


Ibid., 24.

Ibid., 27.

Ibid., 33.

The section outlining the key indicators states that ‘the following list of 10 thematic indicators has been developed to support national and international efforts towards a human rights-based policy response to the crisis, as well as an early warning tool’ but the body of the report does not state that these indicators should be used as the basis of human rights impact assessment as such.


Ibid., 17.