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Reforming Responsibly: Why Governments Should Assess the Human Rights Impacts of Economic Reforms[1]

By Daniel Bradlow

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For example, a government confronting an economic slowdown may change its budgetary allocations and amend the regulations applicable to specific sectors of the economy to make them more competitive. A government facing a debt crisis, whether acting on its own initiative or under pressure from its creditors, may cut its budget and make adjustments in its allocations, implement tax reforms, or privatize some of its state owned enterprises in order to generate the funds that it needs to pay its creditors. Governments may also seek to make their economies more sustainable and inclusive by incentivizing banks to lend more to small and medium enterprises and not to fund coal projects.

Over time, these reforms should improve the functioning of the economy and improve people's access to jobs and social services. They may also enhance their ability to participate in the social and political life of their society. However, initially they can cause economic and social pain. They cause some people to have reduced access to employment, education, healthcare,

[1] This article is based on the United Nations Human Rights Special Procedures, Open Society Initiative for Southern Africa, Centre for Human Rights, University of Pretoria, *How to Make Economic Reforms Consistent with Human Rights Obligation: Guiding Principles on Economic Reforms and Human Rights Impact Assessments* (published by the Centre for Human Rights, Faculty of Law, University of Pretoria, South Africa, 2020), available at: https://www.ohchr.org/Documents/Issues/IEDebt/GuidePrinciples_EN.pdf and on Danny Bradlow, "Governments should always assess the impact of economic reforms on citizens", *The Conversation*, 11 March 2020, available at: https://theconversation.com/governments-should-always-assess-the-impact-of-economic-reforms-on-citizens-133195/.

social welfare and less time and capacity to participate in the social and political life of their society.

Governments planning to make reforms, therefore, face two challenges. First, they must decide which reform policies to adopt. Usually, they will need to choose from a range of possible reforms that all appear to be a feasible route to the desired outcome. They will need to decide which of these options is most likely to produce the desired changes at the lowest economic and social cost. Their choice is influenced by the expected impact of the possible policy options on such factors as employment, prices, the level of government spending on social welfare programmes, healthcare and education, and the environment. It also will be determined in part by political considerations.

The second challenge is that the costs associated with the reform policies are incurred upfront and so are relatively clear. Moreover, they may also fall disproportionately on particular groups within the society, such as workers, the unemployed, women or minority communities. On the other hand, the benefits are only expected to appear over time. Consequently, their scope and size are inherently uncertain. In addition, they may be distributed unevenly in the society so that the groups bearing the upfront losses may not share equitably in the gains.

This means that while all economic reforms may produce substantial benefits, they may also exacerbate social conflict. They may also not generate the promised benefits.

What can government do to mitigate the risks and maximise the chances of an outcome that is economically productive and socially and environmentally sustainable? What can be done to minimise social dislocations?

Government should develop a good understanding of how each of the different proposals will affect different groups in society – today and over the life of the reforms. This cannot be done merely through dialogue and speculation. It requires impact assessments of each reform option before it is implemented.

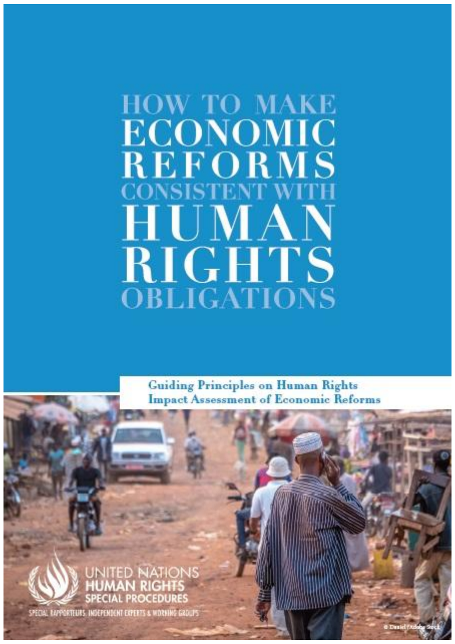
Such impact assessments are standard operating practice for large projects. Their scope has expanded over time. They now include environmental, social, health and, more recently, human rights elements.

Different industry groups have developed international best practice standards for these assessments. For example, the financial sector has developed the Equator Principles. The International Council of Mining and Metals has a new set of Mining Principles. More generally applicable principles include the United Nations Guiding Principles on Business and Human Rights and the International Organization for Standardization's standards on environmental management, sustainability and social responsibility.

There are growing demands for similar impact assessments of substantial government policy initiatives.

In 2019, the United Nations (UN) Human Rights Council adopted a resolution encouraging all states, national human rights institutions and non-state actors to use the Guiding Principles on Human Rights Impact Assessment of Economic Reforms when developing economic reforms. These principles were developed by the UN's Independent Expert on Foreign Debt and Human Rights.

The Centre for Human Rights at the University of Pretoria has developed a user friendly guide to the 22 guiding principles for governments and civil society groups. Although it was designed primarily for the member states of the Southern African Development Community, it can be used by any government or civil society group that wishes to promote sustainable and inclusive economic reforms in their own country.



The principles begin with an overview of the binding human rights obligations that states assumed by signing and ratifying the international human rights conventions.

These treaties oblige governments to respect, protect and fulfil the human rights of people under their jurisdiction. They should ensure that their economic reform efforts promote and do not undermine human rights. This means that governments must implement reforms that are non-discriminatory. These reforms must also allocate the maximum available resources to the realisation of the rights of all people in a country.

Where governments cannot avoid adopting policies that have an adverse effect on human rights, they must ensure that their actions are necessary, proportionate, reasonable, non-discriminatory. They must also ensure that such policies are designed to contribute to the ultimate realisation of human rights.

The guiding principles also specify that governments should ensure that their proposed reform policies are assessed for their impact on human rights. These impact assessments should assess the short, medium and long term impacts of the proposed policies. They should also be based on the principles of participation, access to information and accountability.

The aim is to promote a national dialogue about the proposed policies. The Guiding Principles are flexible about who, inside or outside the government, should undertake these impact assessments. However, the assessors must be credible, independent and technically competent and the impact assessments must inform policymaking.

Time to act

Even before the UN's guiding principles were adopted, governments and non-state actors began assessing economic reform initiatives for their impact on human rights. For example, Thailand's National Human Rights Commission assessed the impact on human rights of the proposed US-Thailand Free Trade Agreement. The UN Economic Commission for Africa, the UN Office of the High Commissioner for Human Rights and the Friedrich Ebert Stiftung jointly commissioned a human rights assessment of the African Continental Free Trade Agreement. The government of Scotland conducts an annual equality impact assessment of its budget. The Center for Economic and Social Rights has coordinated human rights impact assessments of austerity programmes in Brazil, South Africa and Spain. South Africa has a Social and Economic Impact Assessment System that requires government to assess the socioeconomic impact of proposed policy initiatives, legislation and regulation before they are submitted to cabinet for approval.

In the ideal case, the government should do this assessment and should release it for public comment and review. But there's no reason for non-state actors to wait for government to act. Social organisations, representing business, labour and civil society can conduct their own impact assessments of the economic reform proposals of their government and of any other influential groups in the society. This assessment can then inform the debate about the economic reform strategies of the government.

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