

“HUMAN RIGHTS IMPACT ASSESSMENTS MUST BE PART OF ECONOMIC REFORMS”

• *Interview with Juan Pablo Bohoslavsky* •

By Oliver Hudson and Jefferson Nascimento

For many people, the link between foreign debt, finance and human rights may not be immediately clear. However, the Human Rights Council has an independent expert (one of its Special Procedures) to explore exactly this. In this exclusive interview for the Sur International Journal on Human Rights, Juan Pablo Bohoslavsky (Argentina) – the United Nations’ 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 – explains his mandate and how the question of human rights and finance are, in fact, intrinsically linked.

In particular, he discusses how austerity policies – which, although not new, are currently being implemented by governments at an alarming rate around the world – can have a devastating effect on human rights. Bohoslavsky notes how a human rights impact assessment is usually not considered by governments when developing economic reforms, including austerity measures. He is therefore in the process of developing a set of Guiding Principles on this issue, and takes the time to discuss how he has gone about doing this. In particular, he notes the importance of civil society participation in the issue. Finally, he reflects on the Brazilian government’s cancellation of his much anticipated visit to Brazil and explains how he is still hopeful to engage in meaningful dialogue with Brazil through other channels.

More details about Juan Pablo Bohoslavsky can be found on his official webpage (<http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/IEDebtIndex.aspx>). He tweets at @IEfinanceHRs.

Conectas Human Rights • The title of your mandate mentions the effects of foreign debt, but the analysis of austerity measures is often associated with your work. Could you explain the relationship?

Juan Pablo Bohoslavsky • I would like to offer two responses to this question. The first response is formal. My work on economic reform policies, of which austerity, structural adjustment and fiscal consolidation are part, is based also on a request from the Human Rights Council to analyse the impacts on the enjoyment of all human rights, particularly economic, social and cultural rights, and to develop guiding principles for their assessment.¹

A second, more substantive response, is the intrinsic link between debt issues and financial and economic crises. Often, economic strategies and economic reform packages are "justified" by their links with deficit and high levels of public debt. Hence, discussing if and to what extent public debt has to be repaid means also discussing how financial obligations are reconciled with economic and social rights.

Conectas • The adoption of economic austerity measures gained momentum after the global financial crisis (2007-2008). At times, the imbalance of public accounts is used as a justification for severe and long-term budgetary constraints, as occurred in Brazil. How can we include the logic of human rights in this economic debate?

JPB • Allow me first to clarify that the adoption of austerity measures is not entirely new, and certainly not only from the 21st century. From a global perspective we could trace key elements of structural adjustment and fiscal consolidation to a number of crises of the last century, before the 2007-08 crash, whether in Latin America or Asia. This is one of the points I raise in my report presented to the Human Rights Council recently,² the fact that despite decades of experience of the negative impacts on human rights of this type of reforms, in various parts of the world, we continue to see the same recipes applied, with the same negative outcomes. These policies often ignore the imperative of assessing – from a human rights perspective – the impacts on people before these policies and reforms are set in motion.

Now, in relation to your question, the short response is: a human rights perspective must be part of all economic debates, and especially a human rights impact assessment must be part of economic reforms. Economic decisions are never pure and detached from ideology. This exercise (a human rights impact assessment) can support governments and international financial institutions in complying with their international human rights obligations when carrying out economic reforms by providing a specific framework and process for testing how proposed policy responses and related budgetary adjustments measure up against those obligations. Such an exercise contributes to evidence-based policymaking as it provides an analytical basis for forecasting potential human rights impacts when choosing among policy options. At the same time, a human rights impact assessment makes the potential human rights impacts of policy choices more visible and explicit to a wider population and their representatives, and makes policy choices and their consequences

more explicit for policymakers. A human rights-based approach, unlike other more technocratic approaches, provides normative guidance to policymakers about which choices they should make or avoid.



Austerity policies are often justified by an overly simplified or misleading diagnosis — in particular, blaming excessive public expenditure for fiscal crises without even considering other relevant factors, such as external shocks, insufficient revenue streams, illicit financial flows, financial deregulation, widening inequalities, and depressed wages among low- and middle-income households or other failures owing to globalisation. Policy decisions are frequently taken without sufficient consideration of less harmful policy options and reliable analysis of foreseeable outcomes. Information related to these decisions is often not publicly accessible in any meaningful way nor subject to robust participation by groups in society that may be adversely affected. Those who typically shoulder a disproportionate part of the cost of adjustments are the most disadvantaged groups who have marginal voice and political power, which makes their situation and the impact on their rights invisible.

Conectas • Could you talk a little about your most recent report to the UN Human Rights Council in February 2018?

JPB • Thanks for this question, as it allows me to explain the process that I started in 2017, and the various building blocks³ towards the development of the Guiding Principles on Human Rights Impact Assessment of Economic reform policies, which should be submitted to the Human Rights Council by the end of the year.⁴ I see it as a multi-layered process and a crucial opportunity for a diverse group of States and stakeholders to delve into the impacts (documented as well as testimonial), the lessons learnt, the commonalities and the limitations of human rights impact assessments. My main objective with this process is to enhance the understanding of the links between economics and human rights, in times of crisis or acute economic distress, and to provide a robust and practical tool for human rights-centered action.

The report that you are referring to is a crucial building block and I call it the “mapping report”.⁵ This report consolidates existing human rights and other relevant impact assessment tools. It highlights that the guiding principles aim at providing effective and practical guidance and tools to different stakeholders for assessing economic reform policies based on existing international human rights standards and principles. Although such human rights-specific guidance has not yet been adequately developed, relevant tools, experience and research exist. It identifies challenges and some elements to advance towards more effective protection of human rights in economic policy.

The next part of this process is my upcoming report to the General Assembly on the impact of economic reform policies on women’s human rights (it will be available mid-September 2018).⁶ This report aims to analyse the particular ways in which austerity measures, structural adjustment, fiscal consolidation and in general economic reform programmes, have a disproportionate impact on the life of women of all ages and what to do to address the negative impacts. The report aims to provide concrete and critical guidance for the Guiding Principles, from the perspective of women’s human rights.

In addition, the process will include consultations, expert meetings, and importantly a draft text of the Guiding Principles will be posted on my webpage in August 2018 for comments and inputs from any State or stakeholder.⁷ I encourage your readers, especially in the Global South, to engage with this process and to send me their contributions.

Conectas • You have already mentioned how the use of human rights impact assessments to strengthen policy responses to financial crises is analysed in one of the chapters of the report. Can you talk a little more about the importance of these impact assessments and their main requirements?

JPB • While United Nations human rights bodies have already highlighted key human rights principles and standards against which adjustment policies should be reviewed (such as the prohibition of retrogressive measures that are discriminatory or not proportional), there is still a clear need to develop more practical guidance on how to design and implement a human rights impact assessment in practice. That would enable the move from human rights on paper to human rights in action. The guiding principles for assessing the human rights impact of economic reform policies should assist States, international financial institutions and other stakeholders in designing, implementing and monitoring economic reform programmes with the aim of ensuring the protection of human rights.

The guiding principles should be applicable to different circumstances in the context of acute financial crises, in less challenging economic times, in developing countries and in highly advanced economies, and ensure as well prompt consideration of various policy alternatives, beyond austerity measures, in response to fiscal constraints.

They should also provide guidance on and references to analytical approaches that could make visible the potential impacts of reform measures and show how the burden of adjustment is shared across different income quintiles, gender, age and different social groups, including the most marginalised.

Furthermore, they should contain guidance for carrying out cumulative, rights-based impact assessments of various reforms measures that are often implemented in parallel as part of fiscal consolidation packages, such as taxation and public expenditure reform, so that the fuller impact on rights holders and particular groups at risk can be assessed.

And they need to consider the best way to carry out a human rights impact assessment in

order to ensure that the results can effectively inform policy decisions, while at the same time address the independence and credibility of the assessment undertaken.

Conectas • How important is the participation of civil society in developing guiding principles for assessing the human rights impact of economic reform policies?

JPB • In all my work as Independent Expert, I have learnt from and have greatly valued the engagement, contributions and support of civil society organisations and networks. This is true of my country visits, communications, events, thematic reports and it is especially important for the development and later for the use and dissemination of the Guiding Principles. As of today [6 May 2018], I have already received substantive and valuable contributions from civil society around the world referring to what should be included in the Guiding Principles, what type of critical aspects need to be sharpen and what arguments are needed in this type of tool. I continue to engage and invite contributions, critics and also examples. And I especially want to invite civil society in the Global South to engage with this process.

Conectas • In 2017, you visited three countries: Tunisia, Panama and Switzerland. How have the observations and dialogue with civil society in those countries influenced the report?

JPB • During all my country visits, a part of the agenda is devoted to meeting and discussing with civil society. I believe that all of us, special procedures mandate holders, aim to ensure this in our practice. However, in relation to my mandate and work, civil society is sometimes not the “traditional” human rights type. There are a number of organisations working on economic policy, taxation, budgets, corruption or similar issues that do not see themselves or do not necessarily frame their work as human rights work. Part of my role and work is to also build bridges within civil society between these organisations and the relevance of human rights standards, tools, and principles. Ultimately, the use of public funds and public money is critical to issues of equality, redistribution, accountability and effective use of the maximum of available resources, all of which are central principles of a human rights perspective.

Similarly, the work of investigative journalists, such as those that have made public the so called Panama Papers, Paradise Papers, Swiss Leaks, etc. is not often presented and perceived as human rights work. For my work and for the purpose of this mandate, the work civil society organisations have carried out has been very relevant.

Conectas • In March 2018, the Brazilian government cancelled your official visit to the country, with only a few weeks’ notice. The cancellation frustrated civil society organisations, which have worked hard to show how the 2016 freeze in public spending – planned to be in force for 20 years – will have a drastic impact on social rights. What is your evaluation of the visit’s cancellation and how could the criteria included in your report help the Brazilian government take a more human rights approach?

JPB • As you know, all special procedures mandates, such as mine, have to carry out two official

country visits per year, and dates are agreed upon with the Government. In the case of Brazil, the dates for a visit (March 2018) were agreed upon in August 2017 with the Government.

While the visit was postponed at the end of February, I understand that the Government of Brazil will propose new dates, but I have not received them yet. I am still hopeful that the new dates will be confirmed in the coming weeks.

Having said this, there are of course other mechanisms to engage constructively with Governments in my capacity as Independent Expert to assist with assessment and recommendations. Promoting a human rights approach to deal with financial matters is in the interest of the world's peace, equality and inclusive growth. So I am ready to contribute to the country in any way.

• • •

*Interview conducted by Oliver Hudson
and Jefferson Nascimento on 6 May 2018*

NOTES

- 1 • “Resolution 34/03,” Human Rights Council, *A/ HRC/34/L.3*, March 16, 2017, accessed June 6, 2018, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Pages/ResDecStat.aspx>; “Resolution 37/11,” Human Rights Council, *A/ HRC/37/L.22*, March 16, 2018, accessed June 6, 2018, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Pages/ResDecStat.aspx>.
- 2 • “A/HRC/37/54,” Human Rights Council, December 20, 2017, accessed June 6, 2018, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/37/54.
- 3 • Other building blocks include the report on labour rights and austerity “A/HRC/34/57,” Human Rights Council, December 27, 2016, accessed June 6, 2018, <http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/AnnualReports.aspx>, and the upcoming report to the General Assembly on the impact of economic reform policies on women's human rights.
- 4 • “Guiding Principles for Human Rights Impact Assessments for Economic Reform Policies,”

- OHCHR, 2017, accessed June 6, 2018, <http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/DebtAndImpactAssessments.aspx>.
- 5 • “A/HRC/37/54,” Human Rights Council, December 20, 2017, accessed June 6, 2018, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/37/54.
- 6 • For further information and contributions received to date see: “The Impact of Economic Reform Policies on Women's Human Rights,” OHCHR, 2018, accessed June 6, 2018, <http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/ImpactEconomicReformPoliciesWomen.aspx>.
- 7 • The draft Guiding Principles will be published at: “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,” OHCHR, 2018, accessed June 6, 2018, <http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/IEDebtIndex.aspx>.



“This journal is published under the Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License”