

UNDER THE KNIFE: HUMAN RIGHTS AND INEQUALITY IN THE AGE OF AUSTERITY

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In the wake of the global economic downturn triggered by the financial crisis of 2008, austerity has become the new normal. Under pressure to reduce budget deficits, many governments have responded with a package of fiscal austerity measures, typically comprising severe cuts to social expenditure, regressive tax hikes, pension and other social welfare reforms, and the stripping away of labour rights protections.

The impact of these measures on inequality and human rights has been devastating. As the Center for Economic and Social Rights (CESR) has documented over many years and in several different contexts, the austerity drive has mounted a widespread and systematic assault on economic and social rights, particularly the rights to decent work, an adequate standard of living, food, health, housing and social security.¹ Cuts in public spending and clampdowns on anti-austerity protests have also threatened civil and political rights, such as the rights to freedom of expression and association. Austerity is a factor behind the increasing restrictions on civil society space in many countries, making it more difficult to mobilise for fairer alternatives and to access justice for those deprived of their rights.

While the nature and impact of the policies introduced vary from one context to another, one constant is that those facing poverty, marginalisation and discrimination are always hit hardest. In a study published by the Council of Europe Commissioner for Human Rights, CESR highlighted the severe and disproportionate impact of Europe-wide austerity measures on women, migrants and asylum seekers, Roma people and other ethnic minorities, children, young people and older persons, people with disabilities, and lesbian, gay, bisexual and transgender people.² In countries across the globe, economic inequality - the gap between rich and poor - has escalated since the onset of austerity, fuelling the worldwide trend of increasing income disparity and wealth concentration, which has now reached historic levels. As Oxfam recently reported, one per cent of the world's population has now agglomerated more wealth than the rest of the world put together.³

1 'Rights in crisis', Center for Economic and Social Rights (CESR), <http://bit.ly/1rTYBxd>.

2 'Safeguarding Human Rights in Times of Economic Crisis. Issue Paper published by the Council of Europe Commissioner for Human Rights', Council of Europe, November 2013, <http://bit.ly/1V9n6SH>.

3 'An Economy For the 1%: How privilege and power in the economy drive extreme inequality and how this can be stopped', Oxfam, 2016, <http://bit.ly/1SZ7sHQ>.

AUSTERITY: A WORLDWIDE TREND

Austerity is a global phenomenon. After more than five years of draconian cuts to key social sectors and regressive tax, labour and social welfare reforms in countries across Europe, a stark pattern of growing inequality and deterioration in economic and social rights has emerged. Spain, for example, has experienced one of the largest increases in child poverty in the EU since the onset of the crisis, and has now become one of the most unequal countries in Europe. Social exclusion of immigrant households is now more pronounced, and undocumented migrants have been denied access to healthcare on the grounds of health budget cuts.⁴ A similarly unsettling scenario of widening deprivation and increased disparities unfolded in Ireland as a series of austerity budgets prioritised social spending cuts over progressive tax reforms.⁵

But the pursuit of such austerity programmes, while still a central feature of the European economic landscape, is not limited to industrialised economies. Austerity packages are now being rolled out in Latin America as economic recession looms in the region, including in previously buoyant upper middle income countries.⁶ In Brazil, for example, the government responded to economic slowdown by announcing a fiscal adjustment of US\$24 billion in 2015, with budget cuts falling principally in the areas of education, social protection, racial equality and human rights.⁷ In a region that remains the most unequal in the world, the implementation of austerity policies threatens to erode the significant advances made in poverty reduction and social protection in recent years, and to exacerbate economic and social disparities.⁸

Fiscal austerity measures have also been aggressively pursued in lower middle income countries undergoing political transition. In Egypt, for example, the government responded to its post 2011 economic crisis by drastically cutting food and fuel subsidies while also implementing a series of regressive tax reforms, including increasing sales tax on essential commodities.⁹ These measures, which directly contradicted the popular demands for social justice embodied in the uprisings commonly referred to as the Arab Spring, have exacerbated levels of poverty and already pervasive disparities in the country.¹⁰

Austerity programmes are not only spreading across the globe: they are also set to intensify over the coming years. The global economy, having already experienced a major contraction in 2010 and 2011, is now heading into another that is estimated to last until 2020.¹¹ A recent analysis of spending projections in 187 countries shows that the gross domestic product of some 132 countries will be impacted on by this adjustment shock, with 81 developing countries set to reduce public spending during the period up to 2020. The global south will be worst affected, with east Asia and Sub-Saharan African expected to be the worst hit regions.¹² The same study found that more than 100 countries were planning to reduce subsidies, rationalise social safety

4 'Visualizing Rights: A Snapshot of Relevant Statistics on Spain', CESR, January 2015, <http://bit.ly/1TZutf>.

5 'Mauled by the Celtic Tiger: Human rights in Ireland's economic meltdown' CESR, February 2012, <http://bit.ly/1eS3kTi>.

6 'Panorama Fiscal de América Latina y el Caribe 2016: las finanzas públicas ante el desafío de conciliar austeridad con crecimiento e igualdad', Economic Commission for Latin American and the Caribbean (CEPAL), March 2016, <http://bit.ly/1srQU1d>.

7 'Arrocho fiscal detona direitos dos que mais precisam', Instituto de Estudos Socioeconômicos, 26 May 2015, <http://bit.ly/1LGhHv9>.

8 'Social Panorama of Latin America 2014', CEPAL, 2014. See: <http://bit.ly/1zP9pNA>.

9 'Poverty and Austerity - 2014 Egypt UPR Briefing', CESR, 2014, <http://bit.ly/1XzXmzx>.

10 Egypt factsheet series, CESR, 2014, <http://bit.ly/27zSL4K>.

11 'The Decade of Adjustment: A Review of Austerity Trends 2010-2020 in 187 Countries', I Ortiz, M Cummins, J Capaldo, and K Karunanethy, SS Working Paper No. 53, International Labour Organization (ILO), The South Centre and Initiative for Policy Dialogue - Columbia University, 2015.

12 Ibid.

nets, cut or cap public sector wages and introduce pension reforms, with scores of countries also planning health sector and labour market reforms in order to adjust to fiscal contraction. Meanwhile, on the revenue side, 138 countries were set to increase consumption taxes, something likely to adversely affect vulnerable populations, and a third of countries reviewed were considering privatising state assets and services.

The study also observed that such economic adjustment programs have been promoted by the International Monetary Fund (IMF), the Bank of International Settlements and other international financial institutions in a majority of countries around the world since 2010. That austerity packages are being encouraged and expanded despite ample evidence of their harmful implications for human rights and inequality highlights the extent to which economic and fiscal governance at the national and global level remains a rights-free zone.

The belief that fiscal adjustment and reduced public spending would lead to increased private sector confidence and investment has proved unfounded.

IN SEARCH OF FAIRER ALTERNATIVES TO FISCAL AUSTERITY

The renewed austerity drive is all the more alarming in view of growing evidence that it has also failed in its principal objectives. Numerous studies have highlighted the ‘fiscal fallacies’ behind the dogma of austerity:¹³ government deficits are portrayed as a result of profligate public spending, and proof that the social welfare state is an unaffordable impediment to growth and competitiveness. In reality, many countries’ budget deficits were the result of massive financial sector bailouts, decreased revenues due to economic downturn and the cost of necessary but short-lived post-crisis stimulus measures.¹⁴

The belief that fiscal adjustment and reduced public spending would lead to increased private sector confidence and investment has proved unfounded. Rather than staving off the worst impacts of the economic crisis, fiscal contraction brought many developed countries to the edge of a severe and lasting depression.¹⁵ Experience has shown that austerity generates higher unemployment, depresses incomes and decreases domestic demand.¹⁶ Even the IMF, which made fiscal consolidation a precondition for emergency loans in several crisis-hit countries, eventually admitted there was “little support for the expansionary austerity hypothesis.”¹⁷

The argument that, with government coffers all but exhausted, there is no alternative to austerity has also been widely discredited. A number of United Nations agencies and human rights experts have repeatedly recommended progressive taxation, counter-cyclical fiscal policies, investment in productive employment and social protection, and financial market

¹³ ‘Fiscal Fallacies: 8 Myths about the ‘Age of Austerity’, CESR, 2014, <http://bit.ly/1syHLVs>; I Ortiz et al, 2015, op. cit.

¹⁴ I Ortiz et al, 2015, Ibid.

¹⁵ See for example ‘On the Brink: Fiscal Austerity Threatens a Global Recession’, Policy Brief No 24, United Nations Conference on Trade and Development (UNCTAD), December 2011; see also the reports on austerity by the UN Special Rapporteur on Extreme Poverty and Human Rights and the UN Independent Expert on Foreign Debt and Human Rights.

¹⁶ I Ortiz et al, 2015, op. cit.

¹⁷ ‘Expansionary Austerity: New International Evidence’, Working Paper, International Monetary Fund Research Department, July 2011, <http://bit.ly/1ss07Xv>.

regulation as alternative pathways to economic recovery.¹⁸ Extensive research by the International Labour Organization has demonstrated that, even in the poorest countries, sufficient fiscal space exists for social protection programmes to be reinforced rather than cut back. Putting in place more equitable forms of revenue generation through progressive tax reforms and confronting cross-border tax abuse is key to maintaining this fiscal space.¹⁹

CESR's research on financing for international development has shown that a range of progressive tax reforms, coupled with a concerted international effort to confront tax abuse and avoidance, could generate over US\$2 trillion dollars in public finance that governments could use to meet their human rights and sustainable development commitments.²⁰ Research in countries that have experienced some of the most dramatic cutbacks to social spending has also shown that a concerted effort to address tax evasion would generate more than enough revenue to achieve deficit reduction targets without any need for spending cuts. Using estimates from the Spanish Union of Tax Inspectors, CESR calculated that a 10 per cent reduction in tax evasion by large corporations and wealthy individuals in Spain would have generated significantly more than the €27 billion (approximately US\$30 billion) slashed from the national budget in 2011 to 2012.²¹ Similarly, the amount lost each year to the Egyptian public coffers through tax evasion and other illicit financial flows represents about a fifth of the country's total fiscal deficit.²² As Brazil slashes spending on essential services, equality and human rights, little has been done to retrieve the 27 per cent of corporate income tax which it is estimated is lost to tax evasion, or to improve collection of more equitable personal income taxes.²³ Tax policy must therefore be at the core of the search for human rights-centred alternatives to austerity.

MOBILISING FOR ACCOUNTABILITY: CHALLENGES AND OPPORTUNITIES

Regressive austerity measures have effectively burdened the poor and disadvantaged with the costs of the economic crisis, while safeguarding the wealth and privileges of the economic elites responsible for causing it. Outrage at this unfairness has at times boiled over into the streets, with mass mobilisations against austerity and inequality in many parts of the world. The demand for governments to respect basic social rights and tackle extreme inequality has been a unifying feature of these movements. Indeed, the commonality of the injustices experienced and demands made has helped foster transnational solidarity, empowering activists in each context, and in some cases helping secure significant victories.²⁴ In some cases, they have spurred the emergence of new political forces in response to popular frustration with more established alternatives.

18 'Development-led globalization: Towards sustainable and inclusive development paths', UNCTAD, 2011.

19 For more on this see 'Fiscal Space for Social Protection: Options to Expand Social Investments in 187 Countries', ESS Working Paper no. 48, ILO, 2015.

20 'A Post-2015 Fiscal Revolution, Human Rights Policy Brief', CESR, May 2014, <http://bit.ly/1pslf95>.

21 'Spain Factsheet' CESR, 2011, <http://bit.ly/1WEemEY>.

22 'Visualizing Rights: A Snapshot of Relevant Statistics on Egypt', CESR, 2013, <http://bit.ly/1NyxFgg>.

23 CEPAL, 2016, op. cit.; 'Time to Tax for Inclusive Growth', CEPAL and Oxfam, March 2016, <http://bit.ly/1OzZCPV>.

24 For example, civil society pressure forced the Irish government into a dramatic climb-down over its plans to introduce water charges in the country, and parties campaigning in the 2016 general election competed to outdo each other in distancing themselves from the plan.

All too often, however, the austerity context has restricted the space for civil society organising and political participation, as the perceived need for extraordinary measures leads to political exclusion and retrenchment in democratic accountability. This can have especially pernicious and enduring ramifications, as legislation passed amidst the supposed exigencies of a crisis, when generally accepted legal processes are more easily subverted, can prove difficult to reverse further down the road.²⁵

Spain's controversial Decree Law 16/2012, which effectively excluded undocumented migrants from accessing universal healthcare following austerity cuts to the health budget, was passed as an emergency decree, bypassing the normal parliamentary approval process. This was followed by the Ley de Seguridad Ciudadana (Public Security Law), more commonly known as the 'Ley Mordaza' or 'Gag Law', which represented a dramatic crackdown on the wave of public protests against austerity measures. The law, which provoked an outcry from civil society organisations (CSOs) and human rights oversight bodies,²⁶ threatened fines of up to €600,000 (approximately US\$677,000) for participating in unauthorised protests near government buildings and public facilities, and €30,000 (approximately US\$33,900) for filming the police during demonstrations, a response to widespread national and international concern at media images of the heavy-handed policing of anti-austerity demonstrations.²⁷ The 'Ley Mordaza' also included provisions for the summary expulsion of migrants and refugees, overtly contravening international human rights law.

Just as CSOs in austerity-hit countries see the space for civic participation and dissent being stripped away, they are also facing capacity limitations as their funding dwindles. Spain cut its development assistance budget by 49.7 per cent in 2012,²⁸ affecting the funding of many Spanish CSOs also addressing poverty and inequality at home, as well as shrinking funding to civil society groups in Latin America and other regions.

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AUSTERITY IN THE DOCK

With spaces for political participation and social mobilisation being shut down, social justice advocates in many countries have turned to legal or quasi-judicial processes to confront the human rights violations unfolding in their countries as a result of austerity measures. This has included litigation before national courts and recourse to regional and international human rights oversight bodies. The goal of such efforts has been to bring the principles and tools of human rights law to bear in challenging austerity policies and the spectrum of human rights deprivations they have entailed.

At the national level, there has been a proliferation of litigation initiatives aimed at challenging the legality, and remedying the impacts, of unjust austerity policies. In Spain, groups working on the right to health, as well as certain local government authorities, challenged discriminatory healthcare reforms that excluded undocumented migrants from universal primary care,

25 'Crisis Governance in the Administrative State: 9/11 and the Financial Meltdown of 2008', Eric A Posner and Adrian Vermeule, University of Chicago Coase-Sandor Institute for Law and Economics Research Paper Series, 13 November 2008, <http://bit.ly/1syM6ry>.

26 'Two legal reform projects undermine the rights of assembly and expression in Spain - UN experts', Office of the United Nations High Commissioner for Human Rights, 23 February 2015, <http://bit.ly/1OcMXTJ>.

27 'Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Spain, from 3 to 7 June 2013', The Council of Europe Commissioner on Human Rights, 9 October 2013, <http://bit.ly/1R8OdpL>.

28 'Aid to poor countries slips further as governments tighten budgets', Organisation for Economic Co-operation and Development, April 2013, <http://bit.ly/JnTa3x>.

leading to a partial policy reversal and a ruling by the Supreme Court that local governments could design their own law to extend coverage to the affected sector. Portugal's Constitutional Court meanwhile struck down over €1 billion (approximately US\$1.1 billion) of the €5 billion (approximately US\$5.6 billion) in cuts that had been planned in the country's 2013 budget, invoking constitutional human rights provisions.

Access to legal remedies has, however, been undermined in many countries by austerity cuts that target the budgets of judicial systems and reduce their capacity. Across Europe, for example, funding for legal aid was reduced as austerity programmes rolled out, thereby raising an additional impediment for marginalised groups affected by cuts.²⁹

The limited potential for seeking domestic legal remedies in some contexts has led many civil society groups to seek accountability at the international and regional levels. For example, coordinated civil society engagement in shadow reporting led to the governments of Ireland and Spain being called to account for their austerity programmes before the UN Committee on Economic, Social and Cultural Rights. In both cases, the UN body issued strong recommendations concerning the human rights impacts of reforms, echoing civil society concerns. Following its 2012 review of Spain, the Committee was moved to issue guidance to all states clarifying their human rights obligations in the context of crisis and austerity.³⁰ It warned that, in accordance with the principle of non-retrogression, which prohibits any backsliding in economic and social rights protection, any austerity measure that might reduce the enjoyment of these rights can only be justified after careful consideration of all alternatives, such as progressive tax reforms or reallocation of resources from other areas.

Civil society efforts have also found success in pushing regional accountability bodies such as the Inter-American Commission on Human Rights to engage more proactively in confronting the human rights impacts of austerity and scrutinising states' fiscal policies through the lens of human rights principles.³¹

These examples illustrate the scope for adjudication to confront the injustice of austerity. However, social mobilisation is fundamental for adjudication strategies to succeed and have a lasting impact on policy change. As well as the chilled climate for civil society, an additional obstacle for the human rights movement in challenging austerity is the need to adapt its methods of analysis, advocacy and mobilisation to address the complex realities of fiscal policy. There is nevertheless a growing convergence of activists across the human rights, tax justice and development communities committed to forging interdisciplinary tools and strategies to hold governments and other powerful actors to account for the deprivation and disparity wrought by austerity policies across the globe, and to offer a rights-centred framework for the design and implementation of more equitable and sustainable solutions.³²

29 'Evaluation of European Judicial Systems 2012', The European Commission for the Efficiency of Justice, 2012; 'Annual report 2012', European Union Agency for Fundamental Rights, 2012.

30 The letter issued by UN Committee on Economic, Social and Cultural Rights affirms that in order to be in compliance with the Covenant, any policy implemented to address economic crisis should be: temporary, covering only the period of the crisis; necessary and proportionate, in the sense that the adoption of any alternative policy, or a failure to act, would be more detrimental to economic, social and cultural rights; non-discriminatory and cognisant of all possible measures, including tax measures, to support social transfers and mitigate inequalities; and that it protect the minimum core content of economic, social and cultural rights.

31 'Fiscal Policy and Human Rights in the Americas: mobilizing resources to realize rights', CESR and partners, October 2015, <http://bit.ly/1KrjsZR>; 'From the margins to the center: fiscal policy and human rights in the Americas', CESR, 26 October 2015, <http://bit.ly/1W2BWLd>.

32 For more on this, see 'Human Rights in Tax Policy', CESR, <http://bit.ly/1TZD3Zd>; 'Lima Declaration on Tax Justice and Human Rights', 2015, <http://bit.ly/23ooQcw>.

The SDG commitments will remain paper promises unless there is ceaseless vigilance and pressure from civil society for their implementation.

As the austerity juggernaut continues to thunder forward civil society must open up new avenues for accountability to confront the injustice of austerity and inequality. While strategies to achieve this will of necessity be manifold, one clear opportunity for international civil society collaboration lies in the recently agreed Sustainable Development Goals (SDGs). The SDGs contain commitments to policy reform over the next 15 years that, if implemented, would reverse many of the harmful trends and impacts witnessed in the era of austerity.

SDG Goal 10, for example, commits governments to reduce inequality within and among countries, including through fiscal, wage and social protection policies, along with improved regulation of the finance sector. The SDGs and the Financing for Development agreements also include commitments to tackle illicit financial flows and improve international cooperation in tax matters. Such commitments are timely. The Panama Papers scandal highlighted the nefarious impact of tax abuse by wealthy elites in depriving government coffers of the revenues needed to tackle inequality and fulfil human rights, just as the most disadvantaged sectors of the population see wages stagnate, social protection slashed and services they rely upon cut through austerity measures.

The SDG commitments will remain paper promises unless there is ceaseless vigilance and pressure from civil society for their implementation. They will also require meaningful accountability systems at national, regional and international levels to ensure that the targets set are reflected in all relevant policy programmes, and that governments and the private sector are held answerable.³³ Whether the SDGs live up to their potential depends on how effectively civil society activists around the world can maintain the pressure for human rights to be at the core of the economic and development agenda, in order to bring about a transformational shift from austerity to accountability.

33 'Who will be accountable? Human rights and the post-2015 development agenda', CESR, 22 May 2013, <http://bit.ly/1gC1UBt>.