



Safeguarding human rights in times of economic crisis

Issue
Paper



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Safeguarding human rights in times of economic crisis

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List of abbreviations

CEDAW	Convention/Committee on the Elimination of All Forms of Discrimination against Women
CEPEJ	European Commission for the Efficiency of Justice
CERD	UN Committee on the Elimination of Racial Discrimination
CESCR	UN Committee on Economic, Social and Cultural Rights
CESR	Center for Economic and Social Rights
CRC	Convention/Committee on the Rights of the Child
CRPD	Convention/Committee on the Rights of Persons with Disabilities
EC	European Commission
ESC	Economic, Social and Cultural
ECB	European Central Bank
ECHR	European Convention on Human Rights
ECSR	European Committee of Social Rights
EU	European Union
FRA	European Union Agency for Fundamental Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IMF	International Monetary Fund
NHRS	National human rights structure
OHCHR	UN Office of the High Commissioner for Human Rights
PACE	Parliamentary Assembly of the Council of Europe
WHO	World Health Organization

Summary

Europeans are living through the deepest economic recession since the Second World War. What began as a meltdown of the global financial system in 2008 has been transformed into a new political reality of austerity which threatens over six decades of social solidarity and expanding human rights protection across Council of Europe member states. The initial government responses to the economic crisis were characterised by unprecedented fiscal and monetary policies aimed at guaranteeing social protection while stimulating economic demand to prevent a full-blown global depression. However, since 2010, many governments have focused on austerity policies as emergency measures, often side-stepping regular channels of participation and accepted democratic checks and balances. European and international institutions of economic governance have also assumed a central role in enforcing austerity.

Many of these austerity measures – characterised by public expenditure cuts, regressive tax hikes, reduced labour protection and pension reforms – have exacerbated the already severe human consequences of the economic crisis marked by record levels of unemployment. The whole spectrum of human rights has been affected – from the rights to decent work, an adequate standard of living and social security to access to justice, freedom of expression and the rights to participation, transparency and accountability. Vulnerable and marginalised groups of people have been hit disproportionately hard, compounding pre-existing patterns of discrimination in the political, economic and social spheres. Poverty, including child deprivation, is deepening and is likely to have long-term effects. In some cases, the economic crisis is undermining the very capacity of central and local authorities to deliver on the basic promises of a social welfare state and ensure human rights protection for all.

Economic policy is not exempt from the duty of member states to implement human rights norms and procedural principles. As embodied in international human rights law, civil, political, economic, social and cultural rights are not expendable in times of economic hardship, but are essential to a sustained and inclusive recovery. There is growing national and international jurisprudence on the implementation of human rights in the crisis context. This is particularly the case for states' obligations to protect economic and social rights, avoid further erosion and retrogression of these rights and prevent disproportionate impacts of austerity measures on particular sectors of the population. The cross-cutting human rights principles of non-discrimination, equality, participation, transparency and accountability have a specific significance in responses to the crisis.

Human rights standards do not represent precise policy prescriptions. Economic policy in times of crisis requires a complex decision-making calculus, and governments enjoy a margin of discretion in choosing the means for safeguarding rights in times of economic constraint which best fit their circumstances. Nonetheless, human rights and equality do provide a universal normative framework and operational red lines within which governments' economic and social policies must function. This Issue Paper provides practical guidance to Council of Europe member states in navigating the historic opportunities and difficult policy choices they face in upholding human rights duties in times of economic constraint. The Commissioner proposes a set of actionable recommendations and measures which help forge a new path along which governments can align their economic recovery policies with their commitments to human rights and equality. It is necessary to reinvigorate the European social model based on the foundations of human dignity, intergenerational solidarity and access to justice for all.

National human rights structures (NHRs) such as ombudsmen, human rights commissions and equality bodies have an essential role to play in times of economic crisis. As statutory and independent advocates of human rights and equality, NHRs have great potential to promote human rights-compliant responses to the crisis and protect people from discriminatory measures which result in inequalities. They can take an active role in assessing policies and budgets according to human rights standards and create platforms for civil society and government to debate austerity measures. As accessible, low-threshold complaints bodies, NHRs protect people from infringements of their rights resulting from austerity. Governments should strengthen the effectiveness and independence of NHRs so that they are empowered to assume a critical role in safeguarding human rights during economic crisis.

The Commissioner's recommendations

In order to ensure the effective and equal enjoyment of all human rights – civil, political, economic, social and cultural – in times of economic crisis and fiscal austerity, the Commissioner for Human Rights calls on Council of Europe member states to:

1. **institutionalise transparency, participation and public accountability throughout the economic and social policy cycle.** Governments should provide timely access to such key information as budget, tax and financial policies to enable civil society, parliamentary commissions, national human rights structures and courts to monitor and provide oversight over crisis responses. Disaggregated social indicators should be applied to collect data on the cumulative effects of austerity measures on different population groups in order to measure impact, identify disproportionate effects and design policies to protect disadvantaged groups. There is a need to set up channels for social dialogue and citizen participation, in addition to periodic elections, in order to take civil society's views into account in policy making on austerity measures;
2. **conduct systematic human rights and equality impact assessments of social and economic policies and budgets.** *Ex ante* and *ex post facto* assessments should gauge the present and future impacts of austerity measures and budgets on the enjoyment of human rights. Audits of fiscal policy should evaluate whether fiscal contractions are strictly necessary by identifying all possible resourcing alternatives. Austerity measures should not be discriminatory and they should remain temporary, covering only the period of the crisis. Funding levels have to be restored when more resources become available;
3. **promote equality and combat discrimination and racism.** Comprehensive equal treatment legislation should be fully implemented during the crisis period. Particular attention should be given to combating racism and discrimination based on socio-economic status as a means of preventing poverty. Positive measures in favour of disadvantaged groups, including women, are necessary to address disproportionate and compound effects of the crisis and austerity measures. Marginalised and disadvantaged individuals' access to remedies and assistance as victims of discrimination should be facilitated by independent and effective national equality bodies;
4. **ensure social protection floors for all.** Governments should maintain social security guarantees for basic income and health care to

ensure universal access to essential goods and services during the crisis. Governments should resist any pressure to undermine such basic guarantees by ring-fencing public budgets to protect at least the minimum core levels of economic and social rights at all times. There is a need to strengthen legal guarantees of quality social protection for the most disadvantaged and marginalised groups of the population;

5. **guarantee the right to decent work.** The rights to fair and equal remuneration for equal work, safe and healthy working conditions, collective bargaining, freedom from forced and child labour, elimination of workplace discrimination, access to unemployment benefits and compensation for employment-related injuries should be upheld during the crisis. It is essential to ensure non-discriminatory access to employment and education. Positive measures in favour of people with disabilities, Roma and women are needed to facilitate their labour inclusion. Governments should adopt strategies that reduce unemployment from their current levels, with a particular focus on youth and long-term unemployment;
6. **regulate the financial sector in the interest of human rights.** States have a duty to protect individuals from infringements of their human rights by third parties, including financial institutions. Transparent financial regulations should be adopted to provide accountability mechanisms that penalise harmful practices and prosecute perpetrators. Adequate means of redress and remedies have to be available to those adversely affected by financial sector improprieties. Vital public funds should not be used to rescue financial institutions that engage in short-sighted and irresponsible practices;
7. **work in concert to realise human rights through economic co-operation and assistance.** Member states should consider the human rights impacts of their decisions taken within international and European institutions of economic governance. Governments have a responsibility to demonstrate that their decisions prioritise, and at the very least do not impede, the realisation of human rights. States which receive international financial assistance should be empowered to ensure that the enjoyment of human rights is protected in international loan agreements. Governments should enhance co-operation on tax matters for combating tax evasion to help states mobilise the resources necessary for fulfilling their human rights obligations;
8. **engage and support an active civil society.** Governments should respect the critical role of NGOs in relation to austerity and their freedoms of expression, assembly and association. Systematic dialogue,

consultation and co-operation should be promoted between authorities and civil society to make budgeting and austerity measures more effective and tailor them to existing needs. The impact of budget cuts on the funding of NGOs should be assessed before implementation so as not to jeopardise civil society's ability to monitor the consequences of austerity and provide services to the groups affected;

9. **guarantee access to justice for all.** Governments must guarantee effective access to justice during economic downturns by maintaining the judiciary, the legal aid system and low-threshold complaints mechanisms such as ombudsmen and equality bodies. Access to justice can also be enhanced through public interest litigation and simplified and less costly procedures. Particular attention should be given to providing assistance and legal aid to disadvantaged and marginalised groups of people to enable them to voice their complaints;
10. **ratify European and international human rights instruments in the field of economic and social rights.** Member states which have not yet done so should ratify the revised European Social Charter and its collective complaints mechanism, the European Convention on Social Security and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Governments should reinforce national implementation of the decisions and conclusions of the European Committee of Social Rights and the UN Committee on Economic, Social and Cultural Rights. Economic and social rights should be made justiciable before the domestic courts;
11. **systematise work for human rights.** A rights-based approach should be integrated in the ordinary work of public administration at all levels, including in the formulation of economic policies and budgeting, to ensure that human rights and equality duties are taken into account in responses to the economic crisis. Member states should consider the adoption of a national action plan for human rights to increase the effectiveness of, and participation in, human rights work while identifying priorities for addressing the effects of the crisis on the enjoyment of human rights;
12. **engage and empower national human rights structures in responses to the economic crisis.** Member states should strengthen the effectiveness and independence of NHRs, such as ombudsmen, national human rights commissions and equality bodies, which can protect people in an accessible way against infringements of human rights resulting from austerity. Governments should consult NHRs in decision making on austerity measures and budgets to benefit from

their expert advice on human rights and equality, and the groups that need the most protection. Member states should ensure that their NHRSs have sufficiently broad mandates, also in the field of economic and social rights, as well as the expertise and stable funding needed to cover them effectively.

Introduction

In 2012, the Council of Europe Parliamentary Assembly expressed its concern about austerity measures and pointed out that “the restrictive approaches currently pursued, predominantly based on budgetary cuts in social expenditure, may not reach their objective of consolidating public budgets, but risk further deepening the crisis and undermining social rights as they mainly affect lower income classes and the most vulnerable categories of the population”.¹

In times of crisis, governments may not immediately view human rights as relevant to the urgent task of rescuing the economy from the brink of collapse. But as the Commissioner for Human Rights has argued, “periods of financial dire straits should not be seen as emergency situations that automatically entail the curtailment of social and economic rights and the deterioration of the situation of vulnerable social groups. On the contrary, such periods of time should be viewed by states as windows of opportunity to overhaul their national human rights protection systems and reorganise their administration in order to build or reinforce the efficiency of national social security systems, including social safety nets that should be operational when necessary”.²

This Issue Paper outlines the human rights consequences of austerity measures implemented across Europe in the wake of the global financial and economic crises, and provides supportive guidance to the member states of the Council of Europe for upholding their human rights and equality duties in times of economic constraint. The Issue Paper sets out a series of concrete recommendations for human rights-compliant responses to the crisis and addresses the important and unique role of national human rights structures in ensuring that human rights are safeguarded in the crisis context.

Chapter 1 of this Issue Paper provides a short account of some of the impacts of the economic crisis and austerity measures on the enjoyment of human rights in Europe.

Chapter 2 presents the human rights norms and standards most relevant in times of economic downturn and recovery.

Chapter 3 provides concrete guidance on how to effectively implement these norms in practice, thereby illustrating how human rights law can help to frame and shape the member states’ responses to the complex and urgent economic dilemmas they face.

1. PACE, Resolution 1884, “Austerity measures – a danger for democracy and social rights”, 26 June 2012.

2. The Commissioner’s Report on Portugal, CommDH(2012)22, p. 15.

Chapter 4 concludes by outlining the significant role national human rights structures can play in monitoring and reviewing the design and implementation of austerity policies and in providing accountability for the infringements of human rights resulting from austerity.

The Commissioner's recommendations can be found at the beginning of the document.

1. Impacts of austerity measures and economic crisis on the enjoyment of human rights

1.1. A typology of austerity

Europeans are living through the deepest economic recession since the Second World War. What began as a meltdown of the global financial system in 2007 and 2008 has been transformed into a new political reality of austerity which threatens over six decades of growing social solidarity, economic integration and human rights protection across Council of Europe member states.

Government policy responses to the first wave of the economic crisis (roughly 2007 to 2009) were characterised by unprecedented counter-cyclical fiscal and monetary policies aimed at guaranteeing social protection, re-establishing financial stability and stimulating economic demand to prevent a full-blown global depression.³ By 2010, however, many European governments had made the reduction of deficit levels their overriding policy priority. Most national deficits had not resulted from unsustainable public expenditure before the crisis period but from public rescues of financial markets (estimated at €4.5 trillion in the EU between 2008 and 2011, or 37% of the region's GDP)⁴ and reductions in tax revenue stemming from the economic downturn and record unemployment.⁵ Nonetheless, the policy response of the second wave of the crisis (2010-2013) was characterised by contractionary fiscal policies, cuts in public expenditure, selective tax hikes, pension reforms and reductions in labour protection aimed at curbing public deficits, revitalising the economy and gaining financial market confidence. After three years of austerity, these chosen measures have not yet achieved their stated aims.⁶

Austerity is a worldwide phenomenon. According to estimates, contractions in public spending as an ongoing consequence of the global economic downturn are affecting 5.8 billion people or 80% of the global population in 2013, increasing to 6.3 billion or 90% of persons worldwide by 2015. In Council

3. EC, "A European Economic Recovery Plan", 26 November 2008; World Bank, *The Jobs Crisis – Household and Government Responses to the Great Recession in Eastern Europe and Central Asia*, 2011.

4. EC, "Bank recovery and resolution proposal: Frequently Asked Questions", 6 June 2012.

5. IMF, "A New Globalization for a New World", Opening Address by the Managing Director to the 2010 Annual Meetings of the Boards of Governors of the World Bank Group and the IMF, 8 October 2010.

6. IMF, "Fiscal Monitor: Fiscal Adjustment in an Uncertain World", April 2013.

of Europe member states, fiscal adjustment strategies have been remarkably varied, as have the associated impacts across the region. The policy responses of countries receiving international assistance have differed from those of countries affected more indirectly by the crisis. Those Council of Europe member states which are also members of the EU are subject to specific regulations on economic governance agreed at EU level. It should also be noted that many European countries have undergone structural reforms in the past which resemble current austerity policies. Despite the important differences, a general typology of austerity measures can be deduced both from earlier structural reform policies and those being carried out across Europe today. In general, austerity measures fall into four types, each with its own unique consequences for the enjoyment of human rights: a) public budget contractions affecting social spending, b) regressive taxation measures, c) labour market reforms, and d) structural reforms to pension plans.⁷

Public social spending has been the primary target of austerity measures in many member states. This has occurred through wage bill cuts or caps, especially for education, health and other public sector workers, the rationalisation of social protection schemes, the elimination or reduction of subsidies on fuel, agriculture and food products, stricter accessibility conditions for a number of social benefits, and other cuts to education and health-care systems.

Reforms of the tax regime have also been a central part of the austerity mix as governments have sought to address deficits by recovering revenue lost due to the economic downturn. Many of these tax reforms have raised considerable sums and offset the need for further budget cuts. Yet tax increases are rarely neutral in their distributional impact, and some have added extra burdens to low-income families who already suffer disproportionately from cuts in public services. Value-added taxes and other consumption taxes have been a preferred strategy of many governments. If not properly designed with clear exemptions on essential items, consumption taxes often force low-income people to shoulder high responsibilities for economic recovery as they spend a higher proportion of their income on food and basic services. Taxes on income, property and financial transactions, by contrast, generally have more equal distributive effects.

Many governments have engaged in labour reforms with the aim of increasing competitiveness and supporting business development. These reforms have included eroding collective bargaining powers, easing dismissals, slowing or

7. I. Ortiz and M. Cummins, "Age of Austerity: A Review of Public Expenditures and Adjustment Measures in 181 Countries", Initiative for Policy Dialogue and the South Centre Working Paper, May 2013; Report of the UN Independent Expert on extreme poverty and human rights, Magdalena Sepúlveda Carmona, 17 March 2011, A/HRC/17/34.

reversing salary adjustments to inflation (namely decreases in real wages) and altering other employment protection regulations. The empirical case that weakened labour protection drives business development and growth is, however, questionable.⁸

The fiscal crisis has also provided a context for long-discussed structural reforms to pension systems. Most Council of Europe member states are considering or have begun such reforms which expressly aim to go beyond temporary spending cuts by, for example, increasing the retirement age, reducing retirement benefits and restricting the accessibility of the pension system. According to the OECD, these measures are unlikely to deliver immediate social spending reductions.⁹

1.2. Economic, social and cultural rights

Some of the most drastic and lasting human rights consequences of austerity have been in the domain of economic and social rights.¹⁰

The first major casualty of the economic crisis and subsequent austerity measures has been the enjoyment of the right to work. The dramatic spike in seasonally adjusted unemployment in Europe since 2008 reached historic levels of 12.1% in the eurozone area and 10.9% in the EU27 in June 2013, with depression-level unemployment rates haunting Spain, Greece and Portugal.¹¹ As contractionary fiscal policies dampen growth prospects, long-term unemployment is becoming more entrenched,¹² with long-lasting structural implications. In 2012 alone, the European Committee of Social Rights (ECSR) found 13 countries in breach of their duty under Article 1(1) of the revised European Social Charter to pursue full employment policies.¹³

A wayward economic recovery, coupled with a weakening of worker protection, is likely to threaten rights at work, including the rights to fair remuneration, to collective bargaining and to safe and healthy working conditions. In Spain, for example, the minimum wage remains frozen well below European

8. ILO, *World of Work Report 2012: Better Jobs for a Better Economy*.

9. OECD, November 2012, Social spending during the crisis: Social expenditure (SOCX) data update 2012.

10. PACE, Resolution 1884 (2012); Report of the UN Independent Expert on extreme poverty and human rights, Magdalena Sepúlveda Carmona, 17 March 2011, A/HRC/17/34.

11. Eurostat News Release 118/2013, 31 July 2013, "Euro area unemployment rate at 12.1%".

12. ILO, "World of Work Report 2013: Repairing the economic and social fabric: European Union Snapshot".

13. Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Greece, Italy, Latvia, the Republic of Moldova, Slovakia, "the former Yugoslav Republic of Macedonia" and Turkey.

Social Charter standards established to guarantee a decent standard of living.¹⁴ In Greece, the ILO Committee on Freedom of Association found repeated and extensive interventions into free and voluntary collective bargaining and an “important deficit of social dialogue”.¹⁵ High unemployment tends to weaken workers’ bargaining power, leading to high worker vulnerability and lower economic growth rates.¹⁶ Labour exploitation, including child labour, human trafficking and mistreatment of migrant workers, has been a constant concern of experts as demand for cheap labour increases, economic conditions deteriorate and fewer public authorities are available to conduct labour inspections or offer child protection services.¹⁷

Concomitantly with the setbacks in the right to decent work, the right to an adequate standard of living has been threatened as a result of austerity measures. The compound effects of setbacks in decent work opportunities, cuts in social services and regressive tax reforms have contributed to deepening poverty in Europe.¹⁸ In 2011, the percentage of people at risk of poverty or social exclusion reached 24.2% in the EU27.¹⁹ In Estonia, for example, the proportion of the population living below the absolute poverty line (that is, below the subsistence minimum) increased from 8.2% in 2007 to 11.7% in 2010.²⁰

The right to social security and social protection has also suffered austerity-related setbacks. Social insurance and assistance programmes build resilience against social and financial risks and provide access to essential goods and services, meeting needs which would ordinarily go unmet in economic downturns. As the crisis has deepened, many member states have faced exponential increases in demand for social protection. Simultaneously, constrained social security revenue coupled with austerity and fiscal consolidation has pushed the financial and administrative capacities of many

14. Eurostat Labour Force Survey 2012 and CESR, “Visualizing Rights – Spain: Fact Sheet No. 12”, May 2012.

15. ILO Committee on Freedom of Association, Case No. 2820 “Findings and recommendations on Greece in the Committee Report”, 2012.

16. ILO, “Is aggregate demand wage-led or profit-led? National and global effects, Conditions of Work and Employment Series No. 40”, Working Paper, 30 October 2012.

17. Report of the UN Special Rapporteur on trafficking in persons, especially women and children, 12 August 2009, A/64/290; UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Mission to Romania, 30 June 2011, A/HRC/18/30/Add.1; Report of the UN Independent Expert on foreign debt and human rights, 13 August 2012, A/67/304.

18. EC, “The social effects of labour market developments in the EU in the crisis”, Research note 7/2012; EU employment and social situation, quarterly review, December 2012.

19. Eurostat, News Release, 171/2012, 3 December 2012.

20. The Commissioner’s Report on Estonia, CommDH(2013)12, p. 5.

social protection institutions beyond their limits.²¹ Many governments have chosen to reform pension systems, potentially deepening the increasing vulnerability and risk of poverty among older persons. In Greece, for example, the ECSR observed in its decision on a collective complaint that pension reform measures would “risk bringing about a large-scale pauperisation of a significant segment of the population.”²²

The right to housing has been compromised as a result of the economic crisis. The housing market crisis at the root of the financial and economic crises, coupled with growing unemployment, induced a sharp increase in evictions as a result of non-payment of mortgages, foreclosures and home repossession in many countries.²³ Since 2007, homelessness has increased in 15 of the 21 countries monitored by national experts. The crisis has been identified as a key driver of expanding homelessness in Greece, Ireland, Italy, Portugal, Spain and the UK. New groups of homeless have emerged, with homelessness spreading among migrants, young people, women and families.²⁴

The right to food has been affected by austerity measures when governments have limited food subsidies without adequate safeguards to ensure access to the minimum essential levels. Reduction in the consumption of staple food was reported as the most frequent coping mechanism in central and eastern European countries.²⁵ Food banks are experiencing record lines in the UK, for example, with cuts to the welfare system the most common reason given.²⁶

Many people have faced setbacks in their right to water as a result of austerity. As a condition for international assistance from the EC, ECB and IMF, new fees for domestic water use have been introduced in Ireland, for example.²⁷

21. International Social Security Association, “Coping with the crisis: Managing social security in uncertain times, ISSA Crisis Monitor Project”, 2012; PACE Committee on Social Affairs, Health and Sustainable Development (Rapporteur: Denis Jacquat), “Decent pensions for all”, 9 April 2012, Doc. 12896.

22. ECSR, *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, complaint no. 76/2012, decision on the merits of 7 December 2012, § 81.

23. The Commissioner’s Recommendation on the implementation of the right to housing, CommDH(2009)5 and Report on Spain, CommDH(2013)18, pp. 8-9; Report of the UN Special Rapporteur on the right to adequate housing: the financial crisis and its causes, 4 February 2009, A/HRC/10/7.

24. FEANTSA, “On the Way Home?”, FEANTSA Monitoring Report on Homelessness and Homeless Policies in Europe, 2012.

25. European Bank for Reconstruction and Development, “The second Life in Transition Survey (LiTS II)”, 2011.

26. Oxfam and Child Action on Poverty, *Walking the Breadline: The Scandal of Food Poverty in 21st century Britain*, May 2013.

27. IMF, “Ireland: Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding; Letter of Intent and Memorandum of Understanding on Specific Economic Policy Conditionality”, 28 November 2011.

Long-standing concerns about decreased attention to water infrastructure maintenance have been accentuated as a result of austerity measures, with serious risks associated with the quality and accessibility of water. Plans to privatise public water utilities have been part and parcel of several austerity packages which may threaten the affordability of water and the effective accountability of water suppliers.²⁸

The right to education has suffered setbacks, primarily due to reductions in education budgets. Investment in education fell in one third of OECD countries between 2009 and 2010 as a result of the economic crisis.²⁹ Spain cut its education budget by 21.4% between 2011 and 2012, for example, and Estonia by 10% between 2008 and 2009. Cuts in education subsidies and scholarships, school teachers' salaries and budgeting for schools affect the quality, accessibility and affordability of education and can also result in early school dropouts with long-term effects on the children concerned.³⁰

Cuts in health-related spending have affected the right to enjoy the highest attainable standard of health. In Greece, the EC, ECB and IMF have demanded that public spending on health should not exceed 6% of GDP, with a potentially long-term impact on public health. Latvian budget cuts in the health sector have undermined the availability of and access to health care.³¹ Out-of-pocket fees have increased in many countries despite evidence that the introduction of health co-payment systems is associated with decreased use of health services and worsening health outcomes for both high-risk and low-income patients.³² Weakened mental health, substance abuse and suicide have been linked with austerity measures.³³ Recent improvements in life expectancies across the region are being compromised due to the crisis.³⁴

1.3. Civil and political rights

The rights to participate in public affairs and to transparency through the provision of timely, accessible and relevant information have suffered as a

28. Report of the UN Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, 11 July 2013, A/HRC/24/44; Stockholm International Water Institute (SIWI), "The Global Financial and Economic Crisis and the Water Sector", 2009.

29. OECD, *Education at a Glance 2013: OECD Indicators*, p. 186.

30. The Commissioner's Report on Spain, CommDH(2013)18, pp. 9-10; Report on Estonia, CommDH(2013)12, p. 4; Report on Portugal, CommDH(2012)22, pp. 6-7.

31. M. Karanikolos et al., "Financial crisis, austerity, and health in Europe", *The Lancet*, 13 April 2013; Report of the UN Independent Expert on foreign debt, Cephas Lumina, Addendum – Mission to Latvia, 27 May 2013, A/HRC.23/37Add.1.

32. N. Mas et al., "Los sistemas de copago en Europa, Estados Unidos y Canada: Implicancias para el caso español", IESE Business School, University of Navarra, November 2011.

33. WHO, "Impact of economic crises on mental health", 2011.

34. WHO, "European Health Report 2012", pp. 8-10.

result of the crisis. Many governments have speedily drawn up austerity policies, side-stepping regular channels of participation and social dialogue on the pretext of a national financial emergency. The executive has often been allotted greater margins of authority to adopt austerity measures without consultation with the legislature, challenging accepted democratic checks and balances. National-level democratic decision making is further thwarted by the fact that deficit caps and other key fiscal rules made at the European intergovernmental level determine spending levels of many national governments, with little to no participation from those suffering the consequences of cutbacks.³⁵

The severity of austerity measures alongside the frequent failure to consult with the people affected has provoked large-scale demonstrations especially in Spain, Portugal and Greece. Concerns have been raised about the use of excessive force against demonstrators and infringements of the freedoms of expression and peaceful assembly. Harsh reactions to social unrest may engender mistrust in the democratic system.³⁶

Austerity measures have also threatened access to justice by weakening the accessibility and capacity of the judicial system.³⁷ Between 2008 and 2010, the budgets of judicial systems were reduced together with general reductions in public expenditure in Croatia, Bosnia and Herzegovina, Hungary, Serbia, Estonia, Lithuania and Latvia.³⁸ Court fees have also been increased in some countries as a response to the crisis. In Estonia, for example, state fees for civil and certain administrative law proceedings underwent two- to five-fold increases in 2009.³⁹ In 2011 and 2012 legal aid was subjected to significant cuts in Germany, Ireland and the United Kingdom, restricting its availability to a more limited number of cases.⁴⁰

Media freedoms have endured setbacks in the context of austerity measures, including in countries where fiscal contraction has been deepest.⁴¹ Public and private media have suffered staff and salary cuts and the closure of outlets, including the temporary closure of the Greek public broadcaster. Not only do these cutbacks contribute to worsening existing problems of decreasing

35. PACE, Resolution 1888, “The crisis of democracy and the role of the State in today’s Europe”, 27 June 2012.

36. The Commissioner’s Report on Spain, CommDH(2013)18, pp. 22-26; Amnesty International, “Police violence in Greece: Not just ‘isolated incidents’”, 2012.

37. Report of the UN Special Rapporteur on extreme poverty and human rights, 9 August 2012, A/67/278.

38. CEPEJ, “Evaluation of European Judicial Systems 2012”, p. 60; “Edition 2010”, pp. 46-47.

39. The Commissioner’s Report on Estonia, CommDH(2013)12, p. 10.

40. FRA, *Annual report 2012*, p. 243.

41. Freedom House, “Freedom of the Press 2013: A Global Survey of Media Independence”.

media diversity, they also threaten the effective operation of a fundamental pillar of democracy. The ability of journalists to perform their essential educational and watchdog roles has been impaired, curtailing freedom of expression and the right to be informed.

1.4. Disproportionate impacts on disadvantaged and marginalised groups of people

Full and substantive equality for all, while increasingly protected by law in Council of Europe member states, remains an enormous challenge in practice, with systemic barriers to equality further aggravated by the economic crisis. Austerity-driven policy responses to the crisis are exacerbating already widening inequalities and ingrained discriminatory practices.⁴² Those discriminated against in economic, cultural and social life often also find themselves far from political decision-making and may not be in a position to speak up against the effects that austerity measures have on their lives. The victims of multiple and compound discrimination are especially at risk.

Unemployment, discriminatory and precarious working conditions and rising xenophobia affect the daily lives of migrants and asylum seekers. Due to budget cuts, fewer resources are made available for the reception of asylum seekers, programmes to facilitate the social and economic integration of migrants, and legal aid and access to social and health services.⁴³ Even though migrant workers contribute to the tax base, they face increased barriers to accessing essential social services. In Spain, for example, austerity-prompted reforms have resulted in the denial of previously guaranteed public health care to undocumented migrants,⁴⁴ leaving them exposed to the increased health risks associated with recessions.

The economic crisis has resulted in a further deterioration of the already difficult economic situation of many ethnic minorities, including the Roma. Roma are particularly exposed to long-term unemployment and recent figures show that 70% to 90% of Roma in the countries surveyed live in conditions of severe material deprivation.⁴⁵ Anti-Roma sentiment is fuelled by the economic downturn, making positive measures for the protection of Roma

42. OECD, *Divided we stand: why inequality keeps rising*, 2011.

43. OECD, *Settling in: OECD indicators of immigrants integration 2012*; EC, "Inclusion of young migrants", Research note 6/2012; CESR, "Mauled by the Celtic Tiger: Human rights in Ireland's economic meltdown", February 2012; The Commissioner's Report on Greece, CommDH(2013)6.

44. "Urgent Measures to Guarantee the Sustainability of the National Health System and to Improve the Quality and Security of Loans", Spanish Royal Decree 16/2012.

45. European Employment Observatory, "Review: Long-term Unemployment 2012"; FRA, *The Situation of Roma in 11 EU Member States: Survey results at a glance*, 2012.

unpopular.⁴⁶ Democracies across Europe have also been seriously threatened by an upsurge of intolerance, xenophobia and racism and worrying trends of extremism, amplified by the dire economic situation.⁴⁷ Many politicians have chosen to redirect public scrutiny of their conduct by scapegoating the powerless and blaming the victims – be they ethnic or religious minorities, migrants or asylum-seekers, Roma or low-income people. Racist acts have all too often been met by weak state responses.⁴⁸

Structural inequalities and disparities affecting women's enjoyment of human rights have been worsened by the cumulative effects of several austerity measures, particularly as regards the rights to decent work and an adequate standard of living.⁴⁹ In 2011, women faced a higher risk of poverty than men in the EU, with rates of 25.2% and 23% respectively.⁵⁰ Cuts in public-sector jobs, pensions and services, including childcare, parental and child benefits, health care and services to victims of violence and legal aid, affect women in particular. Cuts have also been made in gender equality programmes.⁵¹ Women who are primary caretakers in the family have assumed the largely unrecognised burden of care, such as for people with disabilities or children, which has grown heavier as states reduce staff and financial support and impose stricter conditions for receiving benefits. As governments recede from social protection and the uncompensated care economy grows, women's ability to participate on an equal footing in public and economic life dwindles.⁵²

Child poverty and youth unemployment are major concerns which are likely to have long-term effects. In many countries child poverty has increased even more sharply than poverty rates among the general population. Austerity measures related to child and family benefits, generalised unemployment

46. The Commissioner's Report on Portugal, CommDH(2012)22.

47. Report of the UN Special Rapporteur on racism, Mutuma Ruteere, 29 May 2012, A/HRC/20/38; FRA, "EU-MIDIS Data in Focus Report 6: Minorities as Victims of Crime", 2012.

48. The Commissioner's Human Rights Comment, "Europe must combat racist extremism and uphold human rights", 13 May 2013; The Commissioner's Report on Greece, CommDH(2013)6.

49. Report of the UN High Commissioner for Human Rights on the impact of austerity measures on economic, social and cultural rights, 7 May 2013, E/2013/82.

50. Eurostat, "Headline indicators 2005–2012".

51. EC, "Women and men in the crisis", Research note 4/2012; European Women's Lobby, "The Price of Austerity", 2012; J. Butterworth and J. Burton, "Equality, Human Rights and the Public Service Spending Cuts: Do UK Welfare Cuts Violate the Equal Rights to Social Security", *The Equal Rights Review*, Vol. 11, 2013.

52. Oxfam International and European Women's Lobby, *An Invisible Crisis? Women's poverty and social exclusion in the European Union at a time of recession*, March 2010; J. Lethbridge, "Impact of the Global Economic Crisis and Austerity Measures on Women", Public Services International, 2012.

and rising food prices are central issues affecting the well-being of children. School dropouts, child labour and domestic violence are further concerns.⁵³ The correlation of spiralling unemployment among young people under 25 with the crisis years is undisputed. Over half of all young people are officially unemployed in Spain, Portugal and Greece, with little improvement expected until 2016. The rate of young people not in employment, education or training (NEET) has increased by around 1% since 2008 region-wide, and by 4% and 6% in Spain and Greece respectively, with severe and long-lasting “scarring” consequences for these young people.⁵⁴

As Europe as a whole ages, and with young people finding an increasingly inhospitable labour market, intergenerational solidarity is more important than ever. Yet austerity affects older people as well. Discrimination and stigmatisation on the basis of age in the labour market, disproportionate cutbacks to pensions, the availability and adequacy of long-term care services and elder abuse are principal concerns. Older women are particularly vulnerable to the effects of the crisis as their income/pension is often substantially less than that of men as a result of cumulative discrimination.⁵⁵

People with disabilities have been acutely affected by unemployment and austerity measures which have limited their access to personal assistance and reasonable accommodation. Since the beginning of the economic crisis, the participation of persons with disabilities in the labour market has decreased in Europe. There is also evidence that austerity budgets have restricted the access of people with disabilities to community living, education, primary care and assistance, posing barriers to de-institutionalisation.⁵⁶

53. UNICEF, *A recovery for all: rethinking socio-economic policies for children and poor families*, 2012; Eurochild, “Survey on the effects of economic and financial crisis on children and young people”, 9 October 2009 and Reports, January 2011 and December 2012; EC, “Material deprivation among children”, Research note 7/2011; The Commissioner’s Report on Portugal, CommDH(2012)22; Report on Estonia, CommDH(2013)12; Report on Spain, CommDH(2013)18.

54. ILO, *Global Employment trends for youth 2013 – a generation at risk*; and *Global Employment Trends 2013 – Recovering from a second jobs dip*; PACE, Resolution 1885, “The young generation sacrificed: social, economic and political implications of the financial crisis”, 26 June 2012.

55. PACE Committee on Social Affairs, Health and Sustainable Development (Rapporteur: Denis Jacquat), “Decent pensions for all” working document, 9 April 2012, Doc. 12896; The Commissioner’s Report on Portugal, CommDH(2012)22; Report on Estonia CommDH(2013)12; Report of the UN High Commissioner for Human Rights on the human rights of older persons, 20 April 2012, E/2012/51.

56. European Foundation Centre, European Consortium of Foundations on Human Rights and Disability, “Assessing the impact of European governments’ austerity plans on the rights of people with disabilities, key findings”, October 2012; The Commissioner’s Report on Estonia, CommDH(2013)12; Report on Spain, CommDH(2013)18.

The crisis has also had a deleterious impact on the situation of other disadvantaged groups, though region-wide documentation has been more limited. For example, some civil society groups have reported that the human rights of lesbian, gay, bisexual and transgender people have been adversely affected by austerity measures, particularly in terms of access to health care and services.⁵⁷

1.5. Interdependence of human rights and intergenerational effects of austerity

Human rights are indivisible, interdependent and interrelated. Setbacks concerning economic, social, cultural, civil and political rights are intimately interconnected and have compound effects on individuals. Infringement of the enjoyment of economic, social and cultural rights also affects the enjoyment of civil and political rights. For example, homelessness and living in institutions can easily result in a violation of the right to private and family life. Poverty can become a serious obstacle to the enjoyment of a wide variety of human rights.

Human rights violations related to austerity can also have long-term and intergenerational effects. The loss of a decent job without an effective social protection programme in place can quickly lead to eviction from housing and homelessness, and ultimately result in ill health and even death.⁵⁸ Children exposed to poverty and malnutrition in their families may suffer from stunted physical growth and lasting social and health effects into adulthood. In addition, their educational achievements are likely to be inhibited, hindering their potential as human beings in society. An increasing number of children are dropping out of school to find employment and support their families, risking life-long setbacks in educational achievement. This creates the conditions for job insecurity coupled with the re-emergence of child labour and exploitation.⁵⁹ As a result, Europe risks producing a “lost generation” of disillusioned young people with potentially grave consequences for intergenerational solidarity, social cohesion and long-term political stability.⁶⁰

57. See for example, Joint civil society submission to the CESCR on Spain, May 2012, p.14.

58. George Kaplan, “Economic crises: Some thoughts on why, when and where they (might) matter for health—A tale of three countries”, *Social Science and Medicines*, 74, (2012) pp. 643-646.

59. Save the Children, “Food for Thought: Tackling child malnutrition to unlock potential and boost prosperity”, 2013; The Commissioner’s Report on Portugal, CommDH(2012)22; Report on Spain, CommDH(2013)18.

60. PACE, Resolution 1885 (2012).

1.6. Impacts on state capacity and the human rights protection system

Policy preferences for austerity and fiscal consolidation have had systemic consequences on state capacity and the human rights protection system. Governments are primary human rights duty-bearers, and thus their effectiveness and competency are of the utmost importance in ensuring respect for everyone's human rights. Yet there are increasingly worrying signs that the capacity of the state to protect and fulfil human rights and execute other state functions in times of crisis is being frayed by successive fiscal consolidation plans.⁶¹

In many countries budget cuts have targeted public institutions and public employees at the central and municipal levels, which in some cases could seriously weaken the capacity of the state to execute its functions effectively. Austerity measures have had serious effects on local and regional governments which have key responsibilities for providing welfare and social insurance programmes to their communities. While some countries have resisted cutting funding to local authorities, countries such as Serbia, Bulgaria and the UK have decreased local grants. Previously able to shield people from the worst effects of the first wave of crisis, local governments have faced severe constraints on local resources due to decreases in funding from the national government, reliance on unstable tax bases and increasing demand for public services from people no longer able to cope on their own.⁶²

The human rights protection system and domestic accountability infrastructure have faced setbacks in many countries as a result of austerity. Access to justice has been weakened by cuts in the funding of the judiciary and legal aid. Many national human rights structures (discussed in Chapter 4) have faced disproportionate cuts or mergers. Some have disappeared altogether. The non-governmental sector, which often acts as an essential social service provider during breakdowns in state capacity, has also been affected by diminished public funding.

61. PACE, Resolution 1888 (2012).

62. PACE, Resolution 1886, "The impact of the economic crisis on local and regional authorities in Europe", 26 June 2012; Council of Europe, "Local Government in Critical Times: Policies for Crisis, Recovery and a Sustainable Future", 2011.

2. Human rights standards and jurisprudence on austerity

Economic policy is an exercise of state power and as such is subject to human rights norms, standards and procedural principles. As embodied in international human rights law, civil, political, economic, social and cultural rights are not expendable in times of economic hardship, but are essential to a sustained and inclusive economic recovery. This chapter presents the most relevant international and regional human rights standards in times of economic recession, grounded in relevant international jurisprudence and domestic case law. As international and European human rights monitoring bodies and domestic courts have begun to pay more attention to the impacts of the crisis, these relevant standards and associated criteria have been further developed to meet present-day economic conditions. This is particularly the case for states' obligations to protect economic and social rights, to avoid further erosion and retrogression of these rights and to prevent disproportionate impacts of austerity measures on particular sectors of the population.

2.1. Human rights as legal imperatives and higher-order policy objectives

The UN Human Rights Council affirmed at its Special Session in 2009 that “the global economic and financial crises do not diminish the responsibility of national authorities and the international community in the realization of human rights”.⁶³ Similarly, in 2009 the European Committee of Social Rights stated that “the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the [European Social] Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most”.⁶⁴ In 2012, the Human Rights Council welcomed a new set of Guiding Principles on Foreign Debt and Human Rights which stipulate that governments have an obligation to ensure the primacy of human rights when they make lending and borrowing decisions.⁶⁵ Likewise, the ECSR, with reference to commitments made by Greece to the Troika, made it clear that “states parties... should – both when preparing the text in question and when implementing it into national law

63. Human Rights Council Resolution S-10/1 “The impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights”, para. 5.

64. ECSR, *Conclusions 2009*, Vol. I, paragraph 17.

65. Report of the UN Independent Expert on foreign debt, Cephias Lumina, 10 April 2011, A/HRC/20/23.

– take full account of the commitments they have taken upon ratifying the European Social Charter”.⁶⁶ It follows that states carry the primary burden for proving that any proposed austerity measures are in line with their standing human rights obligations.

Recent domestic jurisprudence in Latvia, Portugal and Lithuania illustrates the normative superiority of constitutionally protected human rights principles over unjustified budgetary measures. In Latvia, the Constitutional Court concurred that international loan provisions stipulated in the IMF/EC/ECB agreements could not serve as an argument for restricting constitutionally guaranteed human rights obligations to ensure adequate social security. Both the social consequences of pension cuts and less restrictive alternatives had to be taken into consideration when concluding such agreements.⁶⁷ In Portugal, the Constitutional Court declared reduced budget allocations for social rights as unconstitutional and ordered restitution.⁶⁸ The Lithuanian Constitutional Court has articulated specific, strict criteria for assessing when social rights can be limited during an economic crisis.⁶⁹

2.2. Economic, social and cultural rights norms under austerity

Under international and European human rights law, Council of Europe member states have an obligation to respect, protect and fulfil economic, social and cultural rights, in times of both economic growth and stagnation.⁷⁰ The principal instruments include the International Covenant on Economic, Social and Cultural Rights, the revised European Social Charter, the European Code of Social Security and various ILO conventions. While the European Convention on Human Rights (ECHR) is primarily a civil and political rights pact, the European Court of Human Rights has also found violations of the Convention concerning rights related to social welfare, health care and housing, for example.

While the full realisation of economic, social and cultural (ESC) rights can only be achieved progressively over time, relevant standards impose obligations of immediate effect, *inter alia* non-discrimination (discussed under 2.5.) and minimum core obligations. That is, states have a direct and immediate duty “to ensure the satisfaction of, at the very least, “minimum essential levels”

66. ECSR, *Panhellenic Federation of pensioners of the Public Electricity Corporation (POSEI) v. Greece*, complaint no. 79/2012, decision on the merits of 7 December 2012, para. 47.

67. Constitutional Court of Latvia, Case No. 2009-43-01, Judgment of 21 December 2009.

68. Constitutional Court of Portugal, Ruling No.187/13, 5 April 2013.

69. Constitutional Court of Lithuania, Decision of 20 April 2010 and Ruling of 6 February 2012.

70. “Maastricht Guidelines on Violations of Economic, Social and Cultural Rights”.

of economic and social rights universally”, whatever their level of economic development or resource base.⁷¹ In times of resource scarcity, governments must deliberately prioritise – in terms of how they raise revenue and allocate public resources – the achievement of the minimum core content of rights necessary for ensuring human dignity.⁷²

The UN Committee on Economic, Social and Cultural Rights (CESCR), the European Committee of Social Rights and domestic jurisprudence in several countries have elaborated on the content of this minimum core requirement relating to ESC rights. The ECSR has made it clear that while backsliding in funding for the national social security system is not *ipso facto* a violation of the European Social Charter, the European Code of Social Security or International Labour Convention No. 102 concerning Minimum Standards of Social Security, a minimum, satisfactory level must be ensured for all people at all times so that they can effectively enjoy the right to social security.⁷³ Pension income for older people, for example, must not be lower than the poverty threshold, defined as 50% of the median income in any given country. The Committee of Ministers of the Council of Europe has also explained that countries would be failing in their duties under the European Code of Social Security if social security benefits were effectively below the poverty line.⁷⁴

The minimum essential levels of the right to work and rights at work are defined through the jurisprudence of the ECSR and ILO labour standards. The minimum standard of the right to fair remuneration, for example, is set by the ECSR at a threshold of 60% of the national average wage, or as agreed by collective bargaining.⁷⁵ At national level, while reviewing the constitutionality of the State Budget Law for 2013, the Portuguese Constitutional Court established the existence of a guarantee of a “right to a minimum level of subsistence” and found that this was not put in place by the state when adopting the budget reductions in sickness and unemployment benefits.⁷⁶

Any failure to meet the minimum core obligations is assumed to be a *prima facie* violation, unless the state can demonstrate that “every effort has been made to use all resources that are at its disposition in an effort to satisfy, as

71. CESCR, General Comment No. 3, paras. 5 and 10.

72. CESCR, General Comments No. 3, para. 12, No. 12, para. 28 and No. 14, para. 18; Statement on allocation of resources, E/C.12/2007/1, paras. 4 and 6.

73. ECSR, *Pensioners’ Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece*, complaint No. 78/2012, decision on the merits of 7 December 2012, para. 65.

74. CoE Committee of Ministers, “Resolution CM/ResCSS(2012)8 of 12 September 2012 on the application of the European Code of Social Security and its Protocol by Greece”.

75. ECSR, Conclusions XIV-2, Statement of Interpretation on Article 4.1, pp. 50-52.

76. Constitutional Court of Portugal, Ruling No.187/13, 5 April 2013.

a matter of priority, those minimum obligations”.⁷⁷ A human rights-based social protection floor which protects the universal availability of essential levels of social services, income, health care, food and housing is increasingly recognised by the ILO and human rights bodies as the policy embodiment of ensuring the fulfilment of a minimum core level of ESC rights.⁷⁸

Governments also have a duty to mobilise the maximum available resources necessary for realising ESC rights. The availability of resources refers not only to the resources under a state’s command at present, but also to resources that could be reasonably and equitably mobilised. Depending on the national circumstances, marshalling these resources to invest in ESC rights generally involves re-allocations of existing resources, resource generation through fiscal and tax policy reforms, monetary policy and financial regulation, deficit financing, debt restructuring and development assistance.⁷⁹ Emphasising the need to consider all financing alternatives to prevent deteriorations in economic and social rights, the CESCR has stated that any proposed austerity measures may only be introduced after exhausting all possible alternatives, including adjustments in tax policy.⁸⁰ The obligation of international co-operation and assistance as set out in Articles 2(1) and 11(1) of the ICESCR implies that states must co-operate with – and not undermine – efforts of other countries to mobilise the maximum of available resources for the fulfilment of ESC rights through, for example, increased co-operation to stem tax evasion.

Of particular resonance to the debate over austerity is the prohibition of retrogression. As stated above, states are not required to fulfil all economic and social rights overnight, but instead must move as swiftly as possible towards this goal by realising the rights over time through measurable progress. The logical corollary of this duty of progressive realisation is that governments must avert retrogression in the realisation of ESC rights, even in times of severe resource constraints such as economic recessions. Actions or omissions which lead to a deterioration in ESC rights enjoyment, whether

77. CESCR, General Comment No. 3, para. 10.

78. ILO, Recommendation concerning national floors of social protection, No. 202, 2012; “Report of the Office of the UN High Commissioner for Human Rights on the impact of the global economic and financial crises on the realization of all human rights and on possible actions to alleviate it”, 18 February 2010, A/HRC/13/38, paras. 21 and 25.

79. R. Balakrishnan, D. Elson, J. Heintz, N. Lusiani, *Maximum Available Resources & Human Rights: Analytical Report*, Center for Women’s Global Leadership, Rutgers University, 2011.

80. CESCR, “Letter on behalf of the Committee of Economic, Social and Cultural Rights to all States Parties to the ICESCR on the protection of rights in the context of the economic and financial crisis”, 16 May 2012; Report of the United Nations High Commissioner for Human Rights on the impact of austerity measures on economic, social and cultural rights, 2013, E/2013/82.

through *de jure* weakened legal protection or *de facto* material cutbacks in social services, can only be introduced after “the most careful consideration” of all alternatives and “would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources”.⁸¹

While a good degree of freedom of action is given to the legislature and the executive, assumptions about the scarcity of funding must be thoroughly analysed, monitored and reviewed for their reasonableness, rather than simply accepted as a given. A growing body of national jurisprudence and authoritative interpretations by international bodies has begun to develop a more evolved set of operational prerequisites and normative criteria to judge whether states’ conduct is leading to unreasonable retrogression in ESC rights.⁸² Perhaps the clearest articulation of the prohibition of retrogression was offered by the CESCR in May 2012. The CESCR established the following criteria for assessing whether austerity or fiscal adjustment measures would be considered reasonable and justifiable, and thus compatible with the ICESCR:

- a. the policy is a temporary measure covering only the period of the crisis;
- b. the policy is necessary and proportionate, in the sense that the adoption of any other policy, or a failure to act, would be more detrimental to economic, social and cultural rights;
- c. the policy is not discriminatory and comprises all possible measures, including tax measures, to support social transfers and mitigate inequalities that can grow in times of crisis and to ensure that the rights of disadvantaged and marginalised individuals and groups are not disproportionately affected; and
- d. the policy identifies the minimum core content of rights, or a social protection floor, as defined by the International Labour Organization, and ensures the protection of this core content at all times.⁸³

States’ primary duties are to rights holders within their own jurisdiction. Nevertheless, governments also have a duty to co-operate and assist one another in the realisation of economic and social rights, as stipulated under the ICESCR, the Convention on the Rights of People with Disabilities

81. CESCR, General Comment No. 3, paras 9-12.

82. International Commission of Jurists, *Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative experiences of justiciability*, 2008; C. Curtis, *Ni un paso atrás: la prohibición de regresividad en material de derechos sociales*, Editores de Puerto s.r.l., 2006; CESCR, General Comment No. 19, para. 42.

83. CESCR, “Open Letter to States Parties regarding the protection of rights in the context of economic crisis”, 16 May 2012.

(CRPD) and the Convention on the Rights of the Child (CRC) and prominently restated by various treaty bodies. This obligation of international co-operation and assistance implies that Council of Europe member states may incur responsibility for relevant human rights violations if their conduct – whether individually, through lending policies, through financial governance agreements such as the EU Treaty on Stability, Coordination and Governance, through regional institutions like the European Union, or through international financial institutions like the IMF – foreseeably impairs the ability of other governments to protect and fulfil economic and social rights for all.⁸⁴ The European Court of Human Rights has made it clear that states can transfer their competencies to international organisations “provided that Convention rights continue to be ‘secured.’ Member states’ responsibility therefore continues even after such a transfer.”⁸⁵

The European Union has committed itself to the founding values of “respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.”⁸⁶ The Charter of Fundamental Rights of the European Union also provides legally binding norms for the implementation of EU law and policies in the area of ESC rights. The future accession of the European Union to the ECHR is a positive illustration of a regional body recognising its human rights duties and choosing to submit its conduct to the jurisdiction of the European Court of Human Rights.

2.3. Civil and political rights

International and European instruments on civil and political rights are also relevant for monitoring the effects of austerity measures. Non-discriminatory access to justice and remedies, guaranteed by the ICCPR and the ECHR, is essential for vulnerable groups of people. The state has a positive obligation under Articles 6 and 13 of the ECHR to maintain a functioning judiciary and to ensure effective access to independent justice and, in certain circumstances, provide free legal assistance.⁸⁷ The right to respect for private and family life (Article 8 of the ECHR) demonstrates the interdependence of

84. The content of the duty of international co-operation and assistance in relation to specific rights is further elaborated in *inter alia* CESCR General Comments Nos. 11, 12, 14, 15, 18, and 19. See also Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Article 31.

85. *Matthews v. the United Kingdom*, application No. 24833/94, judgment of 18 February 1999, para 32; *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Şirketi v. Ireland*, application No. 45036/98, judgment of 30 June 2005.

86. Treaty on European Union, Article 2.

87. *Airey v. Ireland*, application No. 6289/73, judgment of 9 October 1979; *Laskowska v. Poland*, application No. 77765/01, judgment of 13 March 2007.

civil and political rights with ESC rights. Violations of the right to housing, a central concern under austerity, can breach the right to private and family life as well.⁸⁸

The freedoms of association, expression and peaceful assembly are expressly protected under international and European human rights law⁸⁹ and support an active civil society and media, including their critical engagement against austerity. Any restrictions to these rights must be prescribed by law, be necessary in a democratic society and be proportionate by taking the least restrictive measures necessary to achieve the legitimate aim. The disproportionate use of force by law enforcement officials in the context of anti-austerity demonstrations can result in violations of the freedoms of expression and assembly.⁹⁰ These rights also intersect with the rights to information and to participate in the conduct of public affairs.

The absolute prohibition of inhuman and degrading treatment (Article 3 of the ECHR) may also be applicable in cases of extreme hardship incompatible with human dignity. The Court has pointed out that an insufficient amount of pension and other social benefits can raise an issue under Article 3 of the ECHR.⁹¹ However, the Court has not yet found a direct violation under this provision with reference to lack of social protection. There is also a need to check that any austerity measures affecting prison conditions and detention do not reach the severity of inhuman and degrading treatment under the ECHR or the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

2.4. Rights to transparency, participation and accountability

The procedural principles of human rights, especially transparency, participation, accountability and effective remedy, give guidance on the way officials should conduct the process of economic policy making from its design to implementation and monitoring.⁹² The right to public participation, protected *inter alia* by the ICCPR (Article 25) and the CRPD (Article 29), goes beyond mere electoral rights to include duties to actively involve those affected by social and economic policy in meaningful channels of participation so that

88. See, for example, *Moldovan and Others v. Romania*, applications Nos. 41138/98 and 64320/01, judgment no. 2 of 12 July 2005.

89. ICCPR, Articles 19, 21 and 22, and ECHR, Articles 10 and 11.

90. Report on Spain, CommDH(2013)18, pp. 22-26.

91. *Larioshina v. Russia*, application No. 56869/00, decision of 23 April 2002.

92. Report of the Independent Expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, 17 March 2011, A/HRC/17/34, paras. 25-28.

decisions are based on a broad national dialogue rather than narrow private interests.⁹³ Transparency is likewise required at all points in the policy cycle, so that people are able to exercise their right under the ICCPR (Article 19) and the ECHR (Article 10) to accessible, relevant and timely information about policies which will affect their lives.⁹⁴

In 2012, the Parliamentary Assembly of the Council of Europe called on member states “to reflect on how such processes could be made more democratic in the future, also with regard to future economic policy making at the European level, and, in the meantime, act with utmost transparency when taking any far-reaching decisions which profoundly affect national economies and people’s lives.”⁹⁵ In recent decisions related to collective complaints about pension rights from Greece, the ECSR has highlighted the failure of the government to conduct the minimum level of research and analysis on the effects of austerity measures and assess in a meaningful manner their full impact on vulnerable groups in society in consultation with the organisations concerned.⁹⁶ The duty to consult stakeholders applies to EU institutions as well through Article 11(2) and (3) of the Treaty on European Union, which states that “[EU] institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent.”⁹⁷

A central concern of human rights is to regulate the exercise of power by providing guarantees that those in positions of authority are answerable, responsible and ultimately accountable to those affected by their conduct. States are duty-bound to be accountable and to guarantee effective remedies and reparation for human rights violations, via accessible and effective mechanisms (e.g. judicial fora, political institutions, administrative bodies or other quasi- and non-judicial mechanisms). Accountability is not only backward looking, but can perform an important preventive function by ensuring that public and private agents align their conduct with their respective human rights responsibilities and engage in dialogue with rights holders to avert harmful policies.⁹⁸

93. See also UN Declaration on the Right to Development; Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, 1986.

94. Reinforced by the Court in *Társaság a Szabadságjogokért v. Hungary*, application No. 37374/05, judgment of 14 April 2009, para. 35.

95. PACE, Resolution 1884 (2012).

96. ECSR, *Panhellenic Federation of pensioners of the Public Electricity Corporation (POS-DEI) v. Greece*, complaint No. 79/2012, decision on the merits of 7 December 2012, paras. 75-77.

97. See also, D. O’Donovan, “The Insulation of Austerity: The Charter of Fundamental Rights and European Union Institutions”, *Human Rights Ireland*, 16 May, 2013.

98. OHCHR and CESR, “Who Will Be Accountable?”, 2013.

2.5. Equality, non-discrimination and positive measures

The mutually reinforcing principles of equality and non-discrimination are at the very heart of Council of Europe member states' human rights obligations, cutting across each of the instruments described above. The effective enjoyment of human rights must by definition be protected for all people, without distinctions based on grounds such as gender or sex, racial or ethnic origin, disability, sexual orientation, gender identity, age, religion or belief, or socio-economic status. For discrimination to be eliminated in practice, all people must have effective access to their rights. Governments have a duty to ensure real and effective equality by pursuing concrete positive measures in the social and economic spheres which erode, and ultimately eliminate, *de facto* and systemic discrimination.⁹⁹

In the sphere of social rights, the “immediate and cross-cutting obligation” of non-discrimination and equality under the ICESCR¹⁰⁰ requires states to end *de jure* and *de facto* discrimination in the enjoyment of social rights, whether occurring as a result of intentional policy choices or as an unintentional effect. Given the existence of structural barriers to equal protection of the law and equal access to socio-economic rights, concrete, deliberate and targeted measures are required to eliminate discrimination in the enjoyment of the rights to health, housing, decent work, social security and other ESC rights.¹⁰¹ In other words, states must concern themselves with who benefits from particular policies, and actively seek to modify existing patterns of discrimination and inequality by taking positive steps to ensure substantive equality in the enjoyment of rights.

The CESCR has recognised that the economic and social situation of individuals, or socio-economic status, is among the prohibited grounds of discrimination.¹⁰² While socio-economic status can be placed in the “other status” category in the open-ended lists of grounds in the non-discrimination provisions of international instruments, it can also be derived from the grounds of “social origin” and “property” which are specifically mentioned in the ICESCR and the ECHR. This is particularly important considering how austerity measures have tended to compound pre-existing forms of discrimination against low-income populations.

99. See for example ECSR, *International Association Autism-Europe v. France*, complaint No. 13/2002, decision on the merits of 4 November 2003, para. 52; OHCHR and CESR, “Who Will Be Accountable?”, 2012, pp. 67-69.

100. CESCR, General Comment No. 20, para. 7; Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, Article 2(2).

101. CESCR, General Comment No. 20.

102. CESCR General Comment No. 20, para. 35.

In fact, poverty and discrimination are closely connected.¹⁰³ Discrimination is often a cause of poverty and economic exclusion, while the denial of full and active participation in economic life serves as a significant barrier to social inclusion and social welfare for many who live in poverty. Budget cuts which disproportionately burden a certain category of people have been considered unconstitutional by some courts, such as the Portuguese Constitutional Court. This court considered that any tax increases which create unfair burdens on people living in poverty and are insensitive to income levels would be unconstitutional.¹⁰⁴ ICERD, CEDAW, CRC and the CRPD protect the fundamental principles of non-discrimination and equality of ethnic minorities, women, children and people with disabilities respectively and each associated treaty body has issued concluding observations on ensuring equality in times of economic crisis.¹⁰⁵

In Council of Europe instruments, the principle of non-discrimination is recognised both by the ECHR (Article 14 and Protocol No. 12) and by the revised European Social Charter (Article E). The Court has applied the principle of non-discrimination in conjunction with the right to education,¹⁰⁶ the prohibition of degrading treatment¹⁰⁷ and social security¹⁰⁸ in affirming the ESC rights of disadvantaged individuals. The European Social Charter provision covers both direct and indirect discrimination and includes failing to take due and positive account of all relevant differences,¹⁰⁹ failing to treat people in different situations differently¹¹⁰ or failing to take adequate steps to ensure that rights are “open to all” and genuinely accessible by everyone.

103. Equinet, *Addressing Poverty and Discrimination: Two Sides of the One Coin*, 2010.

104. Constitutional Court of Portugal: “Penalising a given category of people, in a way that is made worse by the combined effect of this reduction in pay and the generalised increase in the fiscal burden, undermines both the principle of equality with regard to public costs and the principle of fiscal justice.” Ruling No. 187/13, 5 April 2013.

105. CEDAW, Concluding Observations, Greece, 1 March 2013, CEDAW/C/GRC/CO/7; CEDAW, Concluding Observations, Spain, 7 August 2009, CEDAW/C/ESP/CO/6; CRC, Concluding Observations, Greece, 13 August 2012, CRC/C/GRC/2-3; CRPD, Concluding Observation, Spain, 19 October 2011, CRPD/C/ESP/CO/1; CERD, List of Themes, Portugal, 3 January 2012, CERD/C/PRT/Q/12-14; CERD, Concluding Observations, United Kingdom, 14 September 2011, CERD/C/GBR/CO/18-20.

106. *D.H. and others v. the Czech Republic*, application No. 57325/00, judgment of 13 November 2007.

107. *Moldovan and Others v. Romania*, applications Nos. 41138/98 and 64320/01, judgment No. 2 of 12 July 2005.

108. *Carson and Others v. the United Kingdom*, application No. 42184/05, judgment of 16 March 2010.

109. ECSR, *European Roma Rights Centre v. Italy*, complaint No. 27/2004, decision on the merits of 7 December 2005, para. 36.

110. ECSR, *Association internationale Autisme-Europe (AIAE) v. France*, complaint No. 13/2002, decision on the merits of 4 November 2003, para. 51.

The ECSR has also held, for example, that states must take positive steps to prevent certain vulnerable groups from becoming homeless.¹¹¹ The principle of non-discrimination is recognised under general EU treaties and specific equality directives, including the Charter of Fundamental Rights (Article 21).¹¹²

111. ECSR, *European Roma Rights Centre v. Bulgaria*, complaint no. 31/2005, decision on the merits of 18 October 2006, para. 54; The Commissioner's Recommendation on the Implementation of the Right to Housing, CommDH(2009)5, pp. 16-19.

112. See also FRA, European Court of Human Rights, Council of Europe, *Handbook on European non-discrimination law*, 2011.

3. Implementing human rights in times of economic crisis

Human rights norms and standards do not demand precise policy prescriptions. Economic policy in times of crisis requires a complex decision-making calculus, and governments enjoy a margin of appreciation in choosing the means for safeguarding rights in times of economic constraint which best fit their circumstances. Nonetheless, human rights do provide a universal normative and legal framework, parameters of principles and operational red lines within which governments' economic and social policies must function.¹¹³ This chapter seeks to demonstrate how human rights can guide economic policy responses to the crisis in a practical way. The proposed measures will also serve to reinvigorate the European social model based on a solid foundation of human dignity, intergenerational solidarity and common cause in the realisation of human rights for all.

3.1. Institutionalising transparency, access to information and participation

The right to be informed about and participate in public affairs implies a duty of states to conduct their economic and social policy in transparent ways and allow for public participation in its design, implementation and monitoring. Council of Europe member states have made remarkable strides in developing more transparent forms of governance, but these developments are still incomplete, especially in the economic policy arena. Improvements in access to information about domestic and regional fiscal policies, including financial sector rescues, would be welcome. Timely access to such key information as budget and tax policies would better enable citizen groups, parliamentary commissions, national human rights structures and courts to monitor and provide oversight of crisis responses.

Improved efforts to collect more comprehensive, disaggregated social indicators, which illustrate the cumulative effects of austerity, would help policy makers and researchers identify disproportionate effects, discern whether

113. R. Balakrishnan and D. Elson, "Auditing Economic Policy in the Light of Obligations on Economic and Social Rights", *Essex Human Rights Review* Vol. 5 No.1, July 2008; *Economic Policy and Human Rights*, New York, Zed Books, 2012; I. Saiz "Rights in Recession? Challenges for Economic and Social Rights Enforcement in Times of Crisis", *Journal of Human Rights Practice* Vol. 1 (2), 2009; I. Saiz, N. Lusiani and S.A. Way, "Economic and Social Rights in the 'Great Recession': Towards a Human Rights-Centered Economic Policy in Times of Crisis", in *Contemporary Issues in the Realization of Economic, Social and Cultural Rights*, Oxford University Press (forthcoming).

“measurable progress” is taking place and design more effective evidence-based policies to protect the most disadvantaged groups. For example, surprisingly little systematic data on homelessness are made available by Council of Europe governments, further exacerbating this group’s invisibility.

Beyond the provision of relevant information, governments are also required to establish channels for meaningful social dialogue and citizen participation in economic policy, including, but not limited to, periodic elections. The forms such participation can take are multiple, but people’s voices should have a consequence in economic policy making. Participatory arrangements and consultations should be inclusive, reaching out to individuals, NGOs, trade unions, grassroots movements and the academic community. Meaningful public participation can improve social outcomes and confidence in the democratic system.

3.2. Conducting systematic human rights and equality impact assessments

Governments have an obligation to demonstrate that their laws, policies and programmes contribute to, and avoid undermining, human rights protections. While the European Commission and the IMF conduct annual economic evaluations of many European countries to assess and enforce their compliance with fiscal rules, no such arrangement exists to systematically monitor the human rights consequences of economic policies. *Ex ante* and *ex post facto* human rights and equality impact assessments, as suggested by the CESCR,¹¹⁴ CEDAW,¹¹⁵ CERD¹¹⁶ and the Committee of Ministers of the Council of Europe,¹¹⁷ can identify the distributive effects of austerity policies in society and prompt policy makers to prevent them from being discriminatory.

Periodic independent monitoring would usefully identify and assess the present and future impacts of economic policy, and ensure that they do not undercut the minimum essential levels of social rights fulfilment. All such assessments should be conducted in close co-operation with the groups concerned and their representatives, and should be made public and widely disseminated to ensure transparency and accountability. Each stage of the

114. CESCR, “Open Letter to States Parties regarding the protection of rights in the context of economic crisis”, 16 May 2012.

115. CEDAW, Concluding Observations, Greece, 1 March 2013, CEDAW/C/GRC/CO/7.

116. CERD, Concluding Observations, United Kingdom, 14 September 2011, CERD/C/GBR/CO/18-20.

117. Committee of Ministers, Resolution CM/ResCSS(2012)8 of 12 September 2012 on the application of the European Code of Social Security and its Protocol by Greece.

policy cycle should be subject to *ex ante* and *ex post facto* assessments, and should consider the full spectrum of macroeconomic, financial, tax, wage and employment policies being undertaken. In keeping with the duty of international co-operation and assistance, assessments should also consider domestic as well as extraterritorial or cross-border impacts of countries' economic policies, especially when decisions are made within intergovernmental bodies.

Monitoring of this kind would set a human rights baseline which would allow economic policy-makers to learn from previous mistakes and better anticipate the human rights consequences of their conduct. It would also provide an effective forum for transparency and responsiveness in policy making. In line with the prohibition of discrimination and retrogression, such assessments would help to ensure that the particular effects of austerity measures on disadvantaged members of society are known in advance and that effective protection is provided in crisis responses. They would also provide useful evidence for national administrative bodies, parliaments, judiciaries, regional bodies and international accountability mechanisms to better hold decision makers to account. In addition, monitoring of this kind would allow for empirical comparisons of the human rights consequences of different types of economic policies across the region.

3.3. Carry out systematic human rights screening of budget and fiscal policy

Implementing the duty to maximise the availability of resources for the full realisation of economic and social rights involves constant monitoring and oversight over how public money is spent, what it is spent on, how it is raised and whom it benefits. Comprehensive screening of budget and fiscal policies for human rights compliance improves the accountability and transparency of economic policy processes by allowing for open, public debate over budgeting priorities.¹¹⁸ Human rights audits of fiscal policy would also assist in providing an objective assessment of the necessity of fiscal consolidation by identifying all possible resourcing alternatives to budget cuts, in line with the prohibition of retrogression.¹¹⁹

In some instances, this could mean the prioritisation of social or health spending through budget re-appropriations. In other cases, it could uncover the inequalities buried in the tax code of many countries. Fiscal policy

118. Queen's University of Belfast Budget Analysis Project, "Budgeting for Economic and Social Rights: A Human Rights Framework", 2010.

119. R. Balakrishnan and D. Elson, "Auditing Economic Policy in the Light of Obligations on Economic and Social Rights", *Essex Human Rights Review*, Vol. 5, No.1, July 2008.

audits would also help to identify and reverse the increasingly disproportionate fiscal burden borne by low-income people in some countries. In yet other instances, fiscal policy screening would give evidence of options to broaden the fiscal space in non-discriminatory ways, discovering areas where resources are being lost, such as through tax evasion, as well as pointing out situations where equitable tax increases would provide sustainable resourcing for human rights. Preliminary evidence suggests that opportunities to expand the resource base are abundant in many Council of Europe member states, both domestically and through regional co-operation.¹²⁰ The recovery of public funds lost to, and prevention of future, tax evasion in several Council of Europe member states alone would significantly contribute to the available resource base.¹²¹

3.4. Promoting equality and combating discrimination and racism

The compound effects of austerity measures are likely to aggravate structural discrimination in the political, economic and social spheres. The economic crisis has also amplified manifestations of racism, xenophobia and extremism which question the universality of human rights and equality.¹²² It is essential to maintain comprehensive equal treatment legislation during the crisis, aimed at preventing and punishing discriminatory practices based on grounds such as gender or sex, racial or ethnic origin, disability, sexual orientation, gender identity, age, religion or belief, and socio-economic status. Positive measures in favour of disadvantaged groups, including women, are necessary to address disproportionate and compound effects of the crisis and austerity measures. Governments should mainstream positive steps for promoting equality in their social and economic policies and public procurement.

Equal treatment legislation enables individuals and groups who are victims of discrimination to voice their claims for equality and challenge austerity policies which may result in discrimination. Independent and accessible complaints mechanisms, such as national equality bodies, should be set up to facilitate access to justice and provide assistance to victims of discrimination (see Chapter 4). As national jurisprudence and equality bodies increasingly treat socio-economic status as a prohibited ground of discrimination in the

120. I. Ortiz, J. Chai, and M. Cummins, “Identifying Fiscal Space: Options for Social and Economic Development for Children and Poor Households in 184 Countries”, UNICEF, 2011.

121. R. Murphy, “The cost of tax abuse: A briefing on the cost of tax evasion worldwide”, November 2011.

122. Report of the UN Special Rapporteur on racism, Mutuma Ruteere, 29 May 2012, A/HRC/20/38.

fields of housing, education and the provision of goods and services, governments should consider including it as an explicit ground of discrimination in their equal treatment legislation. This would reinforce efforts to address poverty under equal treatment legislation.¹²³

There is a particular need to combat racism, xenophobia and bias-motivated crimes during the crisis period to prevent any tendencies to scapegoat disadvantaged and marginalised groups of people. Racist violence and hate speech have a broad destructive impact on human dignity and social cohesion. The use of hate speech and bias-motivated offences should be effectively punished, including where the perpetrators are politicians and opinion leaders. States should take measures to provide systematic anti-racism training to all law enforcement officials, prosecutors and judges involved in the investigation and prosecution of racist crimes. Human rights education in schools is essential for building a culture of tolerance and respect.¹²⁴

3.5. Ensuring social protection floors for all

The maintenance of a robust legal and institutional framework of social protection for all without discrimination stems directly from international, regional and domestic standards on ensuring the minimum essential levels of economic and social rights. Social protection is essential for building resilience to economic risk, especially among the most marginalised groups, averting intergenerational transmission of poverty, improving food security, disrupting growing income inequality and maintaining automatic economic stabilisers to prevent the economy from entering into even deeper recessions. Social protection floors should be developed to ensure the minimum core content of social and economic rights at all times.¹²⁵ Social protection measures have ensured access to quality essential services and income security across Council of Europe member states for decades, helping to lift millions of Europeans out of poverty and mitigating the worst effects of economic downturns.¹²⁶ Constitutional

123. The Commissioner “Opinion on national structures for promoting equality”, CommDH(2011)2; Equinet, *Addressing Poverty and Discrimination: Two Sides of the One Coin*, 2010.

124. The Commissioner’s Human Rights Comment, “Europe must combat racist extremism and uphold human rights”, 13 May 2013.

125. ILO, Recommendation concerning National Floors of Social Protection, No. 202, 2012; World Bank Group, Development Committee, “Safety Nets Work: During Crisis and Prosperity”, 11 April 2012; M. Sepúlveda and C. Nyst, *The Human Rights Approach to Social Protection*, 2012.

126. *Anti-crisis measures: safeguarding jobs and social security in Europe*, Council of Europe Publishing 2011.

guarantees of social protection have insulated social insurance and social assistance programmes from short-term political and financial pressures.¹²⁷

Governments should resist the pressure to undermine such essential public programmes. In many instances, ring-fencing public budgets and other safeguard policies to protect universally available and accessible social protection programmes are necessary to ensure the fulfilment of minimum core obligations of economic and social rights in times of economic crisis. Strengthening legal guarantees of quality social protection also helps guard against backsliding. Positive measures to end *de facto* discrimination in access to social protection and to prevent long-term effects of economic crisis are essential, especially for the most vulnerable population groups and in disadvantaged geographical areas. Strategies to address poverty and homelessness, including preventive measures, integrated social protection services, active labour market policies, monitoring frameworks and ring-fenced budget appropriations, should be included in national social protection systems. Particular attention should be given to combating poverty among children.¹²⁸

3.6. Guaranteeing the right to decent work

The rights to fair and equal remuneration for equal work, safe and healthy working conditions, collective bargaining, freedom from forced and child labour, elimination of workplace discrimination, and access to unemployment benefits and compensation for employment-related injuries, should be upheld during periods of crisis. There is also compelling evidence that they make economic sense.¹²⁹ Active labour market policies are needed to protect employment and to improve the employability of workers. Collective bargaining protections and counter-cyclical macroeconomic policies, especially those which address wage disparities among different social groups, have been effective in driving economic dynamism and employment while promoting equality. Strong support for labour inspectors and child protection agencies is needed to combat increasing labour exploitation and child trafficking.¹³⁰

Non-discriminatory access to employment and education should be maintained during the economic crisis. The provision of reasonable

127. International Social Security Association, “Coping with the crisis: Managing social security in uncertain times: ISSA Crisis Monitor”, 2012, p. 25.

128. EC, Recommendation – Investing in children: breaking the cycle of disadvantage, 20 February 2013.

129. ILO, *World of Work Report 2012: Better Jobs for a Better Economy*; R. Freeman, *Labor Market Institutions around the World*, National Bureau of Economic Research; D. Howell, *Fighting Unemployment: The Limits of Free Market Orthodoxy*, Oxford University Press, 2004.

130. The Commissioner’s Human Rights Comment “Child labour in Europe: a persisting challenge”, 20 August 2013.

accommodation and accessibility is essential for many minority groups. Positive measures in favour of people with disabilities, Roma and women should be continued during the economic crisis to improve their labour inclusion. States should develop and adopt strategies that reduce unemployment from their current rates with a particular focus on youth and long-term unemployment. Austerity measures should not result in age discrimination in the remuneration and level of social protection afforded to young workers.¹³¹

3.7. Ensuring access to justice for all and maintaining the human rights protection system

The judiciary, the availability of legal aid and national human rights structures are central to ensuring the rule of law, the regulation of public and private services and effective remedies in times of crisis. Human rights, democracy and the rule of law are empty words when the justice system is inefficient, inaccessible or unaffordable for those who need it most. Governments must guarantee that access to justice – especially for those most on the margins of society¹³² – is not compromised during economic downturns. Budget cuts and austerity measures should not disproportionately affect the functioning of the human rights protection system, so that it has operational stability in terms of staff and resources.

The judiciary has an essential role in protecting the most vulnerable from unjustified retrogressions in the fulfilment of their rights, and in promoting improved dialogue and responsive governance. Constitutional courts in several member states have upheld key economic and social rights under threat from austerity, developed innovative criteria for judging state compliance with domestic and international human rights standards and devised methods for remedying and compensating for infringements of these rights.¹³³ Yet these positive developments are uneven across member states. Many judiciaries have no mandate for, or are not sufficiently active in, protecting economic and social rights.

Reforms are needed to guarantee access to justice by reducing the length of proceedings, providing legal aid and enforcing domestic judgments in a timely manner. Access to justice can be enhanced through alternative mechanisms

131. ECSR, *The General Federation of employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*, complaint No. 66/2011, decision on the merits of 23 May 2012.

132. Report of the UN Special Rapporteur on extreme poverty and human rights, 9 August 2012, A/67/278.

133. T. Birmontienė, "Challenges for the Constitutional Review: Protection of Social Rights during an Economic Crisis", 2012.

including public interest litigation, simplified and less costly procedures and low-threshold complaints bodies such as ombudsmen or equality bodies. Particular attention should be given to vulnerable groups, together with legal aid, to guarantee that they can meaningfully voice their claims against proposed or existing retrogression in the enjoyment of their rights. There is a need to expand the outreach of low-threshold complaints bodies towards disadvantaged and marginalised groups of people to improve reporting.¹³⁴

The adoption of a national action plan for human rights, with mandated co-ordination across different ministries and branches of government, would systematise the implementation of human rights and equality duties, promote dialogue and participation and advocate a rights-based approach in policy making, including in economic decision making and budgeting.¹³⁵ A rights-based approach should be integrated in the ordinary work of the public authorities at national, regional and local levels. A national action plan should identify priorities for addressing the effects of the crisis on the enjoyment of human rights. It is important to involve all stakeholders in systematic human rights work, including national human rights structures, civil society and representatives of disadvantaged groups of people.

National action plans should be directly related to internationally agreed human rights norms. In order to ensure international and national coherence in the implementation of economic and social rights, all member states should ratify the revised European Social Charter and its collective complaints mechanism, the European Convention on Social Security and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Governments should also reinforce national implementation of the decisions and conclusions of the ECSR and the CESCR.

3.8. Engaging and supporting an active civil society

Civil society organisations, including non-governmental organisations and human rights defenders, play a significant role in monitoring the human rights consequences of austerity, defending vulnerable groups and providing relief and other services to affected communities. Governments should respect the critical role of NGOs in relation to austerity and their freedoms of expression, assembly and association. The use of disproportionate force by law enforcement officials against peaceful demonstrators should be prevented.

134. The Commissioner for Human Rights, “Re-thinking Access to Justice in Practice”, Address to Fundamental Rights Conference 2012, 7 December 2012; the Commissioner’s Human Rights Comment, “NHRs can help mitigate the effects of austerity measures”, 31 May 2012.

135. The Commissioner’s Recommendation on systematic work for implementing human rights at the national level, CommDH(2009)3.

In order to support and enable the participation of civil society groups in policy-making, systematic dialogue, consultation and co-operation between authorities and NGOs are necessary to make austerity measures and budgets more effective and tailor them to existing needs. The impact of budget cuts and other measures on the stability and functioning of civil society organisations should be assessed before implementation, especially when they jeopardise the long-term operational stability of NGOs and their ability to provide services to the groups affected by the crisis. Tax exemptions and other indirect forms of financial support for civil society groups in times of austerity are to be encouraged.

3.9. Regulating finance in the interest of human rights

Economic and financial crises usually have disproportionate effects on people living in poverty who face severe risks from macroeconomic instability. Alongside an effective social protection and accountability infrastructure, human rights standards oblige governments to protect individuals against human rights abuses involving third parties, including banks, credit rating agencies, hedge funds or private financial players.¹³⁶ Financial abuses may be of an individual nature, such as through predatory lending practices. They may also be systemic, such as when the irresponsible, risky behaviour of financial institutions puts national economies at the brink of meltdown, forcing governments to use public funds to restore their operations.

In these circumstances, the state duty to protect human rights and ensure the availability of remedies implies the prevention of future financial crises through effective and transparent financial regulation. The UN Special Rapporteur on extreme poverty and human rights has stressed that: “States should ensure adequate means of redress for those adversely affected by the actions taken by financial sector institutions, and adopt regulations that discourage harmful practices by providing for accountability mechanisms that penalize risky behaviours and prosecute perpetrators.”¹³⁷ Several UN Special Rapporteurs have reminded European governments that economic reforms must be crafted in line with human rights obligations and that vital public funds should not be used to rescue financial institutions which engage in irresponsible banking and financial practices.¹³⁸

136. UN Guiding Principles on Business and Human Rights, 2011.

137. Report of the UN Independent Expert on extreme poverty and human rights, Magdalena Sepúlveda Carmona, 17 March 2011, A/HRC/17/34, para. 84.

138. OHCHR, “UN experts call for EU banking sector reform in line with States’ human rights obligations”, 5 October 2012.

3.10. Intergovernmental co-operation and assistance

Social and economic conditions in Council of Europe member states are interdependent. Many national governments are effectively constrained in their decision making by external forces and conditions beyond their control. International economic and financial institutions active in the region, such as the International Monetary Fund, the European Union, the European Central Bank, the Council of Europe Development Bank and the European Bank for Reconstruction and Development, alongside private players such as credit rating agencies, are central agents in framing national economic policies. There is a clear need to improve international co-operation and assistance in the realisation of economic and social rights, especially when seeking alternatives to austerity.

Member states should take measures to consider the human rights impacts of their decisions taken within international institutions, especially financial bodies. The International Monetary Fund and the European Union have provided much-needed financial support and technical guidance to countries in severe economic crisis throughout Europe. Yet gaps in transparency, public participation and democratic accountability plague these decisions. In some cases, onerous conditionalities have prevented governments from investing in essential social protection, health and education programmes. In others, fiscal rules have inhibited governments from using all the tools necessary, including deficit financing, to achieve economic recovery for all.

States which are members of these institutions have a responsibility to demonstrate that their decisions prioritise, and at the very least do not impede, the realisation of human rights. States which are in the position of receiving assistance from international or regional financial institutions, for their part, should be empowered to ensure that human rights are protected in any international loan agreements. The international institutions themselves should ensure that all lending agreements with, and policy advice to, member states comply with human rights standards. Decisions taken and monitoring carried out by EU institutions should also be subjected to the agreed fundamental rights guarantees enshrined in EU treaties, including the Charter of Fundamental Rights. The terms of current rescue packages should also be reviewed from a human rights perspective.

Too often across the region, states' resource bases are severely weakened as a result of cross-border tax evasion. By preventing governments from mobilising resources, such behaviour has the ultimate effect of impairing state capacity, and by extension the ability of states to meet their human rights

obligations.¹³⁹ Council of Europe member states should consider enhanced co-operation on tax matters to ensure that no state infringes another state's ability to mobilise the resources necessary for fulfilling human rights through the taxation of legal and natural persons in its jurisdiction. Such co-operation can, for example, be pursued in the framework of the Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters. Corruption and money laundering also affect the available resource base and require co-ordinated responses. The Group of States against Corruption (GRECO) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism provide useful fora for international co-operation in addressing these problems.

139. See for example, CRC, Concluding Observations, Georgia, 28 June 2000, CRC/C/15/ADD.124, paras 18-19; Concluding Observations, Georgia, 27 October 2003, CRC/C/15/ADD.222, paras 13-14.

4. Role of national human rights structures

National human rights structures (NHRs) such as independent human rights commissions, general or specialised ombudsmen and equality bodies are statutory advocates of human rights and equality and usually act as low-threshold complaints bodies as well. The Commissioner has highlighted their role in protecting the human rights of disadvantaged and marginalised groups of people who have often been hit hardest by the crisis. NHRs can be key partners in times of economic crisis by virtue of their bridging role between government and civil society, between the national and European human rights systems, and in connecting civil, political, economic and social rights. This chapter explores how their multiple functions can be harnessed to more effectively address austerity-driven human rights deprivations.¹⁴⁰

4.1. NHRs promoting and protecting human rights in crisis

Faced with the deepest economic recession in a generation, NHRs across Europe have begun responding to the crisis through their mandated functions to promote and protect human rights. Several institutions have drawn public and media attention to the plight of those disproportionately affected by austerity policies. Economic and social rights in times of crisis have been promoted through public conferences, workshops, civil society dialogues and public statements, for example.

Many NHRs have also taken steps to protect rights negatively affected by economic policies. Those with a quasi-judicial function act as a key redress mechanism. The Ombudsman of Latvia has put particular emphasis on monitoring the implementation of social and economic rights when examining complaints, carrying out *ex officio* investigations and issuing statements.¹⁴¹ The Ombudsman of Portugal has used previously established specialised hotlines – for children, older people and people with disabilities – to address austerity-related concerns. Many NHRs provide legal assistance and representation for low-income complainants, especially those facing discrimination, and help respond to cases of xenophobic and racist attacks.

140. The Commissioner's Human Rights Comment, "National Human Rights Structures can help mitigate the effects of austerity measures", 31 May 2012; The Commissioner's "Opinion on national structures for promoting equality", CommDH(2011)2; A. Corkery and D. Wilson, "National Human Rights Institutions and Economic, Social and Cultural Rights", in *Contemporary Issues in the Realization of Economic, Social and Cultural Rights*, Oxford University Press (forthcoming).

141. Report of the UN Independent Expert on foreign debt, Cephias Lumina, Mission to Latvia, 27 May 2103, A/HRC/23/37/Add.1.

In addition to reacting to the consequences of the crisis and monitoring its impact on a case-by-case basis, some NHRSs have also taken a more proactive approach that systematically analyses the human rights effects of austerity. The Greek National Commission for Human Rights and the Basque Ombudsman in Spain, have produced policy papers or recommendations to shine light on the human rights impacts of austerity and constructively scrutinise austerity policies.¹⁴² The Equality and Human Rights Commission in the United Kingdom conducted an equality assessment of the processes of budgetary decision-making used by the Government to determine whether public bodies, including the Treasury, had “fully considered the potential effects of their decisions on women, ethnic minorities and disabled people, and that any decisions with an effect on these groups could be justified”.¹⁴³

Many NHRSs have published specific monitoring reports on the effects of the crisis or provided advice to the authorities on the issue. The Estonian Chancellor of Justice and the Basque and Catalanian Ombudsmen in Spain have conducted studies on the impact of the economic crisis and austerity budgets on children, with particular reference to child poverty.¹⁴⁴ The Spanish Ombudsman has presented to the senate a compilation of proposals for addressing abuses against low-income mortgage holders, based on complaints received from people facing evictions and with the aim of increasing protection for those at risk of poverty and social exclusion.¹⁴⁵ The Scottish Human Rights Commission has responded to the crisis by giving evidence to the Scottish Parliament on the implications of the UK Welfare Reform Act, partnering with other UK institutions to present a joint submission on austerity to the United Nations, and by working with the Scottish Government to screen the impacts of budget cuts on equality and human rights.¹⁴⁶

4.2. Opportunities for advancing human rights-compliant crisis responses

The breadth and depth of Europe’s economic crisis, austerity policies, and the disproportionate consequences faced by many groups in society have drawn

142. Greek National Commission for Human Rights, Recommendation on the imperative need to reverse the sharp decline in civil liberties and social rights, 8 December 2011; Ararteko (Ombudsman of the Basque Parliament), “Los derechos humanos como base de las políticas públicas en tiempos de crisis económica”, June 2012.

143. Equality and Human Rights Commission, “Making fair financial decisions: An assessment of HM Treasury’s 2010 Spending Review”, May 2012.

144. The Commissioner’s Report on Estonia, CommDH(2013)12; Ararteko, “Report on the impact of the economic crisis on children: The Basque reality”, 2013; Síndic de Greuges de Catalunya, “Poverty and children”, September 2012.

145. See also the Commissioner’s Report on Spain, CommDH(2013)18, pp. 8-9.

146. Scottish Human Rights Commission, “Submission to the Welfare Reform Committee – Austerity & Human Rights”, May 2013.

the public's attention to equality, non-discrimination and human rights. NHRs have great potential to promote human rights-compliant responses to the crisis and to protect people from discriminatory policies which result in inequalities. It is not for NHRs to prescribe specific policy solutions to complex economic problems. Nevertheless, their unique institutional characteristics put them in a useful position to alert governments, parliaments and the public at large when austerity policies cross human rights red lines and threaten effective equality. The examples outlined above point to three key entry points where NHRs could deepen their engagement in addressing the human rights consequences of the economic crisis.

To begin with, NHRs perform a range of advisory functions to government. Through these functions they can assess laws, policies, practices and budgets against human rights norms and equality. This helps to improve transparency and accountability by placing the responsibility back onto government to justify how their decisions were made. It also helps to translate universal norms into the national context as recommendations from NHRs can articulate how human rights can be prioritised in policy choices and resource allocation. NHRs are well-placed to monitor the implementation of these policies based partly on the information provided by complaints and *ex officio* investigations which give a good indication of emerging problems and provide an important feedback loop that can guide governments as to where reforms are needed.

NHRs and their European networks can also create platforms for dialogue between civil society, government and international organisations to raise public awareness about the implications of proposed fiscal policies or legislative reforms, and thereby stimulate the construction of concrete alternatives. By doing so, they can help facilitate meaningful public participation in the formulation, implementation and review of relevant policies, as well as transparency and improved access to information and data gathering necessary to screen economic policy for human rights compliance. Through strategic partnerships with parliaments in line with the Belgrade Principles, NHRs could more effectively conduct human rights and equality screenings of budgets and fiscal policies.¹⁴⁷

NHRs can also help build bridges for carrying out systematic human rights impact assessments of policies and equality mainstreaming in society. They are well placed to broker interactions between state institutions such as auditors, statistical offices, government budget departments, tax inspectors

147. Belgrade Principles on the relationship between national human rights institutions and parliaments, Annex to the UN Secretary General's Report on National Institutions for the promotion and protection of human rights, 1 May 2012, A/HRC/20/9.

and local authorities, and with universities, researchers, and community associations. NHRs can strengthen regulatory bodies by advising them on how to integrate human rights standards and equality into their reviews.

Finally, NHRs can help ensure accountability and remedies for human rights violations that stem from the crisis and the policy responses to it. NHRs with a quasi-judicial function act as key redress mechanisms and their outreach towards marginalised and excluded groups makes them particularly important in this regard. Beyond individual complaints, many NHRs have an *ex officio* investigatory function, which makes them well placed to look into systemic or structural issues, in order to uncover hidden disadvantages and discrimination faced by particular groups. When this is included in their mandate, NHRs may refer cases of austerity-driven human rights infringements to court or make amicus interventions to guide courts on how to apply international human rights instruments when reviewing fiscal policies. Where the legal system allows, NHRs may pursue public interest litigation themselves.

4.3. Empowering NHRs in times of fiscal austerity

NHRs are key hubs in the entire human rights protection system. Their effectiveness and independence are essential factors for an empowered system of accountability in times of economic crisis. Despite promising practices in several countries, many structures are facing significant limitations in this regard. The effectiveness of many institutions is restricted by cuts in available resources and a condensed space for public dialogue and interaction concerning economic policy. In some countries, the independence of NHRs is being compromised because of shortcomings in their mandates or through political pressure. Governments should respect the integrity of NHRs and consult them in policy making and budget processes so that their independent and expert advice on the groups that need the most protection is channelled into decision making. This includes sharing proposed laws and policies early in their formulation stage so that NHRs have a genuine opportunity to review and advise on their likely impact on human rights and equality.¹⁴⁸

States should ensure that their NHRs have broad mandates in accordance with the UN Paris Principles,¹⁴⁹ including powers to address economic, social

148. Equinet, *Equality Bodies: Current Challenges – Equinet Perspective*, October 2012; The Commissioner’s Human Rights Comment, “National Human Rights Structures can help mitigate the effects of austerity measures”, 31 May 2012; The Commissioner’s “Opinion on national structures for promoting equality”, CommDH(2011)2.

149. “Principles relating to the status of national institutions”, Annex to UN General Assembly Resolution 48/134, 4 March 1994, A/RES/48/134.

and cultural rights. It is important that equality bodies are mandated to deal with discrimination related to socio-economic disadvantage. The inclusion of socio-economic status as a prohibited ground of discrimination in equal treatment legislation empowers equality bodies to take poverty into account as a factor in limiting people's effective enjoyment of human rights.¹⁵⁰

Currently, NHRs are often forced to do more with less under budgetary pressure. Demand for NHRs services has increased, while many institutions have simultaneously experienced budget and staff cuts, the closure of regional offices or mergers into less-focused structures. For example, NHRs in Greece, Ireland, Latvia and the UK have faced cuts in their budgets and staff which may hinder their effectiveness.¹⁵¹ Dwindling human and financial resources and uncertainty over future resources are putting NHRs in a difficult position as regards ensuring easy access for vulnerable groups to their services and advancing more ambitious, forward-looking projects such as monitoring budget measures. Stable resource allocation for these critical institutions should be maintained during the crisis and any moratorium on recruitment in the public sector should not apply to them.

Limited resources also hamper NHRs' capacity to expand their proficiency in responding to fiscal austerity. Uneven expertise within institutions in social and economic rights and a general lack of experience and training in fiscal policy, corporate law and financial products keep many institutions from realising their full potential to promote human rights-compliant responses to the crisis. There is a need for improved opportunities for staff training on these issues.

The trend towards increased European co-operation among NHRs provides an important channel for comparative analysis of the impacts of fiscal austerity and appropriate responses, from which individual institutions can learn and which can inform regional-level advocacy. The European networks of NHRs, such as the European Network of National Human Rights Institutions (ENNHRI) and the European Network of Equality Bodies (Equinet) give them a collective voice to engage in agenda setting at the regional level, which is important given the critical role of European organisations in determining national economic policies. The European organisations of economic governance should engage with the European networks of NHRs and seek their advice on ensuring that human rights and equality are taken into account in the design, implementation and monitoring of European economic policies and fiscal regulation.

150. Equinet, *Addressing Poverty and Discrimination: Two Sides of the One Coin*, 2010.

151. The Commissioner's Human Rights Comment, "National Human Rights Structures can help mitigate the effects of austerity measures", 31 May 2012.

Appendix 1 – European Social Charter: signatures and ratifications

The dates **in bold** correspond to the dates of signature or ratification of the 1961 Charter (ETS No. 35); the other dates correspond to the signature or ratification of the 1996 revised Charter (ETS No. 163).

Member State	Signature	Ratification	Acceptance of collective complaint procedure
Albania	21/9/1998	14/11/2002	
Andorra	4/11/2000	12/11/2004	
Armenia	18/10/2001	21/1/2004	
Austria	7/5/1999	20/5/2011	
Azerbaijan	18/10/2001	2/9/2004	
Belgium	3/5/1996	2/3/2004	23/6/2003
Bosnia and Herzegovina	11/5/2004	7/10/2008	
Bulgaria	21/9/1998	7/6/2000	7/6/2000
Croatia	6/11/2009	26/2/2003	26/2/2003
Cyprus	3/5/1996	27/9/2000	6/8/1996
Czech Republic	4/11/2000	3/11/1999	4/4/2012
Denmark	3/5/1996	3/3/1965	
Estonia	4/5/1998	11/9/2000	
Finland	3/5/1996	21/6/2002	17/7/1998
France	3/5/1996	7/5/1999	7/5/1999
Georgia	30/6/2000	22/8/2005	
Germany	29/6/2007	27/1/1965	
Greece	3/5/1996	6/6/1984	18/6/1998
Hungary	7/10/2004	20/4/2009	
Iceland	4/11/1998	15/1/1976	
Ireland	4/11/2000	4/11/2000	4/11/2000
Italy	3/5/1996	5/7/1999	3/11/1997
Latvia	29/5/2007	26/3/2013	
Liechtenstein	9/10/1991		
Lithuania	8/9/1997	29/6/2001	
Luxembourg	11/2/1998	10/10/1991	

Member State	Signature	Ratification	Acceptance of collective complaint procedure
Malta	27/7/2005	27/7/2005	
Republic of Moldova	3/11/1998	8/11/2001	
Monaco	5/10/2004		
Montenegro	22/3/2005	3/3/2010	
Netherlands	23/1/2004	3/5/2006	3/5/2006
Norway	7/5/2001	7/5/2001	20/3/1997
Poland	25/10/2005	25/6/1997	
Portugal	3/5/1996	30/5/2002	20/3/1998
Romania	14/5/1997	7/5/1999	
Russian Federation	14/9/2000	16/10/2009	
San Marino	18/10/2001		
Serbia	22/3/2005	14/9/2009	
Slovak Republic	18/11/1999	23/4/2009	
Slovenia	11/10/1997	7/5/1999	7/5/1999
Spain	23/10/2000	6/5/1980	
Sweden	3/5/1996	29/5/1998	29/5/1998
Switzerland	6/5/1976		
“The former Yugoslav Republic of Macedonia”	27/5/2009	6/1/2012	
Turkey	6/10/2004	27/6/2007	
Ukraine	7/5/1999	21/12/2006	
United Kingdom	7/11/1997	11/7/62	

Appendix 2 – European Code of Social Security (ETS No. 48): signatures and ratifications

State	Signature	Ratification
Austria	17/2/1970	
Belgium	13/5/1964	13/8/1969
Cyprus	15/4/1992	15/4/1992
Czech Republic	10/2/2000	8/9/2000
Denmark	16/4/1964	16/2/1973
Estonia	24/1/2000	19/5/2004
France	4/10/1976	17/2/1986
Germany	16/4/1964	27/1/1971
Greece	21/4/1977	9/6/1981
Ireland	16/2/1971	16/2/1971
Italy	16/4/1964	20/1/1977
Latvia	28/11/2003	
Lithuania	15/11/2005	
Luxembourg	16/4/1964	3/4/1968
Moldova	16/9/2003	
Netherlands	15/7/1964	16/3/1967
Norway	16/4/1964	25/3/1966
Portugal	19/11/1981	15/5/1984
Romania	22/5/2002	9/10/2009
Slovakia	24/2/2010	
Slovenia	20/1/2003	26/2/2004
Spain	12/2/1993	8/3/1994
Sweden	16/4/1964	25/9/1965
Switzerland	1/12/1976	16/9/1977
Turkey	13/5/1964	7/3/1980
United Kingdom	14/3/1967	12/1/1968

Only the Netherlands has ratified the revised European Code of Social Security (ETS No. 139), which has therefore not yet entered into force. Thirteen other member states have signed the revised Code.

Appendix 3 – Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: signatures and ratifications

Participant	Signature	Ratification
Armenia	29/9/2009	
Azerbaijan	25/9/2009	
Belgium	24/9/2009	
Bosnia and Herzegovina	12/7/2010	18/1/2012
Finland	24/9/2009	
France	11/12/2012	
Ireland	23/3/2012	
Italy	28/9/2009	
Luxembourg	24/9/2009	
Montenegro	24/9/2009	24/9/2013
Netherlands	24/9/2009	
Portugal	24/9/2009	28/1/2013
Slovakia	24/9/2009	7/3/2012
Slovenia	24/9/2009	
Spain	24/9/2009	23/9/2010
“The former Yugoslav Republic of Macedonia”	14/8/2013	
Ukraine	24/9/2009	

Europeans are living through the deepest economic recession since World War II. What began as a meltdown in the global financial system in 2008 has been transformed into a new political reality of austerity which threatens over six decades of social solidarity and expanding human rights protection across Council of Europe member states.

Austerity measures have exacerbated the already severe human consequences of the economic crisis marked by record levels of unemployment. The whole spectrum of human rights has been affected and many vulnerable groups of people have been hit disproportionately. Poverty, including child deprivation, is deepening and is likely to have long-term effects. The economic crisis is also undermining the capacity of central and local authorities to ensure human rights protection.

Human rights provide a universal normative framework and operational redlines within which governments' economic and social policies must function. This Issue Paper provides practical guidance to governments in navigating the historic opportunities and difficult policy choices they face in upholding human rights in times of economic constraint. The critical role of ombudsmen, human rights commissions and equality bodies is also highlighted.

The Commissioner for Human Rights proposes a set of actionable recommendations which help forge a new path along which governments can align their economic recovery policies with their commitments for human rights. It is necessary to reinvigorate the European social model based on the foundation of human dignity, inter-generational solidarity and access to justice for all.

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The Council of Europe is the continent's leading human rights organisation. It includes 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.



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