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COVID-19, THE ECONOMY AND HUMAN RIGHTS

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- *Inequality is not a virus, but a political choice* •

ABSTRACT

This article presents a series of reflections on the links between the economy and human rights in times of Covid-19. It argues that the economy and human rights are not incompatible and criticises “the economy first” approach that some governments are promoting, as it leads to the worst of both worlds: a fall in GDP and a rise in deaths. It also warns about the risk of implementing austerity policies, as done in the recent past, and how these policies and confinement increase the burden on women. It presents fiscal policies that could be implemented to finance social justice, while putting people’s needs and rights before capital growth and the interests of large corporations. It also discusses the regulatory conflict between individual property rights and human rights in a range of cases, including investment arbitration. Finally, he offers a series of proposals on economic, fiscal, financial, monetary, social and environmental policies that combine to form a truly transformative agenda.

KEYWORDS

Covid-19 | Human rights | Economy | Fiscal policy | Debt

1 • The pandemic

On March 11th, 2020, the World Health Organisation declared the outbreak of Covid-19 a global pandemic. In a rapidly evolving situation, states are attempting – with varying degrees of commitment and success – to stop the spread of the disease. While the virus constitutes a threat to the rights to life and health, the impact of the crisis on human rights goes far beyond medical and public health concerns. The health crisis itself and the measures that governments have adopted to address it are leading the world into an economic recession that will push another 30 million people into poverty in Latin America alone by the end of 2020.¹ The consequences of the decisions made – both at the national and international level – to address health and economic issues affect one another mutually, which is why they must be taken together.

While it is now clear that states must take preventative and mitigation measures urgently, globally and in a coordinated manner to contain the pandemic as soon as possible, similar considerations should be made to address the adverse impacts on human rights already being felt because of the drastic economic recession. This is why the response to the crisis must be framed and rooted in human rights law.

2 • Economy vs. human rights? A false dilemma

The blatant disregard for the warnings on the need to prepare for pandemics and the lack of effective action on the part of several governments to protect public health by adopting proven measures to flatten the curve of the pandemic, such as social distancing and quarantines, are reason for concern. When people's lives and health are at stake, business should not continue as usual; we must guarantee that economic activity does not undermine health policies aimed at controlling the spread of the disease and the associated risk of a collapse of public health care systems. The decision to protect life or produce more or less economic wealth in a given year should be made from a human rights perspective. The economy *per se* cannot come first: economic policies should focus on people's needs and rights, not the unlimited expansion of capital.

Some governments are promoting an approach that consists of “saving the economy” at all costs, even if it puts the health and lives of the majority of the population at risk.² Similarly, this economy-centred approach is often accompanied by a total lack of interest in reducing inequalities; promoting tax reforms to move towards more progressive systems in which those who have more contribute more; strengthening and universalising social protection and health care systems; guaranteeing the social sustainability of the sovereign debt; justifying that states preserve policy space, which cannot be challenged in arbitration proceedings at the International Centre for Settlement of Investment Disputes (ICSID); caring for people in confinement; protecting those who work outside their homes; deploying specific mechanisms to address gender violence during the lockdown; investing more in the care economy, or

preventing deaths or health problems caused by pollution and climate change. Therefore, in real terms, “saving the economy” also means prioritising the benefits of a certain elite.

It is thus necessary to distinguish between large corporations’ claims to save their profits from the needs of impoverished workers who are trying to earn a living on a daily basis. Although it is important to minimize the social and economic impacts of the recession by offering employment and thus ensuring the survival of the business sector, there are more sophisticated, realistic and efficient alternatives than this more generalist approach. These include, for instances, temporary and targeted exemptions from taxes, rent, mortgages and other outstanding debts or other kinds of financial relief. The existence of a large proportion of the workforce employed in multiple, informal conditions or short-term contracts makes it more difficult to protect jobs by only rescuing small and informal businesses.

From this perspective, it is imperative that states reduce inequality and poverty, and not only bail out large corporations, banks and investors without imposing any social conditionalities on them. Experience shows that these companies do not share these resources immediately or spontaneously with those who need it the most. For this precise reason, companies that distribute dividends, proceed with share buybacks or are registered in tax havens should be made ineligible for government aid programmes, as the governments of Argentina, Austria, Canada, Denmark, France, Poland and Spain have done. Also, for the same reason, capital controls to curb capital flight are also justifiable. Tax fraud and financial speculation do not contribute to human rights; they erode them.

The “economy first” approach should not mean abandoning people to cope with the crisis on their own. First, this is a very short-term view, since from a purely consequentialist standpoint, thousands or millions of people infected or dying does not seem to be a great contribution to national economies. Secondly, as the IMF warned, ineffective health policies prolong the contagion and the violence of the outbreaks, which means that it will take longer to return to stability, a prerequisite for economic recovery. Not putting public health at the centre of government plans of action does not save the economy; it only leads to the worst of both worlds. The case of Brazil should be informative: its economy is collapsing while mass graves are being dug.

The implementation of robust public health policies that save lives and prevent health care systems from collapsing should be complemented by policies that allow goods and services to be imported and/or produced and distributed in order to fulfil basic human rights, while minimising the long-term, negative economic impacts of the pandemic.

From a human rights perspective, the impacts of the recession include challenges to the full enjoyment of a wide range of human rights, such as the right to food, housing, health, education, water and sanitation, social protection, fair and adequate working conditions and freedom from discrimination. Human rights law clearly establishes that people should not have to choose between one basic human right and another. This could be the case, for example, when people reduce their food intake to be able to pay for housing or medical care.

Furthermore, there is special concern with people who have no choice but to acquire more debt to try to satisfy their basic needs. If nothing is done immediately, it is likely that individual and family debt will continue to grow, as people turn to loans as a last resort to fulfil basic human rights. This is especially true if austerity measures are implemented and actively promoted, as the IMF is suggesting.³ Even though household debt is not a human rights violation *per se*,⁴ it becomes particularly problematic when people resort to formal and informal lending networks to guarantee their right to health care, housing, food, water and sanitation or education, for example. What could seem like a lifeline today rapidly becomes a precipitous decline, as debt payments reduce incomes that were already low. To this, one must add the fact that remittances from migrants currently working in countries hit hard by the pandemic are likely to decline dramatically, which will directly affect the lives of many people, especially in developing countries.

3 • The effects of the economic recession on human rights: lessons from the recent past

An economic crisis looms on the horizon, one with immediate social impacts that are already being felt due to the loss of jobs. The world is currently experiencing a “coronavirus shock”:⁵ a phenomenon that threatens to severely affect the global economy, societies and human rights. While it is too early to accurately estimate the scale of the crisis, there seems to be a consensus that its repercussions will be much more drastic than those of the 2008 financial crisis.

More specifically, the UN Department of Economic and Social Affairs anticipates, at best, a deceleration of growth to below 2.5 per cent, the previously forecasted rate for 2020. At worst, it predicts a -0.9% contraction in the global economy. According to the study, the severity of the recession will depend mainly on two factors: “(1) the duration of restrictions on the movement of people and economic activities in major economies; and (2) the actual size and efficacy of fiscal responses to the crisis. A well-designed fiscal stimulus package, prioritizing health spending to contain the spread of the virus and providing income support to households most affected by the pandemic would help to minimize the likelihood of a deep economic recession”.⁶ In terms of lost income, the global economic costs related to the pandemic are currently estimated at 1.1 trillion dollars in 2020 in the most benign scenario, and nearly 3 trillion in the worst-case scenario.⁷

In a context where global indebtedness (household, government and business sectors combined) reached a record high at the end of 2019 and – as UNCTAD had already been pointing out in 2018 – private debt is on a rise, even greater economic challenges⁸ are expected due to debt servicing. This is particularly problematic for developing countries whose average total debt is nearly twice the size of their GDP⁹ and for those that already devote an unprecedented share of their revenues to service their debt with a variety of creditors.

The large-scale impacts of the last global economic crisis (2008-2009) on human rights of people around the world are clear to everyone. Looking back at this period, we can identify a series of consequences, including the adverse effects on the rights to food, housing, education, health, water and sanitation, just and favourable conditions of work and social protection. These impacts have been well-documented both in developed and developing countries. As indicated in a report of the Office of the United Nations High Commissioner for Human Rights on that time, “Generally, the crisis and the global economic slowdown associated with it, has the potential to impact on human rights directly and indirectly, including on the ability of individuals to exercise and claim their rights and on the ability of States to fulfil their obligations.”¹⁰

Furthermore, the same economic shocks can have different impacts on vulnerable and marginalised groups, which can be accumulative for some. In this period, we witnessed an increase in hunger in the world, a large rise in evictions, foreclosures and homelessness, as well as negative impacts on housing affordability. We also know that this crisis caused a major increase in unemployment, which reached unprecedented levels in 2009, pushing many into poverty and exacerbating entrenched inequalities.

In response to the 2008-2009 crisis, we also witnessed the adoption of rescue packages to “save the economy” that targeted private financial institutions, not individuals. Mitigation measures were deployed to limit financial impacts instead of providing specific relief measures to people to ensure the enjoyment of their human rights, such as a moratorium on mortgages and evictions. This means that the bailout policies did not directly benefit the people affected by overpriced mortgages, but rather private financial institutions – the same ones that took too many risks, which was facilitated by deregulation. Lax monetary policies increased financial investors’ revenues¹¹ and encouraged private investors to acquire bonds issued by developing countries.

While the governments’ initial reaction to the 2008-2009 crisis was to support national economies through fiscal stimulus packages and government borrowing, very early on in the process, they began implementing orthodox austerity policies strongly pushed by the IMF and World Bank.¹² These policies have lasted over a decade. In fact, in recent years, two-thirds of the countries in the world were considering adopting austerity measures.¹³

However, it has been shown that as a policy for dealing with the consequences of an economic crisis, austerity does not contribute to economic recovery. Instead, it deepens inequality, hits the most vulnerable the hardest, weakens states’ public safety nets and puts their capacity to fulfil their human rights obligations at risk.¹⁴ As we are witnessing today, it also impairs the ability of states to respond to future shocks in an adequate and timely manner and to prevent and mitigate negative effects on human rights.

The concern raised here is not economic history.¹⁵ In April 2020, in its *Fiscal Monitor Report*, the IMF affirmed that “Once the Covid-19 crisis is over, high-debt countries should, in

general, pursue fiscal consolidation supported by growth-friendly measures".¹⁶ Despite the broad agreement on the need to strengthen the fiscal space of states, in March 2020, World Bank president continued promoting structural reforms¹⁷ which, if anything like the ones in the past, will have negative impacts on human rights all over the world.

4 • The economic crisis has a woman's face

The current economic system is, for the most part, sustained by gender inequality and discrimination against women in the labour market. All over the world, paid and unpaid care work is often performed mainly by women. The value of women's unpaid or poorly paid work and their contribution to the economy has been grossly underestimated and even ignored for centuries. However, in times of pandemics, such as the current one and its interrelated crisis, the value of this work has multiplied. What is more, women make up over 70% of the workforce in the social and health sectors. That is not to mention the role played by women community health workers who are not paid for their work. The human right to care (to provide care, be cared for and to self-care)¹⁸ is being clearly violated.

In this context, it is not surprising that the impacts of the economic crisis are greater for women than for men.¹⁹ Economic crises affect women more than men because they are often over-represented in the informal sector and have low-paying jobs and greater chances of losing their jobs. Furthermore, they suffer simultaneously as public sector workers, service users and the main recipients of social security benefits, all of which has specific implications in terms of care work. The risk of this crisis adding to the burden of care work on women and exposing them to higher levels of discrimination and gender-based violence, in its multiple forms and intersections, is real and acute.²⁰

5 • Fiscal policies to finance social justice

States should rethink their fiscal policies to fund social policies and ensure that these policies and their financial and monetary policies are coherent with one another.²¹ Financing the fiscal deficit is legitimate if it guarantees the population's access to basic human rights. This is why the announced lifting of the European Union's Stability and Growth Pact, which prevents states from accumulating fiscal deficits above 3% of GDP, is commendable. This move will provide states the fiscal space they need and allows them to better mobilise available resources to fight the pandemic and prevent the adverse impacts on human rights that may result from the economic recession and/or the quarantine and the restrictions established to respond to the current health crisis. However, states must take care to avoid debt distress in the future and harness excessive private wealth.

It is unacceptable, in terms of human rights, that only a few people, and the richest 1% in particular, benefit from the crisis through speculation and other means. Therefore,

immediate action should be taken to combat these financial manoeuvres, especially when it comes to prices of Covid-19 related supplies and basic commodities. Price control systems should be implemented for items that are crucial in the current context, such as medicine, alcohol, masks, water and food to prevent market abuses.

All too often, when discussing human rights, and economic, social and cultural rights in particular, the first argument raised by those responsible for their fulfilment is the lack of financial resources to do so. Governments emphasise the “progressive realisation” of economic, social and cultural rights, but fail to look at their core and immediate obligations and the positive obligations of states to generate, allocate and adequately use the maximum of their available resources to advance as quickly and effectively as possible towards the full realisation of these rights. However, the current health and economic crisis shows us two things.

First, some aspects of economic, social and cultural rights with immediate effects do not require resources. For example, one cannot deny patients with Covid-19 medical treatment on the basis of gender, age, race, origin, class, caste, religion, belief or other reasons due to the prohibition of discrimination.

Secondly, this crisis has demonstrated that money can be found when there is a sense of danger and need involved. Governments and the international community have committed to injecting trillions of dollars. In fact, the G20 promised to inject 5 trillion dollars in the global economy and “do whatever it takes to overcome the pandemic”.²²

This way of thinking is not proactive, but reactive. Even if a fraction of this amount had been used proactively for the realisation of human rights and to establish a strong public health sector (instead of subjecting it to commodification, privatisation and cutbacks) to fight inequalities, poverty and the underlying systemic problems related to it, we would not be in such a dire situation today.

States must invest immediately in the health sector and health supplies (including those to treat Covid-19) and strengthen social safety nets. States should, as a first step, provide financial support to individuals and households in need in the form of an emergency universal basic income and/or help employers pay wages, depending on the circumstances. During a second phase, they should establish robust, universal social protection and security systems that enable people to achieve an adequate standard of living. States should also invest in nutrition, housing, education and local, small-scale, environmental-friendly agricultural production.

In practice, this approach does not prevent governments from acting as payers of last resort to cover companies’ costs and pay salaries during the crisis, if necessary. This policy would be justified if implemented to avoid setbacks in economic and social human rights. This crisis must not be used as an excuse to accept new cuts to salaries and other social rights of workers, as some companies (and states) are doing. The crisis is seen as a large-scale test and

the home-office trend is expected to gain momentum in the world of work in the immediate future. Again, this should only be allowed to progress if it does not undermine workers' rights. In fact, now more than ever, there is an urgent need to discuss the relationship between working conditions and obtaining an income (basic income, people's income or any other similar concept) that is sufficient to meet basic rights.

One important aspect is the ultimate source of the funds to be injected in the economy. In the short term, states will undoubtedly have to manage high deficits, since higher public revenues do not keep higher expenditures in check (quite the contrary). However, later on, it will be necessary to reduce this deficit and face new public debt payments. Given the exceptional nature of the current situation, states could establish a one-off tax on wealth; but they could also undertake more ambitious reforms. Indeed, now is a good time to seriously engage in structural reforms for redistributive justice, including progressive tax reforms that require millionaires, billionaires and large corporate conglomerates to contribute amounts that are proportional to the size of their fortunes and profits to society. These structural reforms should include eliminating the primacy of shareholder value in order to distribute profits to all stakeholders, as some companies have promised to do. It should also involve the adoption of more progressive national tax systems and a global corporate tax,²³ including the taxation of all subsidiaries of transnational corporations, tech and online companies and high-net-worth individuals.

States need to urgently address the problems of illicit financial flows, tax evasion and tax avoidance in collaboration with one another.²⁴ This would make enormous amounts of money available to the international community for resolving the crisis by establishing a global fund,²⁵ for example. In particular, individuals and corporations that evade and avoid taxes, including ones with accounts or companies based in tax havens, must be excluded from public bailout measures.

This is where human rights should inform and serve as the basis for coordinating a transformative agenda in the area of economic, fiscal, financial, monetary and social policies. States have the international obligation to generate, adequately allocate and maximize available resources to advance as expeditiously and effectively as possible towards the full realisation of economic, social and cultural rights (art. 2 of the ICESCR). This legal reference should constitute the framework for the discussion on taxing personal assets, eliminating tax evasion, preventing the drain on foreign reserves and consolidating a basic income for all. Reducing inequality is a legal obligation and human rights have the ideological and technical potential to overcome it and anchor public policies in the needs and rights of the people.

6 • The scope of property rights in times of a pandemic

Individual property rights (real, personal and intellectual) should be harmonised with other human rights. The right to property as such is not absolute and, when duly justified, states

should be able to take the economic and legal measures necessary to deal with the current health crisis more effectively. No right or private economic monopoly should be given priority over peoples' right to health and to life.

States that have stepped in to assume public management of the services provided by the private sector in order to guarantee effective, coordinated and non-discriminatory access to these services, such as medical treatment and care for the elderly, not only merit special recognition, but should also be considered an example of a good practice for other countries. In Ireland, for example, the government announced on March 24, 2020 that "For the duration of this crisis, the State will take control of all private hospital facilities and manage all of the resources for the common benefit of all of our people. There can be no room for public versus private when it comes to pandemic" and that all patients with Covid-19 will be treated free of charge.²⁶

In view of the life-threatening situation, including for medical personnel, states should also consider taking control of some companies capable of producing masks and other necessary items, if it would lead to more effective protection of public health. Their owners should be compensated in accordance with the constitutional provisions in the respective countries. Furthermore, in the midst of a global health crisis like the current one, there should be a complete waiver of the provisions of the *Trade Related Intellectual Property Rights* (TRIPS) agreement that apply to medicines and other related technologies.²⁷

It is worth recalling that article 15 of the International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to "enjoy the benefits of scientific progress and its applications". This is of particular significance when combined with the right to life and health in the current context. In fact, the United Nations Committee on Economic, Social and Cultural Rights has just published a General comment on "science and economic, social and cultural rights" in which it explains that "The term 'benefits' refers first to the material results of the applications of scientific research, such as vaccinations, fertilizers, technological instruments and the like. (...) some applications of scientific progress are protected under intellectual property regimes. The right to participate in and to enjoy the benefits of scientific progress and its applications assists States in making sure that these property rights are not realized to the detriment of the right to health".²⁸ The proposal that Costa Rica submitted to the WHO to create a team to collect patent rights, regulatory test data and other information that could be shared for the purposes of developing drugs, vaccines and diagnostics is therefore coherent with international human rights standards.²⁹

In regards to the protection of foreign direct investment, states should issue a joint interpretation of bilateral investment treaties clearly explaining that the pandemic constitutes an unforeseeable and overwhelming force majeure, which justifies the adoption of proportional state regulatory measures to protect public health and the human rights of the population, even if it affects the economic rights of foreign investors.³⁰ No promise of economic gain should ever be above state policies to ensure the survival of the population.

7 • An opportunity for transformative change

We cannot afford to go back to business as usual, nor see a return to the pre-Covid-19 state of affairs as our ultimate goal. The Covid-19 pandemic is a shock that calls on us to rethink the economic, financial and social system in which we live to reduce inequalities between and within countries, as well as between men and women.

Both the Covid-19 crisis and the already visible effects of climate change expose the fragility of our current economic and social systems. Our systems cannot handle the strain of these phenomena, ranging from climate events to pandemics, which experts predict will become more frequent and severe. And when these events occur, our economic and social systems seem to guarantee adequate living conditions mainly for the elite, while the majority of people are pushed into more precarious conditions due to growing poverty and inequality and the deterioration of health. All this makes people much more vulnerable to death when disasters strike.

However, certain concerted actions taken to confront the Covid-19 crisis demonstrate that coordinated action and rapidly changes to policy and practice to tackle global challenges are possible. The sudden decline in production and consumption associated to the current crisis, which has been accompanied by the drop in pollution and greenhouse gas emissions in all continents, call into question our reliance on economic growth as a measure of progress for our societies. At the same time, they highlight the important role that governments play in protecting livelihoods and the right to an adequate standard of living, including rights to adequate housing, social protection and medical treatment for all people.

Economies continue to be important, especially for generating the material basis necessary for a good life for all people through the provision of essential services, decent work and sufficient material goods. However, they must be made to serve the public good and be guided by human rights principles, instead of relying on speculation, high levels of private debt, unregulated consumption and the degradation of natural resources in ways that increase our vulnerability and that the planet can no longer sustain. For the same reasons, states should not provide subsidies (bailouts) and other emergency benefits to sectors whose existence is in direct contradiction with the Paris Agreement, including its 1.5° C temperature limit and the ones for which a transition is not a possibility.

States must save lives and economies to ensure that there are jobs for people down the road and the provision of basic goods and services during the crisis, but this must be done in an intelligent and responsible way that gives special consideration to health impacts. In the “Urgent appeal for a human rights response to the economic recession”³¹ that I sent to governments and international financial institutions in April 2020, I presented a series of recommendations covering a wide range of economic, financial, monetary, fiscal, tax, trade and social policies to help achieve these goals. They include offering emergency cash transfers and aid packages, expanding social safety nets and considering universal basic

income systems, suspending evictions and foreclosures, freezing rents and prohibiting utility cuts due to non-payment. Other measures are the waiver of the provisions of the Trade Related Intellectual Property Rights (TRIPS) agreement in relation to drugs and other related technologies and the suspension of international arbitration proceedings on disputes with foreign investors and of payments and the accrual of interest on private debts of individuals who would otherwise not be able to weather the health crisis for lack of income.³² Other measures are making the repayment of new consumer and investment loans conditional on the curve of the outbreak being reduced to a specific level in a few months from now, approving more progressive taxes on large fortunes, imposing a moratorium on and reducing the public debt of low – and middleincome countries experiencing debt distress and establishing universal health coverage aligned with international human rights standards, among others.

A large number of countries have already begun implementing many of these measures, which contradicts the idea that human rights are not capable of reducing inequalities and that the capture of the state by economic elites is an irreversible natural phenomenon. However, more international and intra-national coordination is needed to coordinate health and economic policies in different jurisdictions to avoid a race to the bottom in which deliberately low standards of health protection are offered to attract more investment.

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