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Rossella De Falco

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Human Rights, Fiscal Policy and Economic Pluralism: Building Inclusive Recovery after COVID-19

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Abstract

The recent COVID-19 emergency has showed how universal healthcare and social security are indispensable to save lives, preserve human dignity and make economies resilient. The global lockdown, though, prompted a massive supply shock, which is now causing a new economic depression, different from any other recession in living memory. The Global South is being affected the most, with the virus wrecking communities and their economies. A rights-based approach to fiscal and economic recovery can be the answer. Indeed, partly as a consequence of the human suffering wrought by the 2008's global financial crisis, human rights scholars and practitioners have developed a wide range of policy options to build inclusive, sustainable economic recovery. This article has two aims. First, it will review the normative foundation of the rights-based approach to economic recovery, including most recent developments, open debates as well as its strengths and weaknesses. Second, this work suggests that too little attention is paid to economic pluralism in such a framework. After briefly summarising what economic pluralism is, it will be argued why it is an invaluable tool in advancing rights-based recovery and overcoming the unnecessary Manichean opposition between economics and human rights. Overall, this work seeks to advance the academic discourse on a rights-based framework to economic recovery, as to place people at the centre amid the COVID-19 recession.

Keywords: *human rights budgeting, economic, social and cultural rights, economic pluralism, economics and human rights, COVID-19.*

* Ph.D Candidate, University of Padova Human Rights Centre, email: rossella.defalco@phd.unipd.it

Introduction

The Independent Expert on foreign debt and human rights, Mr. Juan Pablo Bohoslavsky, has recently urged states to increase social spending to confront the COVID-19 shock (Bohoslavsky 2020b). In a letter to governments and international financial institutions (IFIs), entitled 'COVID-19: Urgent appeal for a human rights response to the economic recession', the Independent Expert has underlined that governments should not focus only on private debt, bailing out corporations, banks and investors without human rights conditions attached (Bohoslavsky 2020a). According to Bohoslavsky, the approach of 'saving the economy' at any cost, even human lives, has the latent meaning of prioritising the benefits of certain elites over others (Bohoslavsky 2020, 6). By contrast, the Independent Expert suggested states to immediately consider unconditional cash transfers to maintain adequate standard of living, provisions of emergency shelter as well as a halt to cuts in the provision of electricity and water (Bohoslavsky 2020, 9). Hence, a rights-based response to the upcoming 'coronavirus shock' is an urgent priority, and it will permit to avoid the deleterious effects of austerity. In fact, Bohoslavsky sustains that austerity policies were an error, causing socioeconomic malaise and human lives the aftermath of the 2008-9 economic crisis. This view is shared by the UN Special Rapporteur on extreme poverty and human rights, who has recently blamed austerity policies for weakening the resilience of welfare states in the face of shocks such as the COVID-19 pandemic. Indeed, the newly appointed Olivier De Schutter denounces how individuals are experiencing increased barriers in accessing healthcare as a result of regressive fiscal policies. For instance, even relatively robust national health systems (NHS), such as Italy and Spain, have been pushed to the brink after years of budget cuts (Newsweek 2020).

Perhaps, the bleakest example of the implementation of austerity is Greece. The Southern European country accepted to implement an international adjustment programme funded by the institutions of the Troika, i.e. the International Monetary Fund (IMF), the European Commission (EC) and the European Central Bank (ECB). This bailout programme had austerity as an economic condition attached, encompassing large-scale privatisation and horizontal budget cuts, with severe implications for the right to health, work and social security. Many public health and epidemiology scholars have demonstrated that austerity was responsible for a public health emergency in Greece (Alexander et al. 2011), with malaria outbreaks (Ifanti et al. 2013), peaks in suicides and mood disorders (Christodoulou et al. 2017), an HIV pandemic, widened health inequalities and a remarkable deterioration in the underlying determinants of physical and mental health. This situation

has been repeatedly condemned by human rights advocacy (Amnesty International 2018; Salomon 2015). However, states also applied fiscal retrenchment out of their own volition, as in the case of the United Kingdom. Even in this Western European country the effects of austerity on human rights were condemned by human rights monitoring bodies. Philip Alston, the former Special Rapporteur on poverty and human rights, described (Alston 2018), in the aftermath of the 2008-9 economic crisis, the appalling hardship experienced by children growing up in poverty, disabled people told to get back to work against their doctors' orders as well as individuals being dependent on food banks for their next meals. It is not surprising, then, that many authoritative human rights voices are calling for debt relief and moratorium (Bohoslavsky 2020a; Saiz 2020) for the weakest states when the post-COVID-19 crisis will hit. What is more surprising is that such options have been even backed by the staunchest promoters of austerity, such as the World Bank (WB) and the IMF (IMF 2020).

The stark positioning of the human rights community against austerity embodies the ever-clear rights-based perspective on public policies and budgetary decisions. Even the Committee for Economic, Social and Cultural Rights (CESCR) began to address budgetary decisions in human rights terms after the 2008's financial crisis (Nolan 2015). Furthermore, emerging scholarship is investigating how courts dealt with post-crisis budgetary decisions of states that impinged on social rights (Fasone 2014b, 2014a; Pietro Faraguna, Cristina Fasone, and Diletta Tega 2019). This rights-based approach to public budgets, however, was the result of a very long normative journey. The debate is still ongoing, and many open questions remain.

This paper is divided in three sections. First, it will depict the normative journey that led to the emergence of a rights-based approach to public budgets and resource mobilisation for human rights. The second section focuses on the present, analysing the recent UN Guidelines on Human Rights Impact Assessments of Economic Reforms, focusing on the procedural requirement of participation in economic policymaking. The third section aims at analysing a less frequently analysed perspective, namely that, to fully realise the rights-based approach to economic policy, human rights advocates should be familiar with economic pluralism, and promote it in democratic fora for economic policymaking. The position advanced is that, combined with strong procedural requirements on democratic participation, economic pluralism is an effective way to overcome the Manichean opposition between human rights and economics, ultimately achieving human rights in all policies.

1. Human Rights, Public Budgets and Fiscal Policies: a Long Normative Journey

For a long time, scrutinising states' budgets through human rights lenses raised concerns. First, there was the preoccupation that interfering in states' budgetary decisions would infringe the sovereignty principle. Second, there was a perceived risk of undermining courts' neutrality and independence from the legislative and executive branches. These concerns were mirrored, for example, in the agnosticism of the Committee on Economic, Social and Cultural Rights (CESCR) on how state parties should mobilise resources to progressively realise rights (Nolan 2015). Such agnosticism went hand in hand with the openly professed neutrality of international human rights law regarding the economic organisation of societies. Indeed, Art. 8 of the General Comment 3 (GC3) on 'The Nature of State Parties' Obligations (Art. 2, Para. 1, of the Covenant)' contains the well-known proposition that:

'The Covenant is neutral and its principles cannot accurately be described as being predicated exclusively on the need for, or the desirability of a, socialist or a capitalist system, or a mixed, centrally planned, or laissez-faire economy, or upon any other particular approach' (CESCR 1990).

This normative agnosticism has changed over the years, albeit slowly and with bumps on the road. If international human rights law still does not dictate which economic system party members should adopt, human rights scholars, monitoring bodies and courts are increasingly developing procedural requirements as well as indicators, benchmarks and methodologies to scrutinise states' budgetary choices. While maintaining their sovereignty, states must prioritise human rights in framing all their monetary and fiscal policies. The next paragraphs will describe how the human rights community gradually shift from being reticent to engage with questions surrounding public budgets to a much more active approach, arriving even? /eventually? at suggesting specific fiscal arrangements such as progressive taxation or raising levies on wealth and capital rather than consumption.

1.1 Progressive Realisation under Maximum Available Resources: Strength or Weakness?

Although all human rights require resources, economic, social and cultural rights (ESCR) have been conventionally discussed more in relation to states' budgets. For instance, an entitlement such as the right to health is directly dependent upon the availability of high-quality, affordable healthcare systems, equipped with high-level medical technology and specialised staff. Therefore, we turn to the examination of the 1966's International Covenant

on Economic, Social and Cultural Rights (ICESCR) in our discussion of a rights-based approach to fiscal recovery and public policies. However, as it will be seen, this discussion is relevant also for civil and political rights, even if ESCR scholars have been engaging more with this debate over the years.

According to the ICESCR, the rights to health, education, work, social security, cultural life and a dignified standard of living are subject to *progressive realisation* under *maximum available resources*. In fact, Art. 2, para 1., of the ICESCR upholds that:

‘Each State Party undertakes to take steps to the maximum of its available resources to achieve progressively the full realization of the rights in this treaty.’

The obligation to take steps in order to fulfil socioeconomic and cultural rights was already anticipated by Art. 22 of the previously adopted Universal Declaration of Human Rights (UDHR), which carefully conceded that the realisation of ‘economic and social rights was to be achieved through national effort and international cooperation’ and in line with ‘the organisation and resources of each state’. The drafting history helps in understanding why the norm on progressive realisation was drafted in such a vague and ambiguous way. In fact, the working group of the that prepared the draft of what would have become, in 1948, the UDHR, was concerned to write a document which would hold together very different, or blatantly opposite, views about the role of the state in the economy (Glendon 2001, 87). Soon after World War II, indeed, the polarisation which would have characterised the geopolitics of the Cold War was already evident. On the one hand, the US was proposing itself as the champion of free markets, while the Soviet Union was leading an aggressive policy of top-down, large-scale planned industrialisation (De Schutter 2018). The UDHR said nothing, then, regarding the desirable level of interference of the state with market mechanisms. Therefore, albeit strongly condemning discrimination, the UDHR did not tackle the sensitive topic of privatisation, nor the equally heated debates on income redistribution and wealth inequality. This was seen as a needed sacrifice to advance the idea of indivisibility and interdependence of all human rights (De Schutter 2018). Hence, when, in 1987, the Committee on Economic, Social and Cultural Rights (CESCR) was formed, socioeconomic rights were still seen as too ill-defined to be justiciable. This is why the ICESCR was often described as ‘programmatic and promotional’ (Brownlie 1980, 572-73), with many law scholars sceptical (Vierdag 1978) about the possibility of courts actually monitoring the realisation of the Covenant’s pledges. Of course, there were already exceptions to this conservative view (Alston and Quinn 1987; Van Hoof 1984).

In response to such criticism, the CESCR started developing a rich normative body to support the interpretation of the ICESCR. While remaining firm on the neutrality of human rights law regarding specific economic systems, the Committee specified that states have an obligations to move 'as expeditiously and effectively' as possible towards the full realisation of economic, social and cultural rights (CESCR 1990). More significantly, in 1997, the Maastricht Guidelines on the Violations of Economic, Social and Cultural Rights listed among the violations of the ICESCR 'the reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone' (ICJ 1997). Adopted on the 10th anniversary of the Limburg Principles, the Maastricht Guidelines were a huge progress in the normative evolution of economic, social and cultural rights (Dankwa, Flinterman, and Leckie 1998). In fact, the Maastricht Guidelines clarified the negative duty implied in the obligation of progressive realisation: the prohibition of deliberative retrogressive measures (Nolan, Lusiani, and Courtis 2014). This principle is found in several General Comments adopted by the CESCR later, such as General Comment 19 on the right to social security, which mandate that retrogressive measures must be implemented only after other alternatives are carefully considered and deemed inapplicable, as well as after an ex-ante independent review. When implemented, these measures must be temporary, non-discriminatory, necessary and reasonable (CESCR 2008, 18).

The ICESCR, however, also contains an obligation that is not subject to progressive realisation nor conditional upon economic development. Indeed, states are required to ensure basic levels, or a minimum core, of economic, social and cultural rights. The minimum core normative framework was already expressed in the Limburg Principles (UN Commission on Human Rights 1987), which states, at para 25, that parties are obligated, regardless of the level of development, to ensure respect for essential levels of rights' enjoyment. By the same token, General Comment 3 warrant that a country in which 'individuals are deprived of essential foodstuffs, essential primary healthcare, basic shelter and housing' as well as 'the most basic form of education', is in violation of its obligation under the ICESCR (CESCR 1990). Hence, any state, at any level of development, is obliged to provide access to water and food to ensure freedom from hunger, as well as essential medicines and the enjoyment of a universal social protection floor (De Schutter 2018). Similarly, the ICESCR entails the obligation of non-discrimination. The content of this obligation is outlined in General Comment 20, and it implies a duty to remove discrimination from a State's constitution, legislation or policy document. Moreover, the provision mandates to address immediately

substantive discrimination, giving priority to the groups being traditionally marginalised or disadvantaged in a society (CESCR 2009).

Finally, another key principle contained in the doctrine related to economic, social and cultural rights is participation. This principle is not overtly stated in the ICESCR. Rather, it is a derivation of the right to self-determination, defined both in the ICESCR and the International Covenant on Civil and Political Rights (ICCPR). Self-determination refers to the entitlement of people to freely dispose of their natural wealth and resources. Specifically: 'At the very least, a State's population has a right to enjoy a fair share of the financial and social benefits that natural resources can bring. This requires ensuring participation, access to information and high standards of transparency and accountability in decision-making about the use of natural resources (Carmona 2014)'. The obligation of participation goes beyond the exploitation of natural resources. For instance, turning again to General Comment 19 on the right to social security (para 42) in the case of retrogressive measures, it is relevant to ask whether such measures derived from the 'genuine participation' of relevant stakeholders in examining proposed alternatives (CESCR 2008).

Therefore, the principle of progressive realisation under maximum available resources turned from a weakness into a strength (De Schutter 2018), paving the way for the scrutiny, in human rights terms, of public policies and budgets. From the brief historical overview above, it emerges that four principles have wide consensus when dealing with public budget and human rights: the prohibition of deliberative retrogressive measures, embedded in the principle of progressive realisation; the minimum core to be ensured regardless of economic development; non-discrimination, both in terms of guaranteeing substantive and formal equality; participation. However, these principles were still expressed at a great deal of vagueness and ambiguity. According to former Special Rapporteur Olivier De Schutter, for example, a great deal of confusion existed regarding conflict over different constitutional backgrounds. For instance, he asks, may retrogressive measures be adopted for the sake of achieving greater equality? (De Schutter 2018, 12). Furthermore, implementing socioeconomic rights often implies a trade-off between the richest and poorest in societies; in other words, they require courts to implement positive duties. However, courts have been traditionally more acquainted with negative duties, i.e. protecting existing rights (De Schutter 2018, 12). In effect, a decade ago, 'tax policy' and 'human rights' were hardly pronounced in the same phrase (Alston and Reisch 2019, 33). These difficulties sparked debate in the human rights community, delineating several approaches to the assessment of progressive realisation: the *violation* approach, the *outcome* approach, and the most recent *resource-*

spending-outcomes approach. The next paragraph will discuss these three conceptual frameworks. Then, the last paragraph will look at the very last developments in the field of human rights and public budget, as we are witnessing a great deal of change in the field over the last decade, especially after the 2008 global economic crisis.

1.2 Assessing Progressive Realisation: Different Approaches

Three approaches emerge, to date, for the monitoring of the ICESCR: the ‘violations’, the ‘outcome’ and the ‘resource-spending-outcome’ frameworks (De Schutter 2018).

The *violation approach* was proposed in an influential article (Chapman 1996) by Audrey Chapman, who sustained that human rights lawyers should abandon the quest for assessing progressive realisation altogether. Following Chapman’s reasoning, this search would only result in undermining the advancement of the ICESCR, distracting the human rights community from the most prominent violations. The same framework was proposed for the right to health, specifically (Chapman 1997). Chapman distinguished between three forms of violations, namely: 1) violations resulting from actions of governments; 2) violations related to patterns of discrimination; 3) violations taking place due to a state’s failure to fulfil the minimum core obligations contained in the Covenant. Of course, Chapman did not intend to lower the bar for socioeconomic and cultural rights achievement, but rather sustained that if states were to fulfil their core obligations, this would have meant significant progress (De Schutter 2018, p. 13). In her words: ‘The minimum state obligations approach affirms that even in highly strained circumstances, a state has irreducible obligations that it is assumed to be able to meet’ (Chapman 2007, 154). Hence, the suggestion of the violations approach is for human rights lawyers to focus only on the most obvious violations of the Covenant. The idea is that the Covenant would benefit from the identification of an essential content has a strong pedigree (De Schutter 2018, 13). See, for example, the work of Alston, who urged the Committee working on the Limburg Principles to convey the message that states should ensure the satisfaction of minimum subsistence levels (Alston 1987; De Schutter 2018).

By contrast, the *outcome approach* to the ICESCR focuses all the attention on the level of enjoyment of rights from the individual. In other words, according to this approach, outcome matters, not means. The framework, hence, is silent on the issue of privatisation. Privatisation is the transfer of government services or assets to the private sector. During privatisation, state-owned assets may be sold to private owners and services formerly

provided by the government may be contracted out (Encyclopaedia Britannica 2020). If human rights scholarship only focuses on outcomes, it is then not important if the levels of enjoyment of a certain right is provided for by public or private entities. There are many problems associated with agnosticism over privatisation, though, from a human rights perspective. For a complete discussion, there is a wide literature on the topic (Brown 2010; Chirwa 2004; Feyter 2005; Katrougalos 2010). Here, we will briefly look at the risk of privatisation through the example of the right to the highest attainable standard of physical and mental health, warranted by art 12 of the ICESCR. First, the privatisation of healthcare (Janssen and Van der Made 1990) entails the risk of exclusion. In fact, certain groups might be excluded from healthcare due to high user fees and co-payments, widening inequalities in accessing medical treatment (Lagarde and Palmer 2011). In fact, markets are a form of plutocracy, meaning that they respond to demand, which is in turn expressed by those with the highest purchasing power, rather than the real needs of the people (De Schutter 2018). Private actors, indeed, are profit-oriented, and are not subject to accountability or bound to the pledges made to voters. This also entails the problem of quality monitoring: low-quality services might be provided at lower prices for those who cannot afford better quality. Finally, some goods are positional, as in the case of education (Adnett and Davies 2002). In these cases, rights should be distributed in relative equality, to be enjoyed. A very good example of the outcome approach is the SERF Index, an innovative composite indicator that employ socioeconomic statistics to gauge the extent to which rights-holding individuals are enjoying social and economic rights against each country's level of obligation (Backman et al. 2008). The level of obligation is measured through the innovative Achievement Possibility Frontiers (APFs) benchmark, that considers the relative economic development of states as a proxy for *maximum available resources*. The indicator used to measure the level of obligation is per capita GDP, whereas indicators such as school enrolment or child mortality are used to measure socioeconomic rights' enjoyment. This results in two indexes: the core SERF Index, most relevant for low- and middle-income countries; and the High-Income SERF Index, most relevant for high-income countries. This approach goes further than the violation approach, as it fruitfully considers the whole range of possibilities a state can achieve with its own resources. However, it remains silent regarding how resources are mobilised, and whether rights are realised through private or public actors. For example, the indicators for the right to health are the following: modern contraceptive use rate; child (under 5) survival rate; and age 65 survival rate. The obligation side is measured with a country GDP. Therefore, it is silent regarding, for example, the level of *public* spending on

healthcare, which has been used as a proxy of government *willingness* in realising the right to health elsewhere (Backman et al. 2008).

Both the violation and the outcome approach do not tackle the difficult question of how much a state should invest to realise human rights. By contrast, *the resource-spending-outcome* approach, proposed by Olivier De Schutter (De Schutter 2018) tries to answer precisely this question. This approach, however, is also reflected in the work of many other scholars and human rights practitioners, as we shall see briefly. From this perspective, resource mobilisation is to be considered jointly with the level of spending and linked to the actual level of enjoyment of human rights. For example, a state where outcomes are not enough is infringing the ICESCR only if such poor outcomes result from the *unwillingness*, rather than *inability*, of states to realise human rights (De Schutter 2018, 22). Hence, human rights advocates should be able to demonstrate that resource mobilisation could have been improved to achieve better outcomes (De Schutter 2018, 22). The three elements are complementary, and a strength in one of them cannot complement a weakness in another field. For example, a state that achieves high spending on social security by a highly regressive taxation system is still failing to comply with its obligations under the ICESCR. A regressive taxation entails high rates on goods and services and low taxes on income and capital. By the same token, when a state achieves acceptable outcomes in the areas of housing, education and healthcare, such results might be fragile and prone to discrimination if they are not supported by reasonable spending and equitable resource mobilisation. This approach echoes the OPERA Framework, developed by the influential New-York based Center for Economic and Social Rights (CESR) (CESR 2018). OPERA has four dimensions: outcomes; policy efforts; resources; assessments. The approach suggests the use of human rights indicators and benchmarks, as well as a mixture of quantitative and qualitative analysis. The OPERA Framework can be also used to assess the human rights impacts of fiscal consolidation in the aftermath of financial and economic crises (Lusiani and Chaparro 2018). This approach could be measured well with the framework developed in 2008 in an article on *The Lancet* assessing the level of enjoyment of the right to health in 194 countries (Backman et al. 2008). Importantly, the list of indicators, framed around the dimensions of accountability, acceptability, accessibility and quality of healthcare, as well as non-discrimination and accountability, encompasses also the level of public spending on healthcare as to measure governments' willingness to provide for the right to healthcare (Backman et al. 2008). Another example is the work on human rights budget analysis (Balakrishnan and Elson 2008).

The last approach seems to be gaining increasing consensus in the human rights community, as it can be seen by the drafting of a milestone in the field of public policies and human rights: the *UN Guiding Principles on Human Rights Impact Assessments of Economic Reforms*. They will be scrutinised in the next section. However, another key development in the justiciability of economic, social and cultural rights is the Optional Protocol to the ICESCR (Langford 2009; Liebenberg 2020), which entered into force in 2013. A discussion of the potential relevance of the OP-ICESCR to austerity and human rights is out of scope here, but it might an interesting development for future research.

2. Mobilising Resources for Human Rights: Where Are We Now?

The Committee for Economic, Social and Cultural Rights (CESCR) historically failed to engage with the effects of economic crisis on human rights. Indeed, during the several financial crises of the 1990s and 2000s, the Committee nor other relevant UN treaty-monitoring bodies blamed structural adjustment programmes or budget cuts for infringing the ICESCR (Nolan 2015, 16). This changed only in very recent times. In May 2012, the CESCR issued a letter to state parties regarding the permissible parameters of austerity measures (CESCR 2012). Subsequently, the CESCR started applying such parameters in its monitoring process. This change of direction was part of a much broader interest in taxation, inequality, poverty and economic reform that developed in the ten years since the 2008's financial crisis (Philip Alston and Reisch 2019, 34). National budgets began to be the object of intense human rights scrutiny, especially from women's rights groups, which exposed the gender bias in tax codes or exposed the discriminatory impact of the joint filling of income taxes (Philip Alston and Reisch 2019, 34). Similarly, organisations such as the Center for Economic and Social Rights (CESR) have been underlying how measures such as the value-added tax (VAT) on consumption overburdens the lower socioeconomic groups in society.

At the same time, the Human Rights Council (HRC) began to engage more closely with the effects of economic crisis on human rights, especially through the work of Special Rapporteurs and Independent Experts. For instance, the report by Magdalena Sepulveda Carmona on a rights-based response to economic and financial crisis, issued in 2011, already contained strong proposals to ensure inclusive economic recovery for all (Carmona 2011), such as avoiding deliberately retrogressive measures, as well as obligations of participation, transparency and accountability. These principles were

reflected in later works by Carmona as a Special Rapporteur on extreme poverty and human rights (Carmona 2014). Leading human rights scholars also started to vet the relationship between debt, austerity and consolidation in very recent times (Nolan et al. 2013; Warwick 2018; Wills and Warwick 2016).

This gradual normative evolution has culminated in the UN Guidelines on Human Rights Impact Assessments of Economic Reforms (hereinafter The Guidelines).

2.1 Human Rights in all Policies: the UN Guidelines on Human Rights Impact Assessments of Economic Reforms

Adopted on 21 March 2019, the Guidelines were framed in accordance with the Human Rights Council Resolutions 34/3 and 37/1. The aim was to provide member states with effective and practical guidance on how to assess economic reform policies on the basis of existing human rights standards, and not to produce new norms. The guidelines list the obligation of states, the applicable human rights standards, the requisites regarding policy coherence and debt sustainability as well as the obligations of international financial institutions and other private actors. The last section deals with human rights impact assessments themselves. Here, it will be sustained that the guidelines are an expression of the resource-spending-outcome approach outlined in the previous section. This is important, as the Guidelines have been framed through an inclusive participatory process, including grassroot organisations, human rights scholars and experts from all over the world.

Principle 1, contained in the Section ‘Scope and Purpose’, states that the Guidelines provide guidance for economic policymaking in compliance with international human rights law. The Guidelines apply whenever reform policies may ‘foreseeably result in impairment of human rights’ (HRC 2018, ‘Scope and Purpose, Principle 1’). Importantly, Principle 1 underlines that the Guidelines might have a reactive function (during acute financial and economic shock) as well as a preventive function, relevant for the mid- and long-term design of economic reform policies (HRC 2018, Principle 1, Art. 1.2). Principle 2 highlight how states are responsible for carefully examining the different policy options to determine the most appropriate measures to realise their international and domestic legal obligations under human rights law. Furthermore, Principle 2 details that taking timely, effective and preventive measures are critical to avoid that human rights are endangered during economic crisis. In fact, states often direct their effort at stabilising the economy during financial downturns, but this is counterproductive, as

it is precisely during crises that the population, and particularly those that are disenfranchised, suffer the most (HRC 2018, Principle 2, Art. 2.3). The obligations apply to all branches of states (executive, judicial and legislative) and all levels of governments (national, subnational and local) (HRC 2018, Principle 2, Art. 2.4). Principle 2, Art. 2.5, hence, upholds that states must assess the potential human rights impacts of fiscal discipline policies (such as adjustment structural programmes). Interlinked with Principle 2 is Principle 3 on the 'Burden of proof and obligation to conduct human rights impact assessments', which warrants that states and creditors, such as international financial institutions and development banks, 'must carry out a human rights impact assessment before recommending or implementing economic reform policies' that could potentially impinge on human rights (HRC 2018, Principle 3). Principle 4 importantly underlines the special role of subnational and local governments in guaranteeing human rights in all policies, stating that 'Decentralization is not always favourable to the implementation of human rights law, and it can be especially burdensome if it is not combined with sufficient resources or policy space (both internal and by facilitating community participation) for the implementation of human rights.' (HRC 2018, Art. 4.2). Key is 'solidarity between regions' (HRC 2018, Art. 4.2).

Section III of the guidelines lists human rights treaties, general comments, statements, open letters, decisions, concluding observations and recommendations representing pertinent soft and hard law when dealing with fiscal policies. Importantly, Art. 5.2. of Principle 5 underlines that the most protective human rights standards apply when state and creditors frame their economic reform policies, in line with the *pro homine* (Mazzuoli and Riberio 2016) core human rights value. Principle 6 reiterates the indivisibility and interdependence of all human rights, showing that budget cuts in public services, such as law enforcement, legal aid, education, health services and social care may all result in a failure to guarantee the civil right to a fair trial, family life, non-discrimination, freedom from torture and cruel, inhuman and degrading treatment, or even the right to life (HRC 2018, Principle 6, Art. 6.1). Importantly, when reforms are taken without a democratic discussion, the right to participation might be undermined (HRC 2018, *ibid.*). The multidimensional nature of human rights implies that economic reforms can jeopardize a wide range of entitlements. The Guidelines also maintain that states must not use scarcity of resources to waive their obligations on human rights, as well as that restrictive loans conditionalities or constraints imposed by trade agreements privileging corporate interests all interfere with states' obligations under human rights law, such as in the fields of air pollution, extreme poverty and

homelessness, and hunger. Principle 7 and 8 deal with non-discrimination and intersectional inequality, with a special focus on gender equality (Principle 8). Finally, Principle 9 tackle the issue of progressive realization and maximum available resources, upholding that states are obliged to implement fiscal and monetary policies in a way that they are deliberately oriented towards the realisation of all human rights. Principle 9(b) entails an obligation to demonstrate that every effort has been taken to mobilise all available resources, even in times of economic crisis. In the words of the document: 'states must generate, adequately allocate and make use of the maximum of their available resource to move as expeditiously and effectively as possible towards the achievement of the full realization of economic, social and cultural rights'. A closer look at the commentary in Principle 9 reveals that it is in line with the spending-resources-outcome approach mentioned above. In fact, Art. 9.3 specifically says that states' obligation to mobilise resources include 'tackling tax evasion and avoidance; ensuring a progressive taxation system, including by widening the tax base with regard to multinational corporations and the richest; avoiding international tax competition; improving the efficiency of tax collection; and reprioritising expenditures to ensure, among other things, adequate funding of public services'. These measures clearly encompass a rights-based approach not to the 'violation' nor the 'outcome' approach discussed in the previous section. Rather, they actively engage with the question of *how* states should mobilise resources to realise human rights, using fairness and equality among socioeconomic groups as a yardstick. Clearly, they call for a redistribution of income and wealth in terms of equality and fairness. Moreover, they suggest that states must ensure adequate *public* services to realise human rights. Importantly, where states are not able to guarantee human rights with their own resources, they must recur to international cooperation. The minimum core is quoted in Art. 9.5 and remain an important tenant in the field of the progressive realisation of rights, as it indorses that countries must mobilise the maximum available resources to ensure a minimum floor for the protection of economic, social and cultural rights. This is particularly powerful as states cannot attribute their failure to guarantee minimum core obligations to a lack of resources; meanwhile, art. 9.5 of the Guidelines warns that the minimum core should serve to detect egregious violations and should not be constructed as a ceiling.

Principle 10 on the prohibition of retrogression summarises the issue of backward steps in the realisation of economic, social and cultural rights. It does not add much to the consolidated consensus, other than putting in place a clear scheme. Indeed, any economic reform that may result in impermissible retrogression in terms of the realization of ESCR is a *prima*

facie violation of such rights. Measures that would result in backward steps are permissible only if they are temporary in *nature* and in *effect*, and limited to the duration of the status of necessity; they are legitimate, ultimately aiming at protecting all human rights; they are reasonable, necessary, proportionate, non-discriminatory, protective of the minimum core. Noteworthy, retrogressive measures should be based on transparency and genuine participation of relevant stakeholders, as well as being subject to meaningful reviews and accountability procedures, including human rights impact assessments.

Section V of the Guidelines deal with the difficult question of the responsibilities of supranational actors in the framing of economic reform policies. Principle 14 reiterates the content of CESCR's General Comment 24, para 24, as well as the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2011), when it upholds that states have an obligation to provide international assistance and cooperation in order to facilitate the full realization of all rights, and to respect the rights of people outside their borders (HRC 2012). In Principle 11, it becomes even more evident an active engagement with the budget implications of human rights. In fact, Principle 11, Art. b, invites states to use fiscal policy as a countercyclical tool to prevent and/or manage the crisis. In other words, the Guidelines suggest a countercyclical approach to fiscal policy, while austerity was a procyclical measure. Procyclical fiscal policies entails cutting budget and raising taxes during a negative slump in the business cycle (i.e. austerity). Principle 11, Art. d requires financial sector regulation. Therefore, the guidelines suggest specific ways in which states should manage their budgets and orientate their spending. The commentary goes even further, specifying that tax reforms should be higher for the well-off in society.

Finally, Section VI provides states with guidance on Human Rights Impact Assessments (HRIAs) (Gillian MacNaughton and Hunt 2011). HRIAs (de Beco 2009; Harrison 2013) serve to gauge the level of interference with human rights of the analysed policy; to identify *prima facie* retrogressive measures under the Covenant; to establish a non-exhaustive list of mitigating measures and ensure conformity of the economic reform policies with the State's human rights obligations. As for who should conduct the assessment, the Guidelines state that: 'Human rights impact assessments of economic reform policies should be independent, robust, credible and gender responsive. In this regard, each country should decide which institution(s) is/are best suited to be in charge of carrying out this exercise, based on applicable criteria'. Hence, there is a great deal of flexibility for governments' needs.

2.2 Participation in Economic Policymaking as a Procedural Requirement

The right to political participation is included in Art. 21(1)(2) of the Universal Declaration on Human Rights (UDHR), which upholds the right of every individual to take part in government, as well as Art. 21(3) on the right to vote. Furthermore, the right to participation is enshrined by Art. 25 of the ICCPR, specifically referring to the right to take part in the conduct of public affairs. From human rights treaties descends that state parties are obliged to hold a free and fair election that should, at least, satisfy the following criteria: elections must be universal and equal, held by secret ballot and at reasonably periodic interval, with no evidence of discrimination against voters or candidates (Fox 2000). An excellent empirical example of participatory budgeting is the policy adopted by the city of Porto Alegre in Brazil, which included a detailed framework of institutions and processes of participation, as well as clear methodological criteria for the redistribution of resources (de Sousa Santos 1998, 462). This urban participatory budgeting experiment aimed at redistributing city resources in favour of vulnerable social groups through participatory democracy (de Sousa Santos 1998).

The example of the city of Porto Alegre above is highly relevant if we return to discuss participation in the context of The Guidelines. In fact, The Guidelines call for a type of participation that goes beyond voting. In effect, the Guidelines, at Principle 19, uphold that participation must be embedded in the process of conducting human rights impact assessments. According to Principle 19, participation should be central in the consideration of policy options, in the outcome documents as well as the implementation of policy responses and in the monitoring of such responses. Specifically, Principle 19, Art. 19.2 underlines how the different levels of government should be adequately informed and consulted. By the same token, Art. 19.3 reiterates that genuine participation is possible only if governments provide timely, comprehensive and accessible information on all aspects of public finance, including budgets and macroeconomic performance. Governments should provide adequate justifications of policy choices to the population in general, with special reference to those most likely to be affected by the reform. In order to ensure meaningful participation, the Guidelines recall the rights to freedom of expression, access to information, freedom of the press, the right to peaceful assembly and freedom of association. Interlinked with Principle 19 is Principle 20 – Access to Information and Transparency, which sees countries obliged to collect reliable, high-quality quantitative and qualitative data. This kind of participation is a result of the right to receive information as a part of freedom of expression.

Hence, the Guidelines refer to the field of participatory decision-making and deliberation, also referred to as ‘deliberative public administration’ (DPA) (Baccaro and Papadakis 2008). Deliberative administration theory is sceptical regarding the problem-solving capacities of the central state. Therefore, the theory advocates the devolution of as many as possible decision-making prerogatives from centralised to public bureaucracies to policy-making fora in which citizens participate either directly or, more frequently, indirectly (Baccaro and Papadakis 2008). In human rights terms, participation is key for at least three reasons. First, guaranteeing participation, transparency and accountability in budgetary decision-making helps to consider the marginalised groups in society (WHO 2014). Economic marginalisation is often explained by political disempowerment (Corbacho, Cibils, and Lora 2013). Likewise, increasing participation would strengthen the negotiating position of departments such as health, education and social welfare (De Schutter 2018, 58), especially in countries where these departments compete with law enforcement branches. However, the competition is also between social departments and macroeconomic legislation, that keeps debt under control (De Schutter 2018, 59).

3. Applying a Rights-Based Response to Economic Recession: how to Respond to the COVID-19 Pandemic

3.1 Human Rights and Neoliberalism: Incompatible?

Human rights, especially socioeconomic rights, require financial resources as well as legal standards (O’Connell 2013). However, many human rights scholars agree that a substantive, material commitment to the realisation of the ICESCR is still lacking. The reason has to be found, according to authoritative interpretations (Branco 2008, 2012; Nolan et al. 2014; O’Cinneide 2014; O’Connell 2013), in the current prevailing social and economic order, generally referred to as neoliberalism (Harvey 2007). Neoliberalism, also known as Washington Consensus, Chicago School or neoclassicalism, presumes that:

‘the state and the market are distinct and mutually exclusive institutions, and that one expands only at the expense of the other. Second, it claims that markets are efficient, whereas states are wasteful and economically inefficient. Third, it argues that state intervention creates systemic economic problems especially resource misallocation, rent-seeking behaviour and technological backwardness (Saad-Filho 2003)’.

Hence, neoliberal economic thinking favours an anti-statist, individualistic ethos with minimum public intervention in the functioning of the market. Austerity is an expression of such socioeconomic project, as it entails tight fiscal and monetary policies, including tax reforms and expenditure cuts, in order to control inflation and limit the scope for state intervention (Saad-Filho 2003). Cutting cash benefits and essential services is not very popular; thus, the economic crisis seems an excellent scenario to superimpose these policies from their main promoters, such as the World Bank and the IMF. A part of human rights scholars, hence, suggest that an inherent tension exists between the provision of the rights under the ICESCR and neoliberalism. For instance, neoliberalism is by default suspicious of public spending as it would stifle economic growth by dumping private investment (Balakrishnan et al. 2016). For a government committed to such ideology, the crisis becomes a long-awaited opportunity (Monbiot 2010), rather than a human and social catastrophe. Hence, the hypothesis of austerity being nothing more than a by-product of neoliberalism is gaining increasing support (Farnsworth and Irving 2018). In concrete, this has been linked to a conflict between the right to education and neoliberalism in the work of the first UN Special Rapporteur on the right to education, Katarina Tomasevski (Tomasevski 1999), where she highlighted the potential conflict between the World Bank's market-driven approach to education and the human rights approach (Tomasevski 2000). Similar tensions between profit-oriented actors in essential services and human rights have been found, for instance, in the field of healthcare (Chapman 2009, 2016) as well as housing (Forrest and Hirayama 2009; O'Connell 2007). A wide literature is exploring the impact of neoliberalism on all human rights, especially socioeconomic rights (Dowell-Jones and Riedel 2014; MacNaughton and Frey 2018; Moyn 2018; O'Connell 2013).

Much research exists, hence, on the negative implications of neoliberalism for human rights. Usually, this reasoning is followed by policy recipes in line with an amendment of the major evils of neoliberalism, including wealth taxes, stronger regulation of financial markets, taxing financial flows (Foster and Yates 2014; Piketty 2020; Piketty et al. 2015). These are highly relevant advocacy instruments in the short-term. There is much less work, however, on the potential transformative power of other economic theories for the realisation of human rights in the long-term. This might be due to lack of relevant multidisciplinary expertise and training in the respective academic areas of human rights and economics. Exceptions exist, however, as it is represented by the recent joint work by heterodox economists and human rights scholars (Balakrishnan and Elson 2008; Balakrishnan et al. 2016; Heintz 2013). The work by these radical authors demonstrates that the human rights discourse can do more than simply limiting the damage of neoliberalism

on human rights. Human rights advocates can call for drastically different economic systems, tackling the *mechanisms* the generate inequalities, rather than easing them at the *end* of the processes, as they were the inevitable by-product of the only feasible economic system. This can be done only increasing the debate on economic pluralism: what it is and why it is relevant for human rights and democratic participation.

3.2 Economic Pluralism, and Why it is Relevant

A grassroot movement in the field of economics studies is increasingly advocating for economic pluralism (Dow 2006). Associations such as Promoting Economic Pluralism or Rethinking Economics¹ lament that economics' teaching in universities is narrow, uncritical and detached from the real world. Critical, heterodox economists have voiced the dissatisfaction with the increasing marginalisation of non-mainstream approaches, pointing at the lack of academic independence as well as the need to defend academic freedom in terms of legal rights (Schauer 2006). The global financial crisis of 2008-9 has been an occasion to critically challenge the mainstream economic paradigm, especially for its incapacity to offer a plausible retrospective explanation and to develop acceptable countermeasures against future crisis (Heise 2017). Moreover, the theories of efficient financial markets and the system of rating financial assets have been deemed responsible for the worst effects of the crisis (Cassidy 2009).

In an influential article, Heise argued that economic pluralism is a scientific imperative, rather than an ethically motivated norm of fairness. In philosophy, pluralism can relate to a multitude of fields, such as ontology, methods, epistemology, theories and paradigms. Applied to economics, in Heise's terms, pluralism result in non-discriminating against any theory on the basis of methods, paradigms and ontology: 'there is no certain, universally accepted knowledge ('truth'), but rather only 'conjectural knowledge' that could potentially be falsified at any time' (Heise 2017, 34). However, current practice is that economics is characterised by an ontological and paradigmatic monism where neoclassical economics constitutes the normal science (Heise 2017, 34). In practice, this ontological and paradigmatic monism allows for the careful consideration of dissenting schools of thought such as information economics, complexity economics, behavioural and evolutionary economics. However, it discriminates against heterodox economic theories such as neo-Ricardianism, ecological and feminist economics, the 'Austrian' school,

¹ See their websites: Promoting Economic Pluralism, at: <https://economicpluralism.org/>, as well as the connected learning platform, 'Exploring Economics': <https://www.exploring-economics.org/en/>; Rethinking Economics: <http://www.rethinkeconomics.org/>.

Marxism, as well as old-institutionalism on the basis of alleged heuristic differences (Heise 2017). A full discussion of economic pluralism is out of scope here, but the reader can refer to the emerging scholarship work on the topic (Dow 2004; Garnett 2006; Negru 2010).

In human rights terms, economic pluralism can be useful to realise the fairness and equality goals embedded in international human rights law, especially in the context of the progressive, active, radical approach taken by the UN Guidelines instrument described in the previous paragraphs – that might, perhaps, result in a binding treaty. At least, being aware of the different school of economic thinking is essential for lawyers and practitioners interested in scrutinising states' budget in light of human rights law, and to critically engage with the question of *willingness* of mobilising maximum research to progressively realise rights. In effect, studying economic approaches and filling the gap between human rights and economics is being repeatedly auspicated by prominent scholars (Balakrishnan et al. 2016). The table below provides an overview of the main economic theories available today.

Summary of Main Economic Perspectives

Economic Theory	Main Ideas
Austrian Economics	Focuses on the economic coordination of individuals in a market economy. Emphasizes the role of the entrepreneur, subjectivism, uncertainty.
Behavioral Economics	Observes individuals' behaviour and economic decision-making
Complexity Economics	Analyses interaction between individuals and structures as systems of organised complexity. Special importance is given to network analysis.
Ecological Economics	The core idea is that human economic activity is bound by absolute limits. The analysis evolves around economy, society and the environment, with the goal of transitioning towards sustainability. Not to be confused with environmental economics, which is a part of neoclassical theory.

Evolutionary Economics	Focuses on economic change, thus processes as growth, innovation, economic development.
Feminist Economics	Focuses on the Interdependence of gender relations in the economy, looking at care-work and power imbalances.
Institutionalist Economics	Focuses on the role of social institutions in terms of laws or contracts, but it is also connected to social organisation of production, distribution and consumption in the economy.
Marxian Political Economy	It focuses on the exploitation of labour by capital. The economy is not conceived as consisting of neutral transactions for exchange and cooperation, but rather as being historically developed out of asymmetric distributions of power, ideology and social conflicts.
Neoclassical Economics	The main focus is the allocation of scarce resources, and the main goal is to determine the efficient allocation of resources in order to increase welfare.
Post-Keynesian Economics	Analyses capitalist economies conceived as highly productive but unstable and conflictive systems. The goal is full employment and full utilisation of capacity.

Freely adapted from: 'Exploring Economics', available at: <https://www.exploring-economics.org/en/orientation/#discover>;

Each theory depicted in the table is associated with specific policies. Some of them are explained in detail below as a way of showing how economic pluralism can benefit the discourse on public budgets and human rights.

Ecological Economics

Not to be confused with environmental economics, which is a branch of environmental economics, ecological economics conceives human action as circumscribed by planet boundaries (Steffen et al. 2015). Ecological economics, hence, analyses the interplay between nature's household (ecosystems) and humanity's household (the economy). Ecological economics is thus an interdisciplinary field that aims at promoting human well-being, sustainability and justice². Typical policies suggestions include

² See, for example: Ecological Economics – The Transdisciplinary Journal of the International Society for Ecological Economics <https://www.journals.elsevier.com/ecological-economics>.

advocating for degrowth, environmental sustainability, reforming the economic organisation of societies and achieving generational justice. For an introduction to the field, see quoted references to this article (Burkett 2013; Common and Stagl 2005; Costanza 1992).

Feminist Economics

Of special relevance for human rights and budget analysis will, and has been, feminist economics. Key policies advocated by feminist economists are emancipation, equality, reorganisation of the production system, power relations, redistribution of wealth and reduction of inequalities. Hence, feminist economists are concerned with the issue of dominance of one group over another in material as well as social terms. For the link between a fully heterodox economics such as feminist economics, and human rights, see the work of scholars such as R. Balakrishnan and D. Elson (Balakrishnan and Elson 2008; Balakrishnan et al. 2016; Patel et al. 2007).

Post-Keynesian Economics

Post-Keynesian economics stems from the work of John Maynard Keynes as well as previous economists such as Michael Kalecki (1899-1970) and Roy Harrod (1900-1978), among others. It devolves around the idea that the principle of effective demand (Keynes 1936), meaning that there is no built-in mechanism that guarantees full employment and full utilisation of capacities. They stress that the future is uncertain, and that a highly interventionist state, engaged in aggregate demand management, stronger social safety net, greater regulation of the financial sector and a more egalitarian distribution of income, together with steady economic growth, is the path to pursue in order to maximise human well-being. In his report 'The Rights-Based Welfare State', UN Independent Expert Olivier De Schutter engages actively with neo-Keynesian concepts such as social investment, even if not explicitly framing in these terms (De Schutter 2018). Similarly, the UN Guidelines used many policy proposals that strongly resemble Neo-Keynesian way of thinking, even if the label is never used.

3.3 A Rights-Based Response to the COVID-19 Recession

As the brief discussion on economic pluralism above shows, many theories on socioeconomic systems exist. A full explanation of why each of them can be relevant to specific rights is out of scope here, as this article was meant to be a broad introduction to the topic. However, this can be the object of more tailored theoretical and empirical research on the topic. Encouraging democratic debate surrounding them, together with strong democratic

procedural requirements in public budget scrutiny, can prevent that the global COVID-19 shock results in another massive backsliding in the enjoyment of human rights worldwide. Arguably, the narrative contained in the Guidelines and in the language of many advocates of the spending-outcome approach seems to resonate much with Post-Keynesian policy suggestions and visions.

As an economic crisis is rapidly coming on the horizon, it is urgent that human rights scholarship reflects on a rights-based framework to economic crisis, as to be relevant in the defence of human rights through policies. In a recent letter to party members, the UN Independent Expert on foreign debt and human rights urged states not to consider austerity as an option, learning from past crisis (Bohoslavsky 2020a). The policy options suggested including to build an emergency human rights and humanitarian response for those left behind. Moreover, it explicitly calls for emergency basic income, housing and essential services, as well as for a social protection floor for all. The Independent expert also touched upon fiscal policies to finance social justice, establishing universal healthcare coverage. The UN independent expert even urged states to avoid invoking the resource excuse to waive their socioeconomic rights obligations. In this case, there are some aspects that do not require resources. For example, the treatment of the COVID-19 patients cannot be denied based on gender, race, origins, class, caste, religion or belief, or other grounds under the prohibition of discrimination. Second, the crisis had demonstrated that resources can be found, as governments and institutions are pledging to inject trillions of dollars into recovery from the global pandemic. In the UN Independent Expert's words: 'States now need to invest massively in decreasing inequalities and poverty, and not just bailing out large corporations, banks and investors with no human rights nor social conditions attached (Bohoslavsky 2020a, 18)'.

Other proposals for a rights-based response to the COVID-19 shock include contributing to the UN multi-donor fund, proposed by the Norwegian government³; debt restructuring and debt forgiveness; directing G20 support to the global South; refraining from defensive trade and intellectual property measure; an intellectual property pool (Silverman 2020), proposed by the Costa Rican government, for sharing patents to develop COVID-19 drugs, vaccines and diagnostics; enabling emergency tax measures for low- and middle-income countries (Saiz 2020). Increasingly, there is a call for a Global Green New Deal (Barbier 2010; Bauhardt 2014) after the COVID-19 pandemic, to reduce economic inequality among and within countries, as well as between men and women. In fact, the global green New Deal has also

³ For more information, see: https://www.regjeringen.no/en/aktuelt/fund_initiative/id2694486/.

been proposed by UN organisations such as UNCTAD, and would reduce the vulnerability of low- and middle-income countries to shocks due to heavy reliance on commodities, as well as helping in diversifying production, increasing resilience (Saiz 2020).

Conclusions

This article has two main findings. First, it has shown that the current soft law instruments relating to sovereign debt and human rights are increasingly engaging with the question of actively scrutinising states' budgets. Specifically, the UN Guidelines on Human Rights Impact Assessments of Economic Reforms take a clear position regarding how states should mobilise resources for economic recovery, resembling not a 'violation' nor an 'outcome' approach to the ICESCR. Rather, the UN Guidelines seem as an expression of the resource-spending-outcome approach outlined in the work of many human rights lawyers and scholars, including heterodox economists. This approach is dependent upon the obligation of strict procedural requirements on democratic participation, accountability and transparency in economic policymaking. Importantly, when human rights courts and monitoring bodies scrutinise not only outcomes, but procedural requirements of transparency, accountability and participation, they are reinforcing also self-determination, rather than undermining it or interfering with sovereignty (De Schutter 2018, 59). It is to be seen if this movement will be followed by constitutional courts around the world, and if the UN Guidelines will have a remarkable impact given the fact that they are still a *soft law* instrument. Second, the present contribution has demonstrated that a first step towards the real implementation of the principles contained in the Guidelines is for the human rights community to familiarise and encourage economic pluralism in academic and economic policy-making circles. In fact, many economic theories exist other than neoclassical neoliberalism, which focuses on free markets and minimal intervention of the state in the economy. This topic has not yet been systematically analysed, only implicitly suggested, by many human rights scholars. Indeed, this article auspicates that economic pluralism is included in the concept of democratic participation in economic policymaking: not only a democratic participation of relevant stakeholders, but also an honest evaluation of all possible economic answers to complex governance problem, without any dogmatic orthodoxy, in line with theoretical pluralism in economics. Before including economic pluralism, in addition to democratic participation in economic policymaking as a procedural requirement, more research is needed on the

legal and ontological premises of such inclusion. However, engaging with economic pluralism is the first step to overcome the traditional Manichean opposition between human rights and economics, as to build inclusive, sustainable economic recovery for all, as well as a rights-based welfare state.

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