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Analysis Report:
Economic Policy & Human Rights
activities of ESCR-Net Members and
Partners

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Introduction

ESCR-Net's Economic Policy & Human Rights Working Group

The [ESCR-Net Economic Policy & Human Rights \(EPHR\) Working Group](#) seeks to develop critical analysis of the global economic system via the human rights framework, facilitate collective advocacy to challenge unjust structures and policies, and promote alternative models of development. Over the course of many years, members have played a leading role in the development of a number of key collective initiatives and advocacy activities, including:

- **The [Coalition for Human Rights in Development](#) (Coalition):** The global Coalition brings together social movements, civil society organizations, and grassroots groups working to ensure that all development finance institutions respect human rights. Co-founded by ESCR-Net in 2014, as the Bank on Human Rights Campaign, the Coalition has called on the World Bank to incorporate human rights into their safeguard policies while gradually expanding its focus to other regional development banks. The Coalition's [Early Warning System](#) (EWS) – managed by ESCR-Net members, the International Accountability Project (IAP) and the Center for International Environmental Law (CIEL) – ensures local communities, and the organizations that support them, have verified information about projects likely to cause human and environmental rights abuses and clear strategies for advocacy. Uniting international research and local expertise, the EWS monitors international and regional development-finance institutions,¹ and reinforces community-led campaigns.
- **The [Righting Finance Initiative](#):** This initiative was established by ESCR-Net members and allies, with the leadership of the Center of Concern, and in conjunction with the Association for Women's Rights in Development (AWID), the Centre for Economic and Social Rights (CESR), the Center for Women's Global Leadership, Development Alternatives with Women for a New Era (DAWN), CIVICUS, iBASE and Social Watch, to facilitate information exchange and foster advocacy for a human rights approach to financial regulation at national and global levels. The initiative focuses on strengthening the capacity of human rights organisations and grassroots groups to influence debate on financial regulation, recognising that global and domestic finance decisions impact the realization of human rights, including public decisions on allocation of resources, the destinations of credit activities, employment and social protection.
- In 2010, strategically focusing on the United States due to its role at the epicenter of the 2008-9 global financial crisis, ESCR-Net members developed **collective analysis of how human rights obligations must be upheld in the context of the crisis**² and then

¹ The data collected includes information about projects financed by institutions such as the World Bank, International Finance Corporation, the Asian Development Bank, the Asian Infrastructure Investment Bank, the African Development Bank, the BRICS's New Development Bank and the Inter-American Development Bank.

² ESCR-Net, AWID, Center of Concern, Center for Economic and Social Rights and Center for Women's Global Leadership (2010) 'Bringing Rights to Bear in Times of Crisis: A human rights analysis of government responses to the economic crisis'. Available at: <https://www.escr-net.org/docs/i/1178087>

advocated at the United Nations for the US Government to, among other things, steer away from an austerity-driven response to the crisis.³

- In 2009, building on a track record of work on trade and human rights, ESCR-Net established a project addressing international policy-making processes on trade and finance, with a particular focus on the agriculture sector, which culminated in the development of the '[Kuala Lumpur Guidelines for a Human Rights Approach to Economic Policy in Agriculture](#)'.⁴ The Guidelines are a tool to support advocates' efforts to ensure the primacy and centrality of human rights of those affected by trade, investment and finance rules as well as fiscal, monetary and other economic policies related to agriculture.
- In 2005-6, ESCR-Net co-facilitated an International Conference on Export Credit Agencies and Human Rights,⁵ drafted a series of related studies on projects being challenged by members, and **articulated the human rights obligations of states regarding export credit agencies** in a series of resources.⁶ This provided new points of leverage to members challenging infrastructure, energy and extractives projects.

The Report's Objectives – Towards a Common Vision for a Human Rights-Based Approach to Economic Policy

ESCR-Net has taken steps to assess key economic policy and human rights issues as identified by members, in the context of the initiatives and activities mentioned above, the expertise and ongoing work of a core group of ESCR-Net members in this area, and the recognition of the strategic importance of an aligned vision throughout the network to support a human-rights based approach to economic policy. In the wake of the economic crisis that began in 2008, deepening inequality, worsening climate change, and ongoing impoverishment and dispossession despite global abundance, many members have emphasized the need to deepen human rights analysis of the global economic and social structures perpetuating these systemic violations and utilize the collective strength of ESCR-Net members to promote alternatives oriented towards common well-being. The main objectives of this project were to gain a greater understanding of economic policy issues impacting the enjoyment of human rights and the extent to which ESCR-Net members are working on these challenges at present, with the ultimate aim of considering which points of common analysis and action could be the focus of future collective action.

³ ESCR-Net, Center for Women's Global Leadership & University of Massachusetts (2010) 'Towards a Human Rights Centered Macroeconomic and Financial Policy in the United States – Submission to the United Nations Human Rights Council, USA Periodic Review'. Available at: <http://www.cwgl.rutgers.edu/docman/economic-and-social-rights-publications/753-towards-a-human-rights-centered-macroeconomic-and-financial-policy-in-the-u-s-1/file>

⁴ ESCR-Net (2010) *Kuala Lumpur Guidelines for a Human Rights Approach to Economic Policy in Agriculture*. Available at: <https://www.escr-net.org/docs/i/1431754>

⁵ Held 11-14 September 2005, in Brussels, organized by ECA-Watch and ESCR-Net.

⁶ *For Instance*: ECA-Watch and ESCR-Net. July 2006. 'The Legal Obligations With Respect to Human Rights and Export Credit Agencies.'

This report sets out the findings of this exercise, setting responses from members within a brief contextual background regarding both the current dominant global economic framework and the human rights principles particularly relevant to economic policy. The process of developing this report is one step toward establishing a new agenda for collective action in a reinvigorated EPHR Working Group.

In addition, this report should be understood as presenting key analysis in conversation with other thematic areas of ESCR-Net members' work, including women's human rights, corporate accountability and other related focus areas. Members have also noted the importance of an intersectional analysis as key to ensuring any collective action is effective. As AWID mentioned during the interview process, "an intersectional analysis linking gender, race, ethnicity, age, ability, nationality, sexual orientation and gender identity, among other status is needed to challenge structural violence and its links with a capitalist global system." This approach will help reformulate an enduring vision for the EPHR Working Group that facilitates an inclusive agenda, cognizant of the differentiated human rights impacts that economic policies have on different sections of society.

The Research Methodology

The research process to develop this report began in May 2015 and will culminate in the public release of the report prior to in-person EPHR strategy discussions for ESCR-Net members at the ESCR-Net Global Strategy Meeting in Buenos Aires in November 2016 (2016 Global Strategy Meeting).

This report is based on the combined findings of online research and interviews with members and partners. Firstly, desk research was undertaken to review the existing economic policy-related activities and strategies used by members and partners across regions. Next, semi-structured interviews were conducted to obtain further insight into these activities and strategies, and the underlying analysis of groups involved. The report was further informed by ongoing conversations with members and interviews undertaken alongside specific gatherings of ESCR-Net members in Uruguay (a Women and ESCR Working Group strategy meeting on housing, land and natural resources, September 2015),⁷ the US (Social Movement Working Group meetings, September 2015/June 2016)⁸ and Kenya (the Corporate Accountability Working Group's annual Peoples' Forum on Human Rights and Business, October 2015).⁹

⁷ ESCR-Net International meeting in Uruguay to advance Women's ESCR related to land and resources. See generally: <https://www.escr-net.org/news/2015/international-meeting-uruguay-advance-womens-escr-related-land-and-resources>

⁸ ESCR-Net social movement gathering in Biloxi, Mississippi. See generally: <https://www.escr-net.org/news/2015/senior-grassroots-leaders-deepen-connections-between-social-movements>

⁹ ESCR-Net 2015 Annual Peoples' Forum on Human Rights and Business. See generally: <https://www.escr-net.org/corporateaccountability/peoplesforum>

The criteria used to engage groups to be interviewed reflects ESCR-Net's principles of applying gender and regional balance to collective work, as well as ensuring the centrality of grassroots groups and social movements in all activities. Selected progressive economists, advocates and CSOs from all regions seeking to address the human rights impacts of economic policies were also interviewed. Forty organizations were interviewed, consisting of 15 from the Latin America and Caribbean region, eight from the Asia-Pacific region, eight from the Sub-Saharan Africa region, three from Arab speaking countries, and six from North America and Europe. Eleven groups interviewed are social movements and grassroots.

Context

Background to the Current Economic Policy Approaches of States

The Increasing, Global Impact of the Dominant Economic Model on Enjoyment of Human Rights

As the EPHR Working Group considers current challenges and opportunities within the sphere of EPHR, it is instructive to ground this analysis within a broader understanding of the impacts of the dominant economic model – neoliberalism – at the global level. While many ESCR-Net members contextualize their work within an understanding of this framework, this section is particularly informed by the recent analysis of global conditions by members of the ESCR-Net Social Movement Working Group (SMWG).¹⁰

Neoliberalism (also known as *laissez faire* economic liberalism) has been defined as “a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade” including “deregulation, privatization, and withdrawal of the state from many areas of social provision.”¹¹ This approach emerged as the dominant economic model – among many possible economic models – amid growing global competition, events like the oil embargo of 1973, and the violent repression of various grassroots struggles in the developed and developing world. It was embraced by UK Prime Minister Margaret Thatcher and US President Ronald Reagan, first piloted within Chile in the wake of the US-backed coup d'état of Augusto Pinochet in September 1973, initiated via reforms implemented by Chinese leader Deng Xiaoping from the late 1970s, and then imposed globally via structural adjustment policies imposed by the International Monetary Fund, World Bank and through the provisions of a growing series of trade and investment agreements.¹²

¹⁰ The SMWG analysis, developed through online and in-person meetings over the course of the past year, was formulated into a working concept paper and shared with ESCR-Net members in advance of the 2016 Global Strategy Meeting with the aim of encouraging a collective analysis of the challenges inherent in our current global economic system.

¹¹ David Harvey. 2005. *A Brief History of Neoliberalism*. Oxford UP. Pp. 2-3. Neoliberalism drew on the work of early liberal thinkers, including John Locke, *Two Treatises of Government* (1689); Adam Smith, *An Inquiry into the Nature and Causes of The Wealth of Nations* (1776); and John Stuart Mill, *On Liberty* (1859), among others, but its rebirth relied on the intellectual work of Ludwig von Mises and Friedrich Hayek, both from Austria, and Milton Friedman, with whom Hayek worked at the University of Chicago and in forming the Mont Pelerin Society. Hayek and Friedman won Nobel Prizes in Economics in the mid-1970s, and Friedman popularized his ideas via television series and as an advisor to multiple political leaders, including General Augusto Pinochet in Chile and President Ronald Reagan in the US.

¹² Sometimes referred to as the “Washington Consensus,” the structural adjustment policies (SAPs) or conditionalities were imposed by the World Bank and the International Monetary Fund (IMF), in policy coherence with the World Trade Organization (WTO). After extensive criticism, SAPs were officially replaced by Poverty Reduction Strategy Papers (PRSPs), with greater input from borrowing countries. These “Bretton Woods” institutions were created in the wake of World War II, but became active in advancing neoliberal policy prescriptions at the end of the Cold War, as the General Agreement on Tariffs and Trades was officially replaced by

It is clear that this approach shapes global interactions, our shared environment and the ability of governments to respect, protect and fulfill their human rights obligations. The impacts of this model manifest in different ways depending on the particular contexts and time period, and arguably rely on and intensify inequalities within and between countries. In identifying the stark inequality present across the world, the SMWG noted that:

we live in the most productive economy in human history with more than enough resources to feed, house and educate every human being, but these resources are not being used to meet these needs. Rather, there is a widening wealth gap that is concentrating the resources and productive capacity of the world into fewer and fewer hands while the majority face impoverishment and dispossession. What's more, many people have been taught that the substandard living conditions in which they struggle to survive is a result of their own poor choices. 'We need to shatter the myth that poverty is self-inflicted.'"¹³

While the neoliberal economic model uses the rhetoric of freedom or liberty to support its aims, its policies have, in reality, undermined organized labor and social democratic programs and impacted adversely on the enjoyment of human rights in many respects. Specifically, the SMWG analysis identified that:

neoliberal rhetoric, regulation and policies have created a false dichotomy between freedom and equality and argued that markets free of government interference would most efficiently allocate resources and ensure economic growth. Neoliberal rhetoric promoted deregulation for the elite, reduced taxation and public spending, privatization of public goods and services, and "flexible" labor markets...Contrary to its claimed promotion of freedom, the current economic system commodifies people and nature and criminalizes the poor.¹⁴ Labor, environmental and human rights regulations are treated as impediments to free markets and progressively weakened, even while corporate pursuit of profit is subsidized. Technological innovation and productive capacity have grown, but they have been matched by increasing unemployment and underemployment, stagnating real wages, deepening inequality and economic and ecological crises, which have fueled extreme weather events, migration, social outcry and militarism.

the WTO in 1995. *See for instance: SAPRIN. 2004. Structural Adjustment: The SAPRI Report: The Policy Roots of Economic Crisis, Poverty and Inequality. New York: Zed Books.*

¹³ ESCR-Net Social Movement Working Group. June 2016. A common charter for collective struggle. Quote from Bob Zellner of the Forward Together/Moral Mondays Movement of the USA, during the meeting of the Social Movement Working Group in Biloxi, MS, 15-19 September. See also, Oxfam. 2016. "An Economy for the 1%: How privilege and power in the economy drive extreme inequality and how this can be stopped." At: https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp210-economy-one-percent-tax-havens-180116-summ-en_o.pdf, which reported, "[t]he gap between rich and poor is reaching new extremes. Credit Suisse recently revealed that the richest 1% have now accumulated more wealth than the rest of the world put together...Meanwhile, the wealth owned by the bottom half of humanity has fallen by a trillion dollars in the past five years."

¹⁴ Herman Kumara, National Association of Fisherfolk Solidarity Organization, Sri Lanka, Millerton, NY, June 8-11, 2016.

A widening wealth gap concentrates the resources and productive capacity of the world into fewer and fewer hands while, at the same time, these forms of exploitation are accompanied by dispossession in both rural and urban areas. As a result “this has led to a growing informal sector, and the suppression of wages and deepening precariousness for workers.”¹⁵ Further, “[i]n many countries around the world, women face different and disproportionate impacts. For example, after decades of conflict and immigration, many rural households are headed by women, yet they are not fully recognized, and women are often excluded from land distribution and subjected to sexual harassment and other forms of violence.”¹⁶

Shifting Global Context

Within this broader context, the economic and political rise of a new set of States – foremost the BRICS (Brazil, Russia, India, China and South Africa) – has posed new opportunities and challenges. They have gradually exerted growing influence at various regional levels, fueling new trade and investment agreements, as well as the creation of new development finance banks. They have the potential to serve as a counterweight to the dominance of the US and EU, but also create new challenges for communities and human rights defenders.

In the past few years, following the most recent global economic crisis, the extreme levels of inequality and injustice have become evident to a growing cross-section of the global population, while austerity measures were imposed in much of Europe and falling commodity prices threatened the gradual gains in some developing countries. Many communities have come into motion, struggling for rights to participation and well-being for themselves, their children and communities.

Yet this has been often met with a shift to increasingly nationalistic politics, willing to scapegoat immigrants, refugees, minorities or other vulnerable groups for economic downturns and insecurity, as opposed to building solidarity and working towards redistribution and sustainability. This political landscape and intensifying repression, perpetrated by both State and non-State actors targeting human rights defenders and affected communities, poses yet another set of challenges for human rights organizations and related grassroots struggles.

The SMWG highlights that neoliberalism is the current manifestation of an economic system founded on histories of State-supported dispossession, oppression and exploitation. The SMWG notes that “[w]e are not poor; we are made poor. We can’t fight poverty but we need to fight against that which impoverishes us.”¹⁷ Further, they suggest that “[I]f itself, and the ability of the environment to sustain it, is threatened by climate change, perhaps the

¹⁵ Ida Le Blanc of NUDE, Trinidad and Tobago, and Melona Daclan Repunte, Defend Job, Philippines, Millerton, NY, June 8-11, 2016.

¹⁶ Herman Kumara, National Association of Fisherfolk Solidarity Organization, Sri Lanka, Millerton, NY, June 8-11, 2016.

¹⁷ Mkhalseni (Ndaboh) Mzimela of Abahlali baseMjondolo, South Africa, Biloxi, MS, September 15-19, 2015.

clearest symptom of a system driven by private profit over public good...It is aided by the manipulation of the media and public opinion which are often used to suggest that a model premised on a drive for profit is the path to happiness, and suggests that those who challenge this paradigm are tantamount to criminals.”¹⁸

In addition, the SMWG notes that “[c]ommercial interests in colonialism, slavery and imperialism relied on government support; today, we are witnessing the growing phenomenon of ‘corporate capture,’ by which an economic elite undermines the realization of human rights and environmental sustainability through exerting undue influence over domestic and international decision-makers and public institutions.”¹⁹ This trend towards seizure of State power by private actors manifests in increased repression of human rights defenders and alternative voices, as well as in the leveraging of State interests in international economic negotiations to secure trade and investment agreements that favour the extraction and commodification of common goods, threatening self-determination and an equal sharing of global resources.

Alternative Conceptions of Development

Recognising the effects over time of the dominant economic model, ESCR-Net members and others continue to advocate for greater consideration and application of the alternative models that already exist, or for new models able to advance human rights. The SMWG, in its overarching analysis, noted emerging points for unity across members’ work to enhance realization of human rights, including: reclaiming human rights to counter present trends, promote accountability and challenge the prevailing development model; connecting struggles, including through confronting corporate capture of State institutions and decision-making processes, insisting on rights not goals, and questioning the morality of a narrow focus on profit amid deepening inequality; advancing the leadership of the impoverished, dispossessed and marginalized; and articulating alternative models.

As examples of alternative models, while challenging an “extractive model of development,” indigenous movements in Latin America have proactively promoted “Buen Vivir” as an alternative conception of development, including recognition of the sacredness of life and nature.²⁰ Other members have articulated models of “development justice” that foreground redistributive, economic, gender, social and environmental justice that is accountable to people.²¹ Generally, members have repeatedly highlighted the need for ESCR-Net to take a proactive approach, critically amplifying, connecting and/or collectively articulating alternative models of economic, social and political development.

¹⁸ Leonardo Pereira Xavier, Movimento Sem Terra, Brasil, Biloxi, MS, September 15-19, 2015.

¹⁹ ESCR-Net Social Movement Working Group. June 2016. A common charter for collective struggle.

²⁰ Francisco Roca, Consejo de Pueblos Wuxhtaj, Guatemala, Biloxi, MS, September 15-19, 2015; see also work of CAOI. For a list of resources elaborating further the concept of Buen Vivir, see:

<http://filosofiadebuenvivir.com/publicaciones/bibliografia/>

²¹ APWLD. 2014. Days of Action for Development Justice Campaign Toolkit. At: <http://apwld.org/development-justice-campaign-toolkit/>.

The Application of Human Rights to Economic Policymaking

Assessing Economic Policymaking via the Human Rights Framework

Human rights are as applicable to economic policy considerations as to any other issue area. This recognition is grounded in the origins of UN human rights standards and mechanisms, which emerged in response to massive struggles for social and economic justice in the face of the Great Depression and colonialism, as well as to the horrors of World War II, in which economic inequality and impoverishment fueled fascist movements and brutal violence. Human rights represent moral and political affirmation – often codified in legal form – of the inherent rights (as opposed to mere aspirations or acts of charity) to be enjoyed by all, and reflect a shared statement of the values people seek to uphold in societies around the world.

As noted above by the SMWG, among others, poverty amid global plenty represents systemic violations of human rights.²² ESCR-Net Working Groups and individual members – focused on women and ESCR, corporate accountability, strategic litigation and implementation, and monitoring, as well as economic policy – use the human rights framework to engage with UN treaty bodies and special procedures mandate holders, advocate with State representatives, build the capacity of local communities, and articulate alternative visions, with the aim of securing progressive developments and social justice reflective of the lived experiences of people and communities.

States have primary responsibility for designing appropriate policies and allocating resources to realize economic, social and cultural rights (ESCR), and for working in conjunction with others to develop and implement macroeconomic policies globally. International human rights standards set out broad parameters regarding State obligations to respect, protect and fulfil the substantive components of the human rights guaranteed under treaties and other instruments. This framework also encourages examination of inequalities within and between nations, while calling for accountability both domestically and extraterritorially.

In the context of economic policy specifically, human rights offer a normative framework against which policies can be evaluated. This facilitates the identification of economic decisions or practices which reflect and/or perpetuate historical injustice, structural inequality or negative stereotypes, or otherwise impede progress towards the realization of ESCR. Further, it provides a lens through which alternative economic policy approaches can be assessed to determine how these can be best constructed to advance the enjoyment of ESCR in practice.²³

²² ESCR-Net Social Movement Working Group. June 2016. *A common charter for collective struggle* (forthcoming, November, 2016). Publication available by emailing Dominic Renfrey: drenfrey@escr-net.org

²³ Radhika Balakrishnan, James Heintz and Diane Elson, Rethinking Economic Policy for Social Justice: The radical potential of human rights (Economics as Social Theory) (24 March 2016).

States' Human Rights Obligations

In general, the international legal human rights framework requires States to respect (refrain from interfering with the enjoyment of the right), protect (prevent others from interfering with the enjoyment of the right) and fulfil (adopt appropriate measures towards the full realization of the right) all human rights. All rights are universal, interdependent and indivisible, as well as justiciable, that is, able to form the basis for a legal claim.²⁴

States parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR)²⁵ have a number of immediate obligations (most notably, to ensure **non-discrimination and equality** in the enjoyment of ESCR), and – pursuant to Article 2(1) – to **take steps**, using **maximum available resources** and via **international assistance and co-operation** in order to **progressively realize** these rights.²⁶ Another key principle of the human rights framework is that of **participation**. Each of these principles is outlined briefly below. Also of particular relevance to development policies and other practices under the neoliberal agenda is the **right to self-determination**, also outlined below.

Non-Discrimination and Equality

States are obliged to guarantee human rights on a non-discriminatory basis, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²⁷ Further, States must take positive measures to ensure both formal and substantive equality. In addition to addressing explicit discriminatory legislation or practice, this approach requires consideration of indirect discrimination against a particular group, where an apparently neutral law, policy or practice affects that group adversely in a disproportionate way, because of biological difference and/or the ways in which they are situated or perceived in the world through socially and culturally constructed differences.²⁸ More broadly, the achievement of **substantive equality** in practice requires a

²⁴ See, for example, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx>

²⁵ Article 2(1) provides that “[e]ach State Party to the [ICESCR] undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” UN Covenant on Economic, Social and Cultural Rights (16 December 1966). Available at:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

²⁶ For a useful detailed overview of these international human rights law principles, see: Balakrishnan, R. & Elson, D. (2011) *Economic Policy and Human Rights – Holding governments to account*, Zed Books (New York), pp. 7-11.

²⁷ See, for example, ICESCR, Articles 2(2) and 3; ICCPR, Articles 2(1) and 3.

²⁸ For recent analysis of a substantive equality perspective as applied to women’s ESC rights and, respectively, work, health and land, see the briefing papers produced by ESCR-Net’s Women and ESCR Working Group. Available at: <https://www.escr-net.org/news/2016/women-and-escr-working-group-launches-briefing-papers-land-work-and-health>.

multifaceted approach which: *redresses disadvantage* (based on historical and current social structures and power relations that define and influence a group's abilities to enjoy their human rights); *addresses stereotypes, stigma, prejudice, and violence* (with underlying change in the ways in which the group is regarded and regard themselves, and are treated by others); *transforms institutional structures and practices* (which may be skewed towards the prevailing economic model, allocating resources in a discriminatory manner, and ignorant or dismissive of lived experiences around the world, particularly of vulnerable or disadvantaged groups); and *facilitates social inclusion and political participation* (in all formal and informal economic policy decision-making processes).²⁹

Maximum Available Resources

There is no absolute definition on what constitutes a State's 'maximum available resources'. Generally, the UN Committee on Economic, Social and Cultural Rights (CESCR), responsible for monitoring States parties' compliance with ICESCR, has confirmed that:

The "availability of resources", although an important qualifier to the obligation to take steps, does not alter the immediacy of the obligation, nor can resource constraints alone justify inaction. Where the available resources are demonstrably inadequate, the obligation remains for a State party to ensure the widest possible enjoyment of economic, social and cultural rights under the prevailing circumstances. The Committee has already emphasized that, even in times of severe resource constraints, States parties must protect the most disadvantaged and marginalized members or groups of society by adopting relatively low-cost targeted programmes.³⁰

In addition to focusing on vulnerable individuals and groups, States must demonstrate that every effort has been made to use all resources that are at their disposal in an effort to satisfy, as a matter of priority, the core obligations of States parties in relation to each of the rights contained in the ICESCR.³¹ Further, CESCR noted that "...the phrase "to the maximum of its available resources" refers to both the resources existing within a State as well as those available from the international community through international cooperation and assistance."³²

²⁹ For more information on this framework as developed in relation to gender equality, see Sandra Fredman and Beth Goldblatt, *Gender Equality and Human Rights* (2015), UN Women Discussion Paper No. 4. Available at: <http://www.unwomen.org/en/digital-library/publications/2015/7/dps-gender-equality-and-human-rights>.

³⁰ CESCR, *An Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" under an Optional Protocol to the Covenant*, Statement by CESCR, UN Doc. E/C.12/2007/1 (21 September 2007), para. 4.

³¹ CESCR, *General Comment No. 3: The nature of States parties' obligations*, Fifth Session (1990), contained in UN Doc. E/1991/23. CESCR has provided guidance to States parties regarding core obligations in various general comments, see

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11.

³² CESCR, *An Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" under an Optional Protocol to the Covenant*, Statement by CESCR, UN Doc. E/C.12/2007/1 (21 September 2007), para. 5.

Accordingly, in the context of economic policymaking, the measures States take to accumulate, manage and allocate financial resources – through taxation,³³ budgetary decision-making and other fiscal measures – should be adequate to ensure that States are in a position to realize ESCR. Beyond the national level, States have obligations to respect and protect human rights in the international economic context, for example, in relation to trade, investment and finance policies, as well as through engagement in sovereign debt negotiations, loan conditionalities, international financial organisations and post-conflict restructuring.³⁴ Acting in cooperation, States have a shared responsibility to request necessary support and to engage in foreign assistance programs and partnerships to resource the measures necessary to realize ESCR globally.

Progressive Realization and Non-Retrogression

States parties to the ICESCR are obliged to make steady progress towards the full realization of these rights, with CESCR noting that:³⁵

...in order to achieve progressively the full realization of the Covenant, States parties must take deliberate, concrete and targeted steps within a reasonably short time after the Covenant's entry into force for the States concerned. The steps should include "all appropriate means, including particularly the adoption of legislative measures". In addition to legislation, the Committee understands the term "appropriate means" to include the provision of judicial or other remedies, where appropriate, as well as "administrative, financial, educational and social measures" (General Comment No. 3, para. 7; General Comment No. 9, paras. 3-5, 7).

Further, CESCR has confirmed that States are expected to avoid regression in their advance towards realization of the rights contained in the ICESCR. As CESCR states, "any deliberately retrogressive measures...would require the most careful consideration and would need to be fully justified by reference to the totality of rights provided for in the Covenant and in context of the full use of the maximum available resources".³⁶ For example, while a State may choose or

³³ As noted by the former UN Special Rapporteur on the Right to Education in 2005 "it is hard to imagine how any state would raise the revenue to finance health, education, water and sanitation, or assistance for those too young or too old to work, were it not for taxation". Tomasevski, K (2005) 'Not education for all, only for those who can pay: the World Bank's model for financing primary education', available at: www2.warwick.ac.uk/fac/soc/law/elj/lgd/2005_1/tomasevski/.

³⁴ Recent collective work by ESCR-Net members in this regard includes: the research and publication of a practitioners' guide to support the interpretation and application of extraterritorial obligations (ETOs) in the context of investment and trade policies, and corporate human rights violations. See generally, ESCR-Net (2014) 'Global Economy, Global Rights: A practitioners' guide for interpreting human rights obligations in the global economy'. Available at <https://www.escr-net.org/news/2014/guide-extraterritorial-obligations>.

³⁵ CESCR, *An Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" under an Optional Protocol to the Covenant*, Statement by CESCR, UN Doc. E/C.12/2007/1 (21 September 2007), para 3.

³⁶ As above, para 9.

be obliged to adopt austerity measures, any unjustifiable measures in this regard would be a breach of the ICESCR.³⁷ In this regard, CESCR has provided the following guidance to States:³⁸

If the adoption of retrogressive measures is unavoidable, such measures should be necessary and proportionate, in the sense that the adoption of any other policy, or a failure to act, would be more detrimental to economic, social and cultural rights; they should remain in place only insofar as they remain necessary; they should not result in discrimination and they should mitigate inequalities that can grow in times of crisis, ensuring that the rights of the disadvantaged and marginalized individuals and groups are not disproportionately affected; and they should not affect the minimum core content of the rights protected under the Covenant.

Participation

All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being.³⁹ A human rights framework therefore requires meaningful participation and inclusion by individuals and communities at each stage of economic policy decision-making. CESCR has made numerous references to the necessity of participation, for example, noting, in relation to the right to health, that the formulation and implementation of national strategies and plans of action "...should respect, *inter alia*, the principles of non-discrimination and people's participation. In particular, the right of individuals and groups to participate in decision-making processes, which may affect their development, must be an integral component of any policy, programme or strategy developed to discharge governmental obligations..."⁴⁰

Self-Determination

Of particular relevance to the impacts of global economic policymaking on the enjoyment of human rights today is the right to self-determination. The significance of this right, and the interdependence of all human rights, is recognized in the identical first two provisions of both ICESCR and the International Covenant on Civil and Political Rights (ICCPR), which affirm that:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-

³⁷ For an example that examines how states should not undermine the principle of non-retrogression, and other principles of human rights law, in response to economic and financial crisis, see: ESCR-Net (2011) *ESCR-Net Statement on the Financial Crisis and Global Economic Recession – Towards a Human Rights Response*. Available at: https://docs.escr-net.org/usr_doc/EconomicCrisisHRStatement_ESCR-Net_final_eng_withendorsements.pdf

³⁸ CESCR, Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights, Statement by the Committee on Economic, Social and Cultural Rights, UN Doc. E/C.12/2016/1 (24 June 2016).

³⁹ See, in particular, Article 19 of the Universal Declaration on Human Rights, and Article 19 of the International Covenant on Civil and Political Rights

⁴⁰ CESCR, General Comment No. 14: the right to health (2000) UN Doc. E/C.12/2000/4 (11 August 2000).

operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

Standards relating to self-determination have been further articulated in, in particular, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and International Labor Organization (ILO) Convention 169 concerning indigenous and tribal peoples.⁴¹ While UNDRIP is non-binding, it is viewed as representing the development of international legal norms and a commitment by UN member States to understand and respond to contemporary challenges and political/socio-economic reality relevant to many indigenous communities. More broadly, decisions and practices in the course of economic policymaking should comply with such standards, ensuring that these do not impede self-determination in practice.

⁴¹ C169 – Indigenous and Tribal Peoples Convention, 1989 (No. 169), entry into force 5 September 1991. Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312314,en

Key Issues at the Intersection of Economic Policy and Human Rights

This section of the report draws out common themes that arose from the research, interviews and consultations which took place. While it is beyond the scope of this report to provide comprehensive analysis of all issues raised, ESCR-Net members have identified, and have expressed a willingness to explore further, a number of common issues, namely: privatization of public goods and services and public-private partnerships; trade and investment; struggles for land and natural resources in relation to infrastructure, energy and extractive sectors; State fiscal policy approaches to taxation and spending; and labor issues in the formal and informal sectors.

As such, the sub-sections below outline the main commonalities of analysis, so as to identify a foundation for further consultation with ESCR-Net members, as a step toward developing a common vision and collective agenda for action.

Trade and Investment

International trade and investment law prioritises economic objectives, often at the expense of human rights (including those focused on workers' rights) and the environment. Consider the North Atlantic Free Trade Agreement (NAFTA), which came into force in 1994. The US Department of Labor (DoL) kept track of job losses resulting from employers relocating out of the US, until the number passed half a million and then President Bush ordered the DoL to stop compiling this data.⁴² By 2010, the US job losses resulting from NAFTA reached almost 700,000, mostly in manufacturing.⁴³ Jobs relocated to third countries as a result of accelerated foreign investment facilitated by agreements are reported to lack the same labor protections.⁴⁴ As US agricultural products flooded the agricultural markets of Mexico, the number of small farmers in that country pushed out of the agricultural sector reached approximately 1.5 million in the first decade of NAFTA coming into force.⁴⁵

⁴² International Trade Union Confederation (2015) *Special Report: TTIP – The Transatlantic Trade and Investment Partnership*, p. 17. Available at: file:///Z:/Working%20groups/Economic%20Policy%20and%20Human%20Rights/2016/Background%20Research%20Materials%20for%20Mapping/ITUC%20Report%20on%20TTIP_en_final3.pdf

⁴³ As above.

⁴⁴ Human Rights Watch documented the impact of NAFTA in Mexico, the country receiving corporate operations that were leaving the US. They revealed a litany of alleged human rights violations occurring as a result of investment operations facilitated by NAFTA, including "favoritism toward employer-controlled unions; firings for workers' organizing efforts; denial of collective bargaining rights; forced pregnancy testing; mistreatment of migrant workers [and]; life-threatening health and safety conditions". See: Human Rights Watch (2001) *Trading Away Rights: The Unfulfilled Promises of NAFTA's Labor Side Agreement*. Available at: <http://pantheon.hrw.org/reports/2001/nafta/>

⁴⁵ John B. Judis, "Trade Secrets," *The New Republic*, April 9, 2008. See also John Audley, Sandra Polaski, Demetrios G. Papademetriou, and Scott Vaughan, "NAFTA's Promise and Reality: Lessons from Mexico for the Hemisphere,"

The privileged economic access that trade systems provide to foreign investors are enforced through binding systems of **investment arbitration** that protect the economic interests of foreign investors. In a majority of instances this system enforces private commercial prerogatives over concern for human rights or the environment. For example, under NAFTA, a US firm called Metalclad sued the Government of Mexico before the International Centre for Settlement of Investment Disputes (ICSID; an international arbitration institution that forms part of the World Bank Group) because local authorities had prevented Metalclad operating a toxic waste plant on a site that was polluting local water sources. Locals had complained they were contracting illnesses and their water was contaminated.⁴⁶ A local court upheld the decision of the local authorities to deny the issuance of the local permit, thereby ordering Metalclad to cease operating. Following this Metalclad sued for damages against the Government of Mexico before ICSID on the basis of loss of investment and was awarded \$15 million USD.⁴⁷

A number of members and others have been active in recent years to influence the proceedings of investment arbitration tribunals. In 2009, in the first engagement of its kind from non-disputing parties to the proceedings of an ICSID tribunal, the Centre for Applied Legal Studies (CALs), the Center for International Environmental Law (CIEL), INTERIGHTS, the International Centre for the Legal Protection of Human Rights, and the Legal Resources Centre (LRC) submitted a joint petition addressing the public interest and international law issues raised by the dispute.⁴⁸ For the first time the tribunal ordered the disputing parties, the South African Government and a foreign mining company, to publicly disclose their legal filings in the case.⁴⁹ Concerns among CSOs remain about the power and operating practices of these investment arbitration mechanisms. As APWLD said, "Investment dispute mechanisms allow companies to sue governments. They are so-called 'independent arbitration' systems but are run by corporate lawyers, which is not particularly independent". This reflection touches on the challenge of how, at its core, this binding system of enforcing investment prerogatives is facilitated by investment lawyers, meanwhile states have not responded to the evolution of this investment architecture by establishing an equivalent system to uphold the primacy of human rights with a similarly binding international judicial authority.

Carnegie Endowment for International Peace Report, November 2003; Jeffrey S. Passel and Roberto Suro, "Rise, Peak and Decline: Trends in U.S. Immigration 1992 – 2004," September 2005, Pew Hispanic Center, at 39.

⁴⁶ Palafox, J. (2000) 'Compensation for regulatory expropriation under NAFTA: Mexico and the Metalclad Case' *International Environmental Law Committee Newsletter Archive*. Available at:

<http://www.abanet.org/environ/committees/intenviron/newsletter/april00/palafox.html>

⁴⁷ See: British Institute for International and Comparative Law (2008) *Case Summary: Metalclad Corporation v Mexico*. Available at: http://www.biicl.org/files/3929_2000_metalclad_v_mexico.pdf

⁴⁸ The petition is available here: <http://www.italaw.com/sites/default/files/case-documents/ita0333.pdf>

⁴⁹ Center for International Environmental Law (2009) *Tribunal in Piero Foresti, Laura De Carli and others v. the Republic of South Africa grants CIEL and human rights organisations access to documents by the parties*, available at: <http://www.ciel.org/news/tribunal-in-piero-foresti-laura-de-carli-and-others-v-the-republic-of-south-africa-grants-ciel-and-human-rights-organizations-access-to-documents-by-the-parties>;

Other trade and investment concerns have arisen in consultation with ESCR-Net members and partners. Several years ago ESCR-Net members joined together to develop and promote the '[Kuala Lumpur Guidelines for a Human Rights Approach to Economic Policy in Agriculture](#)'⁵⁰ to advocate for the primacy and centrality of human rights in policy-making related to trade and finance in agriculture. Concerning trade, investment and labor standards other members have also focused on other specific issues arising such as downward pressure on labor and health standards produced by expanding trade regimes, including NUDE and Otros Mundos.

Privatisation and Public-Private Partnerships

A common concern noted in the research and expressed during the interviews and consultations was the ongoing privatization of public goods and services and particularly the strong shift toward the application of **public-private partnerships** (PPPs) in the provision of public services. PPPs are long-term contracts between governments and one or more private entities to finance, design, implement and operate public sector facilities and services (encompassing provision of water and sanitation, gas and electricity, public transport, social housing programs, education and health services, and so on).⁵¹

The human rights impact of privatization is an established feature of the analysis and advocacy of many human rights organisations, ensuring it is a regular focus for UN committees and special procedure mandate holders. With the transfer of assets and/or responsibilities from States to private entities in relation to services that have a direct relationship with States' human rights obligations, key concerns include: the human rights violations (regarding the substantive components of human rights, including availability, accessibility and quality) and lack of accountability that takes place as services shift to control of entities motivated by the pursuit of profit rather than a human rights-based approach to societal well-being; reductions in the provision of services to poor and vulnerable groups, and associated heightened inequality; a lack of State compliance with the obligation to *protect* against human rights violations by non-State actors, by way of appropriate due diligence, collection of disaggregated statistics, monitoring and facilitating access to and implementation of remedies with respect to any violations that occur.

Consider for example the privatization of education. The UN Special Rapporteur on the right to education noted in a recent 2015 report to the UN Human Rights Council, "the reconfiguration of public services within neoliberal globalization has placed education squarely in the

⁵⁰ ESCR-Net (2010) *Kuala Lumpur Guidelines for a Human Rights Approach to Economic Policy in Agriculture*. Available at: <https://www.escr-net.org/docs/i/1431754>

⁵¹ The most common type are 'Concessions' which "...are contractual arrangements whereby a facility is given by the public to the private sector, which then operates the PPP for a certain period of time. Oftentimes, this also means building and designing the facility as well...They are often financed by [public] user fees (e.g. for drinking water, gas and electricity, public transport, etc)" For an overview, see: United Nations Economic Commission for Europe (2008) 'Guidebook on Promoting Good Governance in Public-Private Partnerships', p. 1. Available at: <http://www.unece.org/fileadmin/DAM/ceci/publications/ppp.pdf>.

headlamps of the private sector and international trade agreements such as the General Agreement on Trade in Services and the Trade in Services Agreement. Low-fee private schools in developing countries are a glaring example of the commercialization of education, characterized as 'edu-business'.⁵² The Special Rapporteur outlined how the push toward education privatization, as with many other public services, originates from the policy prescriptions of the World Bank and IMF during the 1980s, and continues up to the present with the former's 'education sector strategy 2020'.⁵³ More recently, a 2016 UN Human Rights Council resolution urged States to "address any negative impacts of the commercialization of education", in particular by putting in place a regulatory framework to regulate and monitor education providers, holding accountable providers which negatively impact the right to education, and supporting research.⁵⁴

A number of members have focused on privatization of education in recent years, including the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR), the Right to Education Project, Amnesty International, and the Initiative for Social and Economic Rights (ISER), working to highlight the human rights impacts on the availability, accessibility, acceptability and adaptability of education globally. Among many other concerns raised, one persistent finding is the discriminatory impacts of privatized education on female children in various countries.⁵⁵ Where financial barriers exist to obtain education, it is often women and girls in low-income communities that are disproportionately affected.

In relation to PPPs, a number of members noted the increase of these partnerships. For example, the Arab NGO Network for Development (ANND) noted with concern the growth of investments by multilateral development banks (MDBs) in the Middle East region using PPPs to deliver services. As a result, ANND is now "researching into PPPs and MDB investments in the region, and the impact on services, the price of the services, and access to these services".⁵⁶

⁵² Report of the Special Rapporteur on the right to education, Kishore Singh – Protecting the right to education against commercialization, June 2015, A/HRC/29/30, para 36. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/120/82/PDF/G1512082.pdf?OpenElement>

⁵³ As above, para, 37.

⁵⁴ UN Doc. A/HRC/32/L.33 (29 June 2016); see also GI-ESCR, [Historic UN resolution urges States to regulate education providers and support public education](http://globalinitiative-escr.org/historic-un-resolution-urges-states-to-regulate-education-providers-and-support-public-education/) (11 July 2016), available at: <http://globalinitiative-escr.org/historic-un-resolution-urges-states-to-regulate-education-providers-and-support-public-education/>

⁵⁵ Joint Submission of thirteen CSOs to the Committee on the Rights of the Child entitled 'Privatisation and its Impact on the Right to Education of Women and Girls' (2014), available at: <http://globalinitiative-escr.org/wp-content/uploads/2014/07/140627-Right-to-Education-Submission-to-CEDAW-Final-with-logos.pdf>. See generally: Global Initiative for Economic, Social and Cultural Rights, '*Right to Education and Privatisation*' available at: <http://globalinitiative-escr.org/advocacy/privatization-in-education-research-initiative/>; Shailaja Fennell, 'Why girls' education rather than gender equality? The strange political economy of PPPs in Pakistan,' in *Public Private Partnerships in Education: New Actors and Modes of Governance in a Globalizing World*, Edward Elgar Publishing, 2012; Shailaja Fennell, 'Low-fee private schools in Pakistan: a blessing or a bane?,' In, Prachi Srivastava (ed.), *Low-fee Private Schooling: Aggravating Equity or Mitigating Disadvantage?*, Oxford: Symposium Books, 2013.

⁵⁶ Notes of online interview with ANND, May 2015.

Questions arise about how the private operator of a given service can be held accountable for any human rights violations that occur, with the Association for Women's Rights in Development (AWID) asking generally "what does accountability look like for a community [subject to service provision by a private operator]?" Persons affected by human rights violations connected with PPPs face obstacles in securing redress including, among others, the risk of companies declaring bankruptcy or otherwise dissolving, or a foreign company leaving the jurisdiction where the violation occurred (with corresponding difficulties in obtaining justice transnationally).

Furthermore, AWID noted a typical pre-existing lack of transparency and accountability in many countries that PPPs exacerbate, commenting that "[t]here is often no public bidding process for corporations entering into PPPs... There needs to be free exchange of information, greater access about their tax arrangements and disclosure of contracts".⁵⁷

AWID noted with particular concern also the impact that PPPs have on the human rights of women, especially in the context of private take-over of delivery of public services like health and education that disproportionately affect women's human rights.

APWLD also raised concerns about accountability in the context of the new era of development finance established by the UN **Financing for Development** (FfD) process. The Addis Ababa Action Agenda (AAAA)⁵⁸ is the culmination of the FfD process and it structures the approach that states take to financing development activities under the new generation of UN development goals – the Sustainable Development Goals (SDGs). While the AAAA affirms the priority of States to increase the use of the private sector to deliver on their international agreed development objectives, it does not contain any dedicated accountability system other than a brief mention to voluntary international guidelines for business activities, namely one mention to the voluntary UN Guiding Principles on Business and Human Rights.

APWLD further notes that "[t]he primacy given to private finance in these negotiations is a further dereliction of governments' responsibilities; one that is especially disconcerting when there are no binding frameworks for private sector accountability; nothing to align private sector practices with sustainable development objectives; and no mechanism for the oversight and review of partnerships entered into pursuant to this agenda."⁵⁹ A joint CSO response to the adoption of the AAAA echoed accountability concerns by stating "[w]ithout a parallel recognition of the developmental role of the State and clear safeguards to its ability to regulate

⁵⁷ Notes of online interview with AWID, May 2015.

⁵⁸ The Addis Ababa Action Agenda of the Third International Conference on Financing for Development (2015). Available at: <http://www.un.org/esa/ffd/ffd3/wp-content/uploads/sites/2/2015/07/Addis-Ababa-Action-Agenda-Draft-Outcome-Document-7-July-2015.pdf>

⁵⁹ Asia Pacific Forum on Women in Law and Development (2015) *Statement at the United Nations General Assembly Finance for Development Hearings, April 10, 2015*. Available at: <http://apwld.org/statement-at-the-un-ga-financing-for-development-hearings/>

in the public interest, there is a great risk that the private sector undermines rather than supports sustainable development.”⁶⁰

Infrastructure, Energy & Extractives: Struggles for Land and Natural Resources

Echoing a strong emphasis contained in the aforementioned concept paper of ESCR-Net’s SMWG,⁶¹ some groups interviewed explicitly connected human rights violations they witness with infrastructure, energy and extractive sector policies that are intertwined with the broader system of free market economics. As Equipo Pueblo succinctly phrased it “[e]nergy is part of the neoliberal economic model”. This is also highlighted by the example noted above of investment arbitration that has been used by mining companies in efforts to maximize profits through binding arbitration often at the expense of human rights and environmental protections.⁶² Members and others note a range of human rights violations connected with projects and practices connected with these sectors, with direct effect on access to and control over land and natural resources, and associated impacts on, among other rights, the human rights to health, food, water, life, and self-determination. Due to the disproportionate number of women who are small farmers, the social dynamics of the care economy in most communities, and forms of tenure and compensation favoring men, women often face the most severe human rights impacts.⁶³ Also reported were significant instances of violence against affected communities by corporate or State security forces connected with relevant projects, and backlash and criminalization of human rights defenders.⁶⁴ While these sectors are operated by both or a combination of governments and corporations, the increasing ‘corporate capture’ of governments by corporate elites continues to exacerbate these impacts.⁶⁵

Elaborating further into the impact of energy policies on water, Equipo Pueblo reflected how their work in this area led them to the intersection of water and extractive operations, particularly to challenging the impacts of hydraulic fracturing (or ‘fracking’) on the right to water. Other groups like Movimento dos Atingidos por Barragens (MAB) (a social movement against dams in Brazil) and Federação dos Órgãos de Assistência Social e Educacional (FASE) are working together with many groups across the Latin American region on energy policies

⁶⁰ Civil society response to the Addis Ababa Action Agenda for Development, 16 July 2015, available at: <https://www.globalpolicywatch.org/wp-content/uploads/2015/07/20150716-CSO-Response-to-FfD-Addis-Ababa-Action-Agenda.pdf>

⁶¹ ESCR-Net Social Movement Working Group. June 2016. *A common charter for collective struggle*, [Forthcoming, November 2016].

⁶² Anderson, S. & Perez-Rocha, M. (2013) ‘Mining for Profits in International Tribunals: Lessons for the Trans-Pacific Partnership’, *Institute for Policy Studies*. Available at: http://www.ips-dc.org/mining_for_profits_update2013/

⁶³ For recent analysis of women’s ESC rights in respect of land and natural resources, see a briefing paper produced by ESCR-Net’s Women and ESCR Working Group. Available at: <https://www.escr-net.org/news/2016/women-and-escr-working-group-launches-briefing-papers-land-work-and-health>.

⁶⁴ ESCR-Net members are continually facing these threats and the ESCR-Net SOS system facilitates collective action in many of these cases. More information can be found here: <https://www.escr-net.org/sos>

⁶⁵ For more information see the ESCR-Net Corporate Capture Project: <https://www.escr-net.org/corporateaccountability/corporatecapture>

and their human rights impacts, including women's rights. MAB has begun linking with civil society groups across countries where Brazilian energy projects are impacting communities in other countries in the Americas.⁶⁶ Remarkably on a recent development, MAB expressed that the 2015 announcement from the New Development Bank of the BRICS countries for "a proposal to develop energy policies" is "a big concern."⁶⁷ Similarly, Federação dos Orgãos de Assistência Social e Educacional (FASE) is beginning to support the coordination of groups in the Americas working on the impacts on women's rights due to large-scale foreign energy investments, such as fracking, mining and dams. Meanwhile, within Peru, the Confederación Campesina del Perú (CCP) focus on extractive policies, which often have a significant negative impacts on land and the security and culture of communities in Peru. CCP noted: "One of the most offensive economic policies is 'extractivism', which is promoted by the Constitution, made in the 1980s by (former president) Fujimori. It is trampling human rights... The entry of mining has changed our culture. For example, in Cajamarca, this was a purely rural area but mining has imposed modernization on the area. Furthermore, of the 270 social conflicts recorded in Peru in recent years, 80% are related to mining investment".⁶⁸

In the Middle East region, ANND is focusing attention on how EU financial institutions are utilizing EU trade agreements with countries in the region to increase investment in the infrastructure and energy sectors, commenting that "[w]e are trying to analyze their investment strategy in the region and research into the impacts on social and economic rights." In Africa, Save Lamu is focusing on mining and large-scale infrastructure investments that are scheduled to have a significant impact in East Kenya. This concern connects to the "[t]he need for historical land injustices to be addressed before large infrastructure development projects take place." Save Lamu also draws the link between these investments and the broader human rights and environmental impacts of investment in non-renewable energy, noting "[w]e also choose to focus on the proposed coal power plant because there are many negative impacts on human health and natural resources. Coal power emissions also add to climate change which has detrimental global impacts. Therefore, educating our community is very important so that we can join hands in stopping the proposed coal plant, which is a non-renewable source of energy, and support renewable energy such as solar, wind and thermal, which we have plenty of."⁶⁹

Similarly, the Sri Lankan National Fisheries Solidarity Movement (NAFSO) is focused on government infrastructure and tourism projects that displace local communities, disrupt access

⁶⁶ MAB: "We are raising awareness and building connections on 'binational' energy projects, for example where energy is sourced in Uruguay transported to the US". Notes from interview, June 2016.

⁶⁷ Notes from interview with MAB, June 2015.

⁶⁸ Notes from interview with CCP, June 2015.

⁶⁹ Notes from interview with Save Lamu, October 2015.

to adequate food and impact the environment and economic rights for local fisherfolk communities.⁷⁰

At the global level, the Center of Concern (CoC) has identified the global institutions behind the push for private finance and infrastructure, noting that “[t]he G20 opens this conversation, facilitating bank financing for infrastructure development, and civil society groups often do not know the origin of this – the G20 is prioritizing private sector in infrastructure development.”⁷¹

These findings illustrate how – at all levels, from facilitating the arrangements for private investment at the global level to the impacts of such investment at the local level – civil society is struggling to address the human rights impact of infrastructure, energy and extractive projects and practices, in the broader context of an increasing shift to private finance in these and related areas.

Fiscal Policy Approaches to Taxation and Spending

During the interviews for this report, several respondents noted tax justice as an issue that has seen significant progress in the EPHR community, but one that requires continued attention. The term ‘tax justice’ is both a demand a civil society movement seeking to build fair tax regimes that makes sure wealthy individuals and corporations pay tax commensurate to their wealth and income, to ensure states have the necessary funding to support public services, as well as prohibiting tax havens that provide the means for wealthy individuals and corporations to keep their wealth away from tax regimes.⁷² Recent revelations contained in the leaked ‘Panama Papers’ illustrate the magnitude of Panama’s tax haven permitting large-scale tax evasion.⁷³

Several groups interviewed engage in **monitoring government budget** allocations;⁷⁴ while this has been a staple of EPHR work for some time, an increasing number of groups now also focus

⁷⁰ NAFSO: “We challenge economic policies that directly affect the rights of fisherfolk, such as tourism development and infrastructure development policies that do not consider the livelihoods and rights of the people, and impact on small local industries”. Notes from interview, September 2015.

⁷¹ The G20 is an international forum for the governments and central bank governors from 20 major economies, founded in 1999 with the aim of studying, reviewing, and promoting high-level discussion of policy issues pertaining to the promotion of international financial stability. For more information, see: <http://www.g20.org/English/>.

⁷² For more information on tax justice see the Tax Justice Network at: <http://www.taxjustice.net/>

⁷³ See generally, the International Consortium of Investigative Journalists, ‘The Panama Papers’. Available at: <https://panamapapers.icij.org/>

⁷⁴ For instance, ANND, AWID, CESR, Equipo Pueblo, ISER, Asociación Civil por la Igualdad y la Justicia, El Centro de Archivos y Acceso a la Información Pública, LRC, FUNDAR and Hakijamii. E.g. ISER: “We work on advocacy with a group of CSOs focused on monetary implementation of the budget...We want to know the allocation towards to health and education – which are areas we also work in. We do a human rights/gender analysis of the budget; how much will be provided to certain groups. It is the national budget but then we review what is allocated locally. When you look at the right to education –we realize that govt is proposing to cut money, then we know it is underfunded, realize that money is not being spent in schools, resulting in a lack of sanitary facilities, for example. This caused a lot of school drop outs”, Notes from interview, June 2015.

attention on **government revenue accumulation**.⁷⁵ For example, the Center for Economic and Social Rights (CESR) and others have advocated before the Inter-American Commission on Human Rights for states in the region to adopt fiscal policies that realise human rights.⁷⁶

There is also a strong focus on a more varied range of activities such as **illicit financial flows** and other means by which private actors transfer money out of countries where they operate. For example, AWID said that:

We all know that developing nations lose huge amounts of money because corporations are not paying taxes...We want to link financial flows, lack of revenue and the delivery of specific services, particularly those most relevant to the realization of women's human rights...There must be institutions to hold corporations accountable so they pay taxes ensuring there is revenue for states to deliver public services in support of realizing human rights... There is tax evasion and exemption, resulting from government policies that allow corporations to not pay taxes, depriving states of public revenues. National policies must not facilitate tax exemptions.⁷⁷

Other groups also have drawn the links between fiscal policy related advocacy and women's human rights. In particular, ANND focuses on tax justice from the perspectives of women's human rights,⁷⁸ ISER engages in budget analysis to advocate for adequate government

⁷⁵ Center of Concern: "Groups working on tax have become a movement. For a long time focus was on the side of spending, but it is now also on the side of revenue generation due to the awareness of tax justice movement, which is something successful". See generally, 'International Strategy Meeting: Advancing Fiscal Justice Through Human Rights' organized in Peru in April 2015 by Centre for Economic and Social Rights, Tax Justice Network, Oxfam International, Red de Justicia Fiscal en America Latina y el Caribe, Global Alliance for Tax Justice and Latindadd at: <http://www.cesr.org/article.php?id=1694>

⁷⁶ Center for Economic and Social Rights (2016) *Fiscal policy and human rights in the United States*, Presentation to the Sixth Consultation on the Situation of Economic, Social and Cultural Rights: United States and Canada; ESCR Unit, Inter-American Commission on Human Rights. Available at: http://www.cesr.org/downloads/IACHR_ESCR_ConsultNAmerica_presentation_jan2016.pdf

⁷⁷ Notes from interview with AWID, May, 2015. Many of the issues noted by those interviewed for this report are covered under the term 'Base erosion and profit shifting' (BEPS). According to the OECD, BEPS is "Base erosion and profit shifting (BEPS) refers to tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations". In response to this the OECD has produced guidelines requiring country-by-country reporting (CBCR), which means transnational corporations are expected to produce reports of the tax paid in each country they operate in. The purpose of CBCR is to generate greater transparency about whether corporations are paying the tax they should in the countries in which they operate. In recent years many countries have passed laws requiring CBCR, including Australia, China, Netherlands, Poland, South Korea, Spain and the UK. For more information on the OECD's guidelines on BEPS and CBCR, see: <http://www.oecd.org/tax/beps/>

⁷⁸ ANND: "We are working on tax justice from a gender perspective with other groups". Notes from interview, June, 2015.

provision for services that fulfill women's human rights,⁷⁹ while CESR analyses how revenue generation through tax disproportionately impacts on women.⁸⁰

CESR also draws links between tax policies and **government austerity** in the wake of the global financial crisis and the resultant impact on a broader range of human rights. For example, CESR "continue[s] to work at the national level in countries like Spain that have experienced significant human rights impacts as a result of austerity. Part of tackling these issues includes ending tax evasion, which is taking place in many countries like Switzerland, the EU and the US" where loose government tax policies and inaction facilitates corporate tax evasion. CESR also links their tax work with inequality, particularly in Latin America where "fiscal policy in Brazil is impoverishing poor people",⁸¹ and other examples of how tax policy in that region disproportionately impacts afro-descendant communities, women, indigenous peoples and persons with disabilities.

Labor – Formal and Informal Sectors

In considering the intersection of labor and women's human rights, particularly in light of trade and investment liberalization, and labor market deregulation, the ESCR-Net Women and Economic, Social and Cultural Rights Working Group (WESCR WG) produced a briefing paper in which ESCR-Net members recognized the especially detrimental impacts trade and investment liberalization have on the ability of women to generate a livelihood from agricultural employment, start and maintain small businesses, unionise or raise wages in an environment where the gender pay gap and poor working conditions are a state's competitive advantage for attracting foreign investment.⁸²

While not as widely referenced as other issues in the interviews, some groups did note concerns about worker's rights, particularly in relation to forming unions. The National Union of Domestic Employees (NUDE) focus on the rights of domestic workers, especially related to the rights of these workers to unionise and the ways that lack of union representation affects these workers, particularly from the perspective of women's rights (since most domestic workers are women).⁸³ Similarly, AWID also focuses on the issue of unionization for domestic workers, from the perspective of promoting realization for women's human rights. AWID is considering the

⁷⁹ ISER: "We do gender analyses of the budget and build the capacity on monitoring budget implementation by working with communities and organizations and women groups from local villages". Notes from interview, June, 2015.

⁸⁰ CESR: "there is another interesting emerging research area we're looking at on the impacts on tax on...gender inequality". Notes from interview, June, 2015.

⁸¹ Notes from interview with CESR, June, 2015.

⁸² ESCR-Net WESCR (2016) *Women and ESCR Working Group briefing paper: The intersection between work and women's economic, social and cultural rights*, p. 4-5. Available at: <https://www.escr-net.org/resources/intersection-between-work-and-womens-economic-social-and-cultural-rights>

⁸³ NUDE: "We want to continue building a movement to have domestic workers recognized as workers with full rights, which has happened in other countries like Jamaica". Notes from interview, September 2015.

most strategic spaces to engage on this issue, including the ILO, and what unified approaches can women's groups take to this.⁸⁴

Further, the Egyptian Centre for Economic and Social Rights defends the rights of labor activists to mobilise, organize and unionise workers to advocate for better working conditions in Egypt.⁸⁵ Similarly, in Palestine, another ESCR-Net member, Democracy and Workers' Rights Center, protects the right to association for domestic trade unions, as well as advocates for improving labor conditions.⁸⁶ NAFSO in Sri Lanka is focused also on the rights of factory workers employed by multinational corporations in that country.⁸⁷

Members have also shared experiences in relation to their understandings of and work on the care economy, emphasising the role of particularly women in child, elderly and sick care; the State and global policies and practices that fail, in large part, to support care givers and adequately recognise their immense contribution to economies; and the lack of positive measures on the part of States to address existing policies and practices that perpetuate this framework.⁸⁸

⁸⁴ Notes from interview with AWID, September 2015.

⁸⁵ See generally, Egyptian Center for Economic and Social Rights: Labor Rights & Unions at: <http://ecesr.org/en/category/programs/socialrights/labor/>

⁸⁶ See generally, Democracy and Workers' Rights Center, Palestine: <http://www.dwrc.org/>

⁸⁷ Notes from interview with NAFSO, September 2015.

⁸⁸ ESCR-Net WESCR (2016) *Women and ESCR Working Group briefing paper: The intersection between work and women's economic, social and cultural rights*, p. 6. Available at: <https://www.escr-net.org/resources/intersection-between-work-and-womens-economic-social-and-cultural-rights>

Next Steps Towards Collective Action

This report sets out current economic policy practices impacting on human rights and common points of analysis as identified by ESCR-Net members and allies. As noted above, it is a foundational step in an evolving process of consultation with members, with the overarching aim being to inform further collective strategic planning and the development of projects and activities by the EPHR Working Group, led by a regionally and gender diverse group of members and involving the centrality of social movement analysis and leadership.

In the coming months, ESCR-Net will facilitate further opportunities for collective discussion around the primary points of shared analysis identified in this report. This will take place both online through a series of webinars (supported by background papers exploring key topics, and compilation of existing member and other resources), and during ESCR-Net member gatherings – particularly the 2016 Global Strategy Meeting. While there will be specific questions relevant to each key topic, these strategic discussions will each seek to answer some important overarching questions so that ESCR-Net members can assess whether an area is suitable for collective engagement by the EPHR Working Group, as follows:

- **What further information do we need to have to fully understand the key issues at the intersection of economic policy and human rights, as identified in this report?** This will include, among other considerations: the origin of, and stakeholders involved in, the relevant economic policies; the trends, commonalities and differences in economic policy across regions and States; the particular human rights impacts of such policies, including different and disproportionate impacts on specific groups of people; and ongoing development, emerging challenges and opportunities for intervention or influence with respect to such policies.
- **Are the opportunities conducive to being addressed by applying ESCR-Net's model of member-led collective action?** ESCR-Net's model of work draws on the diversity of member's skills and experiences, actively promoting the inclusion of an intersectional analysis and the centrality of social movements. Collective work is undertaken where members recognize that working together on specific projects and activities can address challenges and strengthen the enjoyment of human rights in ways that would not be possible through individual organizational work. This determination depends on a number of factors, including: shared analysis of the issue, challenges and emerging openings for intervention, as developed through widely consultative processes; assessment of capacity and resources; consideration of whether there is space for ESCR-Net to add value through collective work (or whether other individual organisations, networks, INGOs, coalitions or campaigns are already addressing the issue in constructive ways); and an aligned view as to proposed strategy and the way(s) in which

members want to work together (facilitated by the ESCR-Net Secretariat but led by members).

Careful and ongoing strategic assessment by ESCR-Net members of key topics, available opportunities, and specific challenges within the sphere of economic policy and human rights will determine EPHR Working Group projects, grounded in collective member engagement and an intersectional perspective across the network, over the coming years.