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### The Idea of a Human Rights-Based Economic Recovery after COVID-19

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# **The idea of a human rights-based economic recovery after COVID-19**

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"The Global Pandemics: Preparing for the Great Depression"

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## **Abstract**

The COVID-19 pandemic has produced a health and economic crisis of unprecedented scope. As economists and policymakers turn to the task of recovery, protecting human rights remains intrinsically important, both morally and legally. It is also instrumental to the ends of public health and economic resilience. This Article argues that the human rights to life, health, education, social security, housing, food, water and sanitation – the so-called economic and social rights – are as essential as civil and political protections. Moreover, rather than simply ameliorate the inevitable indignities and material deprivations caused by the COVID-19 pandemic, the implementation of duties to respect economic and social rights can help ensure their protection in the post-COVID-19 economy. For this to occur, however, the Article suggests that the application of human rights to the economic recovery should be informed by a longer history of economic crises, assisted by both international and comparative economic and social rights frameworks, and open to the institutional reimagination that the idea of human rights helps to generate.

## **Keywords:**

human rights, COVID-19, economic recovery, crisis, economic and social rights

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## I. Introduction

Human calamities threaten human rights. But they also force critical new understandings of their importance. The COVID-19 pandemic has produced a health and economic crisis of unprecedented worldwide scope. As economists and policymakers turn to the task of recovery, protecting the basic rights of everyone, anywhere in the world, has not only significant moral and legal importance. It also serves the ends of public health and economic resilience. Human rights to life, health, education, social security, housing, food, water and sanitation – the so-called economic and social rights – are as essential as civil and political protections.

The application of these rights to this moment is critical, as the policies adopted during the economic recovery will recast both the present and the future. The economic recovery will affect, for example, the shape of technological innovation, the energy mix between renewables and fossil fuels, the design of food, sanitation, water, health care and education systems, the administration of social services, and the distribution of wealth.<sup>1</sup> The choices that are demanded include which productive sectors to rescue, with what conditions attached, and how to distribute their costs, by taxes or deficits or debt relief, and with what forms of international cooperation.<sup>2</sup> While other international principles, such as the Sustainable Development Goals and the Paris Agreement, offer importance guidance, the human rights framework establishes obligations that states must follow, if they are to accord due respect to people’s dignity, equality and freedom. Such obligations, sourced in international human rights conventions and other laws, do not set out a singular prescription to follow, but they create space for new claims, and oblige each state to explore options and alternatives, through a process which respects civil and political rights, and which ensures that baseline social, economic and cultural protections are met.

Just as the human rights framework offers important principles and standards to guide the recovery, economic and social rights have also become a focal point for several national and transnational campaigns during the crisis. These campaigns have been bolstered by the fact that the rights they demand, would also, if realized, help limit the spread of disease and stabilize the economy from further shocks. A global call has been made for a “people’s vaccine” against COVID-19, shared between all countries, suggesting a coordinated response to the realization of rights to life and health.<sup>3</sup> In the US, advocates have also called for novel precedents, for extending health insurance, waiving medical fees, and reducing medicine prices, both from the state and private actors.<sup>4</sup> Similarly, advocates for the right to housing have demonstrated the ready availability of tools of implementation, through locating city space for shelter, rent forgiveness or mortgage repayment suspension, and a moratorium on eviction and foreclosures.<sup>5</sup> Newly focused campaigns have been directed against water and electricity shutoffs, sanitation neglect, insufficient workplace protections for essential workers, and obstructions in access to food and education. Attention to cash transfers has increased, and once marginal proposals for the realization of economic and social rights, such as a universal basic income, appear more tenable.<sup>6</sup> Related campaigns call for tax justice and debt reform, and to an end to the disproportionate racial and gender impacts, in both health risk and care responsibilities, of the pandemic.<sup>7</sup> The Black Lives Matter racial justice movement has intensified within the US and emerged in protests elsewhere. These campaigns are often coordinated across countries, and increasingly literate about what they demand for economic justice and human rights.<sup>8</sup>

This renewed emphasis on economic and social rights pull in two directions. In one direction, targeted proposals are made to ameliorate the indignities and material deprivations of those burdened by the pandemic and sidelined in the rescue, stimulus or growth packages to come. In the other, more transformative agendas, with highly uncertain configurations, are presented in order to reorganize the central tenets of the global economy and their domestic counterparts. These tensions recall previous efforts to apply the idea of human rights to political economy. The most famous of these is Amartya Sen’s call for “development as freedom”, which helped introduce the Human Development Index over cruder state measures of aggregate growth and GDP, and sought to connect positive human functioning with human rights.<sup>9</sup> But efforts to apply human rights to economic ideas and institutions stretch back to the birth of the contemporary human rights frameworks, in the Universal Declaration of Human Rights (the “UDHR”).

This Article, which takes the form of a “think piece” for human rights-guided policy and law for the post-COVID-19 recovery, suggests that the application of human rights to the economic recovery should be informed by a longer history of economic crises, assisted by both international and comparative economic and social rights frameworks, and open to the institutional reimagining that the idea of human rights helps to generate. First, in Part II, it argues that the Great Depression, rather than the more recent Global Financial Crisis, offers a more instructive lesson for how the idea of human rights can accompany the reconstruction of the post-COVID economy. Secondly, in Part III, it examines how legal standards developed around the state obligation of “progressive realization” point to both ameliorative and more transformative implications. Thirdly, in Part IV, it examines what the recognition of economic and social rights in present-day constitutions, courts, and human rights campaigns suggests about economic rescue or reform. These different features – historical, doctrinal, and comparative – help to inform the idea of a human-rights based economic recovery.

## **II. Situating the Crisis in Human Rights History**

Crises create immense pressure on the laws, policies and practices that protect human rights; they also catalyze changes in response. As of July 2020, COVID-19 has infected at least 13 million people around the world, and led to at least 570,000 deaths.<sup>10</sup> The shutdown of economic activity has taken its own egregious toll, setting measures of human development – longevity, access to knowledge, and a decent standard of living – backwards, with predictions that over half of the world’s population will be living in poverty in the aftermath of the pandemic, in the absence of dramatic and internationally coordinated intervention.<sup>11</sup> In the face of such a crisis, the pressures to ameliorate the hardships are immense, just as are the demands to transform present laws and systems in more just, rights-protective, directions.<sup>12</sup> Two previous economic crisis – the Great Depression of 1929-33 and the Global Financial Crisis of 2007-09 – offer distinctive lessons about the nature of the human rights responses, particularly in the different emphases put on economic and social rights.

Each crisis has its own causes and character, and there is of course much that is unique about the present moment. The extreme economic contraction caused by the arrival of COVID-19 is a foreseeable result of a deliberate economic shutdown, prompted by the spread of a highly infectious and dangerous disease. At one point, more than half the world’s population stayed at home, by order, request, or permission of governments.<sup>13</sup> While this vast restriction of movement

appears, *prima facie*, as an unprecedented limit to human freedom, it also represents an immense coordinated effort at protecting precisely that freedom, in terms of human rights to life and health. The scope of this economic contraction raises several questions – of how human rights may be limited during emergencies, and how civil, political, economic, social and cultural rights relate to each other during such periods, and how previous economic crises, including both rapid and “slower” economic crises, answer that question. While the economic crises analysed below were not prompted by health emergencies (the HIV/AIDS pandemic is instructive on that particular front<sup>14</sup>), they underline the task of economic recovery, and the social learning that took place, around human rights.

## **1. The Global Financial Crises**

In 2008, the Global Financial Crisis was recognized as the worst economic crisis since the Great Depression. Spiraling from the US to the rest of the world, it came at the heels of global fuel and food crises which had seen spikes in food prices and widespread increases in hunger and poverty in the global South. Defaults on subprime mortgages and other financial derivatives produced a chain of collapses in important institutions, destabilizing whole countries and regions. The massive increase in poverty and inequality, within and between countries, arguably lay the foundations for the populist politics that followed, in turn presenting further threats to human rights.<sup>15</sup> Both the crisis itself, and the “recovery” policies that were drawn up to ameliorate its effect, were responsible for profound regressions in economic and social rights protections. This period is therefore illustrative of how human rights became rapidly sidelined by the more influential prescriptions of neoclassical economics, that saw them as obstacles to economic recovery.

The earliest response to the crisis was to ameliorate hardship, as we see now with the most immediate COVID-19 response;<sup>16</sup> but these policies did not endure. The early fiscal stimulus packages and social protection interventions, which mitigated the early effects on the poor, were scaled back by most states in 2010, and austerity measures were adopted as their replacement.<sup>17</sup> These measures, with precursors in World Bank and IMF policies adopted for countries in Latin America and Africa after the 1980s debt crisis (with disastrous results), burdened the poorest.<sup>18</sup> Social protection systems were eroded, with disproportionate impacts on women, children, and persons with disabilities. Spending on public services was cut, including in education and health care. In Greece, for example, an agreement between the IMF, the European Commission and the European Central Bank, required that health spending be cut from 9.7 per cent to no more than 6 per cent of GDP.<sup>19</sup> Public sector employment was reduced, regressive taxation increased, and food subsidies were limited. At the same time, states endorsed generous corporate bailouts, and relied on the idea, sourced in neoliberal economics, that the gains in economic growth would trickle down to the poor.<sup>20</sup> The effect of these developments were notable for the long-term public health of the population. The Committee on Economic, Social and Cultural Rights has pointed out that these disinvestments have exacerbated the effects of the COVID-19 pandemic,<sup>21</sup> expressly connecting the present health and economic crisis with the earlier financial one.

Austerity policies were heavily protested by citizens and residents in many countries. Although protestors did not, in the main, frame their protests in human rights terms,<sup>22</sup> many human rights experts warned of the problematic neglect that such policies would cause to economic and

social rights. The Chairperson of the Committee on Economic, Social, and Cultural Rights wrote a letter to all state parties, noting that austerity policies could lead to rights infringements, unless measures were adopted to minimize their impact on economically vulnerable people.<sup>23</sup> Some austerity programs were challenged successfully in court, with constitutional courts in Europe ordering the return of pensions under theories of equality, property and the *Sozialstaat*,<sup>24</sup> and courts in Latin America supporting a “vital minimum” against encroachment, as they had done in earlier economic contractions.<sup>25</sup> In the US, the epicenter of the crisis, some sub-national (state) courts prevented legislative retrenchment in health care and public schooling provision, particularly for immigrants.<sup>26</sup> At the global level, human rights commentators began to connect human rights obligations more explicitly to the central banks and the International Financial Institutions that were playing such a large role in the recovery.<sup>27</sup> Later, the 2019 Guiding Principles of Human Rights Impact Assessments of Economic Reforms, adopted by the UN General Assembly, sought to move away from ameliorative, ex post analysis, by setting out a framework for orienting goals, sequencing reforms (with attention to the most vulnerable), and establishing benchmarks and indicators for post-reform monitoring.<sup>28</sup> These aimed for more lasting changes, as well as more immediately ameliorative measures, with principles described in Part III below.

## **2. The Great Depression**

The temporary, at-most ameliorative policies of the Global Financial Crisis can be contrasted with the far greater institutional reorientations that occurred after the Great Depression that followed the crash of the US Stock Exchange in October 1929. The lessons from that period are pertinent to the present moment, suggesting a greater ambition, and institutional focus, in the human rights approach to the recovery. It was the economic recession, as well as the rise of fascism in Europe and World War II, that contributed to the expansive articulation of human rights in the Universal Declaration of 1948. In that document, “freedom from want” joined freedoms of religion, belief, voting and speech: civil, political, economic, social and cultural rights were combined under the “common standard of achievement for all mankind”.<sup>29</sup> The Universal Declaration’s enumerated rights included fair work, social security, and an adequate standard of living, and it called on all states and the organs of the international community to respect them. These commitments did not appear from nowhere. They were sourced in philosophical, religious and cultural ideas, and comparative-legal examples. Later, they were bolstered and updated by the decolonization and feminist movements they had originally sidelined.<sup>30</sup>

These newly expressed commitments helped guide the economic reconstructions that followed World War II. They legitimated the expanding role of the state, and its administration of an increasingly complex economy. Indeed, the expressed commitment to a “freedom from fear and want”<sup>31</sup> for all connected the earlier New Deal template of the US to the Bretton Woods Conference (at which the World Bank and the IMF were created). “Necessitous men are not free men”, had declared Franklin D. Roosevelt, but “are the stuff of which dictatorship is made”.<sup>32</sup> As historian Elizabeth Borgwardt has emphasized, the template of relief and recovery, which had reshaped perceptions of “the capacity of the central government to tackle intractable problems with large scale institutional solutions”<sup>33</sup> sought to foster a coordinated predictability in the international economic order. It echoed the New Deal perspective that “economic laws are not made by nature, they are made by human beings.”<sup>34</sup> While the international financial institutions (and the US institutions of the New Deal) were later reshaped by the neoliberal economic

program,<sup>35</sup> and were not free of profound human rights blindspots even in 1948, the transformative ambitions of the period are notable. Such lessons reinforce our understanding that there is nothing natural, or pre-destined, within the institutions of the current political economy.

The changed emphasis on human rights that coincided with the deep-seated transformation of the pre-war laissez faire economies is therefore instructive. A recent surge of historical studies of this period have unsettled many of the assumptions about where human rights came from, and how they were understood. For example, the popular generational account of human rights (as emerging in three stages, first for civil and political rights, secondly for economic and social rights, and thirdly for cultural and environmental rights) has been disrupted, exposing longer historical trajectories and a more varied cross-cultural pedigree.<sup>36</sup> The influence of self-determination and decolonization movements has also surfaced, which expose important links to land, and culture, in the formulation of such rights.<sup>37</sup> These histories are important, as they allow for an exploration into very different institutional arrangements for securing economic and social rights, beyond the (important) welfare state models available. Thus, the history of human rights after the Great Depression is not here recounted in order to provide a model to imitate. Nor should it obscure the developments in human rights since (a particularly significant warning, as the Trump administration has sought to revisit human rights by sidelining developments beyond 1948).<sup>38</sup> It recalls a global context for coordination which is not itself recoverable or desirable; and yet reminds us of what may be required of this one.

Recalling the institutional ambition of the postwar moment reminds us of bigger opportunities for transformation, particularly as the contemporary toolkit of economic policies has evolved to better capture the goals of human rights realization within finite planetary resources.<sup>39</sup> The attempts to recast environmental sustainability, not as a byproduct of or afterthought to economic growth, but as precursor and precondition of it, orients the human rights challenge of the contemporary moment.<sup>40</sup> It is the ambition and scope of the human rights approach that followed the Great Depression and World War II, rather than the more defensive approach that followed the Global Financial Crisis, that offers guidance for the present moment.

### **3. Slower Economic Crises**

The immediate and global economic shocks produced by COVID-19 point almost intuitively to these former global crises, but is important to recall the myriad localized (or regional) and/or less rapid onset crises that have occurred since the adoption of the UDHR, and yet have done little to disturb the neglect of economic and social rights. Prominent histories of human rights have tended to spotlight the Cold War “split” of the UDHR between treaty regimes for protecting civil and political rights (the ICCPR) and for economic, social and cultural rights (the ICESCR), and the later, so-called “breakthrough” period of the 1970s.<sup>41</sup> Both periods oversaw an intense marginalization of economic and social rights, and heralded the neoliberal reorganization of the global economy. That history is now well-known. The international financial institutions became increasingly directed towards an agenda of aggregate economic growth, rather than universal socio-economic guarantees; and the UN programs and special agencies, such as the United Nations Development Program (UNDP), the Food and Agricultural Organization (FAO) and the World Health Organization (WHO) ran independently from, rather than in sync with, the UN human rights regime (an orientation later reversed).<sup>42</sup> Many human rights NGOs, headquartered within



the Global North, were galvanized by only one-half of the vision of human rights. States were often held accountable for only civil and political rights infringements, and indeed punished, in aid, trade and broader foreign policy, for supporting generous economic and social guarantees for their residents. The idea of human rights, particularly in US foreign policy (a prominent non-party to the ICESCR), became highly truncated and selective, ignoring the structural violence of protracted poverty and inequality.<sup>43</sup> While actors within the UN human rights regime, and many NGOs of the Global South, continued to advocate for the more complete idea of human rights, particularly after 1990 and Cold War's end, this advocacy took place in a period of overarching diminishment of economic and social rights.

By the COVID-19 pandemic's arrival, neoliberal reforms had reached every aspect of the global economy, exacerbating the disruptions occurring from technological change, increasing automation and the immense movement of people and capital.<sup>44</sup> In the Global North, rising insecurity and diminishing services have been a notable feature of welfare states, and have been experienced by the poor, working class and middle class alike. As wages have stagnated and the cost of living – particularly housing – has risen, the economic and social rights first secured in the industrialized democracies have been withdrawn, as neoliberal policies have favored minimal regulation and provision, disinvestment in essential goods and services, such as health care and education, and regressivity in tax policy. In the Global South, where economies have been even more heavily exposed to investment, trade and development regimes, economic and social rights were early sacrificed to narrow conceptions of economic development. New forms of public provisioning were often extended on the basis of patronage, rather than rights. While the globalization of the economy helped lift many out of poverty (in China, for the most part, without recourse to human rights or even development goals), the benefits have been uneven as well as unreliable.

Amidst these disruptions, the search for a sustainable pathway to economic development has been ongoing. In 2015, all UN members embraced 17 Sustainable Development Goals (SDGs) and formally supported a united focus on issues of water, energy, climate, oceans, urbanization, transport, science and technology. Yet the neoliberal prescriptions for economic development have complicated each goal: with growth achieved through foreign investment, private financing, the globalization of supply chains, resource extraction of minerals, fossil fuels, and agriculture, and an intellectual property regime which has restrained the use, exchange or sharing of essential seeds, medicines and knowledge more generally. Other components of the neoliberal agenda, particularly privatization and deregulation, have further limited the resources available to the state for the provision of essential goods and services, in such areas as health care, education, water and sanitation. The commodification of access to essential goods and services is the result, which, without extensive transfers, infringes economic and social rights. The outsourcing and transfer of wealth to private, often corporate, actors, have dovetailed with concerns about corruption and state capture.

Despite this long period of diminishment, the UN human rights regime has continued to examine the effect of such policies on economic and social rights. The International Covenant on Economic, Social and Cultural Rights which, by July 2020, had attracted 171 ratifications (roughly equivalent to the International Covenant on Civil and Political Rights, with 173),<sup>45</sup> has been supplemented by other treaties, particularly for racial and ethnic groups, women, children, migrant workers, and people with disabilities<sup>46</sup> and by the UN special mandates based heavily on their

protection. The Committee on Economic, Social and Cultural Rights gained the authority to hear individual and inter-state complaints in 2013, with a mechanism that now has 24 State Parties.<sup>47</sup> Thus the diminishment of economic and social rights has not been met with silence within human rights campaigns. Indeed, an understanding of the links between all human rights has led to evolving demands for protection. The official UN doctrine of “indivisibility” has held, since the 1968 Tehran World Conference on Human Rights, that economic, social, cultural, civil, and political rights are indivisible, interdependent and interrelated, a doctrine reaffirmed in particular at the 1993 Vienna World Conference on Human Rights.<sup>48</sup> Social movements and other protagonists have forced a more express recognition of rights to access water and sanitation (proclaimed by a resolution adopted by the UN General Assembly in 2010),<sup>49</sup> as well as land, and a healthy environment, which were incorporated into special mandates and treaty bodies’ work; additional movements have claimed clean air, electricity, public transportation, and essential communications infrastructure including access to the internet. A mobilized “right to development” was supplemented by a “human rights-based approach” (“HBA”) to development, providing an important, if narrow, lens in which to assess economic programs and initiatives.<sup>50</sup> Recent human rights declarations, for indigenous people and for peasants, have also reinforced a far broader range of human rights, and identified the grounds for more communal structures of protection.

Indeed, during the same period of retrenchment, the recognition of economic and social rights found notable expression within the world’s constitutions. Many of these in fact predated (and informed) the UDHR of 1948, with constitutions protecting rights for workers, social security, education and health. These rights spread heavily during decolonization, and surged during the third wave of constitution-making from the 1990s. Quantitative studies indicate that rights to education, health, child protection and social security are now present in two-thirds of the world’s constitutions.<sup>51</sup> The rights to housing, food and water, sanitation, development and land are relatively less prevalent, although the right to housing is gaining constitutional expression, alongside the right to a healthy environment. Labor rights have fared relatively less well – these are present in fewer than half of the world’s constitutions and are not trending upwards, with the exception of the right to join a trade union (which may also be conceived as a civil right). These rights are often expressly justiciable, meaning that their claims can be heard directly by a court, with implications detailed in Part III below. The United States constitution is a prominent outlier to these trends; nonetheless the same human rights exceptionalism does not apply to its state constitutions, historic entrenchers of rights for workers, education and environmental protection.<sup>52</sup>

The economic recovery that will follow the COVID-19 pandemic will be layered onto this dual history – of a neoliberal decentering of economic and social rights in economic policymaking, and a re-centering attempt within fields of human rights and public law. This broad legal context will be relevant to the choices available for states in the post-COVID recovery, and a number of distinctive legal principles have developed in this period. It is to this framework that I now turn.

### **III. The Contemporary Human Rights Framework**

Under the contemporary human rights framework, all states have obligations to respect, protect, and fulfil human rights, meaning that they must engage in both due restraint (negative obligations) as well as effectively regulate private actors, and provide goods and services (as examples of positive obligations). Relevant obligations are sourced in many parts of the UN human

rights treaties, as well as in a myriad of regional and national (including constitutional) formulations. Such rights may be limited, or derogated from, under certain restricted conditions, such as public health emergencies or severe fiscal strain. Thus, as with ethical theories of human rights, which emphasize their deontological significance, human rights protected within international law and in domestic legal systems must not be sacrificed to raw power, crude utilitarianism, or majoritarianism. Nonetheless, the interests that they protect may be subject to a disciplined trade-off in exceptional cases.

While this Article is primarily addressed to the economic and social rights that are impacted, it is worth noting that according due respect to civil, political, and cultural rights will also be important to the post-COVID economic recovery, and continues as an integral part of the framework of indivisibility described above. For example, if rights of movement, assembly, voting, or a fair trial are limited (in order to prevent the spread of disease, for example) such limits must be necessary and proportionate, which require close scrutiny of their duration, location, scope and (non-discriminatory) impact.<sup>53</sup> Some elements, of course, are non-derogable, even in states of emergency. It is worth noting that such considerations recall other historical crises in human rights history not mentioned in Part II above, such as the HIV/AIDS pandemic, that go beyond the scope of the present Article. For economic and social rights, it follows that any limitations made of them must be justified as furthering public goals, decided openly and democratically, or that their progressive realization has been interrupted by a lack of available resources. These principles become particularly relevant in assessing the post-COVID economic recovery, and are described in this Part.

## **1. Legal Standards for Economic and Social Rights**

Under the ICESCR (like the UDHR before it), state parties are required to “progressively realize”, according to “maximum available resources”, rights to an adequate standard of living, including education, health care, food, social security, and other essential goods and services for human dignity and survival.<sup>54</sup> The obligation of progressive realization does not apply to civil and political rights, and has been derided by many skeptics as offering infinite flexibility.<sup>55</sup> Such criticism does not stand up in practice. In the Committee’s hands, progressive realization presents a context-sensitive formula for differentiating the positive obligations – which are both of conduct and of result – between differently situated states. These are well adapted to help evaluate the economic recovery. Obligations of conduct attach, for example, to how states negotiate and plan the economic recovery, and requires that there be adequate processes for representation and participation, particularly for representatives of those whose lives will be most affected. Obligations of result focus on how the formulated policies themselves secure economic and social rights, again with attention to the most vulnerable. These broad obligations are long-standing, but it is worth detailing five additional legal standards which that Committee on Economic, Social, and Cultural Rights have introduced since 1990, to provide further nuance to the obligation of “progressive realization”, and how it will apply to the economic recovery.

First, the Committee introduced a baseline “minimum core” of “essential foodstuffs, of essential primary healthcare, of basic shelter and housing, or of the most basic forms of education”,<sup>56</sup> that must be provided in all states, whatever their resources. This concept was to play a number of roles, and commentators still split on whether it presents a non-derogable obligation

(which must be realized under any circumstances), or whether, as is more likely, it presents a prioritarian marker for the most urgent socioeconomic interests that demand immediate action. I am among the writers critical of the ambiguity of the “minimum core” concept, and for the problematic distinctions that are drawn between what is immediately obligatory for economic and social rights and what may be postponed.<sup>57</sup> Nonetheless, the Committee has delineated several substantive aspects of the minimum core, for the right to health, for example, or the right to social protection, that will no doubt be important guides during the economic recovery. For example, the Committee has suggested that, during severe economic contractions, each state must demonstrate that every effort has been made to draw on all available resources to secure such a minimum; and each state is obliged to identify, in its policies, the appropriate minimum as benchmark.<sup>58</sup>

As the Committee sets out the parameters of “core obligations”, and states devise and publicize their minimum benchmarks for the health, housing, social security, food, water and sanitation they are in a position to secure, they goal of human dignity, rather than mere survival, is the more human rights-compatible focus. Both interpretations have been offered as orienting a “minimum core”, yet a focus merely on survival-based “basic needs”, while still influential in orienting certain development programs, discounts the humanist values of human rights. If accorded the broader approach, minimum thresholds, alongside social protection floors and other baselines,<sup>59</sup> may play a more transformative, rights-protective role, beyond ameliorating the hardships experienced by the worst-off. This role may be especially apparent when the minimum core is used to inform broader participatory benchmarks of government, such as the requirement for reasonableness in state decision making, including in its budgeting decisions. For example, the recent jurisprudence of the Committee on Economic, Social and Cultural Rights under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights illustrates both the importance of the reasonableness standard for State’s choices in budgeting, and that such choices may be justiciable, i.e., subject to independent monitoring by human rights bodies.<sup>60</sup> When supplemented by other principles of human rights, the minimum core may also help guide the duties of international assistance described below.

A more modest threshold for the minimum core is problematic, especially given the growing economic inequality of recent decades. Samuel Moyn, for example, has suggested that a focus within human rights on status inequalities and a ‘sufficientist’ interpretation of economic and social rights has come at the expense of a robust challenge to economic inequality: that “floors” of minimal protection have distracted from “ceilings” against extreme wealth.<sup>61</sup> While Moyn’s presentation of the broader idea of human rights may overlook some of the economic and social rights advocacy described during the periods of the UDHR enumeration and later, slower, crisis, particularly outside of the United States, this concern gains precision when it applies to the minimum core concept, and indeed reflects many of its earlier criticisms. As I observed a decade ago, the minimum core concept risks a “lowest common denominator” approach to economic and social rights, and may draw attention away from the States of the global North.<sup>62</sup> Yet by following country-specific benchmarks, which are duly focused on human dignity, the concept may play a significant role beyond the most resource-pressured States. Indeed, the majority of the world’s poor people now reside in middle income states,<sup>63</sup> and minimum benchmarks are often left unrealized in many high income, and highly unequal, countries. Under the post-COVID conditions of ever-escalating economic inequality, in between and within many countries, the concept of the “minimum core” may become more relevant. The effect of setting minimum thresholds is therefore

not irrelevant to economic inequality: raising the standard of living of the poorest, or preventing intolerable regressions, are important safeguards against inequality.

The second standard that is relevant is the presumption that the erosion or diminishment of previously secured economic and social rights is incompatible with progressive realization. States therefore have an affirmative obligation to justify any deliberately retrogressive measures as necessary and proportionate, according to the Committee.<sup>64</sup> Retrogressive policies include unjustified reductions in expenditures for public services that have proved critical to economic and social rights, such as the austerity measures described in Part II above. States must then indicate that they considered alternative measures, but none were less restrictive to rights. This obligation adopts the methodology of proportionality, which is familiar in other human rights frameworks.<sup>65</sup> The Committee's concession to temporary 'backwards' steps during financial and economic crises therefore accommodates the exigencies of such emergencies but requires their justification as necessary and proportionate. Critics have suggested, however, that a too-ready acceptance of justifications has diminished previous requirements of participation and review, and provided insufficient guidance on how such policies can be monitored, including their temporary nature and the determination of how the emergency situation comes to an end.<sup>66</sup>

In the context of COVID-19, the presumption against retrogression represents an opportunity, and a danger, in the economic recovery. On the one hand, as the crisis management of the pandemic itself has produced hitherto unprecedented state provisioning and management of people's access to health care, housing, education, and social protection, powerful calls will be made to maintain or extend such protections. These calls suggest an extended timeline, even permanence, for the most immediate measures of assistance. New campaigns have been made for governments to extend evictions moratorium, for example, or to turn rent suspension into cancellation, with powerful corollaries in the human right to housing. Other campaigns have sought to convert individual tax deferrals to tax relief for those with limited income; or to make the temporary social protection and cash transfers and help packages, particularly in low income countries, a more permanent feature of government practice.<sup>67</sup> The immediate response to the pandemic has made previously unattainable levels of state assistance apparently in reach.

On the other hand, the focus on retaining such pandemic-related high-points in state protection, which would take the form of appeals to the non-retrogression standard, may not always prove beneficial to rights advocates. Justifications of retrogression on grounds of proportionality tend to invite arguments about resource constraints when applied to economic and social rights, and force a "dollar versus rights" framing.<sup>68</sup> Hence, states may point to the severe economic shocks of the pandemic to justify later cuts to state provisioning as necessary and proportionate. This may be particularly easy to justify by states when disease control is no longer an urgent aim, and that impetus for protection is removed. Cuts may also be easy to justify according to what are necessary and proportionate, when the extent of the resulting deficits to each state, caused by the massive spending and stimulus needed to stabilize the economy in 2020, is felt. Moreover, many of the high-points of state protection during the pandemic are themselves short-term and flawed: the homeless shelters in the US, for example, hastily organized through vacant hotels and city spaces, have often not realized the goals of dignity; similarly health protections and unemployment benefits have often taken the form of medical fee waivers or one-time checks, with little thought in how to alter the structural conditions that lead to health

disparities or wage precarity in the first place. Arguments about non-retrogression should not be used to freeze such measures in place; just as they are also less helpful for those whose demands for economic and social rights have not chimed with public health goals.

A third human rights standard central to the economic recovery is the prohibition on discrimination. Indeed, this prohibition often operates more like a rule than a standard: it is fundamental to all human rights treaties, and means that states have immediate obligations to avoid any discriminatory purpose in, or disproportionate impact of, law and policy on grounds of race, sex, gender, language, religion, sexual orientation, national or social origin, disability status, socio-economic status, or other prohibited ground. If there is discrimination, it must be justified as necessary and proportionate. The relevance of this protection is heightened by the disproportionate impact of the COVID-19 pandemic's health and economic effects, on women, children, people with disabilities, people of color, and the poor. Women, for example, represent more than 70% of health and social sector workers employed to address the pandemic.<sup>69</sup> They are also burdened more by economic crisis in general, because they are often overrepresented in the informal sector and in low paid or precarious jobs, and they are often the main recipients and users of social security protection and public services, which is linked to the burden of care work they perform in the family.<sup>70</sup> Campaigns by racial justice movements reinforce the importance of greater participation and involvement in the formulation of the policies towards economic recovery, suggesting a vigorous role for non-discrimination.<sup>71</sup>

While the economic recovery will undoubtedly produce winners and losers, the prohibition on discrimination compels a state response if the gaps in access to housing, education, food, water or other essential service are experienced along prohibited grounds. The substantive equality at the heart of this principle also requires that vulnerable and disadvantaged groups must be protected as a matter of priority. As a matter of human rights law, affirmative measures are not only permitted, but required,<sup>72</sup> such as tax measures or social transfers. The particular vulnerability of the groups mentioned above, including women, children and immigrant groups, suggests that cuts to state services, such as in childcare, maternal health care, and domestic violence services, may themselves violate principles of non-discrimination.

## **2. The Global Context of the Recovery**

The obligation on states to progressively realize economic and social rights is not limited to the national sphere, and is relevant to decisions made within the integrated global economy. Within the ICESCR, progressive realization must be committed to, by the state's "maximum available resources".<sup>73</sup> Those monitoring international human rights law, such as UN special rapporteurs or treaty bodies, have given this aspect of states' obligations discernable bite. Maximum resources are defined by a states' ability to both mobilize and generate resources with sustainable parameters.<sup>74</sup> For example, a State which has allocated a disproportionate amount of its budget to defense spending, while its public services are compromised, will stand afoul of the obligation.<sup>75</sup> So, too, will its potential tax resources be counted, even if under-utilized,<sup>76</sup> so that policies to expand the tax base, combat tax evasion and tax progressively will be important to its available resources. Available resources are also defined with respect to "international assistance and cooperation".<sup>77</sup> In this respect, the emphasis on available resources focuses attention on how high-income countries provide financial and other resources to poorer countries. As governments have

committed more than \$11 trillion dollars to the crises (as of June 2020),<sup>78</sup> conventional arguments about resource constraints have little purchase, and demands for international transfers find support in human rights law.

The delineated framework of states' extraterritorial obligations, which refer to acts and omissions of a government that affects the enjoyment of rights outside of a State's own territory, are also critically important.<sup>79</sup> Such obligations are relevant for the global economic recovery, as they may apply to states' duty to regulate private actors, including multinational corporations, as well as the responsibilities of states in their membership of international financial institutions, the sanctions policies adopted by states, and other forms of participation in international relations. For example, the IFIs have played a large role in the economic recovery, in making proposals of debt relief and significant recovery packages. At the same time, in continuing to promote structural adjustment, such proposals may have the effect of at-most ameliorative solutions, with limitations on economic and social rights.<sup>80</sup>

The obligations on multinational corporations are also relevant. The Guiding Principles on Business and Human Rights have sought to delineate human rights responsibilities with more specificity, by outlining different pillars of responsibilities, including corporate responsibilities to respect rights, and states' duties to protect them.<sup>81</sup> The principles used to "embed" such commitments among business groups, although responsive to economic and social rights, rely on soft, voluntary commitments, many of which are weakened by international trade and investment law. While proposals for a treaty on business and human rights have long stalled,<sup>82</sup> multilateral efforts may be given renewed emphasis during this period, and these soft principles may harden. At a minimum, current rescue packages and bailouts must be tied to conditions, such as respect for worker protections, or meeting climate change goals. In this respect, the formal state duty to protect economic and social rights by appropriate regulation of private actors will be bolstered by real bargaining power.

### **3. New Approaches to Measurement and Accountability**

The obligations and legal standards described above are assisted by the significant advance in human rights methodologies in recent decades, even as they, at base, depend on open and public engagement for their overall effectiveness. A growth of measurement tools from the social sciences – indicators, benchmarks, rankings – have captured the information generated by multidimensional poverty and human development indexes to assess the compliance of particular states. Some measurement tools assess the "outcome" of rights fulfilment, such as how a state's population fares according to benchmarks like literacy, infant mortality, life expectancy, and access to clean water, sanitation and power sources. Recent measures expressly contrast these outcomes with how many resources the state had to spend.<sup>83</sup> Moreover, as the data on outcomes can be disaggregated along lines of gender, race, ethnicity, location, or socio-economic status, such information helps to detect, *prima facie*, the discriminatory impact of a state's policies and laws on vulnerable groups. There are also snapshots provided by the social investment ratios generated by the UN Development Program; just as there are ratios for GDP and aid. Other accountability tools are concerned with broader measures, which help make them more attuned to the participation, accountability and transparency goals of human rights (some are designed to generate information only through participation).<sup>84</sup> A forceful debate about the scientific

pretensions and lack of robustness of such tools has, predictably, taken place.<sup>85</sup> Yet with a critical acknowledgment of methodologies and baselines, such tools can help supplement the information presented by those claiming rights in various locales.

In recent years, a particular set of tools have been developed to address the challenges of economic recovery. The UN Guiding Principles for Human Rights Impact Assessments for Economic Reform Policies emerged from lessons learned of the Global Financial Crisis and sought to harness a unified assessment of policies in fiscal, monetary, tax, debt, trade, aid, and environmental programs. The goal behind their drafting was expressly not to develop new human rights standards, but to provide ‘effective and practical guidance and tools to different stakeholders for assessing economic reform policies on the basis of existing human rights standards.’<sup>86</sup> The favored methodology is the human rights impact assessment, with is hoped to democratize resource mobilization and spending decisions, and prevent undue external influence on states receiving assistance or debt relief. This *ex ante* approach suggests that states should compare, in their assessments, different scenarios of economic recovery, including through budget cuts, tax increases or tax compliance strategies, and reviews of tax spending.<sup>87</sup> Critics of the use of such impact assessments in the related field of foreign investment have emphasized that they work best in providing evidence for the likely effect of different approaches, rather than as the basis for one-off remedial compensation for projects.<sup>88</sup> These lessons will be relevant in the economic recovery itself, and, if such criticisms are observed, are likely to provide accountability for a more transformative, rather than merely ameliorative, approach.

#### **IV. Economic and Social Rights outside the UN Human Rights Regime**

As states enact laws and policies to address the economic recovery from COVID-19, it is not only the UN human rights regime that is relevant. Other arenas of human rights law and advocacy will play a part, including those that have emerged during the slower economic crises that have been taking place, particularly in the Global South. This Part turns to much fully explore the role of economic and social rights recognition, justiciability, and enforcement, at the national level. These developments repeat some of the ameliorative or more transformative tropes of human rights frameworks, inject both accountability, and fresh perspectives, into the idea of human rights in the post-COVID economic recovery.

##### **1. Constitutional Rights and Courts**

As constitutional reforms have swept the globe, and resulted in the formal attention to economic and social rights in the majority of the world’s constitutions (described in Part II above), connections have grown between human rights and constitutional rights.<sup>89</sup> Constitutional reforms that are expressly protective of human rights, most prevalent in post-transition countries and regions such as in South Africa, Latin America, or Eastern Europe, are sometimes considered merely tokens or legalisms.<sup>90</sup> One critical portrayal presents the enumeration of economic and social rights as a constitutional compromise between property-holding minorities and the majoritarian poor, with a knowing wink that “juristocracy” tends to defend the former.<sup>91</sup> Yet courts have in fact defended and secured economic and social rights in important ways, both as baseline protections for health care, housing or social grants, for example, or as defenses to retrenchment. Outside of courts, national human rights commissions, Ombudspersons, legislative scrutiny



committees, human rights impact assessments and audits, and other public processes, have been formed, with mixed results but certainly new templates for budgetary and broader economic scrutiny.<sup>92</sup>

The success in economic and social rights-based litigations varies by court, state, region, and time period; and even the measure of success, in material or symbolic terms, is controversial. Nonetheless certain courts, notably within Latin America, Eastern Europe, South Asia and South Africa, have offered innovations in both reviewing legislation and policy for economic and social rights infringements, and ordering remedies upon findings of their breach. Court involvement will raise the prospect of further state accountability of the decisions on which the post-COVID 19 economic recovery will be based. The trend towards litigating rights is also significant for the legal principles that have been formulated, such as judicial review of the “reasonableness” of state action in this area, and the judicial orders of remedies that help prompt participation in enforcement.<sup>93</sup>

There is not a singular model of judicial review of economic and social rights. Perhaps the most prominent model is seen in South Africa, where the Constitution expressly recognizes economic and social rights. The South African Constitutional Court has delivered important orders against state encroachment (in arbitrary evictions, for example), state neglect (in failing to cater, in housing policy, for the vulnerable during crisis), state corruption (in respect with social grants payments contracts), discrimination (in depriving permanent residents of social grants) or unreasonableness (in preventing antiretrovirals in public hospitals, or in failing to attend to crisis conditions in housing policies).<sup>94</sup> This body of caselaw has created accountability for state decision-making, including in setting budgets and in public procurement. It has also focused attention on how private individuals, such as owners of property, may have particular responsibilities to others. Other regions have developed their own models of judicial responsiveness. In Latin America, for example, courts have focused on both the rights of the most vulnerable as well the social state promise for all, delivering orders against “radical deprivation”.<sup>95</sup> Courts have also provided recourse for broader claimants around health care. The latter cases have generated equal parts criticism and endorsement: for the “middle-class bias” they expose, or for their long-term defense of universal protections.<sup>96</sup> Within the US, the increasingly vibrant research field of law and political economy has set out an elaborate set of tools to explore how the judicial development of private rules of tort, contract and property, or the features of particular regulatory regimes, help to challenge economic inequality and precarity.<sup>97</sup>

Judgments by courts in relation to economic and social rights do not have straightforward pro- or anti-democratic effects, as both critics and advocates attest. Some courts have introduced accountability on governments in their interactions with global economic actors, with benefits for both rights realization and broader democratic principles. In the Indian Supreme Court, the prominent “right to food” campaign was galvanized by court-appointed commissioners as well as popular protest, leading to interactive feedback from courts and civil society, and leading to new legislative changes around food security, with mixed results.<sup>98</sup> These trends are not wholly distinct from global North counterparts, particularly in the cases decided in the aftermath the Global Financial Crisis, described in Part II above. Recent climate change litigation has followed this model as well.<sup>99</sup> Other litigation, such as anti-TRIPS agitations around health care, or anti-IMF reforms, had similar transnational dimensions.<sup>100</sup> Many with the greatest impact for rights have catalyzed political responsiveness elsewhere than before courts: channeling democratic

engagement between bureaucracies and social movements, for example, or Ministers and voter-constituents, rather than ordering substantive, court-supervised, remedies. Such processes will create additional avenues of scrutiny for the decisions reached during the post-pandemic recovery.

## **2. Participation in the Human Rights Project**

Laws and accountability frameworks can only do so much, by themselves. But the contribution of human rights to the economic recovery is much greater. The great asset of human rights, on many philosophical accounts, is the special access that their protection opens, to the intersecting dimensions of freedom and dignity in the human experience.<sup>101</sup> This access comes, not only due to the mature framework of civil and political protections that have been established, and the recognition of rights' indivisibility, but for the galvanizing and mobilizing, and information-generating potential of rights-talk itself. As the recovery affects an unfathomable degree of change in health, food, education, work, social security, water, and sanitation systems, it will be important to gather and include diverse voices and perspectives in the formulation of human rights and in the devised steps to realize them. These aspects of participation are likely to become increasingly visible in the post-pandemic recovery, even as rights claimants may be disconnected from the technical experts who are charged with designing the response.

In this respect, it is helpful to draw some short lessons from other “mergers” of human rights discourse with related regimes, such as development or water management, that were extended during the “slow” economic crises described in Part II above.<sup>102</sup> The human rights based approach to development (RBA or HRBA), for example, became a prominent focal point of advocacy from the 1990s. The results included the human development index, described above, which sought to transform the metrics of state success beyond GDP. The merger also established bold institutional reforms for the development field, like requiring economic ministries, such as finance and planning, to integrate rights into the economic policy making process. When the “human right to water” was articulated, first as part of the right to an adequate standard of living under the ICESCR, and later as a human right to water and sanitation recognized by the General Assembly, the same questions were asked of what human rights added to a previously regulated area.

The express connection of the human rights framework to these fields did not always operate as expected. For the human rights based approach to development, human rights organizations began to acquire a greater fluency in economic, social and cultural rights, and establish alliances with environment and development actors. Nonetheless, many expressed objections to the way the RBA failed to empower marginalized groups, or change power relations. Critics suggested that “rights based approaches” became too rapidly specialized, but that looser exercises in “rights talk” were a preferable alternative. This more open-ended – “tactically polyvalent”<sup>103</sup> – exercise of “vernacularization” has long been promoted as a more culturally attuned, less top-down, appreciation of the human rights agenda.<sup>104</sup> The method of “rights talk” may be open to newer articulations of human rights, and create more imaginative languages about new methods of creating access to essential resources or other proposals.<sup>105</sup> For those assessing the increasing calls for the human right to water, and their response, the human rights discourse was cast, in its best light, as offering “a tool for constant and empirical critique with a search for

contextual solutions, rather than the basis for overarching political and policy program.”<sup>106</sup> These lessons are salutary in the use of human rights in the post-COVID economic recovery.

Of course, not all rights have the same mobilizing effect, just as the language of rights does not resonate in all cultural contexts. Human rights to health care, education, housing, food, water, are not mere mirrors of each other. In this respect, it is useful to move between both holistic and separable perspectives.<sup>107</sup> These perspectives, which I detail in full elsewhere, indicate the strength of the overall human rights framework, alongside the benefits of more focused campaigns on the disaggregated interests that are formulated within it. In the first, holistic perspective, economic and social rights operate together to realize the values of dignity, equality and freedom; as indivisible as the broader range of rights, the infringement of one is likely to compound the other, and the effects of stratification or commodification or financialization, for example, are often comparable for each.<sup>108</sup> In the second, rights demarcate interests that are connected with different regimes of law, and their realization is assisted by different forms of scientific or professional expertise. Some may be constitutionally protected, and some may not. They may have different legacies of public provision, and draw out different connections within civil society, whose members may enjoy different levels of social and cultural capital in formulating claims. The insights gained by holistic and separable perspectives are distinct: it is important, in considering the human rights-impact of the COVID-19 recovery, to engage both perspectives to explore how the realization of each right impacts others, but may raise distinguishable problems and solutions.

## **V. Conclusion**

This Article has explored the idea of a human-rights based economic recovery after COVID-19. In calls to #build back better, references to human rights are now made in advocacy, policy circles and partisan political campaigns. This Article suggests such references to human rights should undergird a renewed commitment to the human rights to life, health, education, social security, housing, food, water and sanitation – the so-called economic and social rights – although civil, political and cultural rights are necessarily connected to that approach. It also suggests that a human rights approach does not offer a singular, uniform policy prescription. Instead, it offers the parameters of accountability and participation that have been a known feature (or at least goal) of the UN human rights regime since the UDHR. Taking the form of a “think piece”, this Article combined historical, doctrinal, and comparative analyses to examine how human rights can inform, and alter, the course of the coming economic recovery.

It is impossible to predict the deep swathes of transformations that will occur before the pandemic ends. Without a vaccination or new therapies, economic activity will continue to be deliberately restricted in order to limit contagion; many of the typical assumptions for economic recovery – such as stimulating consumption after a decline in aggregate demand – will not be feasible until the necessary human interactions can take place safely. As COVID-19 continues to unfold, many conventional economic and cultural ideas will be recast. This uncertainly scrambles neat distinctions between ameliorative and more transformative approaches. Nonetheless, it is possible to track the tension between those that seek to immediately alleviate hardship, and those that seek to alter the laws and policies that create exposures to that hardship, within the modern-day human rights framework. First, turning to history, the Article showed that the Great Depression became part of an ambitious global prompt for both the Universal Declaration of Human Rights, and the

recognition of economic and social rights within that document. The Global Financial Crisis, on the other hand, was an at-best ameliorative exercise of immediate support, followed by a lengthy process of austerity that retrogressed important economic and social rights. Secondly, turning to doctrine, the Article mapped opportunities and tensions within prominent legal concepts of the minimum core, the presumption against retrogression, the prohibition of discrimination, and other standards which guide states' obligations to progressively realize economic and social rights. It also describes the accountability techniques that seek to prompt both ameliorative, as well as more transformative, levers for reform, including the most recent approach to human rights impact assessment, and new social science strategies to disaggregate data on who benefits, and who loses, in the post-pandemic recovery. Finally, the Article conducted a broader sweep of human rights approaches outside of the UN treaty regime, including rights-protecting constitutions, courts, and national human rights institutions and other institutions, that may hold recovery strategies to account, and the call to mobilize greater participation, and claiming, by individuals and civil society. It is in these latter arenas that the more transformative ambitions of human rights will be won, or lost.

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<sup>1</sup> United Nations Development Program, *2020 Human Development Perspectives: Covid-19 and Human Development: Assessing The Crisis, Envisioning The Recovery*, [online] [http://hdr.undp.org/sites/default/files/covid-19\\_and\\_human\\_development\\_0.pdf](http://hdr.undp.org/sites/default/files/covid-19_and_human_development_0.pdf) (Accessed July 11, 2020).

<sup>2</sup> See, for e.g., United Nations Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, *COVID-19: Urgent appeal for a human rights response to the economic recession*, (April 15, 2020) [https://www.ohchr.org/Documents/Issues/Development/IEDebt/20200414\\_IEDebt\\_urgent\\_appeal\\_COVID19\\_EN.pdf](https://www.ohchr.org/Documents/Issues/Development/IEDebt/20200414_IEDebt_urgent_appeal_COVID19_EN.pdf) (Accessed July 11, 2020).

<sup>3</sup> United Nations. *Note to Correspondents: Uniting for a People's Vaccine Against COVID-19*. [online] <https://www.un.org/sg/en/content/sg/note-correspondents/2020-06-03/note-correspondents-uniting-for-peoples-vaccine-against-covid-19> (Accessed July 11, 2020).

<sup>4</sup> Rudiger, A. (2020) 'From Free CovidCare to Medicare For All: The Time is Now to Provide Health Care as a Public Good for All.' *Partners in Dignity and Rights*, [online] <https://www.commondreams.org/views/2020/04/04/free-covidcare-medicare-all-time-now-provide-health-care-public-good-all> (Accessed July 11, 2020).

<sup>5</sup> See, e.g., *National Law Center on Homeless and Dignity*, 'California Introduces First-in-the-Nation Amendment to Recognize Housing as a Human Right. [online] <https://nlchp.org/ca-amendment-to-recognize-housing-as-a-human-right/> (Accessed July 11, 2020).

<sup>6</sup> Shanahan, G. & Smith, M. (2020) 'Could Covid-19 be the push that Europe needs for unconditional basic income?' *The Conversation* [online] <https://theconversation.com/could-covid-19-be-the-push-that-europe-needs-for-unconditional-basic-income-137843> (Accessed July 11, 2020); see also Alston, P. (2020) 'Universal Basic Income as a Social Rights-Based Antidote to Growing Economic Insecurity', in Young, K. G. (Ed.) (2019) *The Future of Economic and Social Rights*, Cambridge University Press.

<sup>7</sup> See, for example, #StandUp4HumanRights. [online] <https://www.standup4humanrights.org/en/index.html> (Accessed July 11, 2020).

<sup>8</sup> E.g., Statement issued by the Independent Experts of the Special Procedures of the UN Human Rights Council, *Statement on the Protests against Systemic Racism in the United States*, June 5, 2020. [online] <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25927&LangID=E> (Accessed July 11, 2020).

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<sup>9</sup> See, e.g. Sen, A. (2004) 'Elements of a Theory of Human Rights', in *Philosophy & Public Affairs* Vol. 32, pp.315, 327.

<sup>10</sup> COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University (JHU) [online] <https://coronavirus.jhu.edu/map.html> (Accessed July 13, 2020). [Note to Ed.: WILL UPDATE AT FINAL VERSION]

<sup>11</sup> Oxfam, *Dignity not destitution: An 'Economic Rescue Plan For All' to tackle the Coronavirus crisis and rebuild a more equal world*, 9th April 2020, [online] <https://www.oxfam.org/en/research/dignity-not-destitution> (Accessed July 13, 2020).

<sup>12</sup> This distinction is sketched in only broad-brush terms at this uncertain moment, but recalls the difference between addressing injustices via correcting end-state outcomes (amelioration) or changing root causes (transformation). See, e.g., Fraser, N. (2003), 'Social Justice in the Age of Identity Politics', 7, p. 74 in Fraser, N. and Honneth, A. Eds. *Redistribution or Recognition? A Political-Philosophical Exchange* (Verso).

<sup>13</sup> More than 3.9 billion people, half the world's population, were asked or ordered to stay at home by their governments to prevent COVID-19 spread: see Sandford, A. (2020) 'Coronavirus: Half of humanity now on lockdown as 90 countries call for confinement.' *Euronews*, [online] <https://www.euronews.com/2020/04/02/coronavirus-in-europe-spain-s-death-toll-hits-10-000-after-record-950-new-deaths-in-24-hou> (Accessed July 11, 2020). This lock down has protected the rights of the most vulnerable and those working in essential health and other sectors, although it has wider aggregate benefits. While rights to assembly and movement were limited in the process, these were often done proportionate to legitimate goals, thus satisfying human rights. In some instances, however, they were not, as is discussed below.

<sup>14</sup> Mann, J., M. (1999) *Health and Human Rights: A Reader*, Routledge, London. For additional epidemics, such as tuberculosis, see Maru, D., and Farmer, P.E. (2012) 'Human rights and health systems development: confronting the politics of exclusion and the economics of inequality,' *Health and Human Rights*, Vol. 14, No. 2, pp. 1-8. (detailing an ethical reorientation of the public health field, and a greater understanding of health and human rights)

<sup>15</sup> Alston, P. (2017) 'Human Rights under Siege: How to Respond to the Populist Threat Facing Human Rights', *SUR*, Vol. 14 No. 25 pp.267 - 272; Tooze, A. (2018) *Crashed: How a Decade of Financial Crisis Changed the World*, Penguin.

<sup>16</sup> An example is the US Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748), which introduced a \$2 trillion stimulus to provide direct payments to eligible individuals, fund small business relief, expand unemployment benefits and suspend federal student loan repayments. See further Burris, S., de Guia, S., Gable, L., Levin, D.E., Parmet, W.E., Terry, N.P. (Eds.) (2020). *Assessing Legal Responses to COVID-19*. Boston: Public Health Law Watch (also noting other policies at local, state and federal levels, such as temporarily suspending evictions, suspending water and utility shutoffs).

<sup>17</sup> Sepúlveda Carmona, M. (2014) 'Alternatives to Austerity: A Human Rights Framework for Economic Recovery', in Nolan, A., (Ed.) *Economic and Social Rights after the Global Financial Crisis* Cambridge University Press, Cambridge, 23, 30-1.

<sup>18</sup> Id.

<sup>19</sup> Id., at 35.

<sup>20</sup> Blyth, M. (2013) *Austerity: The History of a Dangerous Idea*, Oxford University Press, Oxford.

<sup>21</sup> *Committee on Economic, Social and Cultural Rights (CESCR)*, (2020) 'Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights' para. 4. See further Sirleaf, M. (2020) 'Capacity-Building, International Cooperation, and COVID-19', vol. 24, Issue 17, *ASIL Insights* (detailing broad effects on the Global South).

<sup>22</sup> Nolan, A. (2014) 'Introduction, (Ed.)', *Economic and Social Rights after the Global Financial Crisis*, Cambridge University Press, pp. 17

<sup>23</sup> CESCR, Letter to States Parties dated 16 May 2012, Reference CESCR/48<sup>th</sup>/SP/MAB/SW; see also A/HRC/40/57. These measures are detailed below, at Part III.

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- <sup>24</sup> Kilpatrick, C. (2017) ‘Constitutions, Social Rights and Sovereign Debt States in Europe: A Challenging New Area of Constitutional Inquiry’, in Beukers T., et al. eds., *Constitutional Change Through Euro-Crisis Law* 279, 294–95.
- <sup>25</sup> See, e.g., Landau, D. “The Promise of a Minimum Core Approach”, in Nolan, pp. 267.
- <sup>26</sup> Hershkoff H. and Loffredo, S. ‘Tough times and weak review: the 2008 economic meltdown and enforcement of socio-economic rights in US state courts,’ in Nolan, pp. 234.
- <sup>27</sup> E.g., Balakrishnan R., Heintz, J., and Elson, D. (2016) *Rethinking Economic Policy for Social Justice: The Radical Potential for Human Rights*, Routledge, London.
- <sup>28</sup> UN Guiding Principles of Human Rights Impact Assessments of Economic Reforms, A/HRC/40/57 2019.
- <sup>29</sup> GA Res. 217, UN GAOR, 3d sess., UN Doc. A/810 (1948).
- <sup>30</sup> Young, K. G. (2009) ‘Freedom, Want and Economic and Social Rights: Frame and Law’, *Maryland Journal of International Law*, Vol. 24 pp.182; Quiroga-Villamarín, D.R. (2019), ‘An Atmosphere of Genuine Solidarity and Brotherhood’: Hernán Santa-Cruz and a Forgotten Latin American Contribution to Social Rights’, *Journal of the History of International Law* 21, 71–103
- <sup>31</sup> United Nations. *Atlantic Charter of 1941* [online]. <https://www.un.org/en/sections/history-united-nations-charter/1941-atlantic-charter/index.html>; United Nations. *Preamble UDHR*, [online] <https://www.un.org/en/universal-declaration-human-rights/>
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