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**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

## **Report of the 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**

### **Note by the Secretariat**

The Secretariat has the honour to transmit to the Human Rights Council the report of the 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, Juan Pablo Bohoslavsky, prepared pursuant to Council resolution 25/16. The report focuses on labour rights in the context of economic reform and austerity measures.

In many countries, austerity-related labour law reforms have been promoted by international financial institutions on the assumption that they will lead to economic growth and thus prevent or help overcome debt crises. These reforms have included freezing or reducing wages and minimum wages, extending working hours, placing workers on precarious contracts or labour reserve schemes and facilitating dismissals. Of particular concern are reforms that have targeted collective bargaining systems, for example by restricting the extension of sector agreements and pushing bargaining down to the workplace level or permitting bargaining with non-union representatives. In his report, the Independent Expert argues that these reforms often erode labour rights and result in retrogression of work-related gender equality. They have frequently contributed to an increase in inequality and insecure and informal employment; fostered discrimination in the labour market towards young and older persons and individuals belonging to marginalized social groups; and resulted in the reduction of job-related social protection. Furthermore, it is questionable whether eroding labour rights generates economic and social benefits to other rights holders that would justify encroaching on them. The Independent Expert concludes with a number of recommendations on how to improve the protection of individual and collective labour rights in response to financial crises.

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## **Report of the 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**

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## I. Introduction

1. The present report is submitted by the Independent Expert on the effects of foreign debt on the enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky, pursuant to Human Rights Council resolution 25/16. The report focuses on labour rights in the context of economic reform and austerity measures.

2. In many developed and developing countries, austerity-related labour law reforms have been promoted by multilateral and regional financial institutions on the assumption that they will lead to economic growth and thus prevent or help overcome debt crises. They have often recommended or insisted, as part of their lending conditionality, that the labour market be made more flexible through deregulation, downsizing the public sector and freezing or reducing wages and work-related social benefits in an effort to reduce government expenditure. A number of national governments have thus implemented these recommendations and reduced or eliminated labour rights — sometimes under substantial duress — in the hope of overcoming their financial difficulties.

3. In the present report, the Independent Expert intends to answer the following questions: What are the human rights implications of austerity-driven labour policies? Have they been effective at all in preventing and overcoming debt and financial crises? What should stakeholders do to avoid and/or minimize the effects of austerity policies?

4. The findings of this report give rise to some concern. Austerity measures and labour market reforms have often contravened the international human rights obligations of States, eroded labour rights and resulted in the retrogression of work-related gender equality. They have contributed to an increase in inequality and insecure and informal employment; fostered discrimination in the labour market towards young and older persons and individuals belonging to marginalized social groups; and resulted in the reduction of unemployment benefits and other job-related social protection.

5. The mainstream assumption that labour rights are generally detrimental to economic development has been challenged at theoretical and empirical levels and it has been, shown more concretely that austerity-related labour market reforms do not usually help economies to recover after crises. Actually, these reforms have not improved economic performance; instead they have inflicted substantial harm on working people, which will be felt for many years.

6. Section II presents the typical contents of austerity-related labour law reforms, which have frequently been undertaken in the context of financial assistance programmes of international financial institutions. Section III explains to what extent these measures have conflicted with international human rights obligations in the field of labour or caused other adverse social and human rights impacts. Section IV reflects on the economic effects of labour standards, in general, and the economic effects of austerity-driven labour reforms, in particular. Finally, section V presents conclusions and recommendations on how to improve protection of individual and collective labour rights during debt crises and times of austerity.

7. The Independent Expert thanks the Governments of Armenia, Chile, Egypt, Greece, Honduras, Kyrgyzstan, Maldives, Mali, Paraguay, Senegal and the Sudan; the national human rights institutions of Croatia, Ecuador, Honduras, India, the Islamic Republic of Iran, Mexico, Nepal, Portugal and the United Kingdom of Great Britain and Northern Ireland; and several civil society organizations for their responses to the questionnaire

circulated in the preparation of the report.<sup>1</sup> The responses received confirmed that, over the past decade, many States implemented reform measures affecting labour rights in order to stimulate economic growth or support financial consolidation. Some of the submissions also included an assessment as to whether the reforms had a positive or adverse impact on the enjoyment of labour rights or other social rights contained in international human rights treaties.

8. Although the report deals with the labour and human rights implications of austerity, fiscal consolidation should not be considered as the only available response to economic crises. Before implementing austerity measures, States and international financial institutions are obliged to assess whether there are any viable human rights compliant policy alternatives to fiscal consolidation.

## **II. Overview of debt and labour rights**

### **A. Financial crises, economic reform and labour standards**

9. Financial crises can affect labour rights in a number of ways. Obviously, financial crises may reduce economic growth and employment and impair the right to work. However, in addition, governments have often undertaken reform measures that directly — such as reduction in wages and employment in the public sector aimed at reducing public expenditure or labour market deregulation in the private sector purportedly to increase competitiveness — or indirectly — by creating economic conditions which increase pressure on workers, reducing wages or threatening employment, for example through privatization of public enterprises, trade liberalization or cutting domestic subsidies — affect labour rights.

10. While the links between debt crises and labour law reform are complex, it is safe to say that unsustainable public debt levels often play a key role in a government's decision to adopt economic adjustment reforms, with various implications for labour rights. In this regard, the stimulus for reform can come from external actors, notably key creditors of the State concerned, while, in others cases, the political impulse for reform policies has stemmed from the Government itself. This includes scenarios where a government is facing a financial or otherwise economic crisis and perceives a need to implement such policies to become more competitive to overcome the crisis. Governments may also perceive a necessity to implement such reforms in order to avoid entering into a debt crisis. A looming debt crisis may also be used to implement business-friendly policies that would otherwise be highly unpopular.

11. Financial crises and labour reforms can result in a vicious downward spiral that depresses labour rights. Increased unemployment and weakened trade unions have the potential to entrench income inequality and stagnation of workers' wages in the bottom half of the labour market and trade unions lose the power to fulfil their traditional role of contributing to redistribution. Consequently, workers may borrow beyond their means to maintain their standard of living; weakened individual and collective labour rights may

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<sup>1</sup> The questionnaire and all the responses received are available from [www.ohchr.org/EN/Issues/Development/IEDebt/Pages/DebtAndLabourRights.aspx](http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/DebtAndLabourRights.aspx). The Independent Expert also thanks Franz Ebert, research fellow at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany, for his research work for the present report.

increase the risk of financial crises which, in turn, may lead to further deregulation of labour markets.<sup>2</sup>

12. Labour-related austerity policies have been openly pushed by a number of official key creditors, including the World Bank and the International Monetary Fund (IMF), together, more recently, with the European Commission and the European Central Bank — the so-called Troika. Especially since the late 1980s, labour-related conditionality has featured prominently in IMF financial assistance programmes. Indeed, around 50 per cent of all lending programmes have involved one or more labour-related conditions over the period from 1994 to 2007. Since then, the number of IMF programmes with labour conditionalities appears to have fallen, but still, between 25 to 40 per cent of IMF programmes adopted until 2014 contained labour-related conditions relating to the public or the private sector.<sup>3</sup>

13. International financial institutions have promoted labour law deregulation not only through formal conditionality to financial assistance arrangements. For example, a subtle form of reform pressure was applied in the case of Italy whereby a confidential letter sent to the Government by the President of the European Central Bank and his incumbent successor set out a list of required potential reforms.<sup>4</sup> IMF has also made use of other instruments to advocate for deregulatory labour reforms, such as its Article IV consultations in the context of its bilateral macroeconomic surveillance.<sup>5</sup> These involve a certain amount of pressure and may also affect a country's capacity to obtain financing elsewhere, given that potential or actual investors and bilateral lenders often have recourse to these reports.<sup>6</sup>

## B. Labour law issues in economic adjustment programmes

14. Faced with financial and economic crises, governments have tended to scale down labour rights, although the specific content of the reforms has varied across the countries concerned, depending, in particular, on the level of protection of the different areas of labour law.<sup>7</sup> This corresponds to the dominant tendency in the approach of international financial institutions to labour reform, notably IMF. While IMF has occasionally supported moderate improvements in labour standards,<sup>8</sup> its prevalent stance regarding labour law has been a deregulatory one. Close to one third of the available letters of intent addressed by

<sup>2</sup> See Simon Deakin and Aristeia Koukiadaki, "The sovereign debt crisis and the evolution of labour law in Europe", in Nicola Countouris and Mark Freedland, eds., *Resocialising Europe in a Time of Crisis* (Cambridge: Cambridge University Press, 2013), pp. 163-188.

<sup>3</sup> Alexander E. Kentikelenis, Thomas H. Stubbs and Lawrence P. King, "IMF conditionality and development policy space, 1985-2014", *Review of International Political Economy* (2016), p. 19.

<sup>4</sup> Stefano Sacchi, "Conditionality by other means: EU involvement in Italy's structural reforms in the sovereign debt crisis", *Comparative European Politics*, vol. 13, No. 1 (2015), pp. 82-83 and 89.

<sup>5</sup> Center for Economic and Policy Research, "Macroeconomic policy advice and the Article IV consultations: a European Union case study" (Washington D.C., 2013), pp. 14-17.

<sup>6</sup> See with further references, Franz Christian Ebert, "International financial institutions' approaches to labour law: the case of the International Monetary Fund", in Adelle Blackett and Anne Trebilcock, eds., *Research Handbook on Transnational Labour Law* (Cheltenham, Edward Elgar, 2015), pp. 126-127.

<sup>7</sup> Christoph Hermann, "Structural adjustment and neoliberal convergence in labour markets and welfare: the impact of the crisis and austerity measures on European economic and social models", *Competition and Change*, vol. 18, No. 2 (2014), pp. 123-124.

<sup>8</sup> Franz Christian Ebert, "International financial institutions' approaches to labour law" (note 6 above), pp. 129-131 with further references.

governments to IMF between 1998 and 2005 contained commitments to be flexible with labour market regulation.<sup>9</sup>

15. Early cases can be tracked to the 1950s, such as when IMF required Argentina to control wage increases. Adjustment measures implemented during the 1980s in the context of the Mexican debt crisis entailed a considerable reduction in both the number of public employees and their salaries, among others. The relevant reforms ranged from minor modifications to comprehensive reform packages with far-reaching amendments to both collective and individual labour laws. For example, during the 1990s, Côte d'Ivoire undertook reforms in the context of an IMF/World Bank-supported economic adjustment programme, which included the deregulation of the rules concerning temporary employment, dismissal and overtime, and involved the decentralization of the collective bargaining system. Similarly, the structural adjustment programme carried out in Argentina during the 1990s entailed individual labour law reforms, involving, for instance, extending the duration of the probation period and collective labour law reforms, which granted firm-level agreements priority over sectoral agreements.

16. In recent years, austerity-driven labour law reforms have remained a widespread trend. No fewer than 89 countries implemented such reforms between 2010 and 2015 and more than half (49) of them were implemented in developing countries. In addition, 130 countries had reportedly implemented or were contemplating cuts in or caps on public-sector salaries, more than two thirds (96) of which were developing countries.<sup>10</sup>

**Table 1: Austerity-related labour law reforms between 2010 and 2015<sup>11</sup>**

	Others						Sub-Saharan Africa
	High-income countries	East Asia and Pacific	Eastern Europe/Central Asia	Latin America/Caribbean	Middle East/North Africa	South Asia	
Number of austerity-related labour law reforms	40	9	12	11	6	3	8
Number of cuts in or caps on public sector wages	34	18	17	14	8	7	32

17. In the context of the eurozone crisis, labour law reforms have been particularly far-reaching. Crisis-stricken eurozone countries have notably adopted legislation to reduce the economic costs of laying off workers. This was done through measures such as cutting severance pay, shortening notification periods, lowering the protection against unfair dismissal and easing the rules on collective redundancies, among others (see table 2 below).

18. Labour law deregulation has also been promoted in the context of international financial assistance by IMF to Morocco and Tunisia. These cases are interesting as IMF and the World Bank had changed their discourse towards social inclusion and protection of the poor and had become more cautious vis-à-vis their earlier austerity-driven approach. However, in the case of Tunisia, the policies promoted by the international financial

<sup>9</sup> Mark S. Anner and Teri L. Caraway, "International institutions and workers' rights: between labor standards and flexibility", *Studies in Comparative International Development*, vol. 45, No. 2 (2010), pp. 151, 163-164.

<sup>10</sup> Isabel Ortiz and others, "The decade of adjustment: a review of austerity trends 2010-2020 in 187 countries", Extension of Social Security Working Paper, No. 53 (ILO, Columbia University and The South Centre, 2015), pp. 12-13. The analysis therein draws on 616 IMF Article IV reports.

<sup>11</sup> Table based on Isabel Ortiz and others (note 10 above), pp. 12-13.

institutions continued to favour labour market deregulation and a salary freeze for civil servants.<sup>12</sup> In the context of a request for financial assistance from Morocco, IMF emphasized the need for deregulating fixed-term contracts and reducing statutory protection in the country.<sup>13</sup>

**Table 2: Labour law reforms of selected eurozone countries during the economic crisis (2008-2012)<sup>14</sup>**

<i>Area of reform</i>			<i>Countries concerned</i>
Reforms concerning selected aspects of individual labour law	Promotion of non-standard employment	Promotion of fixed-term employment and agency work	EL, PT
		Introduction of new employment contracts with less pay and job security	EL, ES
	Reduction of job security	Extension of probation periods	EL, ES
		Weakening of employment protection for civil servants	EL, PT
		Shortening of notice periods	EL, ES
		Increasing thresholds and reducing obligations for mass layoffs	EL, ES
		Changes in the definition of fair and unfair dismissals	ES, IT
		Reduction of severance pay	ES, EL, PT
Reforms concerning collective labour law	Decentralizing collective bargaining	Elimination or suspension of national collective agreements	IE
		Suspension of the favourability principle	EL, ES
		Approval of exceptions and divergences	IT

<sup>12</sup> See, for example, Tunisia, “Memorandum of economic and financial policies” attached to the Letter of Intent addressed to IMF Managing Director, Christine Lagarde, on 28 January 2011, paras. 9 and 21.

<sup>13</sup> IMF, “Staff report on Morocco relating to a request for an arrangement under the precautionary and liquidity line and cancellation of the current arrangement”, para. 20. In Article IV reports on Morocco, the IMF has, for example, highlighted the need for further deregulating the labour market, notably by “reducing the minimum wage and hiring costs” (see IMF, “Morocco: Staff report for the 2011 Article IV consultation” (19 September 2011), para. 26.

<sup>14</sup> The original content of this table, which has been complemented with additional data, is taken from Christoph Hermann “Structural adjustment and neoliberal convergence in labour markets and welfare” (note 7 above), pp. 119 and 121. This is a non-exhaustive list, in the sense that there have been more labour reform areas that have negatively affected labour and human rights, such as cuts and changes to pensions, and cuts to wages, especially minimum wages and public sector wages.

<i>Area of reform</i>		<i>Countries concerned</i>
Weakening of collective bargaining	Suspension or reduction of extension procedures	EL, PT
	Limitation of the “after effect” of expired collective agreements	EL, ES, PT
	Limitation of arbitration	EL
Interventions in collective bargaining	Suspension of existing agreements	EL, PT
	Limitation of the duration of agreements	EL
Weakening of trade unions	Facilitating the conditions for non-union employee representatives to conclude collective agreements	EL, ES, PT

Country abbreviations: EL = Greece, ES = Spain, IE = Ireland, IT = Italy, PT = Portugal.

19. Overall, the reforms have involved significant changes — sometimes even a transformation — in domestic labour law. As a result, the level of protection of labour law has been substantially reduced, while the possibility of trade unions protecting workers by negotiating collective agreements has been weakened. This raises the question of the effects of these reforms on the human rights of workers, which will be addressed in the following section.

### III. Impact of austerity-related labour law reforms on human rights

20. International human rights instruments contain several standards that may be encroached upon through austerity-related labour law reforms. The International Covenant on Civil and Political Rights, notably, embodies the rights to freedom from forced labour and freedom of association, while the International Covenant on Economic, Social and Cultural Rights protects the rights to work and just working conditions and contains more detailed protections of workers’ freedom of association, including the right to strike.<sup>15</sup> Those rights are also protected by the fundamental conventions of the International Labour Organisation (ILO) and the 1998 ILO Declaration of Fundamental Principles and Rights at Work.<sup>16</sup> Regional human rights instruments, including the African Charter on Human and Peoples’ Rights, the American Convention on Human Rights, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, the European Convention on Human Rights and the European Social Charter also contain relevant provisions.

21. These standards have informed the approach of the Committee on Economic, Social and Cultural Rights in defining the scope of States’ obligations, for example regarding the

<sup>15</sup> The Convention on the Rights of the Child (arts. 32 and 34), the Convention on the Elimination of All Forms of Discrimination against Women (art. 11), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5) and the Convention on the Rights of Persons with Disabilities (art. 27) also contain work-related State obligations.

<sup>16</sup> Furthermore, ILO has adopted close to 190 conventions and over 200 recommendations on labour issues.



right to work. In this regard, the Committee has adopted a holistic reading of the right to work, which is informed, but not necessarily restricted, by the scope of related ILO conventions and includes certain obligations that must be implemented immediately, such as the adoption of an employment policy, and others that are progressive in nature.<sup>17</sup>

22. States do have some flexibility with regard to responding to financial crises and in times of economic hardship. When necessary, international human rights law does not rule out that States may have to take retrogressive measures contrary to their general obligations in order to realize progressively economic, social and cultural rights. However, States must always avoid taking deliberately retrogressive measures without carefully considering less harmful alternatives and providing a justification. When a State seeks to introduce retrogressive measures, it must demonstrate that such measures are temporary, necessary and non-discriminatory, and that they respect at least its core obligations.<sup>18</sup>

23. In other words, labour rights contained in international human rights treaties may be encroached upon, but only under very strict conditions, and core obligations must always be respected. For example, in relation to the right to just and favourable conditions of work and the right to work, the Committee identified as core obligations that States should establish minimum wages that are non-discriminatory and non-derogable and indexed to the cost of living so as to ensure a decent living for workers and their families and ensure non-discrimination and equal protection of employment and the right of access to employment, especially for disadvantaged and marginalized individuals and groups.<sup>19</sup>

24. International financial institutions and national development banks must also respect labour rights when providing loans to States and imposing the condition to implement certain fiscal and macroeconomic reform policies. The Committee on Economic, Social and Cultural Rights has explicitly stressed that international financial institutions should pay greater attention to the protection of the right to work in their lending policies and credit agreements and that particular efforts should be made to ensure that this right is protected in all structural adjustment programmes.<sup>20</sup>

25. If implemented, fiscal consolidation programmes must fully respect human rights standards as must borrowing States and lenders, including lending international organizations and States. Both lenders and borrowers have an obligation to carry out a human rights impact assessment prior to the provision of a loan, in order to ensure that the conditionalities do not disproportionately affect economic, social and cultural rights nor lead to discrimination.<sup>21</sup>

## **A. Driving States into conflict with their international obligations**

26. Austerity measures and economic reform programmes have often conflicted with the human rights obligations of States. These range from minor interferences with to complete negation of relevant rights and cover a number of issues.

27. In several instances, the economic adjustment reforms undertaken by States have created tension with regard to the right to fair remuneration. For example, the Committee on Economic, Social and Cultural Rights has repeatedly expressed its concern that the

<sup>17</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 18 (2005) on the right to work.

<sup>18</sup> See general comment No. 23 (2016) on the right to just and favourable conditions of work, para. 52.

<sup>19</sup> *Ibid.*, para 65; and general comment No. 18, para. 31 (a).

<sup>20</sup> See general comments No. 18, para. 53; and No. 23, para. 71.

<sup>21</sup> See A/HRC/20/23; E/C.12/2016/1, in particular para. 11; and A/HRC/21/39, para. 92.

freezing of and reduction in the minimum wage in crisis-stricken countries made it impossible to ensure a decent living as set out in article 7 of the International Covenant on Economic, Social and Cultural Rights.<sup>22</sup> For similar reasons, the European Committee of Social Rights has found violations of article 4 (1) of the European Social Charter.<sup>23</sup> In particular, the compatibility with international human rights standards of labour reforms affecting young people has been questioned. Concerning Greece, the Committee on Economic, Social and Cultural Rights noted that young workers' salaries were disproportionately affected, while the European Committee of Social Rights found a violation of article 4 (1) of the European Social Charter as the minimum wage for workers younger than 25 years was beneath the poverty line.<sup>24</sup> Furthermore, the European Committee found that the specific lower minimum wage for young people discriminated against workers younger than 25 years and that Greece was in breach of article 7 (7) of the European Social Charter which entitles workers under 18 years to at least three weeks of paid annual leave.<sup>25</sup>

28. Labour law reforms facilitating the hiring and layoff of workers have led to tensions with regard to human rights obligations. Regarding the financial crisis in Argentina in the 1990s, the Committee on Economic, Social and Cultural Rights expressed concern about the precarity of work relationships exacerbated by labour law reforms backed by IMF, including through increasing the trial period stipulated in work contracts and the generalization of contracts of limited duration.<sup>26</sup> Regarding protection against dismissal, the European Committee found that the reforms introduced by Spain breached the right to reasonable notice of termination of employment, which concerned, among others, statutory provisions leaving the definition of notice periods to the discretion of the parties to the employment contract and allowing employers to dismiss employees on probation under certain contracts without notice.<sup>27</sup>

29. Trade union-related rights have also frequently been affected by labour law reforms undertaken in the context of crisis-related economic adjustments. The Special Rapporteur on the rights to freedom of peaceful assembly and of association recently expressed concern about the declining respect for collective labour rights, including the right to form and join trade unions. In this context, he also drew attention to the role of multilateral financial institutions that may condition loans on measures that weaken labour protections, deny workers a voice in the process and move employment towards informality.<sup>28</sup>

30. In 1999, the Committee on Economic, Social and Cultural Rights noted with concern the collective labour law reforms carried out in Argentina that reduced the legal work standards and affected the way in which "temporary" workers were treated.<sup>29</sup> In particular, measures aimed at decentralizing collective bargaining have been noted by the relevant quasi-judicial bodies. In the cases of Greece and Spain, respectively, ILO Committee of Freedom of Association underlined that the creation of mechanisms that

<sup>22</sup> See E/C.12/GRC/CO/2, para. 19; E/C.12/ESP/CO/5, para. 18; and E/C.12/PRT/CO/4, para. 12.

<sup>23</sup> European Committee of Social Rights, Conclusions XX-3 (2014), Greece, art. 4 (1); Conclusions (2014), Portugal, art. 4 (1); and Conclusions XX-3 (2014), Spain, art. 4 (1).

<sup>24</sup> See E/C.12/GRC/CO/2, para. 19; and European Committee of Social Rights, Conclusions XX-3 (2014), Greece, article 4 (1).

<sup>25</sup> European Committee of Social Rights, Complaint No. 66/2011, *General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*, 23 May 2012, paras. 30-32 and 68-69; and Conclusions XX-1 (2012), Greece, art. 1 (1).

<sup>26</sup> See E/C.12/1/Add.38, para. 16.

<sup>27</sup> See European Committee of Social Rights, Conclusions XX-3 (2014), Spain, art. 4 (4).

<sup>28</sup> See A/71/385, para. 85.

<sup>29</sup> See E/C.12/1/Add.38, paras. 15 and 16.

favoured decentralized bargaining of exclusionary provisions less favourable than the provisions at a higher level constituted, in this regard, a weakening of freedom of association and collective bargaining contrary to the principles of Conventions No. 87 and No. 98.<sup>30</sup>

31. The fact that the Government of Spain allowed employers unilaterally not to apply conditions stipulated in collective agreements was found not to be in conformity with article 6 (2) of the European Social Charter,<sup>31</sup> while the crisis-related unilateral suspension of a collective agreement, as undertaken by the Government of Greece, was found to be in breach of ILO Convention No. 98.<sup>32</sup> In this regard, the Committee on Freedom of Association emphasized that any urgent measure implemented in the context of an economic crisis that restricted collective bargaining had to be of a temporary nature, necessary, and accompanied by “adequate safeguards to protect workers’ living standards”.<sup>33</sup>

## B. Adverse effects of adjustment programmes on labour rights

32. Adjustment reforms undertaken to prevent, mitigate or overcome sovereign debt crises have affected workers’ human rights on a number of occasions and in various ways. In a study that examined data on 131 developing countries over the period from 1981 to 2003, it was found that the longer the time span during which a country was subjected to a structural adjustment programme sponsored by IMF and the World Bank, the lower the level of protection of labour rights in its territory.<sup>34</sup> Another study that analysed data from 123 developing and emerging economies found a significant negative relation between IMF and World Bank programmes and collective labour rights, notably with regard to workers’ freedom of association and the right to collective bargaining, both in law and in practice.<sup>35</sup> This adds to the literature on the impact of currency crises on labour standards, which found that such crises reduce the aggregate labour share, notably in the manufacturing sector, and lead to a decline in real wages and higher general and youth unemployment, among others.<sup>36</sup>

33. Workers’ wages have very often been affected by economic adjustment reforms. A study of 110 countries identified a negative effect of IMF financial assistance programmes on the labour share in the manufacturing sector.<sup>37</sup> IMF and World Bank-sponsored

<sup>30</sup> ILO Committee on Freedom of Association, Case No. 2820 (Greece), 365th report, November 2012, para. 997; also Case No. 2947 (Spain), 371st report, March 2014, para. 453.

<sup>31</sup> European Committee of Social Rights, Conclusions XX-3 (2014), Spain, art. 6 (2).

<sup>32</sup> See ILO Committee on Freedom of Association, Case No 2820 (Greece), 365th report, November 2012, para. 995.

<sup>33</sup> ILO Committee on Freedom of Association, Case No 2918 (Spain), 368th report, June 2013, para. 362.

<sup>34</sup> Rodwan Abouharb and David Cingranelli, *Human Rights and Structural Adjustment* (Cambridge, Cambridge University Press, 2007), pp. 87 and 200.

<sup>35</sup> Blanton R G, Blanton S L and Peksen D, “The impact of IMF and World Bank programs on labor rights”, *Political Research Quarterly* (2015) pp. 5 and 9.

<sup>36</sup> See, for example, Peter R. Fallon and Robert E.B. Lucas, “The impact of financial crises on labour markets, household incomes and poverty: a review of evidence”, *The World Bank Research Observer*, vol. 17, No. 1 (2002), p. 41; Paul Maarek and Elsa Orgiazzi, “Currency crises and the labour share”, *Economica*, vol. 80, No. 319 (2013), p. 583; Misbah Tanveer Choudhry, Enrico Marelli and Marcello Signorelli, “Youth unemployment rate and impact of financial crises,” *International Journal of Manpower*, vol. 33, No. 1 (2012), pp. 87-88.

<sup>37</sup> James Raymond Vreeland, “The effect of IMF programs on labor”, *World Development*, vol. 30, No. 1 (2002), pp. 124 and 130.

adjustment programmes implemented in the 1980s reportedly went along with the drastic declines in real wages in a number of developing countries.<sup>38</sup> Similarly, the labour share in relation to gross domestic product declined significantly in the course of the economic adjustment programme recently implemented in several eurozone countries, in particular Greece.<sup>39</sup>

34. Trade unions have also been weakened in countries undertaking economic adjustment. A study using data on 39 least developed countries, carried out during the second half of the 1990s, showed that the signing of an IMF loan arrangement and debt service was negatively associated with the level of unionization rates.<sup>40</sup> The privatization of public companies promoted by IMF and World Bank-driven adjustment programmes has, in several developing countries, such as India, furthered the fragmentation and weakening of local trade unions.<sup>41</sup> Labour market reforms undertaken during the European economic crisis heavily affected collective bargaining in the countries concerned. For example, Greece saw a strong decrease in sectoral collective bargaining combined with the spread of company-level agreements by non-union organizations; in Romania, the 2011 labour law reforms heavily affected trade unions' capacity to engage in effective collective bargaining at the national and sectoral levels;<sup>42</sup> and in Portugal, the number of collective agreements adopted per year dropped dramatically between 2008 and 2012, as did the number of workers covered by those agreements.<sup>43</sup> There is the risk that, even if collective labour rights should at some point be restored, trade unions will be too weak to engage in meaningful negotiations with employers. In addition, there has often been a lack of consultation with social partners about relevant economic adjustment programmes.

35. That development has often been accompanied by a rise in the informal economy and an overall decrease in formal employment. For example, in Côte d'Ivoire, both unemployment and the workforce in the informal sector increased drastically under the structural adjustment programme implemented in the 1980s, while the privatization of the cocoa industry reportedly led to an increase in child labour in that industry, often under hazardous conditions.<sup>44</sup> In Malawi, overall formal employment and private-sector employment fell during the implementation of the structural adjustment programmes sponsored by the World Bank and IMF. In other countries, the privatization of public-sector companies also led to the replacement of stable jobs with decent working conditions by precarious jobs involving sub-contractors, which were not fully subject to the relevant

<sup>38</sup> See, for Latin American and African countries, Ajit Kumar Singh, "Social consequences of new economic policies: with particular reference to levels of living of working class population", *Economic and Political Weekly*, vol. 28, No. 7 (13 February 1993), pp. 281 with further references.

<sup>39</sup> Magoulios George, Kydros Dimitrios, Athianos Stergios, "The economic crisis (2008) and effects on income: the case of Greece", *Procedia Economics and Finance*, vol. 19 (2015), pp. 35-36.

<sup>40</sup> Nathan D. Martin and David Brady, "Workers of the less developed world unite? A multilevel analysis of unionization in less developed countries", *American Sociological Review*, vol. 72, No. 4 (2007), pp. 568 and 579.

<sup>41</sup> See, with regard to India, Sasmita Palo, Nayantara Padhi and Sweta Panigrahi, "Labour standards in the aftermath of structural adjustment programme: the case of India", *Indian Journal of Industrial Relations*, vol. 35, No. 3 (2000), pp. 389.

<sup>42</sup> Aurora Trif, "Surviving frontal assault on collective bargaining institutions in Romania: the case of manufacturing companies", *European Journal of Industrial Relations*, vol. 22, No. 3 (2016), p. 222.

<sup>43</sup> Isabel Távora and Pilar González, "Labour market regulation and collective bargaining in Portugal during the crisis: continuity and change", *European Journal of Industrial Relations*, vol. 22, No. 3 (2016), p. 257.

<sup>44</sup> International Labor Rights Fund, "The World Bank and IMF policies in Cote d'Ivoire: impact on child labor in the cocoa industry" (Washington D.C., 2002), p. 4.

labour law provisions.<sup>45</sup> In Greece and Portugal, the implementation of the labour law reforms was concomitant with a steep rise in unemployment and a significant increase in the number of precarious employment contracts.

### C. Impact of labour rights weakening

36. The weakening of labour rights under structural adjustment programmes has entailed adverse implications for other human rights. For example, in Zimbabwe, substantial layoffs in the public sector, among other factors, reportedly pushed a number of workers and their families into poverty and homelessness, affecting their right to food and adequate housing.<sup>46</sup> Austerity-related labour law reforms undertaken in the course of the eurozone crisis are — together with reforms of pension systems — expected to result in widespread old-age poverty.<sup>47</sup> In Greece, the income loss brought about by the austerity measures, labour law reforms and the scaling down of the public sector have led to an increase in poverty, in particular among workers in the private sector, which has been exacerbated by the lack of a social security system capable of providing for sufficient relief.<sup>48</sup>

37. In several instances, structural adjustment programmes have aggravated already existing inequalities in the countries concerned, for example, through the reduction of the labour share in relation to gross domestic product. Adverse effects entailed by structural adjustments have often particularly affected the female workforce. For example, during the implementation of the structural adjustment programme in Mexico, the average wages of women were found to decrease more sharply than those of the male workforce.<sup>49</sup> The downsizing and privatization of State-owned companies have often affected female employment disproportionately.<sup>50</sup>

38. The increase in female participation in the labour market during economic crises often concerned mainly the informal sector.<sup>51</sup> Regarding the adjustment programme in Greece, ILO Committee of Experts on the Application of Conventions and Recommendations highlighted the risk that the deregulation of the labour market could affect the salary level of women in a disproportionate manner.<sup>52</sup> Meanwhile, a study examining the gender gap in Ireland, Italy and Portugal found the tendency of a narrowing gender gap in terms of unemployment as economic sectors with a predominantly male workforce, for example the construction sector, tended to be more affected by the economic crisis. Nonetheless, as the scaling down of the public sector in those countries unfolds,

<sup>45</sup> Kamal A. Munir, Natalya Naqvi and Adaner Usmani, “The abject condition of labor in Pakistan”, *International Labor and Working-Class History*, No. 87 (2015), p. 179.

<sup>46</sup> Saliwe M. Kawewe and Robert Dibie, “The impact of economic structural adjustment programs [ESAPs] on women and children: implications for social welfare in Zimbabwe”, *The Journal of Sociology & Social Welfare*, vol. 27, No. 4 (2000), pp. 94-96.

<sup>47</sup> Christoph Hermann, “Structural adjustment and neoliberal convergence in labour markets and welfare” (note 7 above), p. 127.

<sup>48</sup> See A/HRC/31/60/Add.2.

<sup>49</sup> See Diana Alarcon-Gonzalez and Terry McKinley, “The adverse effects of structural adjustment on working women in Mexico”, *Latin American Perspectives*, vol. 26, No. 3 (1999), p. 115.

<sup>50</sup> For India, see Sasmita Palo, Nayantara Padhi and Sweta Panigrahi, “Labour standards in the aftermath of structural adjustment programme” (note 41 above), p. 390.

<sup>51</sup> See Khadija Ali, “Gender exploitation: from structural adjustment policies to poverty reduction strategies”, *Pakistan Development Review*, vol. 42, No. 4 (2003), p. 675 with further references.

<sup>52</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, Observation adopted 2012, published 102nd ILC session (2013), Equal Remuneration Convention, 1951 (No. 100), Greece.

women, who dominate this sector, are likely to be more heavily affected<sup>53</sup> and austerity-driven cuts in childcare and education services may render the participation of women in the labour market more difficult.<sup>54</sup>

39. Other adverse effects concern the quality of the public service. Reductions in public servants' salaries can affect productivity in the public sector,<sup>55</sup> which, in turn, lends itself to an argument for privatization or additional wage cuts. In Côte d'Ivoire, reductions in teachers' salaries, as recommended by IMF and the World Bank, appear to have had a negative impact on education quality, owing to cross-border brain drain.<sup>56</sup>

40. Finally, IMF and World Bank-sponsored adjustment programmes have, in some cases, been associated with violations of civil and political rights. For example, since the 1950s in Argentina, IMF programmes have repeatedly been accompanied by violence against trade unions opposing labour market-related measures, involving, among others, crackdown on protests and imprisonment of union leaders.<sup>57</sup> In numerous countries, the effects of austerity policies have led to protests and riots,<sup>58</sup> often accompanied by the disproportionate use of force by law enforcement officials against demonstrators and resulting in violations of civil and political rights.<sup>59</sup>

#### IV. Challenging conventional wisdom: economic effects of labour standards

41. The above findings are not only problematic from a human rights perspective, but, as will be shown below, the assumption that labour rights are generally detrimental to economic development has been vigorously challenged at the theoretical level and refuted by empirical data. Evidence that austerity-related labour market reforms have contributed to economic recovery after debt-related economic crises is weak. Sometimes it appears that debt crises have rather provided a pretext to push through labour market reforms favouring business interests rather than addressing economic problems. It is therefore not surprising that debt crises frequently exacerbate economic inequality.<sup>60</sup>

##### A. Economic effects of labour standards in general

42. Whether higher protection of workers through labour legislation increases or reduces economic efficiency has been controversial for some time. According to conventional

<sup>53</sup> In Portugal the gender gap regarding unemployment was even found to be reversed, see Tindara Addabbo and others, "Gender and labour in times of austerity: Ireland, Italy and Portugal in comparative perspective", *International Labour Review*, vol. 154, No. 4 (2015), pp. 458-459.

<sup>54</sup> On the adverse impacts of debt and lending policies on women, see also A/67/304.

<sup>55</sup> Guy Standing, "Structural adjustment and labour market policies: towards social adjustment?", in Guy Standing and Victor Tokman, eds., *Towards social Adjustment. Labour market issues in structural adjustment* (Geneva, ILO, 1991), p. 30 with further references.

<sup>56</sup> Kato Gogo Kingston, "The impacts of the World Bank and IMF structural adjustment programmes on Africa: the case study of Cote d'Ivoire, Senegal, Uganda and Zimbabwe", *Sacha Journal of Policy and Strategic Studies*, vol. 1, No. 2 (2011), p. 118.

<sup>57</sup> Margaret Conklin and Daphne Davidson, "The I.M.F. and economic and social human rights: a case study of Argentina, 1958-1985", *Human Rights Quarterly*, vol. 8 (1986), pp. 255-257.

<sup>58</sup> See John Walton and Charles Ragin, "Global and national sources of political protest: third world responses to the debt crisis", *American Sociological Review*, vol. 55, No. 6 (1990), p. 877.

<sup>59</sup> On Argentina, see Margaret Conklin and Daphne Davidson, "The I.M.F. and economic and social human rights: a case study of Argentina, 1958-1985" (note 57 above), pp. 255-257.

<sup>60</sup> See A/HRC/31/60.

wisdom, labour legislation, in particular employment protection legislation, is a main obstacle to economic growth and employment. In this regard, the Organization for Economic Cooperation and Development (OECD), IMF and the World Bank have advocated that high labour protection standards are a driver of unemployment, among others, and should be scaled down.<sup>61</sup>

43. Those views have, however, been challenged on a number of fronts. Scholars have identified a number of functions of labour law that render the economy efficient rather than encumbering it. Among others, labour laws further economic coordination at both the company and market levels.<sup>62</sup> In addition, laws regarding minimum wages or protection against dismissal tend to incentivize employers to utilize their workforce in an efficient manner, invest in technology and strive to improve their organization. Labour standards also contribute to stabilizing demand during recession. In this regard, the role of labour legislation in correcting market failures is frequently acknowledged.<sup>63</sup>

44. Furthermore, a body of empirical literature has emerged that suggest that the effects of labour standards on the economy are, by far, less problematic than conventional wisdom would have believe. The only robust finding in the literature on the economic effects of labour standards appears to be its positive effect on income distribution. By contrast, “despite considerable effort, researchers have not pinned down the effects, if any, of [labour market] institutions on other aggregate economic outcomes, such as unemployment and employment”.<sup>64</sup> Notably, in an analysis of data on 20 OECD countries, no association was found between weaker labour market institutions and reduced unemployment, while coordinated collective bargaining was found to be related to lower unemployment.<sup>65</sup> A recent study that analysed data from OECD countries and 10 new market economies in Central and Eastern Europe, over three decades, arrived at similar conclusions.<sup>66</sup> Moreover, it was found that “employment protection, benefit replacement rates and tax wedge do not seem to have a significant impact on unemployment”.<sup>67</sup> Another study found “no consistent relationship, either negative or positive, between labour laws in general and unemployment

<sup>61</sup> See OECD, “The OECD Jobs Study. Evidence and Explanations. Part I – Labour Market Trends and Underlying Forces of Changes” (Paris, 1994), p. 69; IMF, *World Economic Outlook: Growth and Institutions* (Washington D.C., 2003), pp. 137-138 and 141-142; World Bank, *Doing Business* (Washington D.C., 2007), p. 19.

<sup>62</sup> Simon Deakin, “Labour law and development in the long run”, in Shelley Marshall and Colin Fenwick, eds., *Labour Regulation and Development. Socio-Legal Perspectives* (Cheltenham, Edward Elgar, forthcoming), p. 41.

<sup>63</sup> See for example, Alan Hyde, “What is labour law?”, in Guy Davidov and Brian Langille, eds., *Boundaries and Frontiers of Labour Law: Goals and Means in the Regulation of Work* (Oxford and Portland, Oregon, Hart Publishing, 2006), pp. 54-60.

<sup>64</sup> Richard B. Freeman, “Labor market institutions around the world”, in Paul Blyton and others, eds., *The SAGE Handbook of Industrial Relations* (Los Angeles, SAGE, 2008), p. 652.

<sup>65</sup> See Dean Baker and others, “Labor market institutions and unemployment: assessment of the cross-country evidence”, in David Howell, ed., *Fighting Unemployment: The Limits of Free Market Orthodoxy* (Oxford, Oxford University Press, 2005), p. 109.

<sup>66</sup> Sabina Avdagic and Paola Salardi, “Tenuous link: labour market institutions and unemployment in advanced and new market economies”, *Socio-Economic Review*, vol. 11, No. 4 (2013), p. 765.

<sup>67</sup> Lucio Baccaro and Diego Rei, “Institutional determinants of unemployment in OECD countries: does the deregulatory view hold water?”, *International Organization*, vol. 61 (2007), pp. 528 and 563.

in developed countries”,<sup>68</sup> while working time and workers’ representation laws appeared to have negative effects on unemployment.<sup>69</sup>

45. The claim that employment protection legislation harms youth unemployment in particular has been challenged by recent research. For example, reducing costs to lay off workers neither increases young people’s chances of finding employment nor decreases the risk of being unemployed.<sup>70</sup>

46. Other studies have identified positive effects of labour standards on productivity and employment. There is a positive long-term relationship of labour legislation, including regulation protecting workers against dismissal with productivity.<sup>71</sup> Also, fewer working hours per day reportedly correlates with higher productivity per hour.<sup>72</sup> There have been similar findings regarding the impact of certain labour laws on innovation. An analysis of four OECD countries between 1970 and 2002 found that higher dismissal protection standards had a positive effect on innovations realized by employees.<sup>73</sup>

47. With regard to developing countries, evidence of a negative impact of labour standards on a country’s economic performance appears to be weak. While relevant data on developing countries is scarce, research on Argentina, for example, suggests that labour market deregulation seems to have reduced employment elasticities instead of increasing them.<sup>74</sup> Meanwhile, evidence on Chile shows that “gradual re-regulation of the labour market was consistent with continued employment growth up to the Asian Financial Crisis” in the late 1990s.<sup>75</sup> A study analysing data on various countries from 1985 to 1994 found that higher labour standards correlated with lower levels of corruption, among other positive effects.<sup>76</sup> Finally, a study on BRICS — Brazil, Russian Federation, India, China and South Africa — suggested that relevant strike laws had no significant effects on unemployment, while more protective employee representation laws were, in part, even negatively correlated with unemployment.<sup>77</sup>

<sup>68</sup> Ibid., italics by authors.

<sup>69</sup> Simon Deakin, Jonas Malmberg and Prabirjit Sarkar, “How do labour laws affect unemployment and the labour share of national income? The experience of six OECD countries, 1970-2010”, *International Labour Review*, vol. 153, No. 1 (2014), p. 17.

<sup>70</sup> See Clemens Noelke, “The consequences of employment protection legislation for the youth labour market”, Working Paper No. 144 (Mannheim, Mannheimer Zentrum für Europäische Sozialforschung, 2011), p. 26.

<sup>71</sup> Simon Deakin and Prabirjit Sarkar, “Does labour regulation improve income distribution at the cost of decreased employment and productivity?”, Paper presented at the ILO/IZA Conference, Geneva, 10-11 March 2016.

<sup>72</sup> See Lonnie Golden, “The effects of working time on productivity and firm performance: a research synthesis paper”, Conditions of Work and Employment Series No. 33 (ILO Geneva, 2011), p. 6 with further references.

<sup>73</sup> Viral V. Acharya, Ramin P. Baghai, Krishnamurthy V. Subramanian, “LaborLaws and innovation”, *Journal of Law & Economics*, vol. 56, No. 4 (2013), pp. 998 and 1032.

<sup>74</sup> Adriana Marshall, “Labour market policies and regulations in Argentina, Brazil and Mexico: programmes and impacts”, Employment Strategy Papers No. 2004/13 (ILO, 2004), p. 22.

<sup>75</sup> Gerry Rodgers, “Labour market flexibility and decent work”, Department of Economic and Social Affairs Working Paper No. 47 (July 2007), p. 6 with further references.

<sup>76</sup> Thomas I. Palley, “Labour standards, democracy and wages: some cross-country evidence”, *Journal of International Development*, vol. 17, No. 7 (2005), pp. 885 and 889.

<sup>77</sup> Simon Deakin, Colin Fenwick, Prabirjit Sarkar, “Labour law and inclusive development: the economic effects of industrial relations laws in middle-income countries”, in M. Schmiegelow and H. Schmiegelow, eds. *Institutional Competition between Common Law and Civil Law*, (Berlin/Heidelberg, Springer, 2014), p. 202.



48. Possibly as a reaction to such research findings, OECD has, in recent years, adopted a less pronounced policy stance on this matter. For instance, in a study carried out in 2006, OECD researchers found “no significant impact of employment protection legislation on aggregate unemployment” but some evidence that “highly centralized and/or coordinated wage bargaining systems” were estimated to be associated with lower unemployment.<sup>78</sup> In addition, a comprehensive review published by the World Bank concluded that labour market institutions had positive distributional effects, while the effects on economic efficiency appeared modest, “with most studies showing no effect or small negative effects but some finding positive effects”.<sup>79</sup> Furthermore, IMF research has also become more nuanced over time, with a recent report finding that labour market regulation had no “statistically significant effects on total factor productivity”.<sup>80</sup>

49. Overall, research suggests that the economic implications of labour legislation are significantly complex, vary across countries and economic sectors and can, more importantly, even increase economic efficiency, depending on the context. In many cases, factors other than labour standards seem to play a stronger role in influencing economic outcomes. The economic case for dismantling labour standards, including in the area of collective bargaining and dismissal protection, is, hence, weak.

50. This finding is also important from a human rights point of view. If encroaching on labour rights does not have any justifiable benefits, even for rights holders who are outside the labour market, and if downsizing labour rights does not lead to enhanced enjoyment of economic and social rights for all, such retrogressive measures cannot be considered as permissible and justifiable responses to financial and economic crises.

## **B. Economic effects of the deregulation of labour law in the context of economic adjustment**

51. Empirical findings overall do not seem supportive of the claim that labour law deregulation fosters recovery after economic crises. Indeed, the evidence seems to be more in line with the argument that “pressure towards labour market flexibilization, aimed at boosting export-led growth, will eventually lead to lower consumption, net exports and employment” at the global level.<sup>81</sup>

52. Evidence from Latin America suggests that reforms that deregulated individual and collective labour law in Argentina, the Plurinational State of Bolivia, Brazil, Chile, Mexico and Uruguay in the 1980s and 1990s, led neither to less informal employment nor reduced employment instability, which saw an increase during that period.<sup>82</sup> Indeed, in several Latin American countries, the weakening of employment protection legislation appears to have

<sup>78</sup> Andrea Bassanini and Romain Duval “The determinants of unemployment across OECD countries: reassessing the role of policies and institutions”, *OECD Economic Studies*, No. 42, 2006/1 (2006), p. 46.

<sup>79</sup> Gordon Betcherman, “Labor market institutions: a review of the literature”, Background paper for the 2013 World Development Report (November 2012), p. 41.

<sup>80</sup> IMF, *World Economic Outlook: Uneven Growth — Short- and Long-term Factors* (April 2015), p. 105.

<sup>81</sup> Jeronim Capaldo and Alex Izurieta, “The imprudence of labour market flexibilization in a fiscally austere world”, *International Labour Review*, vol. 152, No.1 (2013), p. 24.

<sup>82</sup> Lydia Fraile, “Lessons from Latin America’s neo-liberal experiment: an overview of labour and social policies since the 1980s”, *International Labour Review*, vol. 148, No. 3 (September 2009), pp. 220 and 224; Alfredo F. Calcagno, “Ajuste estructural, costo social y modalidades de desarrollo en América Latina”, in *El ajuste estructural en América Latina. Costos sociales y alternativas* (Buenos Aires, Consejo Latinoamericano de Ciencias Sociales, 2001), pp. 80-81; also E/C.12/1/Add.38.

aggravated the precariousness of work with little evidence of improved employment performance.<sup>83</sup> This is in line with the broader finding that an “increased intensity of structural adjustment lending” by IMF and the World Bank does not appear to be associated with increased growth per capita and that repeated adjustment lending has not been related to a reduction in severe macroeconomic distortions.<sup>84</sup>

53. The economic effects of the austerity measures taken recently in the context of the eurozone crisis appear to be similarly weak. Overall, research suggests that the European Union countries that performed relatively better during the economic crisis of 2007 to 2011 were those that had less flexible labour markets.<sup>85</sup> An ILO study found that there was no clear link between employment protection legislation and employment levels,<sup>86</sup> while another ILO report suggested that the combination of labour market deregulation and fiscal austerity was likely to “have affected employment while failing to arrest the deterioration in fiscal deficits”.<sup>87</sup> Labour market reform undertaken in response to the debt crisis in the eurozone appears to have had “little positive impact on national labour markets”, including youth unemployment.<sup>88</sup> The reduced income of large parts of the population owing to deregulatory labour law reforms has rather led to a decline in demand, which can further exacerbate the crisis.<sup>89</sup>

54. Overall, there is little evidence that labour market deregulation furthers recovery in the context of financial and economic crises, while the negative impact on economic and social rights is substantial. This also highlights the potential relevance of other factors behind deregulatory reforms that undermine labour standards, such as ideological bias and non-explicit retrogressive distributional agendas.

## V. Conclusion

**55. Many States with unsustainable levels of debt or experiencing a financial crisis have implemented austerity policies and labour market reforms with a strong deregulatory impetus, either on their own initiative or at the behest of external**

<sup>83</sup> Adriana Marshall, “Weakening employment protection in Latin America: incentive to employment creation or to increasing instability?”, *International Contributions to Labour Studies*, vol. 6, No. 1 (1996), p. 46.

<sup>84</sup> William Easterly, “What did structural adjustment adjust? The association of policies and growth with repeated IMF and World Bank adjustment loans”, *Journal of Development Economics*, vol. 76, No. 1 (2005), p. 20.

<sup>85</sup> Pasquale Tridico, “The impact of the economic crisis on EU labour markets: a comparative perspective”, *International Labour Review*, vol.152 No. 2 (2013).

<sup>86</sup> See International Institute for Labour Studies (IILS)/ILO, *World of Work Report 2012: Better Jobs for a Better Economy*, p. 36. According to this study, “from low levels of employment protection regulation to an average level of regulation, employment levels tend to be *positively* associated with more stringent regulations. Beyond that, badly designed regulations may adversely affect employment”.

<sup>87</sup> IILS/ILO, *Eurozone Job Crisis: Trends and Policy Responses*, Studies on Growth with Equity (Geneva, 2012), p. 30.

<sup>88</sup> See Jason Heyes and Paul Lewis, “Relied upon for the heavy lifting: can employment protection legislation reforms lead the EU out of the jobs crisis?”, *Industrial Relations Journal*, vol. 46, No. 2 (2015), p. 90; on Portugal, see also ILO, *Portugal: Tackling the Jobs Crisis in Portugal*, Studies on Growth with Equity (Geneva, 2013), p. 61.

<sup>89</sup> Christoph Hermann, “Die Finanzkrise und ihre Auswirkungen auf Sozialstaaten und Arbeitsbeziehungen“, *WISO* vol. 36, No. 1 (2013), p. 48; Susan Horton, Ravi Kanbur and Dipak Mazumdar, Labour markets in an era of adjustment: evidence from 12 developing countries”, *International Labour Review*, vol. 130, No. 5-6 (1991), p. 557, focusing on real wage decreases.

creditors, including international or regional financial institutions. Such reforms have often reduced the legal protection of workers and affected the bargaining power of trade unions, with important implications for workers' standard of living, economic equality and social cohesion, among others. In a number of cases, these reforms have amounted to violations of human rights obligations and international labour standards, as documented by, among others, the international bodies monitoring these rights.

56. The present report challenges the widespread belief that deregulating the labour market will further growth and employment. An increasing number of studies have actually pointed to the positive economic effects of labour standards, including on productivity and innovation. In addition, evidence that downscaling domestic labour legislation has actually helped to ensure economic and financial recovery is weak.

57. Financial crises are usually not caused by excessive labour regulation and labour deregulation does not help to overcome them. In fact, conventional austerity-related labour reforms implemented during the last years do not seem to have helped countries recover nor have they resulted in restoring access to employment to pre-crisis levels. Instead, they have undermined labour and other social rights contained in international law. It is therefore time to question the conventional wisdom that the deregulation of labour markets is a suitable and legitimate approach for responding to financial crises. Rather, the opposite is needed, that is, reform measures guided by the normative content of labour rights contained in international human rights law that foster gender equality, enhance employment and provide better access to these rights for marginalized groups and individuals.

## VI. Recommendations

### A. Ensure respect for labour rights through human rights impact assessments

58. It is essential to submit austerity-related reforms to robust human rights impact assessments before they are carried out.<sup>90</sup> First of all, any such impact assessment should include an assessment of the impact of such measures on the population, including whether there are any viable human rights compliant policy alternatives to austerity reforms, before they are carried out and should recommend policies that meet the economic needs of the country in a manner that fully protects human rights. Too often, the measures taken, as in the case of European austerity, have not improved the economic situation, but have, simultaneously, substantially worsening the human rights of millions of people.

59. Human rights impact assessments should feed into both the policymaking of the State considering reforms as well as that of the external actors recommending or requiring such reforms, such as international financial institutions. Such assessments should:

- (a) Be carried out by an entity possessing sufficient independence from the relevant decision makers;
- (b) Cover both labour market reforms and other austerity-related reforms;

<sup>90</sup> See A/71/305, para. 60.

(c) Be based on a solid methodology, involving both quantitative and qualitative analysis;

(d) Involve a procedure that ensures the independence of the actors conducting the assessment;

(e) Involve consultation with all stakeholders, in particular trade unions and employers' organizations, as well as relevant international organizations with relevant expertise, such as ILO;

(f) Contain follow-up mechanisms to ensure that the result of the assessment effectively informs policymaking.

Furthermore, the human rights impact of larger reforms should be monitored periodically and measures should be reconsidered if they produce adverse effects on human rights that cannot be adequately prevented or mitigated.

## **B. Cushion adverse effects through a robust social security net**

60. Economic adjustment programmes typically entail negative effects on workers' economic situation that need to be mitigated through a robust social security net. It is all the more problematic that the downscaling of employment protection legislation has often been accompanied by austerity measures that have weakened employment and the benefits of social security nets. In order to comprehensively address the needs of workers, including the unemployed, States should adopt a comprehensive social security policy and, despite fiscal constraints, allocate the necessary budget for this purpose. There is increasing evidence that such strategies not only have a key role in terms of protecting workers, but are also conducive to sustainable economic recovery.<sup>91</sup> Some international and regional financial institutions have increasingly developed programmes to assist States in strengthening their social protection systems. This should become a more coherent practice, not only for countries undergoing economic adjustments.

## **C. Ensure consultation with social partners and civil society**

61. Employers and trade union organizations have particular knowledge of the workplace reality and have a key role to play in realizing human rights at work. In a number of countries, they play an important role in terms of mitigating the adverse effects of economic and financial crises by agreeing on flexible and tailor-made temporary workplace arrangements, while facilitating the protection of workers and giving a voice to those affected by the measures. The importance of national and sectoral collective bargaining cannot be understated here. They can often also detect problems relating to labour market reform proposals, including those that may have possible adverse impacts on workers' human rights, in practice. Borrowing States and lending financial institutions should therefore consult with relevant and representative trade unions and employers' organizations about any reforms prior to their implementation.

62. Governments should respect all collective agreements that have been concluded and, in particular, avoid derogating from them in a unilateral manner. Also, national

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<sup>91</sup> See Isabel Ortiz and others, "The decade of adjustment: a review of austerity trends 2010-2020 in 187 countries", Extension of Social Security Working Paper, No. 53 (ILO, Columbia University and The South Centre, 2015), pp. 44-46.

human rights institutions and other civil society organizations representing groups that may be marginalized and disadvantaged can play a useful role in monitoring the effects of labour market reforms jointly with trade unions and employer's organizations.

63. There is also a need to reflect upon and devise more inclusive negotiation procedures for dealing with sovereign debt restructuring. In particular, when sovereign debtors and their creditors negotiate the terms of a debt restructuring or new lending with financial institutions, unemployed people, workers, their unions and national human rights institutions should have full access to and be able to participate in this debate. The outcome of these decisions may imply official or informal commitments to pass labour law reforms or budgetary restrictions that may affect the labour market, the functioning of the economy and the public finances in a way that impairs the employment prospects in the State concerned.

#### **D. Incorporate labour rights in policies of international, regional and national financial institutions**

64. International and regional financial institutions and national development banks should include in their policy documents an explicit commitment to respect human rights, including labour rights, in their lending policies and to exercise human rights due diligence when taking lending decisions.

65. Lending agreements should contain the recognition of labour and trade union rights, including the freedom of association and effective recognition of the right to collective bargaining and the right to strike. They should, furthermore, require consultation with trade unions and employer organizations on matters affecting them.

66. International and regional financial institutions and national development banks should develop policies to deal effectively with alleged violations of labour rights in the macroeconomic reform programmes and projects that they finance. The independent complaints mechanisms of international and regional financial institutions and national development banks should be able to receive and address such grievances and complaints in accordance with the Guiding Principles on Business and Human Rights.<sup>92</sup>

#### **E. Ensure policy coherence on labour standards within international organizations**

67. A significant lack of coordination persists between key lending institutions, such as IMF, and the competent international organizations when it comes to labour-related conditionality. This is problematic not only because IMF has recognized that structural reforms institutions, such as ILO, "may be better placed to advise",<sup>93</sup> but also because such lack of coordination entails the risk that adverse effects of policy proposals are not adequately identified and addressed. States and international financial institutions considering labour law reforms should systematically, and in a timely manner, consult with international organizations that have expertise in this area, notably ILO. ILO can, if necessary, also assist with fostering dialogue and

<sup>92</sup> See A/HRC/17/31, annex.

<sup>93</sup> IMF, "Jobs and growth: analytical and operational considerations for the Fund" (Washington, 2013), p. 46. Available at <https://www.imf.org/external/np/pp/eng/2013/031413.pdf>.

consultation between trade unions, employer organizations and the Government at country level. Deference should be shown if these organizations voice significant concerns, in particular regarding States' international obligations in the area of human rights and labour standards. These consultations should occur at an early stage and substantiated objections by the competent organization should lead to the reconsideration and redesign of the relevant policy proposal.

#### **F. Strengthen national and international mechanisms providing effective remedies against labour rights violations**

68. Political mobilization and strategic litigation can serve as a local corrective to austerity-related labour market reforms that infringe workers' rights. Research suggests that international financial institutions are more receptive to political pressure by domestic trade unions than is often thought and are likely to make concessions on labour market issues in the face of significant protest.<sup>94</sup> Similarly, domestic courts, especially — but not only — constitutional courts, have been successfully used in several countries to challenge austerity measures. Also, regional human rights mechanism and courts are important for ensuring that economic reform programmes remain compatible with labour rights. In the same vein, treaty bodies, especially those vested with complaint mechanism, can provide an additional safeguard for labour rights contained in international human rights instruments. A step in this regard would be for States to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights so as to enable individuals to submit complaints once domestic remedies have been exhausted.

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<sup>94</sup> See Teri L. Caraway, Stephanie J. Richard and Mark S. Anner, "International negotiations and domestic politics: the case of IMF labor market conditionality", *International Organization*, vol. 66, No. 1 (2012), pp. 53-54.