A human rights-based response to the financial and economic crisis

Although the legacy of the ongoing financial crisis will be gloomy, it may also have another legacy in that crucial ideas about human rights can no longer be dismissed. The crisis presents a historic opportunity – and a generational responsibility – to rethink decision-making in economic policy. A human rights-based approach calls for a reform of governance structures to ensure that all economic policy is carried out in accordance with the human rights regime. This will ensure participation at all levels, subjecting decisions to public scrutiny, transparency and accountability at every step.

At the same time, it is not hard to find support for the notion that the enjoyment of human rights will be significantly affected by the crisis everywhere. For instance, the dramatic decline in aggregate demand globally has resulted in extensive unemployment and destruction of livelihoods. After years of declining unemployment, some 20 million more people will be unemployed in 2009 than in 2007, according to forecasts by the ILO.8 Some 50 million people could be put out of work if the crisis matches the magnitude of unemployment in the 1990s.6 These general figures hide the greater impacts on women and their children, the poor, indigenous groups, ethnic minorities and migrant workers. Alongside increasing unemployment, social protection – conditional in many countries on having a job – is declining. For those who still have a job, more unemployment means greater pressure on their salaries and social coverage. Social security for senior citizens is also being significantly affected by the crisis, with pension funds registering losses of close to 50% in some cases.2 The shift to fewer publicly funded pension systems of the last decades magnifies these impacts. In turn, the public revenues needed to bolster the required support for social and pension coverage have fallen substantially, limiting government options. Poverty is expected to increase worldwide by as much as 53 million people.4 Even this figure may be optimistic as it is based on the World Bank’s widely questioned definition of poverty and is likely to understate the real number of the poor.2

The evidence presented by this crisis, however, is not different from that revealed by other financial crises that have periodically hit different parts of the world in the last century, notably East Asia in the late 1990s. They all bring extreme hardships and sufferings to ordinary citizens, especially the most vulnerable and marginalized, while those who profited from financial speculation are not held to account for their role in creating the crisis. The effects of the crisis are also likely to lead to increasing inequality. The gap between richer and poorer households that has been widening since the 1990s will get bigger. The income gap between the top and bottom 10% of wage earners had increased in 70% of a sample of countries investigated in an ILO report published last year.9

If social unrest and public expressions of desperation and frustration are met, as they have already been in some countries, with violent repression by government forces, then civil and political rights will also be threatened by the economic crisis. The rise in xenophobic or otherwise discriminatory sentiments that is being seen in several places could also jeopardize the rights of migrant workers and minority groups, who are most vulnerable to discrimination.

Looking at these impacts, and accepting the consensus about the sources of the crisis, one has to conclude that choices made on financial regulation and supervision of financial markets, the actors that operate in them and the instruments with which they operate,2 are entirely technical and to be left to the experts, while human rights policy and concerns should be addressed independently from financial regulations. Although the legacy of the ongoing financial crisis will be gloomy, it may also have another legacy in that crucial ideas about human rights can no longer be dismissed. The crisis presents a historic opportunity – and a generational responsibility – to rethink decision-making in economic policy. A human rights-based approach calls for a reform of governance structures to ensure that all economic policy is carried out in accordance with the human rights regime. This will ensure participation at all levels, subjecting decisions to public scrutiny, transparency and accountability at every step.
This phenomenon was possible with aggressive investment strategies – read, speculation – facilitated by loose flows of capital. Yet it is low-income groups, not those who profited from the pre-crisis boom, who will be disproportionately affected by the post-crisis bust.

In this regard, the financial crisis also calls into question the belief that the wealth earned on markets would “trickle down” to everyone else. Nobel Prize-winning economist Joseph Stiglitz recently stated that financial markets – and indeed GDP growth as currently measured – are not an end in themselves but exist to serve people’s well-being. What is good for finance and what is good for GDP growth alone is not necessarily good for the economic well-being of all. This systemic collapse calls for a new role for national governments in economic policy-making – both domestically and, increasingly, at the international level.

**A human rights response: the principles**

A response to the financial and economic recession that places human rights norms at its centre is not only necessary as a matter of justice; it will also make reforms of the financial and economic system more sustainable and resilient to future crises.

A human rights-based policy response does not presuppose a certain type of economic system. Yet it does take at its point of departure a creative and universally recognized framework – a set of standards founded in the core instruments of international human rights law – to guide the design and implementation of economic policies and programmes to address the crisis. Human rights do not only set limits to oppression and authoritarianism; they also impose positive obligations on states to uphold economic, social and cultural rights. States have the duty to respect, protect and fulfil human rights at all times, especially in times of crisis.

Governments have a duty to ensure minimum essential levels of enjoyment of social and economic rights as a matter of priority, and they have a specific and continuing obligation to move as expeditiously and effectively as possible towards full implementation. Human rights standards call for governments to ensure that no deliberately retrogressive measures are taken – for example, cutting essential programmes – unless this is fully justified by reference to the totality of the rights provided for in the core human rights treaties and in the context of the full use of the maximum available resources. Even in the face of public revenue limitations, states must marshal the maximum available resources to ensure that full implementation of economic and social rights is progressively realized in the short and longer term.

In addition, the principle of non-discrimination requires that states ensure that all measures adopted in response to the crisis avoid disproportionate effects and that deliberate, targeted measures are put into place to secure substantive equality of access to basic services across countries and population groups. Disadvantaged members of society must be protected as a matter of priority, even in times of severe resource constraints.

While the primary human rights obligations of states rest within their jurisdictions, they are also – in the spirit of the UN Charter and applicable international law – required to contribute to international cooperation in the full realization of human rights. When acting within inter-governmental forums such as the UN, the World Bank and ad hoc meetings of the Group of 20 (G-20), states must guarantee that their policies are consistent and conducive to the realization of human rights. In this regard, those states that have enjoyed a more powerful position in decision-making on global economic policies have had greater responsibility for causing, through their actions and omissions, this global meltdown. This means that they also carry greater responsibility for the mitigation of the consequences and for taking the steps needed to assure a just and sustainable way forward. Under international law, governments must also ensure that human rights standards take primacy over trade, investment or finance commitments.

Basic human rights principles include social participation, transparency, access to information, judicial protection and accountability. People must be able to participate in public life and to meaningfully interact with the decision-making process afflicting them, thus rendering the processes affecting their lives open to contest. Additionally, states must ensure that no one is above the law. Individuals whose rights have been affected must enjoy accessible and effective remedies to seek redress. Those responsible for harms, including private actors, must be brought to justice, and future activities affecting human rights must be prevented.

**Reform of decision-making processes on economic policy**

The crisis facing us today provides a historic opportunity and indeed a generational responsibility to rethink the manner in which decision-making on economic policy has so far taken place. A human rights approach calls for the reform of governance structures to ensure that all economic policy at the domestic and international levels is carried out in accordance with the legal content that the human rights regime offers.

Too often, official decisions on the regulation of financial capital flows, for example – or the need to dispense with them – are made by a few “experts”, often including representatives of the private-sector industries themselves. This process in essence closes avenues for public participation in fundamental policy and legal discussions that affect everyone, with particular impacts on the most vulnerable and marginalized. A human rights-based policy response would transform this process, ensuring participation at all levels and subjecting decisions to public scrutiny, transparency and accountability at every step.

Accountability and participation in economic policy-making are also impaired when intrusive policy conditions are demanded by international financial institutions and donors or by inflexible rules in trade and investment agreements. States should be empowered to assert that their human rights obligations take priority over economic commitments or investors’ rights.

These same human rights principles must be instilled at the international level, where cooperation in the realization of these rights is an obligation of all states, particularly those responsible for harms. Despite the far-reaching consequences of financial policy measures, the inter-governmental bodies setting the agenda and designing financial reforms, such as the Basel Committee on Banking Supervision, the Financial Stability Forum and the G-20, limit participation from the majority of countries. The IMF and the World Bank for their part continue to be ruled by principles regarding decision-making that confine developing countries to a marginal role and limit transparency. Equally important, other international organizations that have the express mandate to protect human rights are excluded from the design of policy responses in these forums.

The UN, as the guardian of the international legal framework, is the most appropriate and most legitimate forum to discuss the reforms that are necessary to restructure the international economic and financial system on a human rights foundation. Its role would be greatly strengthened by the establishment of a Global Economic Coordination Council, as recommended by the UN Commission of Experts. Such a body, operating under the principle of constituency-based representation and at a level equal to the General Assembly and the Security Council,

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10 According to a 2007 study by Merrill Lynch and Capgemini. “The number of people with USD 1 million or more to invest grew by 8% to 9.5 million last year, and the wealth they control expanded to USD 37.230 billion. About 35% is in the hands of just 95,000 people with assets of more than USD 30 million.” See Thal Larsen. P. “Super-rich Widens Wealth Gap by Taking More Risks.” Financial Times, 08 June 2007.

11 Thal Larson (op. cit.), quoting a Merrill Lynch’s executive who said the difference between the rich and super-rich reflected “a willingness by the very rich to take greater risks”.

African-American people and indigenous peoples have a common history of exploitation
and conquest, and are disproportionately suffering the impacts of the crisis. Our current
American Empire was built on the so-called American dream, but we see that stolen land
and stolen labor was also used to construct this country, the wealthiest the world has
ever known. From the outset, financial institutions aided and abetted profiteers seeking
to build empire by any means necessary. We must reject the neoliberal theology
and construct more progressive theological theories."

Jean Rice (Picture the Homeless, New York)
vain to compete with industrialized countries in order to fix their troubled banking sectors and implement stimulus plans.

While in the short term these lines of credit may be necessary to allow governments to stabilize spending, human rights principles are critical to determine: (1) the strictly necessary borrowing that needs to be undertaken, (2) the demands that should be met through concessional finance rather than borrowing, and (3) the accountability and transparency principles that will ensure new lending is done in a responsible way, with appropriate social control, so as to prevent the generation of more illegitimate debts that future generations will be forced to pay.

Some forecast that the budgetary cuts provoked by the crisis, and the shift of funds to fiscal stimulus packages, will lead donor countries to cut back on their development aid. With the enjoyment of human rights of so many people at stake due to the financial crisis, donor governments must not regress on their obligations to international assistance by cutting development aid in any way.

**Human rights-oriented economic stimulus packages**

The outline of a human rights approach to the crisis would not be complete without reference to the very particular role that human rights standards should play in domestic economic stimulus packages. Particularly relevant in this regard are the aforementioned principles of non-discrimination, transparency, accountability and participation.

Economic stimulus packages must not in any way discriminate. Governments should evaluate the distributional consequences of the packages across society to ensure that equitable benefits are experienced across lines of gender, ethnicity, sexual orientation and class. Extra measures may need to be taken to promote substantive equality for those historically marginalized and especially vulnerable. Gender-sensitive policies, for example, require women’s participation in the design and implementation of stimulus packages. Decisions throughout the life of the stimulus must also be open to question and based on participation and transparency in order to strengthen public accountability.

One particular area of priority for governments in their fiscal stimulus packages should be the stabilization and strengthening of social protection systems for all, especially the most vulnerable. The right to social security is recognized in the Universal Declaration of Human Rights and in numerous international human rights treaties, and all states have an obligation to immediately establish a basic social protection system and progressively expand it over time according to their available resources. The strengthening of such systems both fulfills the short-term duty to protect people from an economic downturn and contributes to the longer-term economic priority of investing in people.

Yet at present not all countries have the ability to invoke economic stimulus packages in order to avoid regressive measures in the fulfillment of rights and to boost their national economies. While guaranteeing that such packages meet basic human rights standards at home, governments should likewise uphold their obligation to international cooperation by filling the finance gap in the global South.

It is important that, in an effort to stabilize employment and livelihoods, stimulus packages do not expand demand along patterns of consumption that are outdated and untenable in both rich and poor countries alike. The continuation of a high-carbon economy, by depleting the Earth’s resources and increasing greenhouse gas emissions, will only compound the challenges that many countries already face in their attempts to uphold human rights standards.

**Concluding remarks**

We should expect a gloomy legacy to the ongoing financial crisis, more so than to any other crisis that the current generation has seen. But alongside this, there is a legacy of important ideas that can no longer be dismissed and that should be at the heart of the restructuring of the global economic system. The undeniable relevance to financial and economic policy choices of the human rights commitments that the international community has endorsed since 1948 is one of them. Humanity would be well advised not to forget at what cost the modern human rights instruments were forged.