



HUMAN RIGHTS IN THE GLOBAL ECONOMY

REPORT FROM A COLLOQUIUM



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INTRODUCTION

This report captures key questions, ideas and issues generated during a Colloquium on *Human Rights in the Global Economy*. The meeting was co-convened from 11–13 January 2010, in Geneva, by the International Council on Human Rights Policy (ICHRP) and Realizing Rights: The Ethical Globalization Initiative. It brought together experts in human rights, economics and development and included scholars, researchers and representatives from human rights and inter-governmental organisations as well as social movements and international networks.¹

While the influence of human rights has spread, so have disparities in global and national income and wealth. This raises important questions regarding the relevance of human rights to global and national economic policy, an issue especially important to consider at a time when a significant shift in economic thinking is underway.

The Colloquium's primary objective was to facilitate a constructive debate about the relevance of human rights to national and global economic policy-making. It was convened against the backdrop of the "Global Recession" of 2008–09. The financial and economic crisis caused tens of millions of people to lose their jobs and, combined with ongoing food and fuel crises, pushed millions more into poverty.² While evidence of economic recovery in some countries is now apparent, though fragile, the impacts of the crisis continue. Growth remains sluggish; high levels of unemployment persist; and ballooning government debt in many countries is casting a shadow on the sustainability of programmes that fund universal entitlements to health services, education and social protection, especially programmes that protect

the most disadvantaged and vulnerable. When the Colloquium was convened, many governments had taken initial steps to address these consequences and prevent future crises. However, the efficacy of these steps has yet to be determined. Moreover, the extent to which such measures adequately address the structural factors that contributed to the crisis, including the imbalance between the real and financial economies, the excessive power of financial interests, and biased regulation (all further explored below), remains open to question.

The scale of the economic crisis has prompted renewed interest in deepening understanding of the relationship between human rights and economic policy-making. Important efforts have already been made to disentangle the links between ethics, human rights, development and economics.³ The Colloquium and this report is a contribution to these efforts, furthering understanding of the possibilities and the challenges of collaboration. The report is intended to support human rights actors and economics and development experts as they engage in dialogue and joint action around how to most effectively influence economic policy-making.

Many of those taking part in the Colloquium underlined the value of bringing together different communities of practice. At the same time, the discussion did not satisfy everyone. While many participants explicitly recorded their appreciation or welcomed the fact that they were not constrained by a rigid agenda, some felt that the exchanges were at times too abstract, and others felt that the discussion lacked clear direction. Some considered that arguments were not taken far enough, and others thought that the meeting attempted to cover too much ground. In short, the Colloquium highlighted both the importance and the challenges of bringing together discourses on human rights, development and economics, especially in the uncertain environment created by the recent economic crisis.

This report attempts to capture succinctly and in a forward-looking manner some of this complexity. Like the Colloquium, it is best viewed as a basis for further discussion and reflection. We hope nevertheless that it identifies some key opportunities for further work, as well as questions and dilemmas that will need to be addressed if human rights concerns are to influence economic policy-making in the future.

STRUCTURE OF THE REPORT

The report does not attempt to summarise the Colloquium proceedings, though its structure reflects the agenda of the meeting. Instead, it seeks to draw together key issues that emerged from the discussion and raises a number of questions to be considered, as well as suggesting next steps.

It begins by summarising complementarities and disjunctions between human rights and economics (Section I). This section seeks primarily to suggest approaches to economics and economic policy-making that advocates of human rights are likely to find fruitful.

Section II considers the role of the state, again searching for possibilities of convergence. It examines trade-offs in economic policy-making market regulation, and the question of redistribution. It pays particular attention to employment, regulation of financial markets, social security and taxation.

Section III focuses on global economic governance and highlights two significant and complex issues: obstacles to achieving coherence in international legal and policy regimes (including the primacy of human rights); and efforts to strengthen governmental and inter-governmental accountability and legitimacy.

Section IV concludes by suggesting several ways in which human rights advocacy and research might be strengthened to better influence economic policy-making.

Participants' comments are not attributed, but relevant work by individuals or organisations who were present at the Colloquium is acknowledged in footnotes. In addition, to assist readers who wish to pursue specific questions or lines of argument in more detail, a select bibliography lists publications and resources on issues the Colloquium addressed.

¹ See Annexe 1 for a list of participants.

² See, for instance, *Report of the independent expert on the question of human rights and extreme poverty*, A/HRC/11/9, March 2009.

³ See for example, Balakrishnan and Elson, 2008a; Seymour and Pinkus, 2008; Balakrishnan, Elson and Patel, 2009; and Kinley, 2009. See also DeMartino, 2000; Marks 2004; McKay and Vizard, 2005; Fukuda-Parr, 2007; Peil and van Staveren eds., 2009; and Amartya Sen's work on famines and entitlements.

I. HUMAN RIGHTS AND ECONOMICS: APPROACHING THE DEBATE

To what extent should internationally agreed human rights principles and standards influence economic policy formulation? The global recession of 2008–09 has been overwhelmingly viewed as a national and global failure of economic policy and regulation that undermined a range of fundamental rights for people in many countries. However, despite some attempts, international human rights standards and obligations have hardly been considered in the design, implementation and evaluation of policy measures to bring the crisis under control.⁴ Was this because human rights were not perceived to be relevant? Are advocates of human rights simply not effectively explaining the pertinence of human rights to economic and financial governance? Precisely what arguments should be made?

International human rights standards and obligations have not received adequate attention in policy measures to respond to the economic and financial crisis.

These questions lie at the core of a policy gap that pre-dates the recent recession. For many millions of people in poverty there has long been a crisis of economic opportunity and social protection. The global recession arguably heightened the risk for many of them and also put many others at risk, including those in relatively wealthier countries that had less than robust financial regulation coupled with a high degree of global market integration.

When considering these issues, it is important to begin by noting that economics and human rights are distinct and largely self-contained fields. Equally important, both are markedly heterogeneous. As many participants at the Colloquium highlighted, several schools of thought in economics, often referred to as “heterodox” (or *progressive*), do not share the assumptions, methods, normative foundations or policy conclusions of mainstream economic theory.⁵ Equally, though “human rights” is used throughout this report to refer to the international body of human rights standards and instruments that embrace civil, cultural, economic, political and social rights, human rights advocates, working in many different kinds of organisations and political environments, do not practice or invoke human rights in an identical manner.

Several schools of thought in economics, often referred to as heterodox (or progressive), do not share the assumptions, methods, normative foundations or policy conclusions of mainstream economic theory.

As many argued in the Colloquium, understanding the different and sometimes conflicting worldviews of those working in mainstream

economics and those working in human rights is an essential starting point for any meaningful dialogue in this area. For example, economic thinking focuses on choice in a world of scarcity (where everything of value has an opportunity cost and where trade-offs are inevitable). Economic theory, therefore, must focus on setting priorities. In contrast, human rights thinking is grounded in universal principles, and all human rights are considered to be equal in status and indivisible. Consequently, prioritising one right over another poses particular challenges for human rights advocates.⁶ Wary of trade-offs (e.g., between present pain and future gain), human rights advocates often criticise economic analyses that calculate the benefits of long-term aggregate outcomes and discount violations of individual rights as short-term losses and “collateral”. In this respect, economic analysis is indeed at odds with an approach that values equality.

Human rights advocates are wary of trade-offs (between present pain and future gain) and criticise economic analyses that calculate the benefits of long-term aggregate outcomes and discount violations of individual rights as short-term losses and “collateral”.

Yet long-term structural interventions of the kind necessary to build effective and inclusive education, health and social protection systems, reduce endemic poverty or sustain modern economies, cannot be designed solely on the basis of monitoring compliance with individual rights. Some trade-offs are inevitable. Many economists criticise advocates of human rights for avoiding tough choices, and regard human rights principles as unspecific and unenforceable policy tools. From their perspective, human rights advocates appear to affirm broad principles over specific policy choices, especially when the latter seem likely to compromise them.

Underlying these difficulties may be a deeper problem. For many, particularly those coming from an activist perspective, the realisation of human rights is an end in itself. States, in particular, are expected to guarantee and fulfil rights. In contrast, mainstream economics has a largely consequentialist normative framework.⁷ Human welfare is generally viewed in terms of utility levels, preference satisfaction, etc.⁸ Therefore, like some development experts, some economists consider human rights to be a means (i.e., a tool) that can be instrumentalised to achieve less distorted or corrupt markets or more equitable development. These are two very different conceptions of human rights. For one group, they are an additional tool or method, to be adopted where they have practical value; for the other, human rights are a goal representing intrinsic values that should not be compromised. Because they perceive the fulfilment of human rights as *primary*, human rights advocates generally affirm a hierarchy in international law, which others may not.

Many economists criticise advocates of human rights for avoiding tough choices. From their perspective, human rights advocates appear to affirm broad principles over specific policy choices.

⁴ See, for example, Balakrishnan and Elson, 2008b; Fukuda-Parr and Salomon, 2009; CESR, 2009; ESCR-Net et al, 2010; The Human Rights Council, 10th special session, The impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights, S-10/1, 20 February 2009; UN Human Rights Council, Note by the High Commissioner for Human Rights, 2009.

⁵ “Mainstream” or “dominant” economics, often referred to as the New Classical Economics, is traced back to the work of theorists like Milton Friedman and Robert Lucas. Its theorists advance three inter-related hypotheses, concerning rational expectations, the real business cycle, and efficient markets. Its period of dominance is typically dated to the mid- and late 1970s, when it received a huge impetus from the governments of Reagan in the United States and Thatcher in the United Kingdom. For more on the rise of New Classical Economics see, for example, Skidelsky, 2009. Unless specified otherwise, terms such as “economics”, “economic theory” or “economic thinking” in the report refer only to “mainstream” economic thinking.

⁶ The idea of core obligations in economic and social rights is an example of a certain approach to prioritising rights.

⁷ Consequentialism bases moral evaluation (of policy, for example) primarily on its consequences rather than considering the context or the intrinsic value. For a fuller discussion see, for example, Sen, 1987.

⁸ GDP per capita becomes a primary target only because it can be measured in ways that other subjective states of well-being cannot.

Moreover, because equality is the mainstay of human rights (whereas for the most part mainstream economic thinking prioritises efficiency) and the achievement of formal and substantive equality demands an active state, the human rights framework endows government with many positive and negative duties. It has focused on constructing the *public domain* while current economic thinking, which for decades has been dominated by an emphasis on the market as the most efficient distributive mechanism, has enhanced the *private*.⁹

The human rights framework has focused on constructing the public domain while neoliberal economic thinking, for decades, dominated by an emphasis on the market as the most efficient distributive mechanism, has enhanced the private.

At the same time, nothing intrinsic to economic policy or economic ways of thinking rules out human rights. In fact, many human rights advocates argue precisely that a rights-based approach will bring better economic and developmental results, thereby themselves partially instrumentalising human rights values and concepts.

One ought, therefore, to be wary of generalisations. It is too simplistic to assume that economists are insensitive to human dignity or that advocates of human rights are uninterested in economic progress. Many economists aim (through taxation and redistribution strategies) to reduce inequities in access to food, education and health care (all basic rights). Equally, though much human rights advocacy (especially in the global North) has concentrated on civil and political rights, a growing number of experts and organisations have developed human rights approaches that address broad questions of development and growth and more specific issues relating to poverty reduction programmes, budget analysis, social protection, and corporate accountability.¹⁰

TOWARDS CONGRUENCE?

Looking forward, certain obstacles to achieving congruence between human rights and economics principles and approaches need to be recognised. Just as economic thinking can appear disengaged from ethics, rights-based language can be open to manipulation. For instance, some participants at the Colloquium warned of the need to guard against rights-based approaches that valorise property rights or promote a narrow understanding of the rule of law or contract-based regimes. Others noted that many social movements have relied on more open-ended and accessible ideas, such as social justice rather than human rights law, to mobilise people to question unjust economic policies and models. Nor is the dialogue between human rights and economics the only one that is possible or to be desired. Human rights are unlikely to provide answers to all economic questions. This reminds us also that both the economics and human rights traditions are prone to claim intellectual sovereignty, which does not encourage open-mindedness.

Human rights principles are not necessarily neutral; when applied inappropriately or in ways that do not take account of power dynamics, they may do little good (and much harm).

⁹ For an analysis of these tensions see Salomon, 2010.

¹⁰ See for example Marks 2004, 2008; See too the work of the Centre for Economic and Social Rights and also *Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies*, ICHRP, 2002, and *Duties sans Frontières – Human Rights and Global Social Justice*, ICHRP, 2003.

The point is to understand the value of the human rights framework, not necessarily to substitute it as a new and overarching paradigm that has all the answers. It has some distinct strengths. It requires rights to be recognised and protected by law, anchored in international commitments that can be independently monitored, at least in theory. International human rights standards are comprehensive, deal with all categories of rights, and provide special protection to marginalised groups (such as women and girls, children, persons with disabilities, minorities and indigenous people) that too often benefit last and least from economic growth and suffer first and most in economic downturns.

Many economists, especially those who have long pressed for change in dominant modes of economic thinking, recognise these strengths and are potential allies of human rights. Some suggest that human rights principles like non-discrimination and non-retrogression (and its framework of obligations to respect, protect and fulfil) can provide a normative framework against which economic policy can be evaluated.¹¹ When rights-based approaches stress participation and empowerment they reflect many elements of human rights. Possible elements of congruence can be found too in the UN Declaration on the right to development (and in work within and outside the UN human rights system that applies this framework to health, education and poverty reduction) as well as wider efforts to integrate human rights principles in development policy.¹²

In addition, certain other streams of thought within economic philosophy affirm many of the principles put forward by rights advocates, and offer real possibilities for intellectual and policy congruence.¹³ They include, for example, the capabilities approach, which affirms human rights principles such as participation and indivisibility¹⁴; and pro-poor approaches to economic growth, advocated by many economists, that place poverty and equity at the centre of economic policy-making. Therefore, it can be said that, although there are certainly disagreements about which policy prescriptions are most effective, many economists are not averse to taking rights seriously, especially in the context of addressing poverty.¹⁵

Although there are certainly disagreements about which policy prescriptions are most effective, many economists are not averse to taking rights seriously, especially in the context of addressing poverty.

Attempts to improve congruence stand to benefit both disciplines. For instance, quantitative methods of economic analysis, which have sometimes failed to predict how people will act in the real world, could be enriched by the more behavioural perspective of human rights, and vice versa. Because the two professions are divided by the different languages they use, human rights advocates could do more to explain and promote core human rights principles, like universality or interdependence. The fact that economists use similar terms to refer to different things (for example, they speak of universal or targeted welfare policy) means

¹¹ See Balakrishnan and Elson, 2008a; Seymour and Pinkus, 2008; and Kinley, 2009.

¹² See Fukuda-Parr, 2007; Marks, 2008 and 2010; and the work of the OHCHR High Level Task Force on the Right to Development. See also the reports of the UN Special Rapporteurs on Health, Water/Sanitation, Extreme Poverty, and Housing, which provide detailed policy proposals on such integration.

¹³ See, for instance, McKay and Vizard, 2005.

¹⁴ See, for example, Osmani, 2005.

¹⁵ See Foresti, Higgins and Sharma (ODI Briefing Paper 34), 2010, for an instructive survey of opinions of economists in this regard. See Kanbur, 2001, for an analysis of the nature of disagreements around distribution and poverty.

that human rights advocates, no less than economists, need to be careful to explain their terminology.

Human rights can also provide an ethical lens so conspicuously absent from a dominant economic framework that overly focuses on aggregate outcomes. Of course, human rights principles are not necessarily neutral; when applied inappropriately or in ways that do not take account of power dynamics, they may do little good (and much harm). Nevertheless, the economic crisis and

its aftermath have presented a clear opportunity to articulate the ways in which human rights principles, as an ethical and legal framework, might shape and improve economic policy both nationally and globally. This is a major undertaking. In terms of approaching such a task, several broad pointers emerged from the Colloquium's discussions, which could guide human rights advocates, and allies in other fields, as they work towards new approaches to economic policy (see "Pointers", below).

APPROACHING HUMAN RIGHTS ADVOCACY ON ECONOMIC POLICY: SOME POINTERS

- Economics and human rights are both heterogeneous bodies of knowledge and practice marked by internal disagreements and tensions.
- If human rights advocates improve their understanding of the internal disagreements within economics, it will help them to bridge differences and build strategic alliances, particularly with heterodox economists.
- The theory and practice of economics and human rights are shaped by a range of political and ideological influences; economic policy is not determined by economists alone.
- The absence of human rights is not the only "problem" with economic policy; a range of other social, political and institutional factors and influences are relevant and can obstruct new approaches.
- Much can be learned by human rights advocates from social movements, especially their analyses of power structures that shape public policy and its outcomes, and vocabularies such as "social justice".
- It is important to put conversations about the global economy and human rights in a historical context; past critiques of economic policy have often lost their cutting edge when translated into policies or programmes.
- Advocates should advance human rights not only as legal prescriptions but as ethical principles that offer substantive and (not only) procedural guarantees; human rights have broad power as an inclusive political vision, but it also remains necessary to guard against their co-option within conditionalities (e.g., trade-related) or a specific aid regime.

II. NATIONAL POLICY: THE ROLE OF THE STATE

Both human rights and many schools of economic thinking emphasise the central role of the state as a guarantor of rights and as an enabler of economic activity.

Advocates of human rights have a complex attitude towards the state: the issue is not whether the state is strong or weak but whether it fulfils rights.¹⁶ On one hand, they are cautious and suspicious of “strong” states, often perceiving them as authoritarian (associated with repression and oppression). On the other, it is increasingly recognised that a well-organised and active state is needed to establish and maintain the rule of law, and support an independent and fully functioning judiciary. The generation and redistribution of wealth also require the state to coordinate the large social and economic investments that must be deployed to establish transport and communications systems, protect the environment, and provide universal access to basic rights, including social protection, employment, and health and education. Under international human rights law, states are responsible for respecting, protecting and fulfilling human rights, but also for creating the broader social, political and economic conditions in which citizens can exercise human rights freely.

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Neo-liberal economists have sought to restrict the state’s role in order to release the energy in markets that can potentially generate social good. However, other economic theories have emphasised the state’s responsibility to maintain prices, curb inflation, levy taxes, equalise the balance of payments, and in other ways create conditions in which economies can operate efficiently and generate outcomes that are socially as well as economically sustainable. While these concerns are not entirely congruent with those of human rights, when the state’s role in generating and distributing individual and aggregate wealth is considered, they come much closer.

¹⁶ Centre for Economic and Social Rights, 2009.

There is significant potential for congruence between human rights approaches and lines of economic thinking that emphasise the centrality of the state in generating and distributing wealth equitably.

The role of the state sits at the centre of social and economic policy and human rights objectives. More than any other institution, by implementing effective policies, states determine whether people prosper, exercise freedom, become skilled, overcome poverty and enjoy consensual governance. Neo-liberal economic theories, which have dominated policy-making in recent decades, affirm that almost all forms of government intervention distort free markets. Under their influence, states across the world reduced the range of services they provided, privatised public institutions and services, sold public assets and lowered taxes. Yet, while aggregate wealth increased under this policy regime, it did so more slowly than during the immediate post-war period, and growth in many countries has been associated with sharp, sometimes grotesque increases in inequality. The wealth of those at the apex has increased vertiginously in the majority of societies, while large numbers of people living in poverty have been excluded from the benefits of growth, and in many countries even middle class incomes have stagnated or been relatively depressed.¹⁷

The political shock generated by the recent economic crisis has challenged the hypothesis of efficient markets of neo-liberal thinkers: that markets not only regulate themselves but over time allocate resources in the most efficient and equitable manner.¹⁸ While the old arguments between socialism and capitalism have not been revived, there appears no serious interest in reverting to command economies. However, for the first time in a generation, many economists and economic institutions are reviewing certain dominant doctrines and assumptions and, in particular, the role of the state in mediating economic flows and outcomes.

¹⁷ See, for instance, *From Poverty To Power*, Oxfam, 2008.

¹⁸ See, for instance, Colander et al., 2009; Krugman, 2009.

¹⁹ This way of framing the issues emerged from discussions with Sally-Anne Way.

HUMAN RIGHTS ANALYSIS AND NATIONAL ECONOMIC POLICY: TOWARDS CONVERGENCE

How might advocates of human rights most effectively contribute to these ongoing reflections? Three potential points of convergence between human rights and economic analysis became apparent during the Colloquium’s deliberations.¹⁹

- a) Revisit trade-offs in economic policy to ensure they respect rights**—Human rights principles (e.g., universality, indivisibility, participation, accountability, non-discrimination) can help to ensure that cost–benefit models, for example, are equitable and are not discriminatory. In many ways, this corresponds to the *duty to respect* human rights, but it also echoes economic analyses that emphasise pro-poor approaches, transparency, growth with equity and decentralisation, etc.
- b) Regulate markets to protect rights**—The regulation of markets (in particular, financial markets) is now the subject of intense debate. The crisis not only exposed the myth of self-correcting markets but confirmed the essential role that states play, as regulators and in protecting public interests. This corresponds to the *duty to protect* human rights, under which states are expected to ensure that non-state or private actors act in ways that do not undermine rights. By extension, this also has a bearing on the duty to fulfil.
- c) Redistribute to ensure equity and prevent impoverishment**—The redistributive role of the state has been affirmed by many economic theories that recognise the importance of state intervention (through taxation, social transfers and other means) to ensure that the wealth generated by economic activity is fairly distributed. In human rights terms, this corresponds primarily to the *duty to fulfil*, which requires states to use the maximum of their available resources to fulfil economic, social and cultural rights. This, in turn, has a bearing on the duty to protect.

Some specific challenges in these three areas are examined below. At the same time, the state’s role must be contextualised, because global institutions and inter-governmental and private actors greatly influence the policy options or “policy space” available to states. Issues of global economic governance are considered in Section III.

REVISITING TRADE-OFFS IN ECONOMIC POLICY-MAKING

At the heart of the question of trade-offs is a normative tension between mainstream economics and human rights thinking. Though most mainstream economic writing focuses largely on resource and technological constraints, it is not entirely blind to ethical constraints. For example, like members of other professions, economists would not accept slavery even if it were shown to be more efficient. In general, nevertheless, mainstream economic thinking externalises social and environmental constraints, leaving their determination to others. Human rights advocates argue that human rights represent a binding constraint against which economic policy and the goal of maximising human welfare must be assessed, however they are defined.

Economists who adopt a more instrumental view would tend to argue that, since human rights impose opportunity costs and trade-offs, they must be optimised, preferably using cost-benefit analysis or a similar calculus. Indeed, cost-benefit models, often presented as ideologically neutral, in fact rely on assumptions that are problematic from a human rights perspective.²⁰ More often than not, they presume that an aggregate enhancement of wealth justifies the sacrifice of particular interests (often those of people who live in poverty and/or are powerless). For example, the impoverishment and social distress that result when dams or other large infrastructure projects displace communities have often been justified on the grounds that such projects generate large economic and social benefits for other populations or over time.²¹

Are human rights binding constraints against which economic policy and the goal of maximising human welfare must be assessed? Or, since they impose opportunity costs can they be optimised?

As stressed more than once during the Colloquium, a classic understanding of human rights provides a good point of departure for evaluating such trade-offs; the right of all to participate equally in the governance of a country is particularly relevant. Too often, those who are not powerful (who have limited resources or influence) are not able to influence economic policy or ensure that it takes account of their interests.²²

To what extent can policy proposals grounded in human rights (and therefore committed to inclusion and participation) gain traction in the formation of economic policy? How can the power and influence of the private sector, major financial institutions,

foreign investors and donors, and other elites, be offset when trade-offs occur? Put differently, how can conditions be created that ensure consideration of a broader range of valid interests, including the views of people who are vulnerable or marginalised? The realities of power, international as well as national, and the fact that privileges are not readily surrendered, severely restrict not only access to decision-making on economic policy but also the autonomy of many states.

A discussion about trade-offs is essentially a discussion about priorities and the processes by which decisions are made. As such, it engages key human rights principles and concepts. The human rights framework holds that everyone has the right to effectively participate in decision-making, express opinions, have access to information, and freely associate and act. International human rights standards also require states to ensure that civil society organisations are able to operate freely. This implies that states should not only refrain from interfering unduly in their activities but also take steps to ensure third parties do not do so and create conditions favourable to citizen participation. As highlighted at the Colloquium, this also speaks to the principle of indivisibility (e.g., freedom of expression, association and a free media are vital to ensure accountability in governance). International human rights law further requires states to be accountable for their actions: applied skilfully, human rights principles can expose abuses of power, including malpractice by state officials and the improper influence of private interests on official decisions.²³

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The Case of Macro-Economic Policy and Decent Work Opportunities

Jobless growth, experienced in different countries across the world, demonstrates that, while stable and sustainable gross domestic product (GDP) growth is a necessary condition for job creation, it does not guarantee the generation of decent work opportunities. High GDP growth can occur alongside high levels of inequality, unemployment and the extension of informal sectors in which work is neither regulated nor protected by the state.²⁴ Monetary policies that target inflation can negatively affect employment levels, privileging some interests over others. In similar ways, deregulation of labour markets and the destruction of unions and labour protections can negatively impact wages and working conditions and can lead to the flexibilisation and informalisation of work, benefitting some at the cost of others. This too is an area that could benefit from greater collaboration between human rights and economic and development experts.

Under international human rights law, the right to work "includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts".²⁵ States are obliged to "take appropriate steps to safeguard this right"²⁶ and provide an enabling environment that favours the generation of employment that provides an adequate standard of living, decent conditions and fundamental individual freedoms.²⁷ A key question for

20 Some argue that the problem is not with cost-benefit analysis but how it is used. Hansjürgens (2004, p.248), for example, holds that because "effects on human health and the environment can only be made in the form of 'soft' qualitative information" and because "hard" numbers in which financial benefits are expressed "do indeed often have a greater weight in political discussion [...] a certain momentum develops in favour of evidence which is backed up by 'hard' numbers to the detriment" of "soft" ones. Arguably, however, this is precisely why cost-benefit analysis is considered problematic.

21 Nothing highlights this better than the infamous note that Lawrence Summers wrote in December 1991 when he was Chief Economist at the World Bank. When he observed that "...the economic logic behind dumping a load of toxic waste in the lowest wage country is impeccable and we should face up to that", Brazil's then-Secretary of the Environment Jose Lutzenburger replied: "Your reasoning is perfectly logical but totally insane... Your thoughts [provide] a concrete example of the unbelievable alienation, reductionist thinking, social ruthlessness and the arrogant ignorance of many conventional "economists" concerning the nature of the world we live in...". At: www.whirledbank.org/ourwords/summers.html.

22 This is relevant to another concern raised at the Colloquium (discussed below): the space available for individual governments to influence trade-offs and policy priorities.

23 See ICHRP *Corruption and Human Rights: Making the Connection*, Geneva, February 2009; ICHRP *Corruption and human rights: integrating human rights in anti-corruption agendas*, Geneva, forthcoming September 2010.

24 For example, see Maurizio, 2009.

25 International Covenant on Economic, Social and Cultural Rights, 1966, Article 6.

26 Ibid.

27 For more on this, see ILO 2009a, 2009b and 2009d.

advocates of the decent work agenda is how these obligations might be implemented more effectively and how the relevance of such commitments could be highlighted in related policy areas.²⁸

The creation of employment is broadly recognised as central to ending poverty. However, there is still little evidence of consensus around how to generate decent work opportunities in practice, particularly in developing countries. For many years, neo-liberal policies allowed the market to determine the rate at which jobs were generated, believing that free-market competition would produce the most efficient and sustainable outcome.

Over the last two decades, deregulated employment markets and market-led processes of production have created conditions in which labour has become both more “flexible” and more informal. Work in the informal sector often means inadequate working conditions, low wages and lack of effective bargaining power. It is often dominated by women, who are also more likely to be exploited on account of other variables that contribute to existing gender inequalities that disadvantage women. In addition, the growth in informal work hinders poverty reduction efforts and has serious effects on social and economic development. In such a context, human rights principles that require states to support the creation of decent jobs that provide adequate pay and social protection are clearly relevant.

As the Colloquium highlighted, it is vital to consider the human rights impact of macro-economic policy decisions that Central Banks and other economic actors make. Macro-economic policy decisions that target inflation, or reduce state expenditure to cut deficits, while ignoring employment effects, are governed by policy objectives that reflect political interests and priorities. This demonstrates the need to create conditions in which policy formation is transparent and participatory, as well as the need for human rights organisations to monitor economic institutions such as Central Banks as well as Ministries of Finance. Monitoring should track not only the impact of their policy interventions, especially on vulnerable groups, but also the interests that drive and shape their decisions.²⁹

Human rights organisations need to monitor economic institutions such as Central Banks and Ministries of Finance. This must go beyond monitoring the impact of their policy interventions (especially on vulnerable groups) to examine the interests that drive and shape their decisions.

The policy autonomy of economic institutions raises parallel issues. Individual Central Banks (and their governments) may be constrained in running an independent monetary policy if their policy clashes with international monetary policy norms. A new international consensus is required that balances the requirements of monetary policy and the need to create sustainable and decent employment.

REGULATING MARKETS TO PROTECT RIGHTS

The regulatory reach and powers of the state and the conditions under which they may be exercised has been the subject of much debate between economists. Between the *laissez faire* state as facilitator and the soviet-style command economy, economists hold many different views about the state’s role in governance and its relationship with markets. Human rights advocates and economists at the Colloquium repeatedly returned to the need for an active state. Given the significant regulatory failures that

occurred before and during the recent financial crisis, this was not a surprise. However, it did give added resonance to the claim of human rights advocates that states are the primary duty bearer and guarantor of rights.

The human rights notion of a rights-fulfilling state focuses not so much on the state’s scale (i.e., whether it is minimalist or maximalist) or the question of how much regulation is required but on the degree to which a given regulatory regime favours certain interests or purposes over others and responds to the needs of the most disadvantaged.

Regulating Big Finance

The recent financial crisis was arguably caused not so much by the absolute failure of regulation as by a biased regulatory system favouring the interests of major actors in the finance sector.³⁰ The system did not protect the interests of the less powerful, including the middle classes and those living in poverty. Given this, what can human rights law and principles contribute to the substance or success of efforts to reform financial systems nationally and internationally?

It might be argued that the state’s obligation to protect human rights was contravened by leaving the financial markets to the care of apparently independent regulators, self-regulating corporations and hedge-fund titans, which led to economic and social distress. It is not clear whether such a conclusion adds much to our knowledge about the regulatory failure that occurred or fully takes into account the realities of a globalised financial system. A human rights analysis should go further: it should throw light on inequalities in access to power and on failures of accountability that enabled large institutions to unduly influence regulators and legislators in the first place.

The current system of financial regulation produced not just a failure of accountability; it expanded the wealth of a few rather than generating social value by significantly strengthening the economy’s productive capacity.³¹ The challenge is to (re)conceive a regulatory framework that will bridge the real and financial economies and encourage financial innovation to catalyse productive investment rather than speculation.

Indeed, even if it was necessary to bail out failing markets (banks, in particular) doing so without making those institutions accountable has arguably not only increased the risks of a second crisis, but has *yet again* socialised private failures. Citizens have paid the cost of market failure, and the price includes a retrogression in the enjoyment of rights. Effectively, this amounts to a redistribution of wealth in favour of the rich, achieved firstly by bailing out the highly paid financial sector and secondly by cuts in social spending in response to the threat of a public debt crisis (due to the bailouts and the recession that the financial crisis precipitated). Despite some initiatives, there is little evidence yet that the political leaders in the major economies possess the political will or capacity to reform the regulatory system in a fundamental manner, or such that it will achieve more equitable outcomes in the future.

Citizens have paid the cost of market failure, with the large bailouts representing wealth redistribution in favour of the rich—a socialisation of private failures.

The quality of regulation rarely outpaces innovation, and this perpetually creates opportunities for new and ungoverned forms of speculation. A key question then is how to approach financial

28 The case of the National Rural Employment Guarantee Act in India was cited as an example of how this may be realised in policy terms.

29 See Balakrishnan, Heintz and Seguino, 2008; and Balakrishnan, Elson and Patel, 2009.

30 See Balakrishnan, Heintz and Seguino, 2008; and Dowell-Jones, 2010.

31 See for instance Dowell-Jones, 2004; Caliari, 2009; Caliari and Yu, 2009; UNCTAD, 2009b and 2009c.

regulation. A human rights approach would likely support an *ex ante* rather than an *ex post* approach. In other words, regulation must be designed to approve every financial innovation after a transparent evaluation of risks involved, thus preventing “toxic” financial products from entering the markets.³² Private financial actors have preferred an *ex post* approach, largely on the grounds that an *ex ante* approach slows down financial innovation. This, however, also appears to be a way of keeping innovation one step ahead of regulation. Besides, as the recent crisis made clear, there is often a thin line between financial innovation and speculation.

Should it [regulation] be based on the principle that “everything is allowed unless explicitly forbidden” (the preferred approach in financial circles)? or should the guiding principle be that “everything is forbidden unless explicitly approved” (the approach used for example to prevent the marketing of toxic foods and medicines)?³³

Improved regulation alone is, however, unlikely to avoid a recurrence of crises within financial markets. Several Colloquium participants pointed out other specific structural problems in the financial sector that need addressing, including the use of mathematical models that obscure risk, risk models that do not account for social behaviour in the real world and the failure of central bank policy frameworks to give adequate attention to social concerns.

Would a financial transaction tax bring benefit? Could governments devise arrangements that would force the finance industry to take more responsibility for its impact on marginalised people? At present, such questions lack definitive answers, and human rights practitioners and economic policy-makers would need to move from naming problems to finding solutions. Human rights principles cannot simply be grafted onto existing regulatory frameworks.

One possible approach is to expand the terms of the regulation debate to take account of broader socio-economic linkages and impacts.³⁴ Advocates of human rights might then be able to show that a particular initiative would assist regulators to predict market behaviour accurately and better understand the market’s social impacts, which in turn might shift assumptions about financial costs and risks. To do this, however, human rights advocates will need to enhance their own knowledge and find ways to build dialogue and collaboration with experts in relevant fields. Experience gained from applying human rights principles to project finance and ethical investment may be of some relevance in this context.³⁵

REDISTRIBUTING TO ENSURE EQUITY AND TO PREVENT IMPOVERISHMENT

Redistribution has been a central question for several economic schools, even if neo-liberals, Marxists, Keynesians and others have argued the subject differently. The human rights framework recognises that states have a responsibility to fulfil human rights, which requires them to redistribute available resources for the purpose of achieving the universal and progressive fulfilment of economic, social and cultural rights.

It is important to recognise at the outset that redistribution is necessary because patterns of distribution of social goods and opportunities are skewed in the first place. For instance, widening differences in income across the world reflect a weakening of labour protection and labour unions as well as unequal access to resources and opportunities such as (quality) education.

Fiscal policies (that address public expenditure and revenues) possibly have the biggest impact on distributive justice and the attainment of economic and social rights. As underlined in Colloquium discussions, advocates of economic and social rights could benefit from the insights that economic researchers have gathered about the generation and management of public revenues and expenditure, in particular policy instruments relating to social security transfers and taxation.

International human rights law already affirms the right to social security, and social security systems play a critical role in poverty reduction.³⁶ The fact that social security programmes are relatively uncontroversial and that a wide range of diverse actors (both North and South) support them, at least in principle, means they provide significant opportunities for policy negotiation and advocacy.

A number of well-argued human rights perspectives and approaches to social security and protection have been developed.³⁷ Especially relevant is the concept of “minimum core obligations” that can guide fiscal policy to guarantee all citizens access to minimum levels of essential food, education, healthcare, housing, etc., which they require to live a life of dignity.³⁸ In addition, applying the principle of indivisibility clarifies the content of entitlement to social protection and associates it with principles of participation, transparency and accountability, which are central to its realization.

In many ways, therefore, this is an area with evident potential for effective human rights advocacy. To make a significant impact, however, advocates will need to engage with more difficult issues, including universal versus targeted provision; the definition of beneficiaries and entitlements; and issues of process, access and accountability. The long-term sustainability of social security schemes also poses significant challenges, especially in view of the growing public debt. Moreover, some of the apparent solutions (such as exposing social protection funds, especially pension funds, to financial markets) present their own risks. In short, human rights advocates are challenged to go beyond broad guidelines or the parsing of human rights standards and to demonstrate the operational relevance of human rights.

For instance, under human rights law, states are obliged to use the “maximum of their available resources” to progressively achieve economic and social rights. This suggests that an effective taxation system is indispensable in fulfilling all human rights.

Neo-liberal economists traditionally hold that taxation distorts markets and obstructs their ability to allocate resources efficiently. It has become evident, however, that markets do not always or naturally allocate resources fairly. The persistent rise in inequality in recent years, both within and between countries, illustrates this and demonstrates the inadequacy of existing tax systems to correct the bias that market-led economic policies have created. Increasing tax competition to attract foreign direct investment has caused a dramatic change in the structure of tax systems. Many governments have tended to increase indirect taxes such as Value Added Tax while reducing progressive income tax rates. As a result, the tax burden on the wealthiest has fallen and in many countries so have tax revenues that should be used for funding basic services. The recent crisis presents an opportunity to strengthen the case for considering new ideas and tax reform.³⁹

32 See UN-NGLS, 2010.

33 Ibid.

34 See Dowell-Jones, 2010.

35 Ibid.

36 See Committee on Economic, Social and Cultural Rights, General Comment No. 19, The right to social security, E/C.12/GC/19.

37 See Riedel, 2007; and the Reports of the Independent Expert on the Question of Human Rights and Extreme Poverty.

38 This echoes ideas of a “social protection floor” or “minimum income” advanced by development thinkers.

39 For an analysis of the relevance of tax advocacy in the context of development and rights, see Christian Aid, 2009a and 2009b. The work of the Tax Justice Network is another example.

Several questions demand attention. What would be the basis of a human rights approach to taxation? Although the International Covenant on Economic, Social and Cultural Rights (ICESCR) requires governments to raise revenue to fund economic and social rights, it does not specify the characteristics that tax systems should have. How might the notion of “maximum available resources” condition a state’s taxation and borrowing policy? What does the duty to meet minimum core obligations imply? How does the sustainability of tax regimes relate to the question of employment (see above)? In complex economies, what links should be made between corporate taxation, productivity and wealth generation, and the fulfilment of state obligations, including human rights obligations? What would a taxation system consistent with human rights look like?

Human rights principles of equality, fairness, due process, and transparency are relevant to all these questions; however, it should

be pointed out that such principles can be invoked by the rich as well as those in poverty and might not make the collection of additional resources (or the challenging of vested interests) easier or speedier. Again, these questions would all benefit from further dialogue and collaboration between human rights experts and experts from economics, development and other relevant fields.

What would a taxation system consistent with human rights look like? How might the notion of “maximum available resources” condition a state’s taxation and borrowing policy? What does the duty to meet minimum core obligations imply?

III. HUMAN RIGHTS AND GLOBAL ECONOMIC GOVERNANCE

In the last two decades, as the influence of human rights has spread, so have disparities in global and national income and wealth. Over the same period, rapid economic globalisation has increased interdependence, a trend mediated and institutionalised by global regimes that organise and oversee trade, finance and development relations. Questions of global economic governance must be considered in this context. These trends not only shape the evolution of contemporary poverty, but also global responses to it, including the development and application of international human rights law.⁴⁰

Contemporary capitalism is another issue that merits attention in the context of these global interdependencies and imbalances.⁴¹ The recent crisis has often been characterised as a crisis of the global capitalist system. It has been suggested, for instance, that underlying this crisis are three imbalances, between: the real and the financial economies (reflected also in the imbalance between returns to capital and labour); different macro-economies; and the economy and the environment, which sets a material limit on economic expansion.⁴² Consideration of these three constraints cannot be disentangled from, and therefore forms a key part of, discussion of contemporary global economic governance.

In such a context, states (particularly less powerful states) are unable to determine or pursue all their economic objectives through domestic policy alone. Their policy options and political autonomy are increasingly subject to international norms and constraints, both formal and informal, inter-governmental and private. Some of these may actually restrict the ability of states to meet certain human rights obligations.

As pointed out during the Colloquium, many experts (including economists) have recommended expanding the “policy space” or autonomy of governments, especially those in developing countries.⁴³ A principal critique of the Washington Consensus and global economic institutions, such as the International Monetary Fund (IMF), the World Bank (WB), and the World Trade Organisation (WTO), is that they shape monetary and fiscal policies by imposing policy conditionalities and also by empowering private actors in global markets. In parallel, human rights advocates call on states to take account of human rights standards and obligations when they formulate policy. Many economists also support global standard setting, for example, with respect to labour rights. Important questions, therefore, arise concerning both the value of “policy space” and ethical criteria that should apply when policy is formed.

On the other hand, it is evident that international cooperation is necessary to successfully manage large global problems (financial markets, trade relations, debt, poverty, climate change), because their scale and complexity are such that no single state can deal with them on its own. International institutions like the IMF, WB and WTO, and a range of UN institutions, have emerged in the last 60 years to address this need, complemented by numerous institutions that fill similar functions at regional and sub-regional levels. This development has been accompanied by a very considerable expansion in the global regimes of law and policy that cover trade, banking, finance, debt, crime, human rights, and climate change, among others.

Many Colloquium participants observed that, despite these developments, international cooperation remains highly imperfect

and is largely driven by national and relatively short-term political agendas. For numerous reasons (e.g., weak legal rules governing cooperation, conflicting objectives, the tendency of national interest to override international interest whenever they collide) states have rarely succeeded in agreeing or implementing global public policies effectively. The failure to negotiate an adequate programme of action on climate change is the most evident recent example: reform and regulation of financial markets, fulfilment of trade and development objectives, and adoption of equitable global economic policies, present equally difficult political challenges.

To complicate matters further, there is no consensus on the political objectives that should drive the reform of global institutions. Some seek to adapt the structures that regulate the global economy, others wish to replace the existing system, and still others want to construct a new architecture on its foundations. This said, from a human rights perspective, the Colloquium identified at least two essential challenges that any change strategy would have to address. First is the question of the primacy of international human rights rules in the global normative system: competing branches of international law and policy (trade, investment, environment, aid) often override respect for human rights norms. This is often understood as a problem of “coherence”. Second is the question of the legitimacy and accountability of existing, new or reformed institutions.

From a human rights point of view, there are at least two important challenges facing any reform of the global economic architecture: the question of primacy and coherence; and, that of legitimacy and accountability.

COHERENCE AND PRIMACY

Coherence is one of the biggest challenges facing global public policy. The fragmentation of international legal and policy regimes (the separate evolution of rules governing trade, banking and finance, investment, environment, human rights, etc.) means that rather than complement, they often undermine each other.⁴⁴

Examples of fragmentation and incoherence abound. Participants at the Colloquium highlighted how economic institutions like the WTO, IMF and WB (which operate outside the framework of the UN) and unrepresentative forums of states (the G-8 and now the G-20) that seek to control large parts of the global economic policy agenda, contribute to policy incoherence nationally and internationally. Within the UN, relationships are similarly fragmented. Though human rights have been declared one of the UN’s “three pillars”, the UN human rights system has only been a marginal player in UN discussions and responses to the recent economic crisis. Similarly, the Millennium Development Goals framework lacks a serious human rights perspective,⁴⁵ and existing climate change policies barely mention human rights.⁴⁶ At the same time, while institutions such as the WTO, WB and IMF continuously seek to expand their role in the global economic architecture, they

40 See, for instance, Salomon, 2007.

41 Such analyses predate the recent crisis. See, for example, Li and Zhu, 2005.

42 Jayati Ghosh, speaking at the Guardian Forum on the Economic Crisis in London, 2009.

43 For example, see Rodrik, 2001, or Chang and Grabel, 2004.

44 See *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, International Law Commission, A/CN.4/L.682, 2006 for a wider analysis of fragmentation of the international legal space.

45 This is however becoming a significant focus of human rights advocacy within the MDG review process and for post-2015.

46 See for example, *Climate change and human rights*, ICHRP, Geneva, 2008; and also ICHRP, *Climate change: technology policy and human rights*, forthcoming.

have historically been, and remain, unwilling to accept that they bear human rights obligations, and have only selectively adopted elements of international human rights law.⁴⁷

Though human rights have been declared one of the UN's "three pillars", its human rights system has not been a significant player in UN responses to the recent economic crisis or on economic affairs in general.

It is no doubt beneficial to the interests of some powerful international institutions and actors to have a disjointed global legal, regulatory and policy framework. Politically speaking, too, it is often convenient for states if dysfunctional international processes prevent them from addressing global issues that are politically or financially costly. Reform is made infinitely harder because, while states are discredited and frustrated by failures of international governance, an improved system of governance would also disadvantage their political interests in other respects.

A disjointed global legal, regulatory and policy framework may allow powerful international institutions and states to justify not addressing important global issues that are politically or financially costly.

Some say this is simply the nature of "messy multilateralism". At the same time, the global environment is not static. Underlying institutional and normative change continues to occur. The emergence of the "Washington Consensus", and more recently the G-20, signalled attempts to impose a more coherent international agenda. Neither agenda put protection of human rights at the forefront of its concerns. In this regard, coherence, cannot be an end in itself: what counts is who determines the content of "coherence" and what ends it serves.⁴⁸

Coherence, cannot be an end in itself: what counts is who determines the content of coherence and what ends it serves

Human rights advocates affirm the primacy of international human rights rules. They argue that constitutionally guaranteed rights supersede other domestic legislation and that, on the same grounds, international human rights standards should overrule conflicting standards that are set in other areas of international policy (from trade to environment).

Support for this position can be found in the first paragraph of the Vienna Declaration and Programme of Action, adopted at the Vienna World Conference on Human Rights in June 1993, which affirms that: "Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments". Resolutions of expert bodies, such as the former UN Sub-Commission on the Promotion and Protection of Human Rights, have also upheld the primacy of human rights in relation to international trade and investment

47 For an analysis of the WB and the IMF and international human rights law, see Darrow, 2006.

48 See, for example, Dommen, *Human rights and trade; two practical suggestions for promoting coordination and coherence*, chapter in Cottier, Pauwelyn and Bürgi (ed.), *Human Rights and International Trade*, Oxford University Press, November 2006; and Dommen *The WTO, International trade and Human Rights*, chapter in Windfuhr (ed.) *Beyond the nation State – Human Rights in Times of Globalisation*, the Global Publications Foundation, June 2005.

policies.⁴⁹ The UN Committee on Economic, Social and Cultural Rights noted that "human rights norms must shape the process of international economic policy formulation so that the benefits for human development of the evolving international trading regime will be shared equitably by all, in particular the most vulnerable sectors".⁵⁰

However, the legal case for primacy is not clear-cut. Notwithstanding the resolutions cited, it is far from being accepted by all governments or international actors. The Director-General of the WTO (speaking at the Colloquium) argued, for example, that states assume a horizontal relationship between the different international legal regimes, including international human rights law. Viewed this way, the International Covenant on Civil and Political Rights (ICCPR) or the ICESCR are not of higher *legal* significance than treaties covering trade, the environment or nuclear non-proliferation. Unless explicitly directed to do so by Member States, why should the WTO work to uphold human rights provisions when leading negotiations on trade agreements?⁵¹

A political consensus on the primacy of human rights has therefore still to be achieved – and their relevance to global economic governance is even less accepted. When the UN Human Rights Council adopted two resolutions that affirmed the importance of human rights in the context of the global financial and economic crisis, the discussion and the vote revealed significant differences of opinion on the question. Despite interventions by several UN human rights bodies, the final report of the Commission of Experts of the President of the UN General Assembly on Reforms of the International Monetary and Financial System (the Stiglitz Commission) contained no specific reference to human rights.

This is essentially a political rather than a legal issue: new norms are not likely to provide the answer.⁵² Advocates of human rights need to build new alliances and intensify efforts to mobilise public and political opinion in favour of human rights principles and standards, even while continuing to fight legal battles.

In this context, the headway made by social movements and campaigns in contesting international trade, finance and investment regimes on grounds of legitimacy, social justice and equitable development offers lessons.⁵³ To secure acceptance of the primacy of human rights, human rights advocates will no doubt have to show that human rights principles are relevant to the solution of economic and social problems, engage with broader concerns around economic and social justice, and build alliances with social movements and other like-minded networks and organisations. Such alliances have shown themselves to be effective, for example, with respect to certain investment issues, cases of corporate corruption or complicity in abuse, and in addressing labour exploitation and labour standards.

49 Sub-Commission Resolution 1999/30, adopted on 26 August 1999, UN Doc. E/CN.4/Sub.2/RES/1999/9 (1999); and UN Sub-Commission resolution 1998/12, adopted without vote on 20 August 1998, UN Doc. E/CN.4/Sub.2/RES/1998/12 (1998).

50 Para 5, UN Doc. E/C.12/1999/9 (26 November 1999).

51 The international legal position would hold that no international treaty could abrogate *jus cogens* norms directly or indirectly. Some human rights are so absolute as to have achieved this status: they include prohibitions on torture, disappearances, slavery, or genocide. However, disputes regarding trade or financial policy usually concern rights that are more qualified, and often raise difficult issues of causality.

52 The Director-General of the WTO, for instance, called for a political consensus ("Geneva Consensus") that deregulation and opening of markets must be accompanied by "solid social policies to redistribute wealth or provide safeguards to the men and women whose living conditions have been disrupted by evolving trade rules and trade patterns". See: www.wto.org/english/news_e/sppl_e/sppl146_e.htm for the full text of his remarks.

53 See, for instance, the work of Focus on the Global South, the Third World Network, and coalitions like Jubilee South, etc.

LEGITIMACY AND ACCOUNTABILITY

There is no political consensus on the primacy of human rights—and their relevance to global economic governance is even less accepted. Are new norms the answer? Or, do human rights advocates have to do even more to force a political consensus from below—by demonstrating the relevance of human rights to securing economic and social justice.

The crisis in global economic governance is essentially a crisis of legitimacy and accountability. The recommendations of the Stiglitz Commission for a new Global Economic Coordination Council within the auspices of the UN, mirroring the UN Security Council, do not seem to have gained the necessary traction.⁵⁴ However, rising economic powers such as India, Brazil and South Africa appear to have made some progress in claiming a greater role in global decision-making. The G-20, which has quickly risen in its influence on global economic matters, also includes in its membership Argentina, Mexico and Indonesia. The G-20 regards itself as representative and legitimate because of its geographical composition (members are drawn from all continents), its share of the global population (two-thirds) and its share of world gross national product (around 90 percent). However, does this entitle the G-20 to discuss and resolve issues that affect the large number of smaller and poorer states?

As some Colloquium participants observed, the G-20 represents a politically expedient realignment of global and regional power in a multi-polar world rather than a fundamental shift in underlying values of global economic governance. This is evidenced by the group's lack of willingness to set or monitor clear normative standards, especially ones respectful of human rights. So far, the G-20 has acted primarily to coordinate emergency responses to the collapse of banks and financial markets rather than on long-term reflection of the systemic flaws of the global economy. To effectively address issues of legitimacy, issues like the rise of the G-20 and the excessive tilt of UN Security Council in favour of the global North (which feeds the case to reform it) must be addressed.

Reform of the IMF and the WB has also been widely discussed, notably their decision-making processes, conditionality based-lending, and democratisation. Accountability is a key issue in this context. A large accountability gap separates those who make decisions concerning the global economy and those who are affected by those decisions. Several Colloquium participants argued that it is nevertheless important to continue to focus on the accountability of national governments, though views differed about the extent to which international action could help to accomplish this objective. To restore public trust in international institutions, it is critical that inter-governmental and international institutions, as well as non-state economic actors (notably corporations), are held accountable for their actions and decisions.⁵⁵

A large accountability gap separates those who make decisions concerning the global economy and those who are affected by those decisions.

What does “accountability” imply? Traditionally, the human rights community tends to focus on judicial accountability, which has limited purchase on issues of economic policy in the international context. Those seeking to make institutions and structures more responsive and accountable may have to consider the proper balance between *judicialising* and *politicising* accountability. For example, though it will be important to strengthen ongoing work on the notion of transnational or extraterritorial legal obligations regarding human rights (since this might offer additional levers for influencing global economic and financial decision-making), it is important to look beyond this. New approaches to accountability may be needed that build on ideas such as “shared responsibility” and “solidarity”, and on effective public advocacy strategies, to achieve change. In widening the normative underpinnings of accountability, it is pertinent to consider how ideas like “shared responsibility” and “solidarity”, not new in themselves, offer consensual frameworks of action around shared concerns.⁵⁶

Is it time to reconsider the balance between judicialising and politicising accountability? What are the possibilities of new approaches to accountability that build on ideas such as “shared responsibility” and “solidarity”?

Several participants at the Colloquium warned that, when pressing for reform, human rights advocates should resist the instrumentalisation and tactical adoption of human rights language, an approach often employed by economic and financial institutions. Equally important will be the demand for accountability: it will not be achieved if those who are least well served by current national and global economic policies do not call for it.

A significant obstacle here, noted by many participants, is the weakness of global and regional human rights enforcement mechanisms, which are widely perceived to lack bite and in many cases also lack legitimacy, as highlighted by criticisms of the UN Human Rights Council, for instance. On several levels, therefore, influencing and reforming the institutional architecture of global economic governance presents significant challenges.

Human rights advocates should resist the instrumentalisation and tactical adoption of human rights language – an approach often employed by international economic and financial institutions.

⁵⁴ Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System, September 2009.

⁵⁵ *US and EU cotton production and export policies and their impact on West and Central Africa – coming to grips with international human rights obligations*, 3D and EGI, May 2004; and Ovet, *Making Trade Policies More Accountable and Human Rights –Consistent: A NGO Perspective of Using Human rights instruments in the Case of access to Medicines*, 3D, 2006.

⁵⁶ See, for instance, the Report of the Independent Expert on human rights and international solidarity, A/HRC/12/27, 22 July 2009.

IV. OPPORTUNITIES AND CHALLENGES FOR HUMAN RIGHTS ADVOCACY

Preceding sections have already highlighted questions, challenges and opportunities that face human rights advocates when they consider economic policy-making. This section captures some of the more general conclusions that emerged from the Colloquium.

Despite the complexity of applying the human rights framework in this area, much work has already been done to illustrate the relevance of human rights to social policy.⁵⁷ A large body of literature addresses various dimensions of global economic and financial governance and related issues (e.g., climate change, debt, aid) from a human rights perspective. In addition, various UN human rights mechanisms, especially the Office of the High Commissioner for Human Rights and a growing number of Special Procedures, have produced analyses of foreign debt, extreme poverty, food security, water, social security programmes, education, etc. that help substantiate the links between protection of human rights and economic policy-making.

HUMAN RIGHTS AS AN “ETHICAL LENS”

As work in this area progresses, it will be important for all actors involved to consider two distinct strengths of the international human rights framework: its emphasis on accountability (the clear identification of duties and of the persons and institutions responsible for honouring them, supported by legal consequences for misconduct) and its internationally recognised ethical values of participation (non-discrimination and transparency), which can be applied to the design and evaluation of policy.

Attempts have already been made to use human rights to audit macro-economic policy, drawing on basic human principles and the “respect, protect and fulfil” framework.⁵⁸ Human rights-based audits of national and local authority budgets, human rights impact assessments, and efforts to develop human rights benchmarks and indicators all provide valuable elements to build on.⁵⁹

Even where the human rights framework is insufficiently precise, human rights principles (i.e., non-discrimination, gender equality, protection for vulnerable groups, the fulfilment of minimum core standards of shelter, health, education and social security, non-retrogression, participation, access to remedies) have significant universal resonance. The current economic crisis has created opportunities to advance the idea that national and global economic and financial regimes must have “social content” and reflect a foundation of values. Human rights principles can meet this expectation.

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⁵⁷ This received considerable impetus in the 1990s, not only within the UN Sub-commission through resolutions and studies, some of which have been referred to earlier, but also through civil society groups such as INCHRTI (International NGO Committee on Human Rights in Trade and Investment).

⁵⁸ See, for example, Balakrishnan and Elson, 2008a.

⁵⁹ See, for example, the work of the OHCHR. The Committee for Economic, Social and Cultural Rights is also developing a framework on Indicators, Benchmarks, Scoping and Assessment for future dialogue with State parties.

THE ISSUE OF UNEQUAL POWER

Many Colloquium participants highlighted the need to analyse more deeply the power relations in economic policy-making. They suggested that human rights interventions on economic policy, and on social and economic rights in general, need to integrate an analysis of power differentials (e.g., between genders, classes, regions, nations). It is not sufficient to highlight individual violations of economic and social rights; analysis needs to question the underlying structures and relationships (and the collective responsibility of States in perpetuating them) that generate violations. If advocates of rights do not take this step, they risk losing political credibility among activists seeking social justice and may be perceived as justifying and defending the status quo.

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MORE SELF-REFLECTION

The economic and also the environmental crisis have made it clear that a range of actors needs to give more substantial attention to the ethical underpinnings of the global economy and global governance issues. It is widely acknowledged that human rights advocates generally lag behind other sectors of civil society in giving attention to economic policy matters, and need to take a more visible role in debates on poverty reduction.

Questions raised at the Colloquium included:

- Do human rights organisations need to change or adapt human rights norms to engage more effectively on economic matters?
- What are the implications of the focus on poverty and economic justice for human rights organisations and their work?
- In particular, how should human rights organisations adapt their institutional culture and practices to respond to these new realities?
- How can differences between approaches to the challenge of poverty and inequality (both within the economics profession and human rights organisations and their potential allies, such as social movements) be mediated?
- How can social movements, trade unions, development experts and other actors be encouraged to adopt and apply the human rights framework in their work?
- How can the terminology of human rights be made more accessible, so that its concepts are useful to people engaged in local struggles for economic and social justice?

Human rights actors need to avoid becoming complicit in efforts to appropriate the rights discourse. As some participants pointed out, the language and discourse of human rights have been appropriated to other political ends, such as promoting tradeable property rights or human rights conditionalities in good governance regimes and rule of law programmes. The spread of rights language creates risks of co-option and misuse that need a clear, politically informed response.

A NEW RELATIONSHIP WITH COMMUNITIES ON THE MARGINS

Some participants called on human rights and development organisations (and others working on issues of economic policy and practice) to review their relationships with communities and persons living in poverty, as well as organisations that represent them (especially those in the global South). They argued that international human rights organisations should not speak *for* but *with* affected communities and should take political direction from them in advocating for social justice, decent work and other rights-relevant agendas. This is especially true of work on economic and social rights, where social movements and other community organisations have considerable experience, and where human rights organisations may benefit from dialogue and cooperation with a wider range of organisations and networks working on similar issues.

BUILD A NEW CONSCIOUSNESS WITHIN AND AN EPISTEMIC COMMUNITY OUTSIDE

Human rights advocates and economists working on development and other relevant issues should take the initiative to pursue joint research and action and seek to build closer ties with social movement activists campaigning on economic rights. This will require greater efforts by human rights organisations to improve their understanding of economics and economic institutions. Similarly, it will require reaching out to economists and development experts as they seek to move beyond Washington Consensus policy prescriptions, take account of the involvement and insights of human rights actors and attempt to identify more closely with human rights claims.

To be successful, new approaches will need to move beyond general human rights principles towards more specific policy prescriptions. It will be necessary to ask difficult questions concerning costs, prioritisation and choice. The following were some of the recommendations that emerged from discussions at the Colloquium:

- Advocates and professionals working in this area should engage in more inter-disciplinary research, building on economic and human rights concepts: they should identify differences and common ground; values that both disciplines share; and the characteristics of a "rights-fulfilling state".
- More effort should be devoted to strengthening networking and exchange between human rights and economic policy research organisations and think-tanks, and economists and

V. CONCLUSION

As this report is finalised, debates continue about the economic crisis and the responses to it, while the full impact of the crisis still remains far from clear. The scale of cuts in public spending, the impacts on access to universal entitlements, the efficacy of new regulations, particularly in regard to financial markets, the most appropriate "architecture" for global financial institutions: the need for an effective policy response to these and many other economic issues remains pressing. Each demonstrating the urgent need for a more inclusive and broad based debate.

Discussions at the Colloquium confirmed the potential for collaboration between economists and those who work to promote human rights. The economic crisis has opened disciplinary and policy circles to alternative approaches and solutions. Human rights advocates thus have a real opportunity to help reconfigure economic thinking and practice.

The crisis has also triggered self-reflection among human rights advocates. If human rights are to be relevant in this field, human rights organisations will need to understand and monitor national and global economic policies more closely and deepen their engagement with economic institutions.

By doing so, both sides can together continue the important process of understanding how human rights principles might be applied to govern and shape the powerful forces that drive and influence national and global economic behaviour and policy.

development experts, encouraging collective, inter-disciplinary and transnational approaches.

- Human rights advocates should engage more substantively with the UN's economic policy institutions (such as the ILO, UNCTAD, UNDESA and UNRISD). They will benefit from these institutions' expertise in social and economic policy, while promoting a wider understanding of human rights principles and their relevance within these institutions.
- Human rights organisations should consider creating opportunities for economists to work more closely with them, and within them, so helping to integrate economic policy analysis in their work.
- Joint approaches to case studies, examples of successful cooperation by human rights advocates and economists, and successful human rights advocacy on economic matters, should be documented as well as encouraged, and resources should be made available to replicate them.

Donors that support work on the interface between human rights and development must:

- Support initiatives that enhance the capacity of human rights advocates to engage with economic analysis and policy-making;
- Invest resources in inter-disciplinary research on human rights and macro-economic policy, by human rights experts, economists and others;
- Strengthen national and transnational advocacy networks that seek to link social movements with human rights and development organisations.

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The crisis in financial markets in 2008 that triggered the most serious economic crisis since the 1930s has been overwhelmingly viewed as a failure of policy and regulation. Yet international human rights standards and obligations were scarcely mentioned by analysts and policy-makers as they developed a response. Were human rights not perceived to be relevant? Are advocates of rights simply not explaining themselves effectively? Where, precisely, are internationally agreed human rights principles pertinent to economic policy? What should advocates focus on?

This report presents some of the key points, controversies, dilemmas, and possible ways forward that emerged from a Colloquium, convened in January 2010, which brought together economists, human rights advocates, development professionals, and social activists to discuss these questions.

The report notes the potential congruence of human rights with approaches in economics that recognise the state's central role in underpinning core functions on which societies depend, especially policies to manage public resources and redistribute wealth.

Since states have a duty to respect, protect and fulfill human rights, it argues that their policies should: revisit trade-offs in economic policy to ensure they respect rights, regulate markets in a manner that will protect rights, and, redistribute resources in ways that are equitable and prevent impoverishment.

The report indicates how human rights advocates might engage more effectively with economic policy-making and create wider agreement about what human rights can contribute to it. In particular, it suggests that human rights actors need to reflect on questions of social justice and structural inequity, and economic theory and policy, while expanding their links and alliances with economists and experts in monetary and fiscal policy, and with social movements.

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