



## A Human Rights Analysis of the G20 Communiqué: Recent Awareness of the 'Human Cost' Is Not Quite Enough

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It took half a year or so, but at last poor countries and poor people are being factored into responses and solutions to the global financial and economic crisis. The human cost of the crisis is now being addressed by mainstream newspapers, it is the subject of high level reports, and is found in the [G20 communiqué of April 2](#). It seems the people worst hit by this crisis—people who are also least responsible for it, and who will suffer longest when the rich world returns to "normal"—now matter and are explicitly considered within the global public policy that the G20 communiqué reflects.

But note that the international response to the problem is invariably presented as an issue of enlightened self-interest ("[G8 Warns of Hunger Threat to Global Stability](#)," *Financial Times*, April 7, 2009), a call to basic decency ("[Capitalism beyond the Crisis](#)," [Amartya Sen](#), *New York Review of Books*.<sup>1</sup>), and an act of charity ("we are making available resources for social protection for the poorest countries, including through . . . voluntary bilateral contributions to the World Bank's Vulnerability Framework " G20 communiqué, para. 25). True, all these approaches may be required, but it doesn't stop there. The crisis, its human impact, and the proposed solutions are also issues of international human rights law—and in particular of state obligations to take collective action to create a global economic system amenable to the fulfilment of basic rights to subsistence, security, and freedom. Under human rights law the approach applied is to "respect, protect and fulfil"—states must not only refrain from violating rights elsewhere, but must also protect against acts of others that violate rights, and make efforts to achieve the full enjoyment of rights by all.

### International Cooperation and Human Rights Law

It is widely accepted that states have the primary responsibility for the human rights of people within their borders. But there has long been recognition of the need for international cooperation, and for states to take joint action to tackle obstacles that are beyond the ability of any single state to address. The current crisis of the global financial system and the resulting global recession are clearly a case in point.

Thus, one of the purposes of the United Nations is to cooperate internationally in solving international problems of an economic, social, or humanitarian character, and in promoting and encouraging respect for human rights. Numerous legal sources addressing international cooperation detail the specific rights that require collective action. They include the right of everyone to an adequate standard of living; the rights to food, including food security; and the right to water, health, education, work, and social security. [The Universal Declaration of Human Rights](#) (UDHR) refers to the entitlement of everyone to an international order in which human rights can be fully realized. The [1986 Declaration on the Right to Development](#) unambiguously accepts that effective international cooperation is essential "as a

complement to the efforts of developing countries [and] in providing these countries with appropriate means and facilities to foster their comprehensive development." In such human rights treaties as the [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR) obligations of "international assistance and cooperation" are codified; the [Convention on the Rights of the Child](#) (CRC) similarly refers to an obligation of international cooperation, and notes that the fulfillment of the rights enshrined requires that "particular account [shall] be taken of the needs of developing countries."

These articulations provide that the dominant members of the international community of states, or, in the words of the [UN Committee on Economic, Social and Cultural Rights](#) (CESCR), "those in a position to assist", have not only a role but also a responsibility to contribute to the immediate realization of the minimum essential level of socio-economic rights globally. The G20, then, is quite right to highlight the particular needs of developing countries, including the poorest, and to speak of its "collective responsibility" in meeting the [Millennium Development Goals](#) (communiqué, para. 25). These responsibilities are complementary to national responsibilities and necessary because there are obstacles to the realization of human rights that are of a global systemic nature and thus require collective action. Such obstacles point to the need for institutions that create an environment that enables the exercise of human rights. The regulation of financial sectors is again a case in point.

### **The G20 Agenda—Will it Provide *Universal* Human Rights Protection?**

The G20 agenda is clear on the need for collective action, noting that "a global crisis requires a global solution" (G20 communiqué, para. 2). But states must do far better than what we have witnessed so far under the rules of international trade, investment, and finance, which claim global mutual advantage and common benefit but have allowed poverty to persist and inequality to increase dramatically.<sup>2</sup> At their most basic, human rights are egalitarian and universal—all individuals have equal rights, and human rights protection (e.g. the rights to an adequate standard of living, including adequate food, clothing, and housing) must be for everyone.

The commitment to strengthening financial supervision and regulation (G20 communiqué, paras. 13-16) and the enormous bailouts of the private sector in the U.S. and Europe arguably suggest a turn to state-based solutions, a shift away from the [Washington Consensus](#) and Anglo-Saxon capitalism that has failed in terms of advancing the values of equity and inclusion. Yet it remains doubtful whether we are witnessing a revolutionary change in global financial and economic policy; all indicators point to an emphasis on the regulation of the existing economic order, not to a serious consideration of alternatives. Noting that this increased state regulation and global coordination will ultimately strengthen the capitalist system, the Slovenian philosopher [Slavoj Žižek](#) suggests that [Barack Obama might one day be considered among the best conservative presidents in U.S. history](#).<sup>3</sup> International human rights law in this area does not prescribe a particular economic system; it is neutral in so far as its tenets do not favor one economic model over another. It does, however, contain both principles and standards that seek to ensure that any methods for achieving economic growth are just, and that its benefits are fairly distributed.

The G20 communiqué recognizes that the current crisis has a "disproportionate impact on the vulnerable in the poorest countries" (para. 25). To put this claim in figures: the World Bank estimates that the crisis has already pushed 100 million people back into poverty.<sup>4</sup> The [ILO](#) reports that the bleak labor market will most affect women, migrant workers, and youth and stresses that that the labor market would likely need a long time to recover, a full four or five years after economic recovery.<sup>5</sup> These impacts are not merely unfortunate; they signify prima facie massive and systemic breaches of international human rights law, such as the right of everyone to an adequate standard of living and to continuous improvement of living conditions and the right to work.<sup>6</sup> Unfolding before us is not only a financial and economic crisis, but a human rights crisis too. It would seem that powerful states have failed in their joint and separate duties to respect and protect the most basic rights of those 100 million people, and in their duties to advance an international order conducive to their realization.

The G20 response to the crisis has been to increase funds toward "social support" (para. 17), but as part

of a package to be made available to global financial institutions aimed at supporting growth, particularly the [IMF](#). Several questions remain unanswered. First, how will these funds be allocated between the emerging market countries and the poorest countries? Second, how much of the support will be for pro-poor growth that can stabilize household incomes and access to food, productive employment, education, and healthcare for all households, including the poorest and those of marginalized groups? In addition, many countries are not only hit by a fall in capital inflows and shrinking export markets, but also by a dramatic fall in migrant workers' remittances. Many of the poorest countries of the world now rely heavily on remittances as a foreign exchange earner and as a source of revenue; in Tajikistan remittances now constitute 45 percent of the GDP, in Lesotho 29 percent, Honduras 25 percent and Guyana 24 percent..<sup>7</sup> So a third question is: How much will go to the direct social support of those in dire need rather than to the long list of wider targets (e.g., bank recapitalization, infrastructure, trade finance, et cetera) that may stimulate growth but may not benefit the poor? Fourth, what policy priorities and conditionalities will the IMF pursue? Will they be akin to the strategies of budget cuts, high interest rates and other contractionary measures pursued in Indonesia in 1998 or Argentina in 2000/2001? Or will countries have adequate policy space to put in place counter-cyclical policies that are home grown and grounded in the unique context of the country's economic but also political realities?

It is significant that the communiqué recognizes the importance of long-term food security (para. 25), a vital protection that has been dramatically weakened by the mainstream policy approaches of the last two decades. A general point worth making is that people are not of value merely as potential productive instruments of growth; people are agents of change and possess inherent worth and inalienable rights. International assistance and cooperation in support of social protection, therefore, is essential and should be part and parcel of the G20 agenda of "ensuring a fair and sustainable recovery for all" (para. 25)..<sup>8</sup>

Committing resources and investing in food security for the poorest countries would seem to go some way to fulfilling human rights duties of international cooperation in realizing the right to social security as provided for in the UDHR and in treaties dealing with socio-economic rights. However, in order to show a real commitment to addressing the impact of the crisis on the most vulnerable in the poorest countries—a crisis that by all accounts has its roots in the United States and that the United States has the greatest capacity to resolve—the U.S. government should ratify the two central UN treaties dealing with socio-economic rights. The ICESCR has 160 state parties, including all industrialized states; the CRC boasts near universal ratification..<sup>9</sup> President Obama has begun to invalidate Bush's denial of international norms regarding torture, rendition, and the laws of war, yet the country's anomalous status on international protections of socio-economic rights leaves it outside the legal mainstream on critical issues of domestic and foreign policy, such as healthcare, social security, a decent standard of living, and education—issues close to the hearts of U.S. citizens.

### **Global Institutions and Policy Incoherence**

The communiqué recognizes the need for the UN to work with "other global institutions to establish an effective mechanism to monitor the impact of the crisis on the poorest and most vulnerable" (para. 25). It remains to be seen whether monitoring by the UN will translate into meaningful cross-institutional action. Such moves have so far been resisted by representatives of developed states, who have preferred, for example, to keep discussions on trade at the [WTO](#) rather than down the street at the UN, where concerns are repeatedly voiced as to how trade policy deeply affects basic rights to food and health in developing countries. The IMF continues to reject the relevance of human rights to its mandate, despite longstanding concerns over the effect of conditionality on their realization in recipient countries.

In its efforts to integrate human rights concerns and global economics, the [UN High-Level Panel on Threats, Challenge and Change](#) recommended in 2004 that the UN restructure its Economic and Social Council to act as a development cooperation forum. In so doing, however, the Panel's report attested at the outset to the limitations of the proposal by conceding that "decision-making on international economic matters, particularly in the areas of finance and trade, has long left the United Nations, and no amount of institutional reform will bring it back."<sup>10</sup> The [recent report](#) by the Commission of Experts on Reforms of the International Monetary and Financial Systems, chaired by [Joseph Stiglitz](#), has tried its

hand at this substantive and institutional cross-fertilization. It recommends "an appropriate mechanism within the United Nations System for independent international analysis on questions of global economic policy, including its social and environmental dimensions".<sup>11</sup> as well as the establishment of a Global Economic Coordination Council as a principal organ of the UN (along with the Security Council and General Assembly). The report proposes that the Council meet annually at the level of Heads of State and Government "to assess developments and provide leadership in economic, social and ecological issues".<sup>12</sup> It is foreseen that all global institutions dealing with trade, finance, and human rights would have input into the process.

These suggestions on reform are not solely in the realm of global public policy, but give rise to questions of general international law and the requirement that obligations undertaken under one international legal regime (for example, human rights) are not undermined by commitments made in another (for example, trade and investment). This speaks to longstanding concerns over the lack of international policy coherence, with the institutional bifurcation resulting in a split between human rights goals and economic objectives, despite their obvious interconnectedness.

If G20 leaders understand the current crisis not as an aberration to an otherwise effective system, but in many ways as an outcome inherent in the logic of the laissez-faire capitalism of the past decades, the present moment can be seized as an opportunity to devise an alternative program of globalization. The poor and new poor need more than improved regulation and strong rhetoric around global solutions; what is required is rigorous consideration of what constitutes an optimal system for the proper integration of social and economic objectives. Any proposed solution should be tested against the range of obligations under international human rights law, with any decisions determined on the basis of how they benefit the least privileged in our global community.

### Going Forward

That the relevant states did not exercise the requisite due diligence in preventing the current financial crisis that has so gravely affected the exercise of fundamental human rights in poor countries exposes a major gap in accountability structures for human rights. All states—including those that are poor—are accountable to their citizens for respecting, protecting, and fulfilling their human rights. But the events of late 2008 and early 2009 have demonstrated a need for institutional mechanisms of accountability to global citizens. As described above, human rights law has long anticipated that the effective protection of socio-economic rights should not be territorially circumscribed; the remedies of the crisis must fully address this dimension.

From the perspective of international human rights law those worst hit are victims of violations, and it is a basic tenet of international law in this area that victims are entitled to adequate reparation, including restitution, compensation, satisfaction, or guarantees of non-repetition. It would be both tragic and ironic if the response to the shock of the financial crisis on the poor and vulnerable was just more of the same economic model that led not only to financial instability, but also failed to produce inclusive economic growth. The G20 agenda extends a helping hand by offering social protection for the poor and vulnerable countries affected by the crisis. But these remedies can go much further by building in measures to ensure that structural changes extend full support and benefits universally to each and every person, beginning with the poor.

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### NOTES

<sup>1</sup> Vol. 56, No. 5, March 26, 2009.

<sup>2</sup> "The gap between the world's richest country and the world's poorest increased from about 3:1 in 1820 to about 70:1 in 2000." Richard Jolly, "Global Inequality," in David Alexander Clark (ed.), *The Elgar Companion to Development Studies* (2006) 196 at 197. "Measured at the extremes the average American was 38 times richer than the average Tanzanian in 1990. Today the average American is 61 times richer." UNDP, *Human Development Report 2005: International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World* (2005) 37.

[3](#) John Thornhill, "The Modest Marxist," Lunch with the FT: Slavoj Žižek, *Financial Times*, March 7-8, 2009.

[4](#) Robert B. Zoellick, "[A Stimulus Package for the World](#)," *The New York Times*, January 23, 2009.

[5](#) "[The Financial and Economic Crisis: A Decent Work Response](#)," ILO Discussion Paper (2009) paras. 5-6.

[6](#) CESCR, Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights (25th session, 2001) UN Doc. E/C12/2001/10, para. 4.

[7](#) Data from World Bank cited by Diane Alarcon, Stephany Griffith-Jones and José Antonio Ocampo, "How Does the Financial Crisis Affect Developing Countries," *UNDP International Poverty Center One Pager*, April 2009.

[8](#) "Article 2, paragraph 1, and articles 11, paragraph 1, and 23 of the Covenant require that States parties recognize the essential role of international cooperation and assistance and take joint and separate action to achieve the full realization of the rights inscribed in the Covenant, including the right to social security." CESCR, General Comment no. 19 on Art. 9 (The right to social security), (39th session, 2007) UN Doc. E/C.12/GC/19, para. 52.

[9](#) Somalia is the only other state not to have ratified this treaty.

[10](#) *Report of the UN High-Level Panel on Threats, Challenges and Change: A More Secure World: Our Shared Responsibility*, November 29, 2004, UN Doc A/59/565 (2004) para. 274.

[11](#) *Commission of Experts of the President of the General Assembly on Reforms of the International Monetary and Financial Systems*, March 19, 2009, UN Doc A/63/XXX, para. 45.

[12](#) *Id.*, para. 52.

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