A HUMAN RIGHTS RESPONSE TO THE ECONOMIC CRISIS IN THE U.S.

The economic crisis and human rights

Economic and social rights provide a fundamental standard of decency for evaluating our economic system and holding governments and private actors to account. These human rights are inalienable – individuals cannot have their rights taken away due to political changes or economic crises. The current global economic crisis is evidence that the economic policies of the past three decades have not worked. In fact, they now threaten the security of basic human rights. The devastation that the crisis has already wrought on the most vulnerable households in the Global North and the Global South is a reminder that the formulation of economic policy and the realization of human rights have, for too long, been divorced from one another.

Over the past three decades, economic policy, both globally and in the U.S., has been geared toward a single target - economic growth – with little attention paid to issues of distribution. Economic policy making has proceeded with the assertion that economic growth, no matter how skewed in favor of a few, will ultimately benefit all by eventually providing more resources for the realization of human rights. Efficiency, rather than securing the basic well-being of all, has been the mainstay of these policies. Yet, the same policies adopted to achieve economic growth have, in many instances, eroded basic social and economic rights. These rights have even been depicted as inefficient costs that slow growth. It is clearly time to assess economic policy using the ethical lens of the universally-recognized human rights framework.

Clarification of human rights obligations

The Universal Declaration of Human Rights (UDHR) includes social and economic rights, as well as civil and political rights, and makes no arbitrary distinction between them. All states that are party to the UDHR (which includes the US) have a moral and political obligation to realize the rights specified in the UDHR. The UDHR was reinforced by a series of international treaties (variously named Covenants or Conventions) which legally bind the states that are party to them to realize the rights contained therein, and also provide guidance and norms for states that have not yet finalized ratification.[1]

Human rights obligations contained in these international instruments have been spelled out more fully by General Comments and General Recommendations issued from time to time by UN treaty monitoring bodies such as the Committee on Economic, Social and Cultural Rights (CESCR); and by international law experts who

Human rights obligations entail three specific duties with respect to economic and social rights:[2]

1. The obligation to respect rights. The obligation to *respect* requires governments to refrain from interfering with the enjoyment of economic and social rights. So, for example, the State will have failed to comply with its obligation to respect the right to housing if it engages in arbitrary forced evictions.

*2. The obligation to protect rights***.** The obligation to *protect* requires governments to prevent violations of human rights by third parties. For example, a government's failure to ensure that private employers comply with basic labor standards may amount to a failure to meet its obligations to protect the right to work or the right to just and favorable conditions of work.

3. The obligation to fulfill rights. The obligation to *fulfill* is generally recognized as being comprised of three elements – to facilitate, provide, and promote rights. It requires governments to take appropriate legislative, administrative, budgetary, judicial and other measures toward the full realization of such rights. Thus, the failure of governments to provide essential primary health care to those in need may amount to a violation.

Each of these obligations has two dimensions: conduct and result.[3]

The obligation of *conduct:* A government is obliged to design and implement its policies and programs in a way that can reasonably be expected to realize the enjoyment of rights.

The obligation of *result:* A government is obliged to achieve outcomes that enhance the enjoyment of rights.

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have produced the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997).

Guidelines for governments in meeting their economic and social rights obligations

States enjoy a margin of discretion in selecting the means to carry out their obligations for economic and social rights, but they must pay regard to the following six points:[4]

1. *Progressive Realization* acknowledges that the full enjoyment of human rights will not come in a day, but demands that, every day, the government works to ensure that it comes a little closer.[5]

2. The criterion of *Maximum Available Resources* means that governments cannot shrug off human rights obligations on the grounds of lack of resources.[6] Resource availability depends on how the state mobilizes resources from the people living under its jurisdiction to fund its obligation to fulfill human rights. The ability of the government to raise revenues through an equitable system of taxation is essential for it to carry out its responsibilities with regard to social and economic rights.[7]

3. *Non-Retrogression* means that once a particular level of enjoyment of rights has been realized, it must be maintained.[8]

4. *Non-discrimination and Equality* criteria are central to the universality of human rights.[9] An often-ignored consequence of these rights is that the ownership of property cannot be grounds for discrimination.[10] Non-discrimination also implies that positive steps must be taken to reduce already existing and historic inequalities and to improve the social and economic rights of the most vulnerable.

5. *Participation and Transparency*: governments are obliged to provide mechanisms through which people can participate in decision-making and can access the information they need to do so effectively. Transparency implies more than access to information – positive steps must be taken to make the available information understandable to the general public. This obligation implies that governments must also strive to collect and make available data necessary to monitor and evaluate progress towards realizing social and economic rights amongst various different social groups.

6. *Accountability*: governments are obliged to provide mechanisms and a process through which individuals can hold the state accountable. The right to an effective remedy must offer both redress for wrongs committed and hold responsible parties to account[11] in cases in which social and economic rights have been violated. Processes for ensuring accountability are not limited to the court system, but can also be implemented through complementary legislation and administrative and political systems.

Why are U.S. macroeconomic policies important for human rights?

Macroeconomic policies impact the economy as a whole and determine whether there are enough decent jobs and adequate resources for healthcare, education and other social services. Macroeconomic policies are implemented using instruments such as taxation, government spending, and control over the supply of money and credit. These policies affect key prices – such as interest rates and exchange rates – that directly influence, among other things, the level of employment, access to affordable credit, and the housing market. Two broad categories of macroeconomic policy are particularly relevant: (1) monetary policy – how governments influence the money supply and interest rates and (2) fiscal policy which deals with government spending and taxation.

Some macroeconomic targets directly correspond to certain social and economic rights. In these cases, the government has an obligation of conduct – macroeconomic policies should be conducted so as to realize these key rights. An example is employment and monetary policy. The U.S. Federal Reserve, which determines the nation's monetary policy, has a mandate to conduct policies so as to maintain price stability and the maximum possible level of employment.[12] We can interpret the mandate on employment in a human rights framework. Monetary policies which target employment are directly linked to the realization of the right to work and the right to an adequate standard of living. If the Federal Reserve neglects its mandate on employment, it compromises these economic rights.

Macroeconomic policies, especially fiscal policies, also impact the resources available for delivering other social and economic rights. For example, the budget is the primary tool for delivering housing, social security, and education. The budget is also the channel through which resources are made available to ensure the availability of information and to maintain certain systems of accountability and participation. Fiscal policy, through the government's ability to tax and spend, determines the total amount of resources available in the budget, and therefore directly influences the resources available for realizing rights.

Non-retrogression and progressive realization also require that government spending not be overly sensitive to economic downturns. Government spending should rise during times of crisis to fund the social safety net, and fall during economic booms, when the safety net is less widely needed. In reality, the opposite happens to spending by state and local governments. In state budgets, funding is often cut during a downturn and often taxes are cut during economic booms.

The funding of public services and the regulation of financial institutions must also be non-discriminatory if the U.S. is to support basic economic and social rights. Consider education. In the U.S., the right to education is directly linked to the tax system and how revenues for education are generated. Since schools depend on local taxes, educational spending is largely determined by the local tax base. Given patterns of residential and socio-economic segregation in the U.S., school systems in cities with a large share of students of color often operate with far fewer resources than suburban school systems, with a large share of white students, even in the same metropolitan area. The de facto discriminatory effects are clear: students of color do not enjoy the same right to education as white students. For example, across the country, $614 less is spent on students in the districts educating the most students of color as compared to the districts educating the fewest students of color.[13]

Monetary policy and financial regulation

In the U.S., monetary policy is conducted through the Federal Reserve banking system. The board of directors is nominated by the President and confirmed through Congressional hearings. Apart from these appointments, the Federal Reserve operates independently of the executive and legislative branches of government. The Federal Reserve board of governors does make a substantial quantity of information publicly available. However, there is no scope for direct participation in decision-making and the systems of accountability are limited.

Although the Federal Reserve has a dual mandate to control inflation and maintain full employment, U.S. monetary policy has been much more responsive to the needs of the financial sector. Monetary policy has targeted low rates of inflation and helped to maintain high asset values in the stock markets and other financial markets. This effectively protects the value of financial wealth. The Federal Reserve does respond to higher rates of unemployment by lowering interest rates. However, such policy responses generally receive a lower priority. Low rates of unemployment are often interpreted as a warning sign of impending inflation, and the Federal Reserve may raise interest rates to slow down employment growth in an effort to reduce inflation.

The use of monetary policy to protect financial interests raises important questions about what the "maximum available resources" really are. As the financial crisis unfolded, the Federal Reserve responded by injecting substantial financial resources into the economy to help save financial corporations. The Fed has not responded with the same immediacy to prevent backsliding in terms of health care, employment, or housing. To give a specific example, the rescue of the financial sector has not been accompanied by equally vigorous efforts to rescue people losing their houses due to foreclosure – even though the root cause is the same – the collapse of the sub-prime mortgage market. We need to ask some probing questions. Are the country's financial resources being allocated in such a way to support the progressive realization of social and economic rights – secure housing, maintaining low unemployment, protecting pensions, and improving access to higher education through affordable loans?

Fiscal policy and budgets

Fiscal policy employs two mechanisms to achieve chosen objectives: taxation and government spending. Through these policy tools, governments impact aggregate levels of supply and demand, taking money out of the economy by levying taxes and putting resources into the people's hands by way of public spending.

The budget is the primary government tool for the direct realization of rights to healthcare, education, social security, and a basic income. Budgets operate at various levels. A complete analysis of budgets and human rights requires linking federal, state, and local fiscal policies. The federal government provides grants and resources to state and local governments that are then used to realize certain social and economic rights. Similarly, state governments provide resources (often called 'state aid') to local governments. Cutbacks at the state or federal level can therefore directly affect social and economic rights which are primarily delivered through local governments. In Georgia, for example, a recent study showed that if tax reductions had not taken place, annual revenues would be $1.5 billion higher and would have decreased the size of cuts that Georgia has to face by 60 percent.[14]

The manufactured crisis

Financial and economic crises are not random or natural events – they are **manufactured** through the design and implementation of particular policies as well as the nature of certain institutions. The sustainability of social and economic rights requires appropriate macroeconomic policies that prevent, instead of foment, the type of crises the world is currently experiencing. Regulation of financial institutions can limit the possibility of crisis and promote stability, for example, but regulations have often been biased toward the interests of business and away from government duties to ensuring of the right to work and an adequate standard of living. Therefore, macroeconomic policies that lead to financial crises and economic instability are not conducive to realizing rights – they violate the obligations of progressive realization and non-retrogression.

Biased regulation and the crisis

Regulation in the U.S. context is skewed in favor of certain interests. It is not that there was simply deregulation of the U.S. economy, but instead a re-regulatory process that is biased toward the interest of banks rather than workers and families. Biased regulation comes from deliberate government policy changes and a failure to extend government's supervisory role in the context of social and economic change (a failure with regard to the obligation to protect). The sub-prime mortgages associated with the current crisis provide an example. Without the proper type of regulatory oversight, financial institutions engaged in predatory lending practices – that is, an extension of loans on unfavorable terms primarily targeted at low income households. These loans were not subject to 'due diligence' – an accurate assessment of the risks involved.

At the same time that financial markets were being re-regulated for the big financial players, reform of personal bankruptcy laws was pushed through. This made it more difficult for people suffering a catastrophic medical problem or a prolonged period of unemployment to manage onerous levels of personal debt. An unexpected setback could lead to a loss of basic social and economic rights for the rest of a person's life.

When the crisis hit, the U.S. government responded by setting up funds to bail out the financial institutions. However, the government begrudged homeowners of an equivalent degree of protection. The negative impact of the housing crisis has been disproportionately greater for women (single parents) and people of color.[15] In human rights terms, the outcome has been discriminatory.

It is not only in the financial sector that we can see evidence of biased regulation. Minimum wages do not correspond to an adequate standard of living; government has failed to act so that minimum wages rise with inflation over time. Instead, policies are generally aimed to protect profits and asset prices, thus raising the incomes of wealth holders at the expense of decent employment opportunities.

Biased Regulation of Finance

A brief history of financial regulation shows how the evolution of regulatory changes over the past several decades has set the stage for subsequent financial crises. The regulatory framework that was set up around the time of the Depression has been transformed through purposeful legislative changes in recent decades.

Glass-Steagall Act (1933) – established the FDIC and allowed Federal Reserve to regulate interest rates. Importantly, this act also effectively prevented the use of the assets of commercial banks for speculative activities – that is, banks could not gamble on the stock market with their depositors' money. Glass-Steagall prohibited banks from owning non-bank financial institutions.

Securities Exchange Act (1934) – established the SEC (Securities and Exchange Commission) to govern the exchange of financial securities. The SEC mandate to regulate finance markets has not kept pace with financial innovations (hedge funds, derivatives – including financial futures, swaps, etc.).

Depository Institutions Deregulation and Monetary Control Act (1980) – the first step in 're-regulating' U.S. financial markets. This act increased the scope for bank mergers, allowed savings and loans and credit unions to offer checkable accounts, and deregulated interest rates. These changes set the stage for the Savings and Loan crisis in the 1980s. It also led to the rapid consolidation of the banking industry in the U.S.

Gramm-Leach-Bliley Act (1999) – ('Financial Services Modernization Act'). This legislation repealed portions of the Glass-Steagall Act that established a firewall between banks and other financial institutions. It allowed the consolidation of commercial banks and investment banks (e.g. Citigroup). Many institutions at the center of the current crisis were the by-products of the consolidations which happened after the act became law.

Commodity Futures Modernization Act (2000). This act ensured that certain financial products (i.e. derivatives) offered by commercial or investment banks would not be regulated under existing laws governing futures contracts. Even without this legislation, many new financial products are virtually unregulated, including the mortgage-backed securities and the credit default swaps which triggered the financial meltdown.

Sarbanes-Oxley Act (2002) – This act followed the Enron debacle. It established standards for business management and accounting. The Act does not apply to privately held companies. And, apart from some new accounting guidelines, the act did not attempt to regulate the financial system.

The bailout and the stimulus: transparency, accountability, and non-discrimination

The government has launched two broad responses to the economic crisis: a bailout of financial institutions (the Troubled Asset Relief Program, or TARP) and a fiscal stimulus package (the American Recovery and Reinvestment Act, or ARRA). It is critical to evaluate both programs in terms of human rights norms.

TARP explicitly provides money to the financial institutions whose bad decisions, based on short-term profiteering, created the current crisis. We should ask ourselves, who gets the money and is the use of the money justified from a human rights perspective? That is, does it prevent non-retrogression by preventing a collapse, or is the money simply protecting a narrow set of interests? The fact that similar relief has not been provided to households facing foreclosure raises serious concerns. Where's the money going? One thing is clear—there is little transparency as to what happened to the money that has already been allocated to the financial sector. Government resources, from tax revenue and greater borrowing, are being given away with little public knowledge of what the money was used for.

Likewise, do the funds adequately address all dimensions of the crisis and are the maximum available resources being used to protect basic rights? The size of the direct spending in the stimulus package is substantially smaller than the funds devoted to TARP. A large sum of resources were made readily available to the financial sector without accountability and participation, but many state, local, and federal programs that impact directly the lives of working people will be cut, inevitably leading to a backwards slide in terms of enjoyment of economic and social rights.

In terms of the stimulus package, it is important to stress that there are good parts and 'less good' parts of the package from a human rights perspective. A significant portion of the stimulus package goes towards aid to states (supporting Medicaid and education). This is good – a partial response to the procyclical nature of state-level spending. There is also a sizeable amount of direct spending aimed at job creation. This is important – since it could prevent retrogression in terms of the right to work and the right to an adequate income.

A sizeable share of the stimulus package however is going towards tax cuts. This raises questions around the availability of funds to protect social and economic rights during the crisis (providing large-scale tax cuts lowers the 'maximum available resources' accessible to the federal government).[16]

Furthermore, the job creation programs may not be gender equitable, since the types of jobs that will be created have traditionally been filled by men. The issue is complicated by the fact that, at the current time, many more men have lost their jobs relative to women.[17] This may change as the dynamics of the crisis unfold. Nevertheless, there is no provision to monitor these outcomes. At a minimum, the government should monitor the stimulus spending in terms of its actual discriminatory effects. The government might also be able to use these resources to change the gender dynamic in the work force. For example, a serious injection of resources to the provision of affordable child care will not only employ a large percentage of women who work in that industry but also allow women who have children to participate in the workforce more fully.

Demands for a human rights centered response to the crisis in the U.S.

1. Channel resources towards protecting rights, not shielding wealth. Revisit tax cuts and the money being used to bail out financial institutions. Increase transparency and accountability to ensure that the funds are being used to prevent the retrogression of rights, not simply the realization of profits.

2. Provide more federal funds to state and local government to prevent cuts to education, health, and core social services. Revisit the need for greater stimulus as the impact on state and local budgets becomes clear.

3. Stop foreclosures – implement a real rescue package for residential housing.

4. Monitor the job creation associated with the recovery to ensure that jobs are of decent quality and employment opportunities are equitably distributed. Shift priorities and create new programs to include women and people of color.

5. Balanced regulation, not biased regulation. Introduce a comprehensive set of regulations for the financial sector as a whole. Make sure that prudential safeguards are introduced to prevent future crises.

6. Conduct a national audit of fiscal policy practices of state and local governments to determine which policy decisions (e.g. tax cuts) have reduced available resources and therefore made spending so sensitive to economic cycles. Reform tax systems to prevent similar cuts during future downturns.

7. Move quickly to a system of universal health care so that losing a job does not lead to violations of the right to adequate health.

8. Extend unemployment insurance, disability benefits, and support to low-income households to help maintain a minimal standard of living.

9. Democratize the Federal Reserve System to improve public participation and hold public and private actors accountable for policy decisions which risk threatening human rights.

REFERENCES

1. In 1965 *came* the Convention on the Elimination of All Forms of Racial Discrimination (CERD), followed in 1966 by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) came into force in 1979 and the Convention on the Rights of the Child (CRC) in 1989.
2. *Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights*. Part II, para. 6. Maastricht, Netherlands. 22-26 January 1997.
3. GenCom 3, para. 1.
4. These principles are taken from ICESR and UDHR and several general comments on the covenant.
5. Progressive realization imposes a “specific and continuing” (CESCR General Comment 12, para. 44) or “constant and continuing” (CESCR, General Comment 15, para. 18) duty to move as “expeditiously and effectively as possible” (CESCR, General Comment 3, para. 9; CESCR, General Comment 12, para. 44; CESCR, General Comment 15, para. 18) towards full realization of rights for men and women. These steps toward full realization of rights must be “taken within a reasonable short time after the Covenant’s entry into force for the States concerned” and such steps should be “deliberate, concrete and targeted as clearly as possible” in order to meet the obligations of States (CESCR, General Comment 3, para. 2; CESCR, General Comment 12, para. 43; CESCR, General Comment 14, para. 30; CESCR, General Comment 15, para 17).
6. The CESCR calls on each state “to take steps…to the maximum of its available resources, with a view to achieving progressively the full realization of…rights…by all appropriate means.” The Committee on ESCR has clarified that “such steps should be deliberate, concrete and targeted as clearly as possible” and that “the phrase ‘to the maximum of its available resources’ was intended…to refer to both the resources existing within a State and those available from the international community.” Since it is impossible to take steps toward the progressive realization of human rights without resources, the maximum available resources obligation is “both a protect- and fulfill-bound obligation.”
7. It is important to note that our work on maximum available resources is still ongoing. We need to pay attention to government borrowing and the long-run impact of debt on the sustainable level of resources.
8. CESCR, General Comment 3, para. 9; CESCR, General Comment 12, para. 45; CESCR, General Comment 14, para. 32; CESCR, General Comment 15, para. 19.
9. The *Limburg Principles* devote an entire section to clarifying the grounds of discrimination mentioned in Article 2(2) of the ICESCR, clarifying that “the grounds of discrimination mentioned [therein] are not exhaustive” and are therefore open to broader interpretation. CERD, CEDAW, and the *Vienna Declaration and Programme of Action* all reinforce the importance of non-discrimination and equality in the enjoyment of human rights .
10. Morsink (2000, p.113). See also CESCR General Comment 20. Non-discrimination in Economic, Social and Cultural Rights.
11. See ICCPR, Art. 2 states: “Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; and (c) To ensure that the competent authorities shall enforce such remedies when granted.”
12. Federal Reserve Act, 1916. www.federalreserve.gov/aboutthefed/fract.htm.
13. The Education Trust, “The Funding Gap 2005: Low-Income and Minority Students Shortchanged by Most States” 2005.
14. James Heintz.. The Grim State of the States: The Fiscal Crisis Facing State and Local Governments” *New Labor Forum* Spring 2009
15. http://www.iwpr.org/pdf/B260jec.pdf
16. This is because tax cuts go to those who have earnings, excluding those without income. Further, tax cuts are likely to be saved, and thus are not available to fund social expenditures to protect the vulnerable.
17. The impact of the crisis on employment is further complicated by reduction of hours, especially in female dominated occupations. Thus, while currently larger increases in male unemployment dominate our understanding of the gender effects of the crisis, women’s income is concurrently declining due to hours reductions.

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