

Global campus of regional master's programmes in human rights and democratisation

2015 research project:

The impact on human rights of foreign debt and economic crises

Draft research outline

Background

The world is still trying to recover from financial crisis of 2008, and increasingly nations are faced with complex foreign debt crises. The institutions and instruments frequently used to address such situations often impact negatively on the observance, protection and promotion of human rights. Recent developments and new challenges, such as the case of forced 'defaults' in Argentina or threatening financial collapse in Greece, demonstrate the need for an adequate international response to debt and economic crisis that also protects and promotes human rights.

The primacy of human rights, even in times of crisis, is logical. If, from a long term perspective, development and growth are opposites to stagnation and downturn, then measures to spur development, as opposed to debilitating austerity, is the better response to debt and economic crisis. In his work "Development as Freedom," Amartya Sen persuasively argued that true national development requires a holistic, rights-based approach designed to facilitate the development of individuals by securing freedom for individuals - principally the freedoms enshrined through human rights. Expressed simply, a developed society is a collective of developed individuals, and individuals can develop when basic needs are met, and basic opportunities motivate individuals and facilitate their free choice such that the individual maximizes their potential, thus maximizing their contribution to society. A society's investment in, and development of, its human resources is thus the essence of national development. In Sen's work, categories of freedoms which foster the development of individuals, and thus of society, include civil and political rights (e.g. equality, civic discourse), economic facilities (e.g. employment opportunities, fair remuneration), social opportunities (e.g. education), transparency/accountability (e.g. rule of law), and protective securities (e.g. healthcare, social welfare).¹ Thus, under this framework it can be argued that economic austerity measures which negatively impact on these pro-development freedoms contradict, in the long term, their purported goal.

That human rights take precedent over conflicting national financial concerns is also reaffirmed in international and regional instruments and initiatives. The two International Covenants and their progeny obligate states to protect and promote a vast number of rights which mirror Sen's pro-development freedoms, and foreign debt or economic crises are not grounds for derogation. Also, the Vienna Declaration and Programme of Action (1993)² foresees a holistic, rights-based approach to sustainable development, and in turn proposed alleviating the external debt burdens on developing countries. Likewise, the Millennium Declaration (2000) called for reforms in the international financial system and to make foreign debt sustainable with national development, while the Monterrey Consensus (2002) called for the mutual accountability of both lenders and borrowers as it relates to the effects of foreign debt on human rights.

¹ Sen, Amartya, *Development as Freedom*, Anchor Books: New York, 2000.

² <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>

With specific regard to foreign debt and human rights, the relatively recent Guiding Principles on Foreign Debt and Human Rights,³ endorsed by the Human Rights Council after a broad consultative process,⁴ affirms that foreign debt constrains development and undermines human rights guarantees. As evidence, the Guiding Principles note that while fulfilling debt obligations the Heavily Indebted Poor Countries (HIPC) were unable to invest in protecting and promoting human rights, but that once debt was forgiven, allowing for state investment in public services and human rights, such investment spurred national development. The Guiding Principles also notes that the current system of foreign debt is not achieving purported development goals, and that, based on a general UN commitment to development and Articles 55 and 56 of the Charter, both debtor and creditor states are obligated to promote development, which can be achieved by implementing the standards and measures outlined in the Guiding Principles. The standards and measures include, in part, human rights impact assessments relative to debt acquisition before lending, prohibition on retrogressive measures relating to the protection and promotion of human rights due to debt obligations, guarantees that debt is acquired only for legitimate projects with defensible development goals and by legitimate authorities, due diligence and full disclosure on proposed loans and participation by stakeholders in the process, oversight by representative bodies and civil society, and holding private lenders accountable to the same standards through domestic law of resident states. Thus, the purpose of the Guiding Principles is to ensure that compliance with the financial commitments derived from foreign debt will not undermine the obligations to realize fundamental economic, social and cultural rights, as provided for in the international human rights instruments. Most recently, in March, 2014 and in response to a Human Rights Council request, the Independent Expert on the effects of foreign debt submitted Draft Commentary to the Guiding Principles which should aid in application of these guidelines.⁵

In contrast, international initiatives specifically related to economic crises and human rights are less developed. UN organs have articulated that the world financial crisis threatens the right to development, and that bank bail-outs and austerity measures have reduced government expenditures on human rights, development and social welfare, but no specific guidelines have been issued yet in this context. Instead, UN agencies have tried to address increased needs due to the crisis as identified within their specific mandates. ECOSOC has addressed the impact of austerity measures on human rights in concluding observations to states, as well as in a communication to states highlighting the need to focus policies and expenditures on employment, social welfare and human rights in general.⁶ The Human Rights Council has called on Special Procedures to address the economic crisis as it pertains to their mandates.⁷ Perhaps as a precursor to specific guidelines, expert meetings have been held, the latest in July, 2013; its focus was the impact of the financial crisis on the realization of human rights, and the specific concerns addressed included the question of accountability, non-retrogression with regard to economic, social and cultural rights, the impact

³ <http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/GuidingPrinciples.aspx>

⁴ (A/HRC/20/23) <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/20/23&Lang=E>

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(A/HRC/25/51)(http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A_HRC_25_51_A_UV.doc)

⁶ “Human rights and the financial crisis,” OHCHR

<http://www.ohchr.org/EN/Issues/Development/Pages/PromotingHRbasedfinancialregulationmacroeconomicpolicies.aspx>

⁷ See A/HRC/S-10/1 para. 9. Multiple mandates including the rapporteurs and independent experts on migrants, racism, education, health, slavery, sale of children, minorities, trafficking, violence against women, debt, food, housing, poverty and water, and the working groups on business and human rights, discrimination against women, and persons of African descent have addressed this issue. See Annex 2, OHCHR draft background note on Promoting a rights-based approach to economic stabilization, recovery and growth.

on marginalized groups, and promoting a rights-based framework to address financial crises which focuses on accountability, good governance, rejecting the inequality of the “too big to fail” premise, human rights impact assessments and a human rights response to economic recovery.⁸

In many ways a “rights-based approach” to the constraints of foreign debt and economic crises appears to match well with the primary themes of Sen’s “Development as Freedom” approach. Sen’s civil and political rights theme encompasses the call for stakeholder participation and monitoring in the debt context as well as concerns about good governance raised in the economic crisis context. Sen’s economic facilities concept encapsulates concerns about job training and job creation, while social opportunities are reflected in education for career employment. Likewise, protective services coincide with calls for investment in public services, social welfare and healthcare. Lastly, transparency guarantees are reflected in both the debt and economic crisis context as concerns for accountability, due diligence, and regulatory reform. Reflecting on the interplay between these three frameworks raises valid questions as to whether or not excessive austerity measures, economic inequality and a lack of transparency in decision making is counterproductive. This is especially true now that the G20 nations recently agreed to a new policy of “bail-ins” to address the next financial crisis, without having conducted any broad consultation.⁹ For all of these reasons, research on these issues is timely and of great potential value.

Scope

The aim of this research project is to explore broadly the nexus between foreign debt and/or economic crises and human rights. The final research product will be composed of articles from the different Regional Master’s Programmes focusing on a regional perspective related to the impact of debt and /or economic crisis on human rights, or an aspect thereof.

Research questions

1. Actors: For your region and in the context of your chosen topic, who are the principal actors or players in the field (e.g. international/regional institutions, states, private corporations, others)? For each one, what in particular establishes them as a principal actor?
2. Norms/Process: For your region and in the context of your chosen topic, what norms, process or regulatory frameworks apply? To what extent or in which ways do the norms, process or frameworks relate to one or more of the three frameworks discussed in the background section above? In other words how is the regional and/or state domestic frameworks similar or different to the model(s) discussed above in relation to the nexus between debt/economic crisis and human rights?
3. Impact: For your region and in the context of your chosen topic, have the norms, process or regulatory framework facilitated or frustrated the protection and promotion of human rights, which rights principally, and in what context? For each right principally impacted upon, what indicators reveal that the norms, process or regulatory framework either help or hurt in the protection and promotion of the right? Consider evidence from international and/or regional

⁸ OHCHR, “An expert meeting on promoting a rights-based approach to financial regulations and economic recovery (Vienna, 1 July 2013)” <http://www.ohchr.org/EN/Issues/Development/Pages/PromotingHRbasedfinancialregulationmacroeconomicpolicies.aspx>

⁹ Global Research, “New G-20 Financial Rules: Cyprus-style Bail-ins to Confiscate Bank Deposits and Pension Funds.” <http://www.globalresearch.ca/new-g20-financial-rules-cyprus-style-bail-ins-to-confiscate-bank-deposits-and-pension-funds/5417351>

monitoring mechanisms (e.g. UPR, treaty-body reviews, etc., as ECOSOC has been actively commenting on such issues recently). Consider evidence from NHRIs and civil society actors as well as state and other institutional data.

4. Conclusions/Recommendations: For your region and in the context of your chosen topic, what issues need to be most urgently addressed, and what can be done to improve the system so as to ensure the primacy of human rights? Do any of the three models discussed above indicate or suggest how improvements could be made?

Structure

The final research work will be composed of a) an introduction to the themes and problems, b) analytical articles from regional perspectives relative to one or more of the general themes (i.e. debt and/or economic crisis and human rights), and c) a conclusion summarizing the work and offering appropriate recommendations. Each regional article should include a) a brief introduction, b) an analytical review that is responsive to the chosen topic from a regional perspective and that addresses the research questions, and c) a conclusion summarizing important findings and offering recommendations when appropriate. For the sake of uniformity between regional submissions, the analytical text of each regional work should follow the structure of the research questions 1-4 as much as is possible.

Format & Length:

Regional submissions should be structured to follow the research questions 1-4 above. Regional submissions will likely consist of 10 to 15 pages, not including appendixes consisting of interview summaries, surveys and data.

- Font: Times New Roman, size 12, footnotes size 10
- Quotes longer than 40 words should be indented in size 11 without quotation marks
- Single spacing, 6pt spacing between paragraphs
- Reference system: Harvard

Methodology

Desk top research and interviews:

Researchers should draw on primary and secondary sources of information published or issued by international or regional organizations and their subsidiaries or affiliates, state governments and their subsidiaries or affiliates, and reputable civil society actors (e.g. think-tanks, NGOs, etc.), as well as articles and data published in reputable academic journals and web sites.

Interviews may be conducted with representatives of international and regional organizations and their subsidiaries or affiliates, state governments and subsidiaries/affiliates, national human rights institutions (NHRIs), as well as relevant and reputable civil society organizations (NGOs). Interviews with individuals whose human rights have been impacted in fundamental ways as a result of foreign debt or economic crisis and within the chosen topic. A summary of any interviews or other means of documenting interviews is highly encouraged and such summaries may be included in an appendix to regional articles. Some researchers may also wish to conduct surveys and include in an appendix the survey and data results.

Timelines

- 23 January 2015 provide the Coordinator with titles of the articles, abstracts and the names of the research team;
- 17 April 2015 submit regional articles/reports which will be used for the discussion at the Global Classroom;
- End of May 2015 integrate insights and conclusions from the Global Classroom discourse and finalize the research;
- 05 June 2015 submit final versions of regional articles/reports.

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