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Panel: Strengthening the effectiveness of international assistance and cooperation in combating poverty**

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Poverty:

The number of people globally living in extreme poverty has *increased* in the past three decades if we don't factor in China.¹

Global inequality:

Inter-country income inequality continued to rise after 1980 if we take China out of the picture.

The point: 'Falling income inequality between countries is a function of China's fast growth (since the early 80's) and not a generalized tendency of the world system'.² We can thus conclude that the *generalized tendency of the contemporary world system is in fact greater poverty and inequality globally.*

Neoliberalism:

The liberal policies that have dominated the economic landscape for the past two and half decades are widely understood by even mainstream economists and policymakers to have failed in terms of their announced goals of more rapid economic growth, reduced poverty and more stable economies.³ These outcomes lead the 2008 Nobel prize winning economist Professor Paul Krugman (Princeton University) to conclude recently that: "The welfare benefits of globalization were oversold."⁴

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** International policy coherence was the subject of the preceding panel and is therefore not explicitly addressed herein.

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¹ Among other sources, Robert Hunter Wade, 'Globalization, Growth, Poverty, Inequality, Resentment, and Imperialism', in John Ravenhill (ed), *Global Political Economy* (2nd edn, Oxford University Press, 2008) 373, at 382. Wade's conclusion is for the period 1981-2001.

² *Id.*, 387.

³ William K Tabb, *Economic Governance in the Age of Globalization* (Columbia University Press, 2004) 3. Tabb concludes that: "[O]ver the years of neoliberal hegemony growth has slowed, poverty has increased, and economic and financial crises have plagued most countries of the world economy. The data on this is overwhelming." *Id.* Ha-Joon Chang's findings are: '[M]any developing countries have actually been performing quite badly over the last two and half decades. The annual per capita growth rate of the developing world has halved in this period, compared with the "bad old days" of protectionism and government intervention in the 1960s and the 1970s. Even this modest rate has been achieved only because the average includes China and India – two fast growing giants, which have gradually liberalised their economies but have resolutely refused to put on Thomas Friedman's golden straightjacket.' Ha-Joon Chang, Protecting the Global Poor, *Prospect Magazine*, Issue 136 (2007). Wade concludes: 'There has been a major growth slowdown during the age of intensified globalization – post Bretton Woods, since around 1980 - compared with the previous two or three decades'. Wade, 381.

A central point underpinning these trends and conclusions is that world poverty does not exist outside the realm of *human choice* and the decisions of dominant states and institutions. Quite the opposite, the state of world poverty within which we find ourselves today is not an accident, but rather, in the words of Professor Susan Marks a ‘policy option’.⁵

In light of these less than stellar findings on poverty, inequality and economic policy, in the time I have I’d like to offer six reflections on **strengthening international cooperation for the realization of socio-economic rights** through a consideration of international law principles and doctrines.⁶ I will have to be brief, but we can revisit any of these points during the discussion.

Proviso - my focus is on the global economy including, notably, the impact of the **financial and economic crisis** on *developing* countries and the poor in those countries. Of course, that I am considering issues of international cooperation as regards industrialized states does not suggest that developing states are relieved of their own, domestic, human rights obligations in the wake of the crisis. However, I am preoccupied here with the plight of poor countries (and the poor in those countries) because:

- they are least responsible for the crisis;
- in many ways they are reliant on external actors for their recovery;
- they will take longer to recover from the crisis, and importantly;
- the impact of the financial and economic crisis results in absolute poverty, not merely relative poverty, as is the case in industrialized countries.

So the first point on strengthening international cooperation for the realization of socio-economic rights:

1. International cooperation in this area should focus not only on poverty i.e. the absolute position of the worst-off globally, but also on **global economic inequality**.

Socio-economic rights under international law are concerned with ensuring survival and *minimum* standards of dignity. This has resulted in inadequate consideration of why it matters to our concerns about poverty if others have more. The *relational* element matters for a whole host of reasons. To highlight just a few:⁷

- There is something intrinsically wrong, or unfair if some people are worse off than others, especially if the inequalities are due to circumstances beyond their control.⁸
- Equality can be an instrumental good in providing means to the desired end, for example, if it expedites poverty alleviation and contributes to human rights fulfilment; allows for greater participation in public life; renders advances more sustainable.

⁴ Paul Krugman, *Globalization and Welfare*, London School of Economics, June 2007. Notes on file with author. Lecture available at: www.lse.ac.uk.

⁵ Susan Marks, ‘Human Rights and the Bottom Billion’, *European Human Rights Law Review* 1 (2009) 37, at 48.

⁶ For the source of this obligation see, *inter alia*, Article 2.1. International Covenant on Economic, Social and Cultural Rights: ‘Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures’.

⁷ My current research on human rights, and global poverty and inequality from which this short section draws builds on a paper entitled *Affluence and International Human Rights Law* delivered in May 2009 at a conference on International Law and Global Justice, University of Oxford.

⁸ Adam Swift, *Political Philosophy* (Polity, 2001) 123.

- Economic inequality globally matters also because of the *process* by which that inequality has come about: it is a product of asymmetrical power and influence.
- Global economic inequality matters because it results in *arbitrary* disadvantage and the denial of human rights. If you happen to be a woman living in sub-Saharan Africa your chances of dying during pregnancy or childbirth are 100 times greater than women in high-income countries. This example suggests that it is not just poverty that offends, but the arbitrariness of their lot given the state of inequality.
- The UNDP reports that the world economy at present has 40% of the population living on income so low as to preclude fully participating in wealth creation.⁹ The ability of the poor to participate in the shared life of a global society is rendered impossible due to their absolute position of poverty, but *exacerbated* by the exclusion caused by their *relational* poverty.

In sum: international cooperation for the realization of human rights needs to confront directly inter-state inequality and its implications.

2. World poverty constitutes **indirect discrimination** against the poor.

This situation in which the global poor find themselves might also be understood as discriminatory. The rules that regulate the global economy *may not set out* to exclude them from accessing an adequate standard of living, education etc - goods that *others* with adequate resources can secure - but they do. This constitutes indirect discrimination under international human rights law.¹⁰

3. Given the policy failures of the past 25 years outlined at the start of my paper, and the circumstances wrought by the financial crisis, post-crisis mechanisms should impose a **burden of proof** on the relevant international financial institutions and states designing the recovery architecture.

In the absence of overwhelming evidence demonstrating the advantages of inequality for poverty reduction,¹¹ the burden of proof should shift to those governments, policy-makers and international institutions that are implicated in the production of the global inequality we know today, to show that economic policy is consistent with the demands of basic human rights. It should be for them to demonstrate, for example, that global inequality is not damaging to poverty alleviation efforts and that

⁹ UNDP, *Human Development Report 2005: International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World* (Oxford University Press, 2005) 38.

¹⁰ Under international human rights law discrimination is any distinction based on the prohibited grounds – grounds that include economic and social situations - which has the purpose or *effect* of nullifying and impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms in the political, economic, social, cultural or any other field. Indirect discrimination refers to laws, policies or practices which appear neutral, but have a disproportionate impact on the exercise of rights by particular groups. See, Committee on Economic, Social and Cultural Rights, General Comment no 20, Non-Discrimination in Economic, Social and Cultural Rights (Art. 2(2)), UN Doc E/C.12/GC/20 (2009).

¹¹ Free-market advocates will argue that income inequality (a hallmark of trade liberalization) ‘provides incentives for effort and risk-taking, and thereby spurs efficiency and productivity, the gains from which will trickle down’. In fact, there are no definitive conclusions as to whether rising level of income inequality causes faster growth, and ‘even if strong relationships between inequality and subsequent growth were found, the causality is questionable’. Wade, 401. ‘The evidence against trickle-down economics is now overwhelming, at least in the sense that an increase in average incomes is not sufficient to raise the incomes of the poor for prolonged periods.’ Joseph E Stiglitz, ‘Is there a Post-Washington Consensus Consensus?’ in Narcis Serra and Joseph E Stiglitz (eds), *The Washington Consensus Reconsidered: Towards a New Global Governance* (Oxford University Press, 2008) 41, at 47.

post-crisis reform, limited merely to tinkering around the edges of global capitalism (the response so far), is best for *shared* benefits and *sustainable* development.¹²

4. A stronger role for the international law doctrine of **due diligence** is needed. The aim is to strengthen policies of world poverty *prevention* and to facilitate attributing responsibility when there are many actors and complex causal relations.

Due diligence requires - in the first instance - a positive 'duty to prevent' the violation of human rights. Applying the familiar due diligence standard internationally in the context of world poverty, it could be asked whether the relevant states acting individually or collectively *ought* to have acted differently and thus are wholly or partly at fault for the current state of affairs; could these actors have *foreseen* that their conduct and decisions would lead to these events occurring (increased poverty, financial crisis); and could they have reasonably averted the harm without substantial costs to themselves? These questions might become part of **assessing compliance** with obligations of international cooperation.

5. Establish and apply **indicators for attributing responsibility** under conditions of globalization.¹³

While all states are to cooperate in order to contribute to the common objective of eradicating world poverty, the responsibility of a state for the creation of a just economic order should be in accordance largely with its weight and capacity in the world economy. The content of this principle of common but differentiated responsibility in the context of international cooperation for human rights provides the basis for four indicators that may assist in determining responsibility for world poverty:

- A. Responsibility may be determined as a result of the contribution that a state has made to the emergence of the problem;
- B. Responsibility may be determined as a result of the relative power it wields at the international level that is manifested as influence over the direction of finance, trade, and development;
- C. Responsibility may be determined based on whether the given state is in a position to assist;¹⁴
- D. Responsibility can be determined on the basis of those states that benefit most from the existing distribution of global wealth and resources.

6. It is a basic tenet of international law that victims (in general international law terms: 'the injured state') are entitled to adequate **reparation**, including restitution, compensation, satisfaction, or *guarantees of non-repetition*, for failure to apply a convention.¹⁵

¹² Žižek remarks that increased state regulation and global coordination will ultimately strengthen the capitalist system. John Thornhill, 'The Modest Marxist,' Lunch with the FT: Slavoj Žižek, *Financial Times*, 7-8 March 2009. For an example of thinking outside the box see, 'Prosperity without Growth?: Transition to a Sustainable Economy', *Sustainable Development Commission* (UK), 2009.

¹³ These indicators are drawn from, Margot E Salomon, *Global Responsibility for Human Rights: World Poverty and the Development of International Law* (Oxford University Press, 2007) 193.

¹⁴ '... [I]nternational cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard. Committee on Economic, Social and Cultural Rights, General Comment no 3, The Nature of States Parties' Obligations (Art. 2(1)), UN Doc E/1991/23 (1990), annex III, para. 14.

¹⁵ 'Any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such

Reparation could take many forms:

- commitment to strengthening the human rights architecture, including through ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;¹⁶
- a commitment to the meaningful development and application of the obligation of international cooperation along the lines of what has been discussed during this forum;
- the meaningful and expeditious reform of the global financial architecture in a manner that recognizes and integrates the contemporary and holistic understanding of development; and the international legal principles and norms that underpin the global order (e.g.: human rights, environmental law);¹⁷
- guarantees of non-repetition through a commitment to cooperating internationally for the realization of socio-economic rights by seizing the present moment as an opportunity to devise an alternative program of globalization better suited to compliance with the universal human rights standards.

The poor and new poor need more than improved regulation and strong rhetoric around global solutions. What is **required in this post-crisis period** of reflection is a rigorous consideration of what constitutes an optimal system for the proper integration of socio-economic rights under conditions of globalization, and meaningful and expeditious changes to the international political economy backed up by strong human rights enforcement mechanisms.

violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition.’ Committee on Economic, Social and Cultural Rights, General Comment no 12, The Right to Adequate Food (Art. 11), UN Doc E/C.12/1999/5, para. 32; Articles on the Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission on the work of its 53rd session, UN Doc A/56/10 (2001).

¹⁶ In the case of the US, ratification of the Covenant too. See further, Sakiko Fukuda-Parr and Margot E Salomon, ‘A Human Rights Analysis of the G20 Communiqué’, *Carnegie Council on Ethics and International Affairs Online*, 4 May 2009. http://www.cceia.org/resources/ethics_online/0033.html

¹⁷ See, Daniel Bradlow, ‘Assessing International Financial Reform’, in Julio Faundez and Celine Tan (eds), *International Law, Economic Globalization and Developing Countries* (forthcoming, Edward Elgar Press, 2010).