A BOTTOM-UP APPROACH TO RIGHTING FINANCIAL REGULATION

Why is a Human Rights Approach Needed in Financial Regulation?

Protests are rippling from Wall Street to all parts of the globe, and the ongoing effects of the financial and economic crisis have brought home to people worldwide the intrinsic connection between financial regulation policies and the social contract in any given society.

This is in stark contrast to the two particular myths prevailing before the financial crisis. The first was that private financial firms could be trusted to exercise self-regulation. By seeking out their own self-interest, it was argued, the firms would inevitably end up pursuing the behaviors that were optimal, ultimately, for society as a whole. Government regulation was seen as an intrusive attempt to second-guess the outcome that market forces in their free interplay would achieve. Another prevailing myth was that the framing and design of financial regulation must be reserved to certain trained experts, only ones qualified for the job because of their understanding of the technical complexity of financial markets. Technocracy was to rule the market, not the rest of democratic society.

The financial collapse and its aftermath represent a moment of awakening about the interdependence of financial regulatory choices with a broader set of public interests. In a resolution issued in 2009, the Human Rights Council —the world's foremost human rights organ--recognized the "negative impact of the global economic and financial crises on economic and social development and on the full enjoyment of all human rights in all countries."[1]

Three years after the crisis, indeed, basic human rights continue to be affected. The impacts on budgets due to lower revenues and the rescues of financial firms generated knock-on effects on sovereign debt that have become today sources of uncertainty and the sources of a looming new crisis.

After an initial period where governments were encouraged to increase social spending to counteract the crisis, a recent study reveals that 91 countries have either significantly reduced expenditures or on their way to reduce them next year—with social protection, old-age pensions, wages, education, healthcare and social security facing serious cutbacks, leaving deep, long-lasting scars upon people's well-being and basic dignity.[2]

It is estimated that more than 40 million people around the world were driven into hunger as a result of the 2008 food price crisis. While the food price inflation may be partly due to fundamentals of demand and supply, the Special Rapporteur on the Right to Food found evidence that such developments "were exacerbated by excessive and insufficiently regulated speculation in commodity derivatives." [3]

Now more than ever there is a need to counter-balance the often myopic views of financial experts with a broad array of social groups (consumer, labor, women, environment, indigenous people, and other "human rights-holders") in the design of financial policy. Reciprocally, democracy in any meaningful sense rests upon a legitimate contribution of all people to the design of public policy, including related to financial regulation.

But if this is true, the human rights considerations cannot be addressed only at the apex of a crisis to mitigate or remedy the consequences. Forward-looking steps are needed if financial regulations are to prevent crises or ensure their effects do not unjustlly harm ordinary people. Human rights principles and standards—including participation, transparency, equality and non-discrimination and above all accountability—must form the cornerstone of financial regulatory efforts from the design to implementation to monitoring stages.

1 A/HRC/RES/12/28

2 Ortiz, Isabel, Jingqin Chai and Matthew Cummis 2011. Austerity Measures Threaten Children and Poor Households. September. UNICEF, New York.

3 De Schutter, Olivier 2010. Food Commodities Speculation and Food Price Crises. UN Special Rapporteur on the Right to Food. Briefing No. 2. September.

Fundamental human rights—as laid out in the International Bill of Rights--must be the primary consideration in decisions on the generation and the allocation of public resources, employment, the provision and access to essential reproductive services, and many other public policies. International human rights law requires governments to protect people from abusive behavior by the private sector—including financial actors—which leads to human rights harm.

Nonetheless, whatever role human rights considerations play, choices on whether to regulate or not to regulate the financial sector, and how, will have clear implications for the extent to which governments can ultimately fulfill their commitments in those areas. In extreme cases, an economic emergency situation might result, as we have seen, in democratic political processes being swiftly brushed aside to respond to a crisis.

Of course, this argument may make perfect logical sense but, for those working on the trenches of human rights advocacy and defense, getting involved in financial regulation matters is much more easily said than done. In fact, the second myth referred to above was more than a belief. It was consistent with the reality that, on account of their technical and complex nature, financial regulations have typically been hard to access but by a few experts. This made those regulations easy to capture by the lobbying of large and well-resourced financial firms and experts on their payrolls, while impairing access by, and accountability to, the broader public.

"A bottom-up approach to righting financial regulation" is an initiative that seeks to build the capacity of human rights organizations, grassroots and social movements to engage in the financial regulation debate, assess the human rights merits of alternative approaches and their trade-offs, and determine priorities, always taking as a starting point the interests of the constituencies they serve. It starts with encouraging human rights organizations, including ourselves, to reflect, individually and collectively, on some basic questions such as:

- Where and how do the interests of the constituencies whose rights we advocate get affected by financial regulations or the lack thereof?
- What does it mean, in practical terms, to bring human rights standards to bear in the financial regulatory decisions? Are there alternative regulatory choices that, if pursued, are likely to go farther in meeting human rights commitments?
- How are financial regulations designed, implemented and monitored? Who participates and who does not? Why?

Human rights advocates have an essential role to play in demanding and making real the accountability of governments in their financial regulation processes to human rights. At the international level, the UN human rights machinery, including Special Rapporteurs and human rights monitoring bodies, have been asked by the Human Rights Council to report, within the realms of their respective mandates, on the human rights impacts of the financial crisis. This role will hardly be fulfilled, however, without the active intervention of the human rights community to bring the examples and cases to their attention.

On the other hand, it is crucial that human rights organizations also go beyond their "comfort zone," and demand recognition as legitimate interlocutors of the authorities dealing directly with finance, nationally and internationally. For this, the human rights community will have to find its voice, develop and agree on proposals that its constituencies are capable of supporting and defending.

Building capacity for human rights organizations to carry out advocacy on financial regulation matters will not happen overnight, but this is not a reason not to begin the process today. Ultimately, doing so is not only in the interest of the human rights community, but represents the only path to reforms of the financial sector that guarantee more sustainable, more resilient, more just and more democratic financial and economic systems.

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202.635.2757 PHONE | 202.832.9494 FAX
1225 Otis St. NE | Washington, DC 20017
www.rightingfinance.org