



# Dignity, or Indignation? Implementing a Human Rights- Centered Framework to Economic Policies

Human rights and the financial crisis in focus  
Monday, 1 July 2012  
Vienna  
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**CENTER FOR ECONOMIC  
AND SOCIAL RIGHTS**

# Summary

1. 3 structural roots of financial crisis
  - a) Financial regulatory failures
  - b) Accountability deficits
  - c) Growing income inequality
2. The evolving human rights normative framework
3. Some human rights-centered economic policy alternatives to austerity

# 3 key causes of the financial collapse

## 1. Financial regulatory failures

"Major failures in financial regulation, supervision and monitoring of the financial sector...compounded by over-reliance on market self-regulation, overall lack of transparency, financial integrity and irresponsible behaviour, have led to excessive risk-taking, unsustainably high asset prices, irresponsible leveraging and high levels of consumption fuelled by easy credit and inflated asset prices. Financial regulators, policymakers and institutions failed to appreciate the full measure of risks in the financial system... the unfolding crisis...has demonstrated the need for more effective government involvement to ensure an appropriate balance between the market and public interest."

~ UN General Assembly Resolution  
63/303, 2009

[www.cesr.or](http://www.cesr.or)



# 3 key causes of the financial collapse

## 2. Deficits in accountability and effective remedy (Taleb 2010)

Moral hazard, flawed incentives and the abdication of personal and institutional responsibility at play.

In absence of an effective and predictable system of risk management, meaningful sanctions, accountability, and system of remedies to prevent and deter extreme risk-taking, private financial actors could push downside losses onto society while enjoying the upside gains, free from having to directly bear the costs of their own conduct, even when criminal.



‘It is the government job to cover the losses beyond a certain point.’  
--Finance professional

# 3 key causes of the financial collapse

## 3. Income inequality & financial instability (IMF)

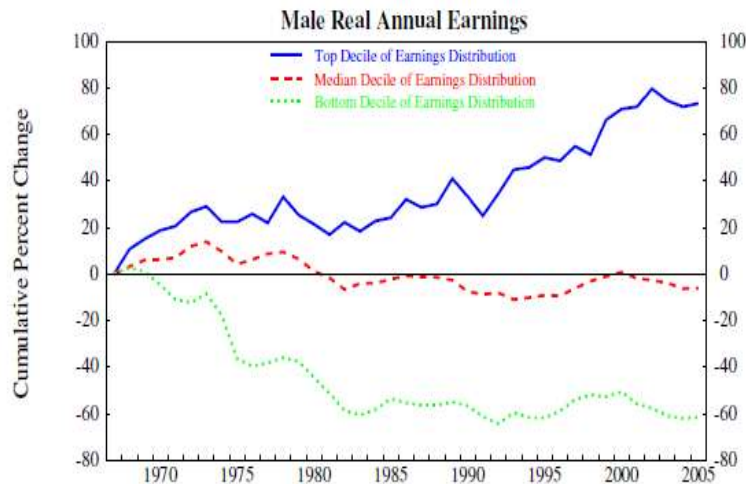


Figure 6. The Size of the U.S. Financial Sector

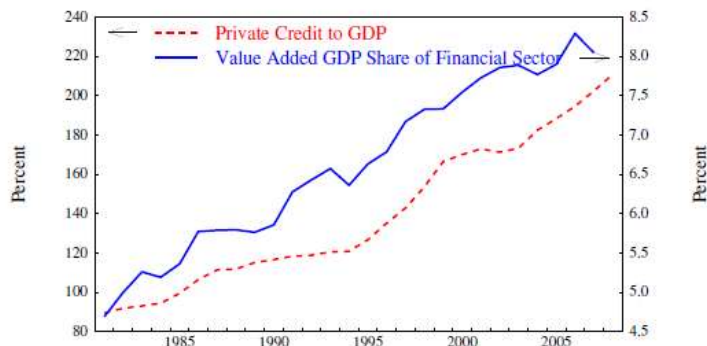


Figure 5. Debt to Income Ratios

Cumulative Percent Change

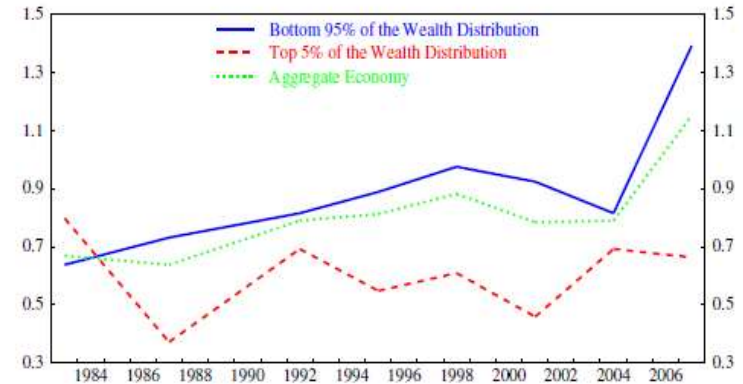
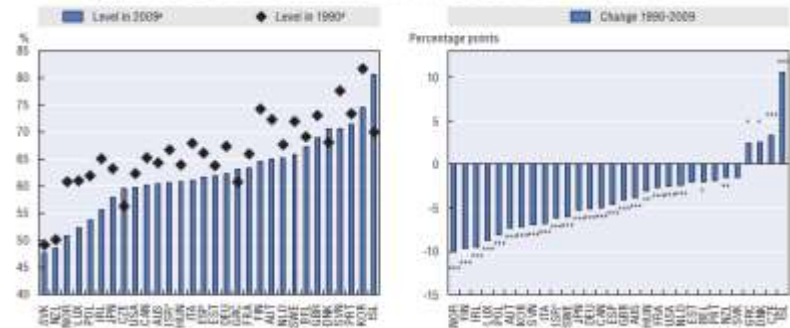


Figure 3.1. The decline of the labour share in OECD countries, 1990<sup>a</sup>-2009<sup>b</sup>



# Evolving Human Rights Framework

- *Economic policy is public policy.*
- Human rights norms, standards and policy can't give detailed prescriptions universally, but can provide a normative framework as well as operational redlines for the entire economic policy-making cycle.
- Vis-à-vis the regulatory failures, accountability deficits and deepening income inequalities...  
→ Growing convergence around the need for a **protective, regulatory, pre-distributive** and **redistributive** roles of government.

# Applying human rights to economic policy in crisis

Economic, social and cultural rights (including right to decent work) entail legal obligations for States to:

- **Respect:** refrain from interfering with rights
- **Protect:** prevent abuses by business and other third parties and hold those responsible to account
- **Fulfill:** create conditions for the realization of rights
- **Remedy:** guarantee effective remedy for human rights abuse, including when necessary judicial remedies.

# Human rights standards and principles relevant to economic policy

## Obligations of **conduct**:

- To **take steps** (legislative, judicial, budgetary, administrative and other) to fulfill ESCR, including through national planning (ICESCR, OP)
- To use **maximum available resources** to ensure progressive realization
- Through **international cooperation and assistance** (ICESCR, CRC, CRPD)
- To ensure **participation, transparency and accountability** through the policy cycle (CESCR GCs)

## Obligations of **result**:

- Progressive realization: move swiftly towards increased levels of rights enjoyment, with **no deliberate retrogression (“backsliding”)** unless **justified** (ICESCR Art 2)
- **Minimum core obligations**: immediate duty to prioritize achieving minimum essential levels of rights enjoyment universally (CESCR GC 3)
- **Non-discrimination**: duty to ensure substantive equality in enjoyment of rights (ICESCR and GCs)
- To ensure that relevant services are available, accessible to all, acceptable and of adequate quality (CESCR GCs)



# Ensuring the maximum available resources for economic and social rights

## Five areas for maximizing available resources



**The Maximum Available Resource (MAR) Star (CWGL 2011)**

# MAXIMUM AVAILABLE RESOURCES (MAR) STAR

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- **Government Expenditure and Allocation:** can fulfill economic and social rights through social spending (spending on education, health etc.), public investment (infrastructure), etc.
- **Government Revenue:** Taxation is the most important way in which governments mobilize and redistribute domestic resources to provide public goods, social services and social protection and to protect human rights enjoyment through re-pricing. (Revenue < Expenditure = budget deficit Fiscal deficit needs to be somehow financed)
- **Debt & Deficit Financing:** might positively or negatively affect human rights depending on the assets built through borrowing and sustainability of debt.
- **Monetary Policy & Financial Regulation:** directly affect available resources by influencing interest rates (affecting employment, housing) and exchange rates (affecting competitiveness in international markets and growth).
- **Development Assistance:** can augment the resources available to a government and support the realization of social and economic rights.

# Extraterritorial obligations to economic and social rights in the context of crisis

## Extraterritorial obligations have been interpreted (2011 Maastricht Principles) to include duties to:

- **Respect:** “Do No Harm” *directly* or *indirectly* by impairing the ability of another State to comply with its obligations or assisting another to breach them
- **Protect:** take necessary measures to prevent abuses by business and other third parties which the territorial State is in a *position to regulate*
- **Fulfill:** create an international enabling environment (e.g. macroprudential stability), and cooperate to mobilize the maximum of available resources, (including int’l assistance) commensurate with capacity and available resources for the universal fulfillment of rights
- **Remedy:** ensure availability of effective remedy for human rights abuses

# Proposals for Human Rights-Centered Economic Policy Alternatives to Austerity

## Fiscal Policy

- ***Inclusive Growth or Austerity Trap?*** Counter-cyclical economic policies--non-discriminatory, participatory, transparent and accountable--allow for greater fulfillment of ESCRs (and protection of decent work) of those in most need, with direct multiplying effects on growth, employment and improved income equality.
- ***Social Protection Floor for All:*** Embodies a human rights focus on most vulnerable, fulfilling a minimum core level of rights, serves as economic stabilizer, is affordable and builds human assets needed for productivity.
- ***Tax Justice:*** Involves maximization of available resources, by broadening fiscal space nationally and extraterritorially in progressive, equitable, non-discriminatory ways (e.g. widening tax base from those who can bear burden, innovative financing sources eg FTT, improving tax collection, zero tolerance for cross-border tax evasion and illicit financial flows)

# Proposals for Human Rights-Centered Economic Policy Alternatives to Austerity

## Monetary Policy

- Central banks are important human rights duty-bearers, essential players in determining overall employment and the enjoyment of other economic and social rights, such as housing.
- Transparency, participation and accountability in monetary policy cycle a particular challenge, with few mechanisms to hold the central banks transparent and accountable, even to their own legal mandates.
- ***Balancing inflation stabilization with full employment-oriented targets and financial stabilization functions key , especially in relatively deflationary period***

# Proposals for Human Rights-Centered Economic Policy Alternatives to Austerity

## Financial Regulatory Policy

- **Protecting** against individual and systemic human rights abuse by private actors, preventing future financial crises and holding those responsible for the financial crisis to account
  - *Gambling on famine*: Curb financial speculation contributing to commodity price volatility
  - *End Too-Big-to-Fail*: Reduce the size and complexity of systemically important financial institutions, breaking up large firms through direct regulatory intervention, if necessary
  - UN SRs: “States must protect budgetary resources from being compromised by future bailouts and commit to creating a regulatory framework that ensures such resources are not directed to failing financial firms.”
  - Strengthen *Bank Capital Requirements* to Prevent Future Human Rights Abuse [www.cesr.org](http://www.cesr.org)



## A BOTTOM-UP APPROACH TO RIGHTING FINANCIAL REGULATION

A new, young initiative to ***expand peoples' voices in financial regulation*** by creating space to meaningfully relate financial regulation debates to people's existing human rights struggles at national and global levels in three dynamic ways...

1. Make link between human rights framework and on-the-ground struggles with financial regulatory policies
2. Generate proposals for ensuring financial regulation is placed at the service of society
3. Build cross-national alliances and advocacy strategies



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# Proposals for Human Rights-Centered Economic Policy Alternatives to Austerity

## Accountability from a Human Rights Perspective

- “No human rights without human remedies”: Accessible and effective mechanisms (via courts, political institutions, or administrative bodies) enable rights-holders to make their rights *enforceable* and to seek *remedy* and corrective action when their rights have been violated.
- How to apply right to effective remedy—including compensation and guarantees of repetition—to financial crisis? Individual and structural remedy?
- UN SR Extreme Poverty: governments “should ensure adequate means of redress for those adversely affected by the actions taken by financial sector institutions, and adopt regulations that discourage harmful practices by providing for accountability mechanisms that penalize risky behaviors and prosecute perpetrators.”



# In conclusion...

- Human rights law and practice can provide a universally-applicable but nationally-tailored **normative framework** as well as **operational redlines** to guide the design, implementation and monitoring of economic policy.
- **Normative basis for a restored protective, regulatory, pre-distributive redistributive** role of government.
- Embedding human rights norms and principles in economic policy necessary for **moral, legal** and increasingly **economic** reasons. Financial stability rests on improved income equality, accountability and remedy and regulatory action to prevent and when necessary punish harm.
- Human rights norms, principles and mechanisms provide empowering tools to battle for more **just, resilient, inclusive** and **sustainable** economic policy alternatives—domestically and across borders.

# Additional Resources

- Joint ESCR-Net publication: *“Bringing Human Rights to Bear in Times of Crisis: A human rights analysis of government responses to the economic crisis,”* March 2010
- CESR Fact Sheet on Economic and Social Rights in the USA post-crisis
- Center for Women’s Global Leadership: *“Maximum Available Resources and Human Rights Analytical Report”* 2011
- UN Special Rapporteur on Extreme Poverty and Human Rights 2011 Report on Economic Recovery Measures
- Ortiz and Cummins, *“Age of Austerity”*
- [Rightingfinance.org](http://Rightingfinance.org)
- CESR briefing: *“Mauled by the Celtic Tiger: Economic and Social Rights at Risk in Ireland’s Recession”*
- CESR Fact Sheet and UN CESR Submission on *Austerity-Driven Economic and Social Rights Regressions in Spain*
- CESR briefing: *Fiscal Fallacies: 8 Myths about the “Age of Austerity” and Human Rights Responses*
- *“Only the Little People Pay Taxes”: Tax Evasion and Switzerland’s Extraterritorial Obligations for Economic, Social and Cultural Rights in Zambia*
- CESR briefing: *Human rights legal challenges to austerity* (forthcoming)

