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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Poverty as a violation of human rights*

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Summary

The working paper conceptualized poverty, in particular extreme poverty resulting in social exclusion, as a violation of human rights. To this end it surveys a number of current initiatives and advocates a conception of poverty as an absence or underdevelopment of human capabilities and freedoms. The document concludes by emphasizing the need to empower the poor as a poverty-reduction human rights strategy.

* The notes are circulated in the language of submission only.

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Introduction

1. This document,¹ submitted pursuant to resolution 2003/14 of the Sub-Commission on the Promotion and Protection of Human Rights, seeks to make a contribution to a process whereby the international community comes to think of poverty as a human rights violation and acts accordingly. In a world convulsed by war and violence, where the great majority live in poverty and want, it might seem naive to contemplate such a prospect. In this paper, however, an effort is made to argue rationally for an approach that should contribute to a more humane form of globalization and international relations. The Social Forum and the work of the Sub-Commission, together with that of a number of other bodies,² provide an opportunity and a duty to make progress towards this end.

I. POVERTY AS A MASSIVE AND ONGOING VIOLATION OF HUMAN RIGHTS

2. Poverty, it has been said, is the greatest ethical challenge facing the world today. Although there are surely other more pressing political problems, such as terrorism and world peace, the situation of the poor in today's world presents a long-term problem with the most complex consequences for the stage of development achieved by humanity with today's globalization, as well as raising ethical considerations.

3. Although some progress was made in the 1990s, poverty indicators continue to worsen rather than improve. It is not the aim of this paper to offer an analysis of poverty, on which various reports and studies already exist.³ What is important is simply to note that poverty is spreading, is growing worse in some regions and among some groups, and is translating into permanent exclusion.⁴

4. Most people and families living, for example, in poverty and extreme poverty are in rural areas of Africa, Asia and Latin America. In Latin America, for example, there is a persistent increase in extreme poverty in rural regions. In many cases traditional ways of life have been "shattered" by partial and aggressive modernization, leaving the population highly vulnerable. There are no or very limited opportunities throughout entire regions. The Social Forum in 2004 will consider these situations, which are, perhaps, the most difficult arising in today's world. Urban poverty, in particular in major cities, has worsened in recent years. Masses of migrants, as a result of the rural crisis, are moving to live in communities on the outskirts of cities in both Third World and developed countries, changing the face of many cities that until a few years ago prided themselves on not having great masses of the poor among their population. For many, poverty has turned into permanent exclusion; the growth in the world's national economies bypasses them, since they remain in a situation of poverty.

5. Accordingly in this paper we speak of poverty as a mass, structural and enduring phenomenon, present in both Third World and First World countries, in which individuals and families are subjected to poverty by external forces and decisions which have nothing to do with them and over which most of the time they have no control. It is in these cases, widespread throughout the world, in which we can say without fear of contradiction that a massive, flagrant and systematic violation of human rights is taking place.

6. While poverty is always a denial of people's rights in their dignity as human beings,⁵ it is in the cases referred to here, those of exclusion and "hard-core poverty", that it makes sense to speak of the international and national responsibilities of institutions and actors, since what is taking place is the systematic denial of any opportunity to enjoy the intrinsic rights of human beings.

7. Poverty thus understood appears as an arbitrary imposition on certain individuals and groups, and constitutes flagrant discrimination in a world which sees itself as increasingly interdependent. Accordingly, for roughly a decade the view has been expressed in international agencies that extreme poverty in particular and poverty in general constitute a denial of all human rights, whether civil and political or economic, social and cultural, as well as a massive violation of fundamental individual rights.⁶

II. A CULTURAL MOVEMENT FOR THE RIGHTS OF THE POOR

8. The aim of this paper is to work towards a paradigm shift in the analysis of poverty. The focus has usually been on the needs existing in the world of the poor. This is an extremely limited approach, however, and has proved ineffective in poverty eradication programmes, often imbuing these with attitudes of compassion without considering the global phenomena behind poverty; such programmes fail to deal with the poor within a framework of dignity and rights so that they are understood as "victims" of violations, or to consider anti-poverty measures as processes in which the right to redress and indemnification is recognized. This working paper takes a rights-based approach, linking poverty with human rights and the dignity of the human person. Since poverty ultimately consists of the denial of the fundamental rights of the human person, it is in this sense a violation of human rights, perhaps the most massive in today's world. As Nelson Mandela stated at the Copenhagen World Summit on Social Development, it is the modern face of slavery, and in this sense it is the duty of contemporary society to abolish and eradicate it.

9. This paper draws attention to the increasing concern at international forums over the growth in world poverty. The paper is part of an ever-growing cultural and social movement that seeks, firstly, to raise awareness of the problem and, secondly, to create international legal instruments that clearly express the refusal of the international community to accept poverty as a "natural", insoluble phenomenon in the modern world. It represents an effort to increase awareness of the unacceptability of viewing poverty as an undesired but intractable side effect of economic growth, investment, international trade, finance, and modernization policies. The proposal for an international declaration, to be solemnly adopted by States, on "poverty and human rights", identifying, inter alia, poverty, and in particular situations of extreme poverty, as a violation of individual rights, will be the first step on the road to eradication, placing legal obligations on the various private, public, national, international and financial actors engaged in these processes.

10. The establishment of higher levels of commitment and obligation on the part of the international community might perhaps help to resolve the contradiction between decisions taken in the economic and financial system at the national and, in particular, at the international level, and policies intended to address poverty. Poverty alleviation policies are, for the most part, the

“ambulance” picking up the casualties left by economic policy measures. A rights-based approach, moreover, places humanitarian and “philanthropic” programmes in a dynamic framework, questioning the dependency and subordination engendered by many charitable programmes, which seek to mitigate the unforeseen consequences of economic and financial decisions and non-decisions.⁷ A rights-based approach leads to an understanding of poverty from an economics and ethical standpoint, that is from the standpoint of decisions taken in the world of business and those taken or those that should be taken in the legal and political context.

11. As noted in various forums, this involves a “holistic approach” to the study of poverty. On the one hand it involves not hiding the underlying causes of poverty, which not only perpetuate themselves but produce “new poor”, and, on the other hand, not isolating poverty eradication programmes and measures from the economic, social and cultural, and also military phenomena that give rise to and explain it. Lastly, this approach allows for participation, enhancement of dignity, self-management of resources, empowerment, and exercise of fundamental rights by the poor and their organizations, the only viable road to overcoming poverty.

III. POVERTY, GLOBALIZATION AND GOVERNABILITY

12. It is important to be precise when referring to contemporary poverty, that is, the poverty occurring and being perpetuated in the current period of “globalization”.

A. Undermining the fable of social integration and neodualism

13. “Potential economic growth”, at this time of globalization, has become a visionary horizon for most of our societies and their leaders. In this framework of potential, the “fable of social integration” has been undermined, in many cases completely. What characterized policy and civic culture in most societies in the First, Second and Third Worlds until the mid-twentieth century and after was the “fable of social integration”. Leaders were of the view that their countries could achieve social integration, reasonable levels of equality, and equitable and adequate systems of protection; that they could construct coherent societies and strong States, and could make policy a system of communication able to imbue inherently diverse and complex societies with a sense of unity. These ideals, shared by both sides in the cold war, have faded, so that today, at the dawn of the twenty-first century, they are hard to find. The fable of integration has faded away. “Potential economic growth”, which is characterized by a kind of structural “neodualism”, results in one sector of the economy and of the population benefiting and the other merely waiting or being content with the crumbs given to them by social policy or philanthropic agencies.

14. The undermining of the fable of social integration is perhaps the most significant phenomenon during the current period of globalization at the international level, and is clearly apparent in the South. Elites consider that development and economic growth are possible, but will not “drag up” most of those excluded. Exclusion is becoming a permanent phenomenon, and has begun to be seen as part of the “nature of things”. Charitable and philanthropic activities are coming to replace “social justice”.

B. Globalization, distribution of wealth and poverty

15. The above considerations would not be sufficient in considering structural poverty without an understanding of the international and national contexts in which it occurs. Inequality in income distribution is increasing at the national and international levels, furthering the erosion of egalitarian and integrationist constructs.⁸ Of course, in this case the causes are to be found in global economic and political processes, that is, in the characteristics assumed by the world economy, and in so-called globalization. We must not forget that room for manoeuvre by national economic actors, in particular Third World countries, is very limited, even if we find that there is a genuine will for change and transformation on the part of Governments, which is not generally the case. Nevertheless, attributing everything to “globalization” is and would be an error of judgement. A second crucial factor is the capacity or incapacity of national States for internal and external coordination. This is what we term “governability”: the capacity of a State to coordinate society internally (“social integration”), and to coordinate economically, socially and politically with the international context and environment in which it actually operates (“international integration”). We use the concept in the two senses, and not only in terms of the capacity for legitimacy that a government has vis-à-vis its citizens, as it is generally used.⁹

16. One of the most important issues in the century now beginning, as is readily apparent from the demonstrations that attend each world gathering, is the relationship between decisions on international trade taken at the level of States and multinational or multilateral bodies and the consequences at the country, regional, local or individual level.¹⁰ It is well known that there exists an enormous gulf between those taking decisions and those who are affected by them. This is particularly hard and brutal in the Third World, in which the future and potential development of entire regions are mortgaged to decisions taken far away and without their knowledge. The strengthening of global civil society forums and bodies for ethical communication, so-called “bottom-up globalization”, now presents an opportunity for dialogue in which central issues of interest to the international community are analysed. The United Nations, as a forum for international debate, has also in recent years come under critical scrutiny.

17. Globalization leads to the appearance, weakening and strengthening of new actors.¹¹ A significant set of ethical actors has agreed, without there being any particular organization involved, to demand compliance with economic, social and cultural rights in various domains and in particular in the health sphere. The Committee on Economic, Social and Cultural Rights, at its twenty-first session (15 December-3 December 1999) drew the attention of the World Trade Organization (WTO), meeting in Seattle, United States of America, to the need to respect economic, social and cultural rights in discussion of patents (see E/C.12/1999/9). The Convention on Biological Diversity and other agreements state that intellectual property rights must be made compatible with individual rights, and with the transfer of ecologically sustainable technology to the Third World. All this has led to greater awareness that there is a contradiction at the international level between property rights as discussed and adopted in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and human rights agreements, conventions and treaties (see Sub-Commission resolution 2000/46). This is today a central theme in the context of health, food, seeds and technological know-how. Economic, social and cultural rights are the defence of poor countries against “unbridled globalization”.

They are also an important element to be taken into account by trade unions in developed countries, which see how many industries are moved abroad, exported, in the quest for cheap, unregulated labour.¹²

C. Poverty, new actors and obligations of States

18. The Copenhagen Summit in 1995 stated that combating poverty and promoting sustainable lifestyles were moral, political and economic responsibilities of national Governments and the international community. The declaration, and subsequent declarations, have not made much progress in establishing machinery that would permit monitoring of the discharge of these responsibilities, let alone establish obligations.

19. A breakdown between societies and their economies and the complex processes of social disintegration are frequently unforeseen consequences of economic, commercial and financial decisions by private actors (in combination with public actors) that are frequently as or more powerful than States.¹³ The crisis of many social integration systems, which is creating some of the most acute dangers of conflict and violence, and not only in Latin American and Third World countries, stems from decisions taken by distant boards of directors, whose only concern is the financial results of their companies. The attitude of States towards multinational companies, however, is one of servility, as these constantly threaten to “migrate to the competition” where “better terms” are on offer, or else of impotence. This is why it does not seem possible for individual States, particularly small ones, to act alone, and decisions are required in the realm of international law.

20. Both theoretically and practically, the need for codes of conduct to govern the activities of transnational corporations, whether they engage in production, extraction, trade or, above all, finance, is a major challenge for the theory of human rights and international law. Hitherto the entire focus has been on the responsibility of States for the protection and enjoyment of human rights. But it is undeniable that globalization has created a different and far more complex situation. Globalized companies have taken over markets and it is not possible for any one country to regulate what these companies do. This is why the international community as a whole has to understand that globalization involves numerous actors and thus numerous responsibilities. We attach the greatest importance to the efforts being undertaken by major actors and individuals to secure a code of conduct that is binding on multinational corporations as well as a suitable court to which complaints can be submitted in the event that this code is breached.

21. A rights-based approach would change these situations, in which obligations appear to be voluntary and do not reflect the naked reality.

D. International cooperation and anti-poverty measures

22. The changes and transformations in international cooperation are further characteristics of contemporary globalization. State development agencies compete with multilateral public agencies and private and non-governmental organizations, in particular philanthropic

organizations.¹⁴ Recent years have seen the emergence of powerful organizations that move vast resources. In global terms the decade after the end of the cold war led to a reduction in international development cooperation and an increase in humanitarian and philanthropic cooperation.

23. The commitment undertaken by the international community to the effect that 0.7 per cent of gross national product (GNP) would be allocated to cooperation, the so-called 20/20 strategies, the promises and commitments to reduce external debt, and other similar initiatives, have, in recent years, existed only on paper or only partial initiatives have been taken. Most of these initiatives, have fallen by the wayside as resources for international cooperation have declined. In the South, there is a growing awareness that the generous cooperation, supposedly motivated by good will, during the cold war was strictly political or geopolitical. Once the threat was over, it declined and in some cases ended.

24. Humanitarian assistance has today grown in importance, with assistance being channelled in time of natural and other disasters, and in particular in time of political crisis and violence. Frequently such international aid takes on a political connotation and more than once has been used to exert pressure. Often the provision of international aid has determined the subsequent development of the country or region.

25. In many international cooperation agencies a tendency has emerged to copy or emulate the operating methods of private companies, in particular transnational corporations. Cooperation projects are required to produce a “social profit” in the manner of investment by companies. A work style is postulated in which self-assumed goals are more important than participatory decisions by the groups that are the recipients of the cooperation. It is of great interest to note in European and United States cooperation agencies the emergence of significant frustration at the lack of success in terms of development and cooperation, as if that supposed that the successes and failures depended exclusively on decisions taken at the project level and not on much broader global processes. Many observers “in the South” see, with enormous frustration, not only a reduction in funding in a context of sustained economic growth by the rich countries, but also scepticism on the part of donor institutions with regard to the tackling of the causes of poverty and the quest for creative solutions.¹⁵

E. Poverty and governability

26. The worst way for a country to confront globalization, however, is to do so without strong State institutions, with a weak, corrupt State whose laws are not respected and which has no political parties and no bureaucratic system capable of managing the system and making it governable.

27. International organizations caught up by the privatization mania suggested, when they did not impose, the shrinking of the State as a key factor in modernization and economic growth. The prescription was applied without the patient’s illness being known. International cooperation agencies, meanwhile, have also been chary of State institutions and their activities have often been instrumental in weakening local systems of power.

28. The case of the Argentine crisis is emblematic. The question arises of whether this is an economic or a political crisis. There is no doubt that the crisis has an economic impact, but in substance it is political, as has been demonstrated over the past year with the recovery of various indicators and the reconstitution of the system of federal government. State machinery was demolished, corruption bred scepticism, political parties were no longer able to provide the necessary link between the people and the State, and democracy collapsed. The result of the crisis was a devastated economy. In Africa the poorest countries are not necessarily those poorest in resources, but those in which there is no respected governing class, and in which the State has crumbled, and where social chaos thus prevails.

29. Governability is an essential prerequisite for the eradication of poverty. A country's capacity to participate in globalization, with effects that may be positive or negative, depends on the presence or absence of a State system, of a political elite, of a system of parties, of institutions able to strike a balance between global structural conditions and the globalized economy and the needs of the population. It is very difficult to even imagine that any Third World country suffering from major internal divisions, without well established and respected political parties, and with a corrupt governing class, could successfully embark on the eradication of poverty.

30. To this must be added issues of great importance such as the trustworthiness of the State and its officials in the management of public funds. There is a direct link between corruption and poverty, since the misappropriation of large amounts of money directly harms the poorest, who are prevented from obtaining from the State benefits and services that would help them to escape from their circumstances.

31. Perhaps the most important assessment of a decade of "unbridled globalization", such as occurred after the end of the cold war, is to note the existence of an intimate relationship between external factors ("globalization") and internal factors ("governability"). To cast blame or hold responsible only some of the ills afflicting our countries is both partial and mistaken.

F. Globalization of rights

32. None of the assertions in this paper could be taken seriously if we were not witnessing a process of "globalization of rights". Fortunately, economic globalization, the growth and spread of international trade and of communications, has resulted increasingly in a process of "bottom-up globalization", in which human rights standards have also been globalizing, that is to say, universalizing. It is not that human rights are being universally respected, but that knowledge of them as a desirable framework or prospect for living has spread greatly in recent years and decades.

33. It is not the first time in human history that together with an expansion of trade, economic exploitation and the partial triumph of the meanest and most exploitative interests, we see the emergence, quietly at the outset, of new freedoms. The same boats that in earlier centuries transported goods and in many cases plundered colonial countries also transported writings and the new ideas of freedom and democracy that built the post-colonial world and changed the twentieth century. Today the Internet and television not only allow the business world to communicate but also those who have made of the defence of human rights a passion and a vocation.

34. A few years ago the establishment of the International Criminal Court would have been almost unthinkable, as would the rights of the child, the treaties against torture and many other conventions that affect and impact on events and conduct by many countries. The globalization of communications means that what takes place in a village is often known instantaneously by much of the planet.

35. The globalization of rights is a necessary precondition for what Mary Robinson, the former United Nations High Commissioner for Human Rights, termed “globalization with a human face” as opposed to “unbridled globalization”, to which we have referred, and which has predominated over the past decade.

36. The strengthening of international law, of the machinery and instruments of the international human rights system, is, today, the only possible mechanism that can change a system that condemns broad sectors of humanity to poverty. This is a lengthy and certainly complex process, but there is no doubt that this is the trend, notwithstanding all obstacles.

IV. POVERTY ERADICATION, SOCIAL CAPITAL AND HUMAN RIGHTS

37. The way in which poverty is approached determines the likelihood that it will be overcome. Several approaches are currently under discussion regarding analysis and identification of the problem of poverty and its eradication. The more traditional approach is that of “needs”, in which the poor are seen as marginal individuals without resources. This approximation was rapidly superseded owing to its simplicity, although it is still used in producing statistics and frequently in implementing alleviation programmes. Today other approaches are emerging with greater vigour. One such approach is that of social capital, and another, complementary in our view, is that of individual rights. This chapter seeks to analyse the relationship between the various approaches to and ways and means of overcoming poverty.¹⁶

A. Poverty and social capital

38. Caroline Moser, a British anthropologist, conducted a study in 1996 in four world cities: Guayaquil, Ecuador; Manila, the Philippines; Lusaka, Zambia; and Budapest, Hungary. This study was of great importance in determining World Bank policies. In the report Moser stated:

“To increase the economic productivity of the poor a global and comprehensive social policy approach is required, acknowledging the complex interdependence of social and human capital. Over the past 10 years policy has taken increasing account of the role of human capital in economic development. To judge by the much more recent acknowledgement of the importance of social capital in economic development and of the repercussions of its erosion in times of economic difficulty, there would be a need for a social policy in which individual actions were combined imaginatively with community participation and human development was linked with social development.”

39. In this way Moser pointed out that it was not only important to focus on the capacity of individuals to confront poverty but also on the nature of the community in which those

individuals lived, so-called social capital, that is, the framework of intangible assets, solidarity and interpersonal relations which allow the poor as a whole to resist or not the effects of the crisis.

40. Family and family networks appeared in this study as a determinant in terms of capacity to confront crisis and emerge from poverty. When individuals lose this social network they inevitably fall into a downward spiral of poverty.

41. The Economic Commission for Latin America and the Caribbean (ECLAC), for its part, refers to social capital as a central factor to be taken into account in social development policies. The definition used is the following: "Social capital is understood as the set of social relations based on trust and behaviour patterns of cooperation and reciprocity."

42. Two lines of thinking are apparent in ECLAC documents. One holds that the most important approach is to create "human capital" and the other, seen as complementary, is the need to "create social capital". In this connection the emphasis on human capital means focus on the individual level. Persons acquire capital, for example, through education, which allows them to escape from their impoverished circumstances.

43. The Secretary-General of ECLAC considers that the persistence of poverty, which tends to be endemic in the region, is a serious obstacle to the attainment of equality. He emphasizes the important role that education and training of the workforce play in resolving the problem. Education, he states, is a prerequisite for equitable and democratic development, citizenship and personal development.

44. His argument is linked to the technological changes taking place in the world with globalization; he states that owing to significant, ongoing technological innovations, adaptation of the labour force to these changes is a further critical factor that must be taken into consideration.

45. ECLAC has made an appeal for the mobilization of social capital in the poorest sectors. This strategy must be geared towards the design of formal institutions for association and participation. Training of beneficiaries in self-management cannot attain its objectives unless informal sociocultural institutions offering trust, cooperation, leadership and prestige are recognized as subjects of public policy.

46. It is interesting to observe that there is a return to proposals that in one or other form were around in Latin America in the 1960s, but in different terms and without the element of "social movements" and "social demands" made at that time. "Participation", defined in operational terms, has emerged as a concept, seeking to establish an alliance between the poor and the State. These ideas have been of the greatest importance in the public policies pursued in Latin America over the past decade.

47. ECLAC adds that participation at a community association level may be the key to matching public services with households, a very important consideration in poverty alleviation programmes. In addition the mobilization of community social capital can contribute to making these programmes more effective and encourage microenterprises in urban areas and production in rural areas.

48. As is apparent from these assertions, participation is understood as a key factor in eliminating poverty, and in this scenario a rights-based policy strengthens this critical factor: participation is not only something undertaken voluntarily by States, but an individual right.

49. Durston defines social capital as the content of certain social relations expressed in acts of trust, reciprocity and cooperation. In his work he emphasizes that those possessing social capital have greater chances of escaping poverty than those not possessing it. This author examines the importance of concepts such as blood relationship, friendship and prestige as instruments for social change. He notes that social capital is brought into play in times of need, risk or opportunity.

50. From this standpoint the social capital paradigm includes social capital proper, networks, socio-emotional goods, affective values, institutions and power. Social capital is the solidarity that a person or group feels for others. It is based on relationships of solidarity that can be described in terms of networking. From this standpoint the very concept of social capital has evolved and no longer relates only to the support and protection networks that the poor have but to the power that they can exercise. Thus we can link this debate with debate on human rights.

B. Poverty, capabilities and power

51. The conception of social capital that we have described has elements that constitute strengths and others that are clearly weaknesses in tackling the complex issue of the conceptualization of the eradication and elimination of poverty.

52. The strength lies in considering that the community, social and structural context and framework of poverty is critical and that it does not come down to the individual, and that only through developing the “human capital” of individuals can poverty be eradicated. Education plays an important but not decisive role in this connection, at least in the short and medium term. In Latin America the high enrolment rates secured in recent years have resulted in “educated poverty” (poor individuals with a high level of exposure to the formal education system, poor individuals with education of questionable quality and relevance, it should be added).

53. The weakness lies in concepts of “participation” and “rights”, key elements in social policy and in poverty eradication programmes. They are understood, as indicated, as a pairing, as a system of “association”, and not as the acquisition of increasing power, autonomous decision-making, self-assertion capability, self-identity or establishment of standard poverty escape routes.

54. The common element in all these definitions of poverty is need, some kind of deprivation that evokes the description “poor”. However, when poverty is discussed as a social problem, the concept has a much more restricted domain because of its well-established link with deprivation caused by economic constraints. The poor are poor not only because they lack goods but because they lack the “capability” to acquire them. And this is a different kind of problem, epistemological as well as socio-political.

55. These considerations suggest that we need a definition of poverty that refers to the non-fulfilment of human rights, but without de-linking it from the constraint of economic resources. Amartya Sen's capability approach¹⁷ provides a concept of poverty that satisfies these twin requirements. In many institutions the capability approach has already inspired a significant broadening of the concept of poverty - replacing a narrow focus on low income with a multidimensional view of poverty. Much of the current debate on poverty in academic circles draws upon this approach either explicitly or implicitly. As a rule, however, such discussions do not use the language of rights. But a little reflection shows that there exists a natural transition from capabilities, understood as access to power, to rights. Most human rights are concerned with the human person's rights to certain fundamental freedoms, including the freedoms to avoid hunger, disease and illiteracy. And the capability approach requires that the "goodness" of social arrangements be judged in terms of the flourishing of human freedoms. The focus on human freedom is thus the common element that links the two approaches. Looking at poverty from the perspective of capability should, therefore, provide a bridge for crossing over from poverty, from the conception of social capital, from participation understood as "association", to rights, the human rights of the poor.

56. To see the relevance of capability for understanding poverty, we may begin by noting that the defining feature of a poor person is that they have very restricted opportunities to pursue their well-being. Poverty can thus be seen as typical of those groups of people that possess low levels of power, or, as Sen puts it, the failure of basic capabilities to reach certain minimally acceptable levels. This is what we have termed "exclusion" in the case of Latin America.

57. Several clarifications should, however, be made at this point so as to avoid misunderstanding. First, while the concept of poverty does have an irreducible economic connotation, the relevant concept here is not low income but the broader concept of inadequate control over economic resources, of which inadequate personal income is only one possible source. Other sources include insufficient control over goods and services provided by the State, inadequate access to communally owned and managed resources, inadequate control over resources that are made available through formal and informal mutual support networks, and so on. If a person's lack of control over any of these resources plays a role in precipitating basic capability failures, that person would be counted as poor.

58. Second, the recognition that poverty has an irreducible economic connotation does not necessarily imply primacy of economic factors in the causation of poverty. For example, when discrimination based on gender, ethnicity or any other ground denies a person access to health-care resources, the resulting ill-health is clearly a case of capability failure that should count as poverty because the lack of access to resources has played a role. But causal primacy in this case lies in sociocultural practices as well as in the political and legal frameworks that permit discrimination against particular individuals or groups; lack of control over resources plays merely a mediating role.

59. The capability approach defines poverty as the absence or inadequate realization of certain basic freedoms, such as the freedoms to avoid hunger, disease, illiteracy, and so on. The reason why the conception of poverty is concerned with basic freedoms is that these are recognized as being fundamentally valuable for minimal human dignity. But the concern for

human dignity also motivates the human rights approach, which postulates that people have an inalienable right to these freedoms. If someone has failed to acquire these freedoms, then obviously that person's right to these freedoms has not been realized. Therefore, poverty can be defined as both the failure of basic freedoms - from the perspective of capabilities, or the non-fulfilment of the right to those freedoms - from the perspective of human rights.

60. These considerations are critical when decisions affecting the poor, or impoverished territories as a whole, are taken externally, for general economic or global political reasons or simply without heed. In all these cases this paradigm facilitates understanding of the question of responsibilities. Poverty, by not being understood merely as a need but as a lack of opportunity, a violation of basic freedoms, a lack of access to resources, allows us to understand its causes, the consequences of decisions and ultimately to draw attention to those taking decisions. The international debate on rural poverty at the Social Forum, possibly one of the most forceful Third World forums, may be understood from this theoretical standpoint - based on a new dimension, and may identify the relationship existing between food policies and the lack of opportunities for great masses of agricultural labourers throughout the world. The situation of small-scale fishermen, another subject to be dealt with at the Social Forum, may also be understood as part of this complex relationship between poverty and lack of control over resources.

C. Poverty reduction and human rights

61. The idea underlying the adoption of a human rights-based approach to poverty reduction is that policies and institutions dealing with poverty reduction should be explicitly grounded in the norms and values of international human rights law. Poverty, considered as a human rights violation, particularly when it is massive, persistent and ongoing, entails measures decreed by law and not merely by the good will of individuals and institutions.

62. Backed by universally recognized moral values and fortified by legal obligations, international human rights supply a binding normative framework for national and international policy-making, including poverty reduction strategies.

63. Economic, social and cultural rights were systematized and regulated internationally in a specific historical framework, essentially the product of the pressures and demands by mass social movements that emerged at the end of the nineteenth century, the new States that emerged in the First and Third Worlds, and a particular vision of the State that developed in the first half of the twentieth century. The International Labour Office, in a recognition of labour rights, was established under the Treaty of Versailles. The years between 1920 and 1946 saw the development of international labour law, a significant component of economic, social and cultural rights. Immediately after the Second World War the Charter of the United Nations, containing many references to fundamental human rights was debated and drafted, and it is clear from the immediate background to the text and the contextual interpretation that references to human rights also embrace economic, social and cultural rights.¹⁸ Almost immediately afterwards work began on drafting the International Covenant on Economic, Social and Cultural Rights, concluding in 1966. The Covenant has been ratified by over 145 States.

D. Indivisibility of human rights and poverty

64. Considering poverty as a breach of human rights gives rise to an obligation not only for States to act, but also and at the same time for the States and actors involved to refrain from acting, from breaching those rights. This is the logic of an analysis in which the internationally accepted concept of the indivisibility of rights is to the fore. "Poverty" lies somewhere between economic, social and cultural rights and civil and political rights, because it is obvious that people living in situations of extreme poverty are being denied not only their economic rights, but their rights as citizens as well.

65. From this standpoint of the rights of the poor, the principle of indivisibility means that States and decision-making agents must refrain from taking political decisions the effect of which is to create, aggravate or heighten poverty.

66. As frequently stated, the goal to which this view of rights tends is that decisions affecting poverty should be no different, theoretically or politically, from those affecting people's right to life or physical integrity, or their essential civil rights. Nobody could have imagined a few decades ago that a ban on torture would come to be established so decisively by the international community. The arguments of States were self-evident. The need for States to protect themselves, to obtain information that affected their security, even if this involved the use of force, meant that torture, if not wholly legitimate, was at least in common use. In fact, police forces in almost every country in the world made routine use of torture. Today, not only has this lost any legitimacy, but the physical integrity of the prisoner comes before the interest that a particular State may have in obtaining information. Torture has not been eradicated in the world, but it has been delegitimized in such a way that States only use it furtively and clandestinely. Torture as a violation of human rights is no longer an external consideration in public security decisions, but a core one. This is no more or less than the prospect many of us see for the treatment of poverty as a human rights issue.

E. Poverty, rights and oversight¹⁹

67. One of the considerations that make this framework appropriate in a poverty reduction context is that established norms and values have the capacity to empower the poor and make policy makers accountable. The human rights-based approach to poverty reduction consists essentially in the empowerment of the poor as possessors of rights and in social or civic accountability or oversight as a permanent exercise of the relationship between the State and its citizens.

68. The most fundamental way in which empowerment and accountability occur is through the introduction of the concept of rights itself. Once this concept is introduced into the context of policy-making, the rationale of poverty reduction no longer derives merely from the fact that the poor have needs but also from the fact that they have rights - entitlements that give rise to legal obligations on the part of others. Poverty reduction then becomes more than charity, more than a moral obligation - it becomes a legal obligation. This recognition of the existence of the legal entitlements of the poor and of the legal obligations of others towards them is the first step towards empowerment and accountability.

69. This is why the campaign for the “abolition” of poverty makes sense. The idea is for the rights of the poor to be recognized at the highest levels of national and international law. This means that there will be a legal requirement for economic, social, military and other policies affecting the poor or resulting in the creation of poverty to take the issue into account.

70. A few examples will facilitate understanding of the relationship between “legal abolition” and eradication. The example of children’s rights is telling. Until a few years ago it was considered normal in many countries of the world for children to enter the workplace very young. Increasing international awareness of this social ill, school absenteeism, and the burden of obligations that it imposed, led to increasing but inadequate awareness. An international instrument was called for: the Declaration on the Rights of the Child. This Declaration, solemnly signed by the great majority of countries, has gradually been implemented and in recent years both ILO and WTO have gone so far as to impose penalties in respect of goods manufactured using child labour, various systems of certificates of guarantee having been proposed. The transfer abroad of industrial production activities from major countries cannot legitimately be based on child labour - although in practice it sometimes occurs - since control and reporting systems are in place, which while recently established, can sound an alert.

71. Between abolition and eradication a period elapses which, depending on the issue, may be quite lengthy. For example, slavery was abolished in the nineteenth century, but still in the twentieth and twenty-first centuries the Working Group on Contemporary Forms of Slavery has dealt, year after year, with many situations in which this practice has not been eradicated. Something similar has occurred with apartheid and racial discrimination.

72. There is little doubt that this view of human rights induces many sectors, leaders and individuals, including the well intentioned, to consider it as an elusive and even far-fetched idea, since the idea and concept of poverty has been “naturalized”. It is supposed that poverty is “natural” in societies and that it reflects the will, behaviour and attitude of each individual. It appears as being delinked from the economy, from political measures, from government policy, from public and private financial decisions and from the results and consequences they have on populations and people. The “higher interest” of the State, as in the earlier example, is to keep the economy working, and to that end the so-called “social cost” is not necessarily taken into account in the interplay of alternatives. The higher interest subordinates individuals, just as the information needs of the State permitted the use of repugnant methods.

73. The salient features of a human rights approach include the following principles: explicit linkage to national and international human rights norms, standards and principles; empowerment and participation; accountability; non-discrimination and equality; and progressive realization.

74. These basic human rights principles compel policy makers to focus on the most vulnerable and disadvantaged, those who are often excluded by “average progress”. The implication is that in the design and implementation of macroeconomic and microeconomic policies it should not be possible to consider poverty or impoverishment as a “consequent condition”, which is what actually happens. The linkage of poverty as a denial of basic individual human rights cannot be considered a consequent effect.

75. In summary, a definition of poverty that links it to rights creates a framework of power in which the poor cease to be objects of charity, welfare or “public policies” of a merely optional nature. It establishes a framework of obligations for States that allows the concept of “participation” to be replaced by that of citizenship.

76. A human rights-based approach to poverty reduction emphasizes obligations and requires all decision makers, including States, intergovernmental organizations and transnational corporations, to reflect international human rights in their conduct.

V. FINAL COMMENTS

77. The theoretical and political issue that arises is for poverty to be understood by the State, individuals and society as a whole as being linked to rights. The poor and their associations, for their part, have rights and obligations to the State, and on the exercise of those rights and obligations essentially depends the eradication of their situation of poverty.

78. Like the struggle to defend individual human rights, the struggle against poverty is based on the idea that rights have been violated. Although the problem is urgent, it may be a long time before these ideas are put into practice, but what is required before then is a massive collective international effort to move beyond the purely economics-based conception of poverty, notions about the individual responsibility of the poor, and the charity-centred view of poverty reduction, and to bring together in a single approach efforts to combat poverty, national and international economic policy-making, and the enforcement of human rights.

Notes

¹ Este trabajo es una versión modificada del solicitado por la UNESCO y que fue presentado en el Forum Mundial de Derechos Humanos, Nantes (Francia), 16 a 19 de mayo de 2004.

² La UNESCO desarrolla una importante iniciativa antiabolicionista en materia de pobreza, ligándola a los derechos humanos. Compartimos plenamente esta perspectiva al igual que la que implementan otras agencias tales como el PNUD y la OIT.

³ Según cifras de la CEPAL, de 2001 a 2003, han aumentado en 11 millones las personas que en la región latinoamericana viven bajo la línea de la pobreza. (CEPAL, *Informe económico de América Latina*, Santiago de Chile, 2003, pág. 21).

⁴ El *Informe sobre el desarrollo mundial 2000-2001* del Banco Mundial está dedicado al tema de la pobreza y sostiene que una cifra aproximada de 1,3 billones de personas viven bajo la línea de la pobreza extrema y 2,3 en la pobreza. El informe es muy cuidadoso en señalar que estas cifras son aproximativas y que el sistema de medición, menos de 2 dólares de los EE.UU. por día para los pobres y menos de 1 dólar por día para los extremadamente pobres, son cifras que sólo sirven para aproximaciones globales. Véase Banco Mundial, *Informe sobre el desarrollo mundial 2000/2001 Lucha contra la pobreza*, Washington D.C., 2001.

⁵ Las resoluciones de la Comisión de Derechos Humanos y de la Asamblea General señalan que tanto la pobreza como la exclusión social son una “violación de la dignidad humana”.

La Asamblea General, en el párrafo 1 de su resolución 55/106 de 4 de diciembre de 2000, “*Reafirma* que la extrema pobreza y la exclusión social constituyen una violación de la dignidad humana y que, en consecuencia, se requiere la adopción de medidas urgentes en los planos nacional e internacional para eliminarlas”. En este trabajo nosotros hacemos una distinción entre la pobreza en general como denegación de los derechos humanos, lo que es concordante con la declaración, y enfatizamos en la exclusión como fenómeno de violación masiva, sistemática y permanente de los derechos de las personas.

⁶ El Informe final sobre los derechos humanos y la extrema pobreza fue presentado en 1996 por el Relator Especial, Sr. Leandro Despouy (E/CN.4/Sub.2/1996/13).

⁷ Este movimiento que relaciona la pobreza con los derechos humanos tiene ya una larga historia. Numerosas ONG iniciaron en los años ochenta diversas aproximaciones en torno a esta relación. Oxfam, el movimiento ATD Cuarto Mundo y otras trataron de salir de un marco puramente desarrollista. En América Latina un conjunto importante de ONG, entre ellas coordinadas por la Asociación Latinoamericana de Organizaciones de Promoción (ALOP), produjo la Declaración de Quito, sobre la vigencia de los derechos económicos, sociales y culturales, que se enmarca en esta tendencia. Los informes del Relator Especial, Sr. Leandro Despouy vinieron a dar un marco más comprensivo del fenómeno (Véase E/CN.4/Sub.2/1996/13). Véase también el Informe del seminario sobre la miseria y la denegación de los derechos humanos que se realizó en la Sede de las Naciones Unidas en Nueva York entre el 12 y el 14 de octubre de 1994. (E/CN.4/1995/101) y los resultados de otros dos que se han realizado en la Oficina de las Naciones Unidas en Ginebra. El Secretario Adjunto de la UNESCO, Sr. Pierre Sané, ha desarrollado una campaña “para la abolición de la pobreza” (véase “The right to global justice. Poverty and human rights. Towards a new paradigm in the fight against poverty”; PNUD, “Poverty reduction and Human Rights, a practice note” (marzo de 2003)). Véanse asimismo “Aplicación de las normas vigentes de derechos humanos en el contexto de la lucha contra la extrema pobreza”, documento de trabajo preliminar presentado por José Bengoa coordinador del grupo de expertos *ad hoc*. (E/CN.4/Sub.2/2003/17) [se puede consultar en www.unhchr.ch en inglés, francés y castellano y en www.identidades.cl junto a otros documentos sobre esta materia del autor]; “Los derechos humanos y la reducción de la pobreza: Un marco conceptual”, OACDH, Ginebra, 2004; Thomas W. Pogge, “Severe Poverty as a Human Right violation” [se puede consultar en www.unesco.org]; “Joint working paper of the ad hoc group of experts on the need to develop guiding principles on the implementation of existing human rights norms and standards in the context of the fight against poverty, including extreme poverty, submitted by Jose Bengoa, coordinator” (E/CN.4/Sub.2/2004/25); y los documentos preparativos y los resultados del Foro Social, realizado en Ginebra el año 2002.

⁸ Véanse los estudios sobre distribución de los ingresos y derechos humanos que se han realizado en la Subcomisión de Prevención de Discriminaciones y Protección de Minorías, hoy denominada Subcomisión de Prevención y Protección de los Derechos Humanos, por los Relatores Especiales Asbjørn Eide (1997) y José Bengoa (1998 y 2000).

⁹ Nos parece que este es un concepto de mucha utilidad, ya que si la “gobernabilidad” se entiende solamente hacia la relación entre el “pueblo” y sus gobernantes, podría conducir a alternativas “populistas”, y si se la comprendiese solamente como la aceptación de las reglas del sistema financiero internacional, de las inversiones, de encontrar “nichos” en los mercados globalizados, se podrían producir alternativas burocráticas de gobernabilidad.

¹⁰ Uno de los compromisos de la Cumbre Mundial sobre Desarrollo Social de Copenhague señalaba explícitamente: “Nos comprometemos a velar por que los programas de ajuste estructural tengan orientación social y no actúen en detrimento de los más débiles”. Véase también A/CONF.166/L.3/Add.7. Se podría señalar que este deseo expresado por la comunidad internacional es aplicable al conjunto de decisiones que se toman hoy en día en materia de comercio y finanzas. Lamentablemente este compromiso como muchos otros, quedó apenas estampado en el papel. La Subcomisión ha debatido en los últimos años los informes de los Sres. Oloka Onyango y Deepika Udagama en los que esta materia se analiza en profundidad. (E/CN.4/Sub.2/2000/13 y E/CN.4/Sub.2/2001/12).

¹¹ Las conclusiones de la Comisión de 26 expertos que convocó Juan Somavía Secretario General de la Organización Internacional del Trabajo, OIT, para analizar los efectos de la globalización, no es muy diferente, aunque en cierto modo más tímida que la que nosotros adoptamos y que incluso adoptan muchos organismos de las Naciones Unidas.

¹² 2002 Seminario Internacional sobre los “Derechos Económicos, Sociales y Culturales en un mundo globalizado” Nuremberg (Alemania). El encuentro terminó con la firma de compromisos entre la industria, los sindicatos y el gobierno en torno al cumplimiento de estándares de derechos laborales, (trabajo infantil por ejemplo) en las subsidiarias asiáticas de la industria alemana y el establecimiento de mecanismos de control y seguimiento. La aceptación de que los estándares son los de la “casa matriz” y no de las reglamentaciones sociales de las subsidiarias, es la clave para enfrentar este complejísimo asunto derivado de la globalización.

¹³ El Grupo de Trabajo sobre Transnacionales de la Subcomisión de Derechos Humanos, revisó el informe del Profesor David Weissbrodt acerca de las responsabilidades de las empresas transnacionales en las violaciones de los derechos humanos en general y en particular en las violaciones de los derechos económicos, sociales y culturales. En agosto de 2003, la Subcomisión aprobó el proyecto de Código de Conducta y lo entregó a la consideración de la Comisión la que lo analizó en su sesión de 2004. Lamentablemente la Comisión de Derechos Humanos, ha postergado la discusión (2004) demostrando la reticencia de muchos países desarrollados respecto a legislar sobre estas materias.

¹⁴ En el año 2003 ha habido un ligero aumento de la ayuda en la denominada Cooperación Internacional, pero ésta se explica fundamentalmente por la situación del Iraq y otros países en situaciones similares. Estados Unidos destina el 0,14% del PIB a la Cooperación Internacional, y los países de la Unión Europea el 0,35%. Japón destina el 0,20%. Bélgica (con un 0,6%), Dinamarca, Luxemburgo, Francia, Irlanda, Holanda, Noruega y Suecia se han puesto metas de llegar al 0,7% del producto interno bruto, establecido en los acuerdos y la Cumbre de Copenhague. Bélgica se ha propuesto llegar a esa cifra en 2010, Francia en 2012 e Irlanda en 2007. Francia ha señalado avanzar en 2005 al 0,5%. La comunidad europea espera llegar al 0,39% en 2006. Según Richard Manning, Presidente del Grupo de Coordinación Sur, de

Inglaterra, si se descuentan las ayudas humanitarias destinadas al Iraq el volumen de la Cooperación al desarrollo ha bajado el último año en 2,1 mil millones de dólares. Parte de la deuda externa estatal liquidada por países desarrollados a países subdesarrollados, es considerada también en la categoría de “cooperación al desarrollo”, lo que distorsiona y disminuye aún más estas cifras.

¹⁵ Muchas de las agencias de cooperación se dejan llevar por “modas” que sólo expresan la incapacidad de enfrentar estos complejos problemas. Por ejemplo, en los últimos años la “moda” de la denominada “Responsabilidad social de la empresa” (RSE) y muchas agencias financian programas destinados a “convencer” a las empresas acerca de sus deberes con sus trabajadores y las comunidades directa o indirectamente afectadas por sus labores. Las empresas obviamente deberían realizar obras sociales y ser responsables de las dinámicas sociales que provocan, pero en primer término deben cumplir con las leyes, ya sea laborales, ambientales, de impacto social y cultural. La única manera, pensamos en el contexto latinoamericano, de que las empresas cumplan con su responsabilidad social, es la existencia de organizaciones sociales “empoderadas” que ejerciten el “control social”, que no sólo negocien con las empresas sino que exijan el cumplimiento de estándares apropiados, a lo menos tales como los que emplean en sus casas matrices de los países desarrollados.

¹⁶ Me he basado en esta parte del trabajo en simultáneos debates en el Banco Mundial sobre pobreza, en la Comisión Económica para América Latina, CEPAL sobre “capital social”, en la Subcomisión de Derechos Humanos de las Naciones Unidas, los trabajos de Pierre Sané, Secretario General Adjunto de la UNESCO, que dirige el programa de “abolición de la pobreza”, y las conocidas tesis de Amartia Sen, cuyo análisis teórico y práctico en cierto modo ha sido asumido por el PNUD en su concepto más amplio de “Desarrollo Humano”.

¹⁷ En inglés Sen habla de “capability” lo cual se define como “poder o habilidad de la cual a menudo no se ha hecho uso”. Diccionario Harpers. A. Sen, *Inequality Re examined*, (traducido al español como *Nuevo examen de la desigualdad*), 1992, pág. 109.

¹⁸ Héctor Gross Espiel, “Los derechos económicos, sociales y culturales, su reconocimiento, promoción y protección internacionales”, Comisión Interamericana de Derechos Humanos, 1984. Una visión moderna del problema de los derechos de las personas en materia económica, social y cultural, debería poner en el centro de la discusión el “derecho a tener la oportunidad”. La Declaración de Filadelfia establece con mucha claridad el derecho de las personas, desde este punto de vista, al decir: “Todos los seres humanos, sin distinción de raza, credo o sexo, tienen el derecho a perseguir su bienestar material y su desarrollo espiritual en condiciones de libertad y dignidad, de seguridad económica y en igualdad de oportunidades”. El *Informe sobre Desarrollo Humano 1994* del PNUD, señala que la equidad “está en las oportunidades, no en los logros finales. Toda persona tiene derecho a una oportunidad justa para desarrollar lo mejor de su capacidad potencial” (E/CN.4/Sub.2/1994/21, párr. 63).

¹⁹ Esta parte del trabajo la realizamos en conjunto con Laurent Meillan, de la Oficina del Alto Comisionado para los Derechos Humanos.
