

Chapter 6

The Global Financial Crisis: A Human Rights Meltdown?

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The GFC is affecting the world, but currently in a disproportionate manner the so-called 'Western' or 'developed' world. This is also the part of the world that has traditionally supported individuals' human rights as codified in international human rights treaties, and for the most part all human rights including civil, political, economic, social and cultural rights. The GFC has put significant pressure on states' finances, and powerful public and private actors strongly influence the way in which states react to this situation. This chapter will discuss how the GFC and the reactions to it disproportionately affect the human rights enjoyment of vulnerable groups such as women, indigenous populations and people living in poverty. Based on the relevant human rights treaties, most notably the ICCPR and the ICESCR, the chapter will then consider ways in which states can balance the pressure from the GFC and yet comply with human rights obligations. The article will finish with a consideration of the dangers of ignoring the adverse human rights effects of the GFC on such vulnerable groups.

*'What began as a financial crisis is rapidly turning into a global human rights crisis. Just as greater poverty and misery are threatening the realization of economic and social rights, the repression of growing social protest is threatening civil and political rights. A rising tide of xenophobia and discrimination is also already threatening the wellbeing of migrants and minorities. Yet despite the human rights dimensions of the crisis, government responses have largely failed to take their obligations in this regard into account.'*²

Introduction

The quote above introduces the work that the Center for Economic, Social and Cultural Rights has carried out concerning the human rights effect of the GFC. This echoes the often reiterated statement by Amnesty International and other human rights organisations, that it is in times of crisis that human rights become most important. It is relatively easy for states to comply with their human rights obligations in times of peace and prosperity. In the past decade, there have been two major international or global crises that have tested the commitment to human rights on a larger scale: that of the aftermath of 9/11 and the subsequent counterterrorism efforts, and that of the GFC, which had its first clear expressions in the summer of 2007, and still continues to challenge policy-makers in national, regional and global institutions.

There are many ways in which a commentary on the way in which human rights have been affected by the GFC could have been framed. This is an important issue for political scientists, economists, sociologists and moral philosophers, among others. However, international lawyers have not only an interest in such a commentary, in the opinion of the author, but also a responsibility to provide

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² Center for Economic and Social Rights, 'Rights in Crisis' www.cesr.org/section.php?id=139 accessed 12 October 2012.

insight into how law may be relevant, both in terms of addressing the events and how these events may impact upon human rights enjoyment. Furthermore, it is important to determine whether the existing international legal structures may provide guidance to policy-makers as to how they can comply with their human rights obligations in times of crisis. International human rights lawyers are often criticised for being more interested in getting human rights standards approved (through adoption and entry into force of human rights treaties) than seek the implementation and compliance with these standards. In the current GFC, it is imperative that international lawyers live up to their responsibility to seek implementation and compliance.

In the context of the ‘birth’ of international human rights law through the adoption of the UN Charter in 1945, the drafters of the Charter clearly recognised the strong link between human rights protection and peaceful societies, or alternatively, the violation of human rights and conflict. The first two paragraphs of the Preamble of the Charter reflect the disdain for the ‘scourge of war’ and ‘faith in fundamental human rights’. Moreover, Article 1 of the Charter lists four main purposes of the organisation, one being to maintain international peace and security,³ another the promotion of respect for human rights.⁴ This link was further recognised in the early 1950s with the adoption of the European Convention on Human Rights and Fundamental Freedoms, and subsequent human rights law developments through the UN and regional institutions. This recognition of the link between human rights violations and conflict should make alarm bells ring around the world currently experiencing a GFC: it is imperative to ensure that individuals and groups around the world do not suffer severe human rights violations in times of economic crisis, not only because of the immediate human suffering that this would entail but also for the potential conflict, at times violent, in which this may result.

Having said this, it is equally important that international human rights lawyers remain realistic and refrain from the temptation to become dogmatic. If a gulf develops between the politicians on the one hand and human rights lawyers on the other, the opportunity for much-needed constructive dialogue will be lost.

This chapter will be divided into three substantive parts. Part 1 will consider how human rights enjoyment is affected by the GFC; Part 2 will address the need to balance the pressure from the GFC with the duty to comply with human rights obligations, and finally in Part 3 some of the dangers of ignoring human rights concerns when dealing with the GFC will be considered.

The effect on human rights enjoyment by the GFC

The UN, Council of Europe, NGOs and others have in the past couple of years documented how the GFC affects individuals’ enjoyment of human rights. In the winter of 2009, the UN Human Rights Council held a special session on human rights and the GFC, and adopted a resolution that clearly recognised the effect of the GFC on human rights enjoyment. Both in the Preamble to the resolution and in its substantive part it was confirmed that that ‘the universal realization and effective enjoyment of human rights are challenged due to multiple and interrelated global economic and financial crises’.⁵ Similarly, the Council of Europe’s Commissioner on Human Rights has held that ‘[...] vulnerable people – who have a difficult time defending their rights in the best of times – have often been hit hardest by budget cuts in many European countries’.⁶ NGOs have addressed the question in more detail, and several organisations have reported on specific human rights problems stemming from austerity programmes or other effects of the GFC. In particular, the Center for Economic, Social and Cultural Rights has considered the situation in Ireland, and held in a report that:

‘A poorly managed recession, followed by a series of austerity budgets characterized by retrogressive cuts to social spending and an aversion to tax increases have markedly undermined the rights to

³ UN Charter (1945), Article 1(1).

⁴ *Ibid.*, Article 1(3).

⁵ UN Human Rights Council, S-10/1 *The impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights*, Para 1; 23 February 2009, available at: www2.ohchr.org/english/bodies/hrcouncil/specialsession/10/index.htm accessed 12 October 2012.

⁶ Council of Europe, Commissioner on Human Rights, ‘National Human Rights Structures can help mitigate the effects of austerity measures’, available at www.coe.int/t/commissioner/news/2012/120531hrc_EN.asp accessed 12 October 2012.

education, health, housing, work and an adequate standard of living. Poverty levels are rising fast, just as Ireland's already struggling health and education sectors are being stripped of their resources.⁷

In relation to Greece, the UN Independent Expert on Foreign Debt and Human Rights, Cephias Lumina opined that, 'The implementation of the second package of austerity measures and structural reforms [...] is likely to have a serious impact on basic social services and therefore the enjoyment of human rights by the Greek people, particularly the most vulnerable sectors of the population such as the poor, elderly, unemployed and persons with disabilities'.⁸

These and similar documentation of the negative effect of austerity measures on the enjoyment of human rights provide evidence that the GFC and measures taken as a result of it pose a real problem for millions of people around the world. While the immediate effect of such austerity programmes may be clearly demonstrated in terms of violations of economic and social rights, such as the right to food, health, housing and work, the underlying effects clearly also affect civil and political rights, such as freedom of expression, freedom of assembly and association, and the right to be free from discrimination on the basis of gender, disability, social status, etc.⁹

Thus, from the above examples it is clear that people are suffering human rights problems as a result of the austerity programmes and the GFC. The question becomes whether this represents violations of human rights on the understanding that violations only occur if an obligation is breached,¹⁰ and it is therefore necessary to look at what obligations states have in times of crisis. For the purpose of this article, I will only base the discussion on the two Covenants on Human Rights: the ICCPR,¹¹ and the ICESCR.¹² These two covenants are widely ratified,¹³ and therefore carry obligations for the large majority of states, including most of the OECD countries.¹⁴

International Covenant on Economic, Social and Cultural Rights

According to Article 2(1) of the ICESCR, states shall 'take steps, individually and through international assistance and cooperation, 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'. The key provisions to consider here are 'take steps', 'individually and through international assistance and cooperation, especially economic and technical' and 'to the maximum of available resources'. Article 2(2) should also be considered in this context, as it contains the non-discrimination provisions of the Covenant.¹⁵

According to the interpretation of Article 2(1), the requirement that states shall 'take steps' implies a) inaction would not be in conformity with the obligations, and b) retrogressive measures are not acceptable.¹⁶ This means that states are under an obligation to take positive steps towards the full realisation of the rights in the Covenant, through all appropriate means, and through the maximum use of available resources.¹⁷ In times of financial crisis, this general provision should guide states to

7 Center for Economic, Social and Cultural Rights, 'Mauled by the Celtic Tiger: Human Rights in Ireland's Economic Meltdown', Rights in Crisis Briefing Paper, February 2012, 4.

8 'Greek austerity measures could violate human rights, UN expert says', 30 June 2011, available at: www.un.org/apps/news/story.asp?NewsID=38901&Cr=austerity&Cr1 accessed 12 October 2012.

9 'Bringing Human Rights to Bear in Times of Crisis: A human rights analysis of government responses to the economic crisis', Report co-authored by a number of human rights NGOs, including ECSR-Net; Center for Economic, Social and Cultural Rights; and Center for Women's Global Leadership and Center of Concern, March 2010, 8.

10 International Law Commission, *Responsibility of States for Internationally Wrongful Acts*, Yearbook of the International Law Commission, (2001), Vol II, Part 2, Article 1 and 2.

11 Adopted by the UN General Assembly (1966), UN Treaty Series, Vol 999, no 14668; entry into force 1976.

12 *Ibid.*

13 As of August 2013, the ICESCR has 160 ratifications; while the ICCPR has 167. For up-to-date ratification information visit <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

14 The US has not ratified the ICESCR, but most of the other OECD countries have.

15 Article 2(2) reads: 'The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

16 Philip Alston and Gerard Quinn, 'The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights' (1987) 9 Human Rights Quarterly 2, 166.

17 *Ibid.*, 177.

consider the human rights consequences of austerity measures taken to relieve the financial problems. Indeed, in its recent concluding observation on the periodic report submitted by Spain, the UN Committee on Economic, Social and Cultural Rights (UNCESCR) recommended that Spain:

‘review the reforms adopted in the context of the current economic and financial crisis to ensure that all the austerity measures introduced *uphold the level of the protection attained in the realm of economic social and cultural rights* and that, in all cases, such measures are temporary and proportionate and *do not negatively impinge on economic, social and cultural rights*’.¹⁸

Furthermore, the provision relating to international cooperation and assistance is of great significance in this context. While the question as to whether there is a firm obligation of financial transfers from richer countries to poorer ones is still debated,¹⁹ it is reasonable to argue that this provision is a reflection of a sense of solidarity with states in need of assistance to implement economic, social and cultural rights, and therefore measures that are taken in one state that may have negative effects in another state will be a breach of these obligations. Furthermore, it has been argued that in times of crisis (normally related to natural or man-made disasters), the obligation to assist may be stronger.²⁰ The GFC is certainly a man-made crisis, and for some people (for instance, the Greek population), the measures taken to deal with the crisis may result in similar human rights results as natural disasters. This includes starvation, homelessness and an inability to access life-saving medical treatment. In such situations, states that are in a position to assist should do so,²¹ and states that have influence over decisions that adversely affect the human rights situation have obligations to design the decisions in a manner that avoids such serious human rights problems.²² The GFC is an international crisis and an internationally generated crisis that is responded to with international assistance through the IMF and/or the EU for some countries. This international assistance carries significant conditions as to how national policies are supposed to be designed and carried out.²³ In such situations, the international institutions that are responsible for the financial conditions of the assistance should also have responsibility related to the human rights effects of those policies. To leave such responsibility to the domestic state, which has for practical purposes lost much of its autonomy over budgetary decisions, would not reflect current understanding of international human rights law obligations of international organisations, including the international financial institutions and regional institutions in question.²⁴

Another pertinent question in the present GFC relates to the understanding of the provision referring to ‘maximum of available resources’ in Article 2(1). This provision has not been clearly interpreted by the UNCESCR or other authoritative bodies. From the drafting of the article, and from the practice of the UNCESCR, it is clear that the resources referred to are both domestic resources and those available internationally.²⁵ However, in the GFC, it is difficult to argue that a significant increase in resources will be available for the implementation of economic and social rights (or other human rights for that matter). This does not mean that the provision of ‘maximum of available resources’ becomes ‘null and void’. Quite the contrary: in situations where the resource base is severely limited, as it currently is in the global financial market, it becomes even more important that those resources that are available are used to their maximum for the benefit of all human rights, including economic and social rights. It is therefore a matter of strong priority to ensure that resources are used to protect the most vulnerable in society, and that the de facto outcome of austerity measures should not be discriminatory with respect to the weakest

18 UN Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by States Parties under articles 16 and 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights – Spain, 18 May 2012; UN Doc E/C.12/ESP/CO/5, para 17 (emphasis added).

19 Magdalena Sepúlveda, ‘Obligations of “International Assistance and Cooperation” in an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights’ (2006) 24 *Netherlands Quarterly of Human Rights* 2, 274.

20 UNCESCR, General Comment no 12 – Right to Adequate Food as a Human Right (1999), para 38.

21 UNCESCR, General Comment no 14 – Right to Highest Attainable Standard of Mental and Physical Health (2000), para 39.

22 Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights, adopted by a group of experts meeting in Maastricht, September 2011, paragraphs 8 and 9.

23 ‘Spain and Italy criticise Berlin plan for EU to police budgets’ *The Guardian* (29 October 2012), available at: www.guardian.co.uk/world/2012/oct/29/europe-divided-european-union-budgets accessed 1 November 2012.

24 Andrew Clapham, *Human Rights Obligations of Non-State Actors*, (Oxford University Press 2006), Chapter 4.2.

25 Limburg Principles on the Implementation of Economic, Social and Cultural Rights (1987) UN Doc. E/CN.4/1987/17, Principle 26; see also UNCESCR, General Comment no 3 – Nature of States Parties’ Obligations (1990), para 13.

parts of the population.

Article 2(1) of the ICESCR is thus not limited to times of prosperity. Even in times of austerity, states retain the obligations to ensure that their populations do not suffer violations of their economic and social rights.²⁶ This is both an obligation on the national level, and an obligation through international assistance and cooperation. When states act internationally – either alone or through international institutions, such as the international financial institutions or the EU, they need to consider the human rights effects of their measures and try their utmost to comply with the obligations in the Covenant. It is quite clear that the current GFC is the result of international action (or inaction) on the part of states to sufficiently regulate the financial activities of governmental and private actors in the international financial sector. Furthermore, the responses to the GFC are significantly coordinated through international actors such as the IMF and the EU. A consequence of this should be that these actors look beyond the financial or economic benefits of the measures taken to address the GFC to include a careful consideration of human rights effects of these measures.

International Covenant on Civil and Political Rights

Regarding civil and political rights, the situation is somewhat different. It may be thought that the GFC and the consequent austerity programmes only affect individuals' economic and social rights, as respect for civil and political rights would seemingly be unaffected by financial constraints. This approach is based on the opinion that the implementation of civil and political rights requires few or no public funds. However, while the question of financial resources for the implementation of civil and political rights is an interesting debate in itself, it lies outside the scope of this article. It is, however, notable that the responses by governments to the GFC are clear illustrations of the interdependence and interrelatedness of economic and social rights on the one hand and civil and political ones on the other. Civil and political rights have been affected by the GFC and by the responses that governments have taken in this regard.²⁷ It should be noted that the ICCPR does not contain direct reference to obligations of international assistance and cooperation; quite the contrary, the general obligations article of the ICCPR (Article 2(1)) provides that:

'Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

While the article does make reference to 'within its territory and subject to its jurisdiction', it has been recognised that the obligations pertaining to this Covenant are not uniquely territorial, but that they may extend beyond the State Party's territory in certain circumstances.²⁸

However, in the national/territorial setting, the current GFC has resulted in significant threat to civil and political rights. To take Greece as an example, there are significant reports of increased xenophobia, discrimination and violence against immigrants, and maltreatment of asylum seekers.²⁹ Amnesty International has also reported that the reactions from the government (through police and security forces) include practices of severe human rights violations, such as the use of torture against asylum seekers and others.³⁰ More broadly, across Europe, there have been massive demonstrations against austerity measures introduced by governments and the EU. Often these demonstrations are reactions to breaches of economic and social rights, and the population exercises its right to assembly and freedom of expression to protest against the cuts and austerity measures. At times these protests have been met with excessive force by the

²⁶ See n 18 above.

²⁷ 'Police Violence in Greece: Not just Isolated Incidences' Amnesty International Report, July 2012. Available at www.amnesty.org/en/library/asset/EUR25/005/2012/en/edbf2deb-ae15-4409-b9ee-ee6c62b3f32b/eur250052012en.pdf accessed 1 November 2012.

²⁸ For an elaboration, see S Skogly, *Beyond Borders: States' Human Rights Obligations in International Cooperation*, (Intersentia 2006) chapters 4 and 6; see also Marko Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principles and Policy*, (Oxford University Press 2011).

²⁹ Amnesty International report (2012), n 27 above.

³⁰ *Ibid.*, 17.

authorities, questioning the respect for these civil and political rights.³¹

It has been shown that in times of austerity, vulnerable groups are hit hardest by the measures that are taken to improve the financial situation. Immigrants and asylum seekers have already been mentioned. Research also shows that the gap between people already living in poverty and the better off is widening. Unemployment figures are skewed against women,³² and services aimed at vulnerable children are often cut.³³

If human rights shall retain any meaning in times of crisis, it is clear that states need to heed their obligation to protect vulnerable groups from attack and discrimination, both direct and indirect, such as disproportionate levels of unemployment among specific groups. The treatment of the most vulnerable, such as immigrants and asylum seekers, also need to be given the human rights attention merited.

Balancing the pressure from the GFC and complying with human rights obligations

It has now been established that economic, social, civil and political rights may be affected by the GFC and the subsequent measures taken by states and the international community to respond to the situation.

Does this mean that governments have no flexibility when it comes to the respect and promotion of human rights in times of GFC? It is important to recognise that while human rights law sets limits as to what states can legitimately do to individuals, it does not dictate policy. The state retains significant policy choices as to how to deal with the GFC as long as human rights standards are protected. In this regard, international human rights law should be considered a tool in policy decisions, rather than an obstacle. As such, human rights provisions set minimum standards for the treatment of individuals, and it sets priorities for the conditions applicable to those who are most vulnerable in society. It also provides very firm non-discrimination provisions that should guide policy choices.³⁴

States will, however, often consider that human rights implementation demands too great an expenditure of resources of many kinds in times of crisis. In such situations, it is important both to assess whether there is some flexibility in the obligations and indeed to determine whether the perception of the existence of constraints on their implementation is real. In some severe situations, there are derogation possibilities in human rights law. This is specifically provided for in Article 4 of the ICCPR, and other human rights treaties contain such provisions as well.³⁵ Article 4 provides that:

‘1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.’³⁶

For a state to use the derogation possibility in the ICCPR, it will have to proclaim a national emergency, which is of a severity that threatens the life of the nation. Furthermore, the specific details of derogations will have to be communicated to the UN Secretary-General.³⁷ As indicated above, some

31 ‘Policing Demonstrations in the European Union’, Amnesty International Report September 2012, 2. Available at www.amnesty.org/en/library/asset/EUR01/022/2012/en/1e06df7d-6878-40e0-8e82-d07605e9a6e9/eur010222012en.pdf accessed 1 November 2012.

32 ‘Women over 50 hardest hit by austerity measures as their unemployment rises faster than any other group’, Mail Online 29 September 2012, available at www.dailymail.co.uk/news/article-2210386/Women-50-hardest-hit-austerity-measures-unemployment-rises-faster-group.html accessed 1 November 2012.

33 ‘NGOs warns: Austerity brings more children in poverty’, New Europe Online 9 October 2012. Available at: www.neurope.eu/article/ngos-warns-austerity-brings-more-children-poverty accessed 1 November 2012.

34 See Article 2(2) of the ICESCR, and Article 2(1) of the ICCPR.

35 For example, Article 15 of the European Convention on Human Rights and Fundamental Freedoms (1950).

36 These articles refer to the right: to life; to be free from torture; not to be held in slavery and servitude; imprisonment due to failure to fulfil contractual obligations; to non-retrospective criminal charges; to recognition as a person before the law; and freedom of thought, conscience and religion.

37 ICCPR, Article 4(3).

rights are considered non-derogable, and as such they can never be exempted from protection by the state. In determining whether the individual state's experience of the GFC is such that it 'threatens the life of the nation' it will be necessary to assess each state's position at any given time. There are states that have experienced the crisis of a magnitude such that an argument of the 'life of the nation' may be relevant. This could perhaps have been (or still is) the case for Greece, Ireland and Iceland. But the case would need to be made. Other states may be hard hit, but not quite reach the threshold required by Article 4.³⁸

The ICESCR does not contain a derogation clause, and there has been debate as to whether this means that no derogation from the provisions of the Covenant is ever permitted.³⁹ According to Ssenyonjo, the absence of a derogation clause can be interpreted in two ways: that derogation from the provisions in the Covenant is never permitted as such an opportunity is not provided for in the Covenant; or that they may be permitted for non-core obligations as derogation is not explicitly prohibited.⁴⁰ The UNCESR held in its General Comment no 3 (1990), that States Parties have certain minimum core obligations.⁴¹ According to this General Comment, these minimum core obligations imply that every State Party shall ensure 'the satisfaction of, at the very least, minimum essential levels of each of the rights'.⁴² The Committee states that without such a minimum core obligation, '[the Covenant] would be largely deprived of its *raison d'être*'.⁴³ Yet, the Committee does include some consideration of reality in these arguments and holds that:

'[i]t must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. [...] In order for a State Party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations'.⁴⁴

It has been argued that these minimum core obligations cannot be derogated from in situations of emergencies,⁴⁵ and in two of the General Comments on the content of substantive rights of the Covenant, the UNCESR has confirmed that such obligations are non-derogable.⁴⁶ The specific content of these obligations vary from right to right, but the UNCESR holds that 'at the very least, minimum essential levels of each of the rights is incumbent upon every State Party',⁴⁷ and they used examples to illustrate their meaning: 'a State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant'.⁴⁸ Thus in situations where unemployment due to austerity measures result in inability to procure the basic necessities of food or healthcare, the state will have violated the obligations that are non-derogable.

The derogation clauses and the discussion on the derogable nature of obligations pertaining to economic and social rights provide a rather negative approach to 'escaping obligations'. It is more constructive to consider how human rights standards may provide guidance to governments when trying to determine the priorities within policy choices. Human rights standards do in a certain sense provide a checklist against which potential negative effects of responses to the GFC may be considered. In the determination of options, states should use the predicted human rights violation's effects as a measure by which priorities are set. This could, for instance, be done by the use of Human Rights Impact Assessments (HRIAs), which would reveal the potential positive and negative effects of different

38 To the knowledge of the author at the time of writing, no state has actually proclaimed such a state of emergency and derogated from their obligations under the Covenant or from the similar provisions of the ECHR.

39 Magdalena Sepúlveda, *The Nastier of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (Intersentia 2003), 293–309.

40 Manisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (Hart Publishing 2009) 40.

41 UNCESCR, General Comment no 3, n 25 above, para 10.

42 *Ibid.*

43 *Ibid.*

44 *Ibid.*

45 Ssenyonjo, 41

46 See notably General Comment no 14 (2000) (*Highest attainable standard of Health – article 12*), para 47; and General Comment no 15 (2002) (*Right to water*), para 40.

47 UNCESCR, General Comment no 3, n 25 above, para 10.

48 *Ibid.*

policy models. Such HRIAs may thus serve as a helpful tool for states to avoid human rights problems in the financial crisis.

Much of the existence of human rights obligations relates to achieving certain outcomes, namely an improved human rights situation for a state's population. This is commonly described as obligation of result.⁴⁹ However, human rights obligations also carry procedural duties ('obligation of conduct'),⁵⁰ some of which may be described as complying with principles of *due diligence*. Due diligence is not extensively defined in international human rights law. However, in relation to the rights of women, the then-UN Special Rapporteur, Yakin Ertürk, wrote a report in 2006, where the concept was considered in detail.⁵¹ In this report, Ertürk refers to the Declaration on the Elimination of Violence against Women⁵² and points to Article 4(c), in which states are urged to 'exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons'. She adds that 'as such, the concept of due diligence provides a yardstick to determine whether a State has met or failed to meet its obligations in combating violence against women'.⁵³ The concept of due diligence thus refers to the manner in which states behave to prevent human rights violations, and protect individuals against such violations by states or by other actors. Used analogously in a GFC situation, due diligence would provide a yardstick to determine whether a state has met or failed to meet its human rights obligations in times of economic crisis.

In terms of the GFC, the concept of due diligence could be very useful for states. While it is exceedingly difficult to predict all potential outcomes of policy choices, if states can demonstrate that they have exercised due diligence in their decision-making processes, they will to a large extent have complied with their obligations of conduct. HRIAs may be a tool in such due diligence processes. Clear processes for the consideration of human rights as part of the response to a GFC will in many situations provide alternative strategies that may help states to avoid significant human rights problems.

Dangers of ignoring the adverse human rights effects of GFC

What may the results be if states ignore the human rights effects of their GFC responses? It has been demonstrated that there is a growing disparity between rich and poor in the period since 2007–2008.⁵⁴ It has also been shown that the poorer segments of societies carry a disproportionate 'burden' of dealing with the financial crisis in terms of cuts in public spending, public sector jobs and social security for vulnerable groups.⁵⁵ Legally, if these effects result in violations of human rights for those affected by these measures, states have failed to comply with their obligations according to treaty law. There are, however, more sinister outcomes of ignoring the human rights effects. The disparities referred to may be very harmful in the long term, and may lead to unrest and conflict within and among societies. In Europe, there has been growing opposition to the political solutions that are being 'imposed' on the population. This opposition has resulted in large scale peaceful demonstrations, in more violent demonstrations, and perhaps even more worryingly in a sharp rise in 'far-right' or extremist groups that advocate a militant opposition and violence against immigrants, asylum seekers and people of a different colour in general.⁵⁶ These developments raise concerns from a human rights perspective in two different ways: what happens to the demonstrators in a tense environment; and what are the long-term effects on human rights enjoyment when societies become so divided? Furthermore, what will the

49 Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, 1997, Guideline 7. Available at: www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html accessed 15 October 2012.

50 *Ibid.*

51 *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, UN Doc. E/CN.4/2006/61 20 January 2006.

52 Declaration on the Elimination of Violence against Women, Adopted by the General Assembly 23 February 1994, UN Doc: A/RES/48/104.

53 Ertürk, 2006, 6.

54 Zanny Minton Beddoes, 'For richer, for poorer' *The Economist* 13 October 2012, available at www.economist.com/node/21564414 accessed 28 October 2012.

55 Ha-joon Chang, 'The root of Europe's riots' *The Guardian* 28 September 2012, available at www.guardian.co.uk/commentisfree/2012/sep/28/europe-riots-root-imf-austerity, accessed 28 October 2012.

56 Benjamin Ward, 'Europe's Own Human Rights Crisis', Human Rights Watch, available at www.hrw.org/world-report-2012/europe-s-own-human-rights-crisis accessed 29 November 2012.

long-term prospect be for peaceful coexistence if human rights violations become more widespread and perhaps even tolerated by the majority of the population?

Human rights violations that become tolerated in times of crisis may lead to fuelling disparities in society; it may 'legitimise' xenophobia or violence against minorities and vulnerable groups; and it may lead to internal and regional conflict. There is a possibility that inaction in the face of human rights problems may lead to significant discontent and a potential 'political ticking bomb' fostering extremism and unrest.

Conclusion

To conclude, it has been shown that states retain their human rights obligations in times of a GFC. Furthermore, it has also been shown that those states that in more prosperous times generally support and comply with human rights requirements, are unable or unwilling to give priority to human rights compliance during the GFC and in their responses to it. This is also the case for international financial institutions and regional organisations, which put significant pressure on, and prescribe policy measures for, states in terms of how they would deal with their economies in the GFC.

The way in which society reacts to a crisis such as the GFC can be seen as an indication of the measure of humanity within our societies. It is important that today's politicians and other decision-makers are aware of their history. The UN Charter and the Council of Europe (with its European Convention on Human Rights) were adopted with the underlying premise that the full respect for human rights and fundamental freedoms was a precondition for peaceful and prosperous societies. It is of paramount importance that current political and financial measures are not seen in isolation, but that the lesson has been learnt from history that without full respect for human rights, and particularly protection of the most vulnerable in society, severe consequences may follow. In the words of UN High Commissioner for Human Rights, Navi Pillay, 'While it is imperative to respond to the current crises with a thorough review of the functioning of the international financial and monetary mechanisms, a human rights approach will contribute to making solutions more durable in the medium and long run.'⁵⁷

57 'A Human Rights Response to the Global Economic Crisis', February 2009, available at: www.ohchr.org/EN/NewsEvents/Pages/humanrightsresponse-to-the-crisis.aspx accessed 12 October 2012.