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NEW DEVELOPMENTS IN INTERNATIONAL POVERTY LAW: THE UN GUIDING PRINCIPLES ON EXTREME POVERTY AND HUMAN RIGHTS

by Camilo Pérez-Bustillo

Persons living in poverty are confronted by the most severe obstacles – physical, economic, cultural and social – to accessing their rights and entitlements. Consequently, they experience many interrelated and mutually reinforcing deprivations – including dangerous work conditions, unsafe housing, lack of nutritious food, unequal access to justice, lack of political power and limited access to healthcare – that prevent them from realizing their rights and perpetuate their poverty. Persons experiencing extreme poverty live in a vicious cycle of powerlessness, stigmatization, discrimination, exclusion and material deprivation, which all mutually reinforce one another. Extreme poverty is not inevitable. It is, at least in part, created, enabled and perpetuated by acts and omissions of States and other economic actors.

From the Preface to the *UN Guiding Principles on Extreme Poverty and Human Rights* (OHCHR 2013)

The traditions of the oppressed teach us that the state of emergency in which we live is not the exception but the rule.

Walter Benjamin (1940)

The adoption of the *UN Guiding Principles on Extreme Poverty and Human Rights (GP)*, by the UN Human Rights Council in September 2012 and by the General Assembly in December 2012, marked a potentially historic advance in the overall process of incorporating issues related to poverty and inequality into broader frameworks regarding the conceptualization of human rights. They also have implications concerning the implementation and enforcement of human rights standards regarding poverty.

The *GP* “are premised on the understanding that eradicating extreme poverty is *not only a moral duty but also a legal obligation* under existing international human rights law” (Preface to *Guiding Principles*; emphasis added). The key test of their practical significance will be the extent to which the *GP* interdimensional approach to the relationship between human rights standards and poverty eradication is actually incorporated into global, regional, and national anti-poverty initiatives. They thus also exemplify persistent challenges and limits in the development of global social policy in such contexts.

Key steps in the overall convergence between research and policy frameworks pertaining to poverty and human rights include the need to situate such issues within the context of the defence of economic, social, and cultural (ESC) rights, their inclusion in national constitutional texts, and their interpretation in the case law of national, regional, and international courts. The place of ESC rights within the UN framework has for example recently been strengthened by the entry into effect in May 2013 of the Optional Protocol to the UN Covenant on Economic, Social, and Cultural Rights (see: <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>). The evolving definition of this architecture of “international poverty law” (Pérez-Bustillo 2008, Van Genugten and Pérez-Bustillo 2004, Williams 2006) is also shaped, in part, by authoritative interpretations of the meaning

This brief argues that:

- The adoption of the UN Guiding Principles on Extreme Poverty and Human Rights marks a potentially historic advance in the overall process of incorporating poverty related issues.
- The Guiding Principles reflect both potential and limits of global social policy efforts within the UN and overall international system.
- The Guiding Principles should be understood as part of a broader, still incomplete, process of strengthening the recognition of rights within the UN system.
- The Guiding Principles may help strengthen the UN Human Rights framework by providing an additional basis for poor people’s fundamental right to “live in freedom and dignity, free from poverty and despair.”

and reach of such provisions by specialized mechanisms within the UN system.

Examples of these mechanisms include the observations, recommendations, General Comments, and statements periodically issued by the UN Committee on Economic, Social and Cultural Rights (UN CESCR) and the efforts of Special Rapporteurs focused on specific issues (such as Magdalena Sepúlveda of Chile, the current mandate holder for issues related to Extreme Poverty and Human Rights). The *GP* are an illustrative case. They have symbolic importance because they reaffirm and may serve to strengthen the international community's still inadequate commitment to apply human rights principles and policies to the eradication, reduction, and ultimately prevention of poverty. The *GP* also enrich the theoretical and policy frameworks needed to assess and shape what should follow the culmination in 2015 of the current stage of the contentious Millennium Development Goals (MDG) process (Pogge 2013, Pogge et al. 2013), including the potential creation of the Global Social Fund.

The new Guiding Principles reflect both the potential and limits of global social policy efforts within the UN and overall international system

The new *GP*, like the MDG process, also reflect the limits of hegemonic approaches to human rights promoted by institutions such as the International Monetary Fund (IMF), World Trade Organization (WTO), World Bank and the most powerful states within the UN system, which have been highlighted by many scholars throughout the world (see e.g. Baxi 2002, Dussel 2013, Falk 2000, Santos and Rodríguez Garavito 2005). These critiques are especially apt within the context of ongoing observances of the 65th anniversary of the adoption of the *Universal Declaration of Human Rights* in December 2013.

The inadequacies which continue to plague the still incomplete process of convergence between human rights and anti-poverty discourses, policies, and practices are both conceptual and structural in character. They include the continuing failure by many policy-makers and researchers to fully embrace human rights-based approaches to poverty, at least in part because of their counter-hegemonic potential, or to explicitly recognize that poverty and inequality, as such – and not just “extreme” versions of such conditions – violate fundamental human rights principles and standards. These failures are often rooted in the reduction of human rights to “neo-liberal” premises which subordinate their potential emancipatory interpretation to the purported imperatives of the “free market,” “free trade,” and “national security.” Much of this is grounded in the origins of such approaches in classical liberal and Eurocentric assumptions characteristic of Western modernity, which insist that liberty is not only compatible

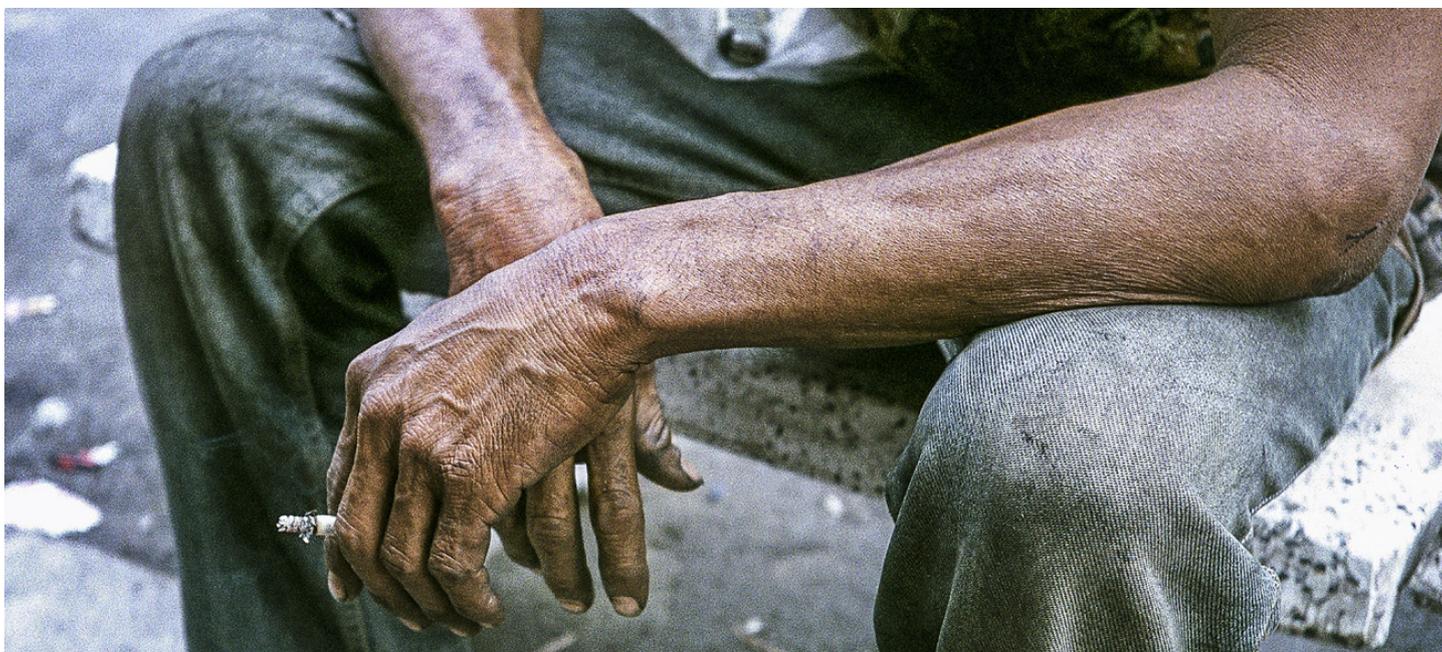
with, but must be founded on, the protection of individual conceptions of property rights (Meiksins Wood 2012).

The Guiding Principles, the “poverty of rights,” and “human rights from below”: poverty, self-determination, and violence

Poverty is an urgent human rights concern in itself. It is both a cause and a consequence of human rights violations and an enabling condition for other violations. Not only is extreme poverty characterized by multiple reinforcing violations of civil, political, economic, social and cultural rights, but persons living in poverty generally experience regular denials of their dignity and equality. (Preface, *UN Guiding Principles*)

The *GP* thus exemplify the promise and limitations of human rights reflected in the persistent “*poverty of rights*” (Van Genugten and Pérez-Bustillo 2001) which characterizes the living conditions of the global poor. Such conditions amount to a permanent “state of emergency” – such as is imposed more generally during a war, dictatorship, or national catastrophe – which highlights the need to deepen and extend the meaning of human rights, in practice, “*from below*” (Baxi 1987, Dussel 2013, Pérez-Bustillo 2008, Rajagopal 2003, Santos and Rodríguez Garavito 2005). This is especially critical as hegemonic institutions such as the World Bank, which are responsible at least in part, together with national élites, for generating much of the poverty and inequality which continues to violate the dignity of billions of people throughout the world, rhetorically embrace the “elimination of poverty” combined with diluted versions of “human rights,” in order to bolster their waning institutional legitimacy (Human Rights Watch 2013, Pérez-Bustillo 2003). These limitations are especially notable in an era of deepening financial, economic, and environmental crises, on a global scale, which have increasingly taken on a multidimensional, ultimately “civilizational” character (Dussel 2013).

Efforts to reshape hegemonic approaches to the relationship between poverty and human rights build on Amartya Sen’s insight that poverty in essence implies a lack of control over the circumstances in which one lives (Sen 1998), which thus, from a human rights perspective, implies violations of individual and collective rights to self-determination. This in turn suggests that poverty is not “simply” the *cause* of serious violations of human rights, but is also in fact the *product* of such violations, which reflect the intertwined, convergent character of state, structural, and systemic violence. The relationship between poverty and both more direct and more subtle forms of violence has been highlighted by Sen’s own work regarding the human toll of hunger and femicide, and that of Thomas Pogge (2002), as well as by human rights advocates such as Mahatma Gandhi, Martin Luther



King, and Nelson Mandela. Key aspects of Sen's approach to the relationship between poverty, democracy, and broader deprivations of freedom are reflected in paragraph 2 of the UN General Assembly Resolution adopted in December 2012:

reaffirming that ... it is essential for States to foster participation by the poorest people in the decision-making process in the societies in which they live, in the promotion of human rights and in efforts to combat extreme poverty and that it is essential for people living in and affected by poverty and in vulnerable or marginalized groups or situations to be empowered to organize themselves and to participate in all aspects of political, economic, social and cultural life, in particular the planning and implementation of policies that affect them, thus enabling them to become genuine partners in development. (para. 2, A/Res 67/164)

Origins and evolution of the Guiding Principles

The *GP*, which were first approved in their initial form by the UN Sub-Commission on the Promotion and Protection of Human Rights on August 24, 2006, were finally adopted by the UN Human Rights Council on September 27, 2012 (Resolution 21/11), and explicitly referenced ("with appreciation" as a "useful tool") as part of a broader resolution on Extreme Poverty and Human Rights adopted by the UN General Assembly on December 20, 2012 (Res 67/164, not released publicly until March 13, 2013).

The December 2012 resolution marks a potential turning point in a complex process which included two key earlier resolutions. These included the declaration by the United Nations in December 1992 of October 17 as the International Day for the Elimination of Poverty, and the launching of the Second UN Decade for the Elimination of Poverty (2008–2017) in December 2007. More substantive

steps included the adoption by UN CESCR of a *Statement on Poverty* (E/C.12/2001/10) on May 10, 2001, which provided a crucial inspiration for the drafting of the *GP*, and which must be understood as one of the foundational components of "international poverty law" (Pérez-Bustillo 2003, 2008). The 2001 Statement in fact went further than the *GP* emphasis on "extreme" poverty, by insisting that poverty as such constituted a serious violation of human rights, not "only" its most extreme forms.

The process which culminated with the approval of the *GP* included longstanding – and continuing – efforts by the UN's Special Rapporteurs on Extreme Poverty and Human Rights, by specialized staff and consultants associated with the Office of the UN High Commissioner on Human Rights, and the input of several researchers within the CROP network. Much of this has involved attempts, which were only partly successful, to prevent the dilution of the proposed *GP*, because of the lobbying efforts of UN member states concerned about the effects of overly prescriptive language. This included the restriction of their emphasis to issues of "extreme" poverty, despite the fact that the 2001 statement issued by the UN CESCR extended more broadly to issues of poverty overall.

As the UN CESCR noted in May 2001:

(t)he rights to work, an adequate standard of living, housing, food, health and education, which lie at the heart of the Covenant, have a direct and immediate bearing upon the eradication of poverty In the light of experience gained over many years, including the examination of numerous States parties' reports, the Committee holds the firm view that poverty constitutes a denial of human rights." (UN CESCR 2001)

This does not apply only to "extreme" poverty. The Committee also stressed the anti-poverty obligations of global institutional actors including "private businesses" (*GP* para. 20), and the need to "remove ...

global structural obstacles” which confront the anti-poverty strategies promoted by developing countries, including unsustainable foreign debt, the widening gap between rich and poor, and the absence of an equitable multilateral trade, investment, and financial system.” (GP para. 21) The GP should thus also be understood as part of a broader, still incomplete, process of strengthening the recognition of rights within the UN system for sectors traditionally marginalized in hegemonic approaches to human rights, such as indigenous peoples and migrants.

The Guiding Principles in their historical context: the Universal Declaration of Human Rights and its origins

The potential impact of the GP emphasis on the relationship between human rights and poverty is enhanced because it is deeply grounded in Articles 22, 25, and 28 of the *Universal Declaration of Human Rights* of 1948, which affirm the “right to realization ... of the economic, social and cultural rights indispensable” for each person’s dignity and “for the free development of their personality” (Art.22); the “right to a standard of living adequate for ... health and well-being ... including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond” their control (Art. 25); and “to a social and international

order in which the rights and freedoms set forth in this Declaration can be fully realized” (Art. 28). These provisions in turn flesh out the meaning of Franklin D. Roosevelt’s original conceptualization of “freedom from want” in his “Four Freedoms” speech (1941), the incorporation of such concerns in the Allied war aims articulated by the Atlantic Charter, and his 1944 proposal for an “Economic Bill of Rights.”

The Guiding Principles and the right to a dignified life, or the “right to be human,” as bases for advocacy and for the convening of an International Poverty Tribunal

Human dignity is at the very foundation of human rights. It is inextricably linked to the principles of equality and non-discrimination. Respect for the inherent dignity of those living in poverty must inform all public policies. State agents and private individuals must respect the dignity of all, avoid stigmatization and prejudices, and recognize and support the efforts that those living in poverty are making to improve their lives. (Preface, *UN Guiding Principles*).

The GP draw upon the historical framework derived from the conceptualization of “freedom from want” and related provisions of the UN Charter and the *Universal Declaration of Human Rights*. In this way they provide an additional basis for movements of poor peoples and



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their allies around the world to continue to push for a fuller recognition of their fundamental right to “live in freedom and dignity, free from poverty and despair” (from the Preamble to the GP, citing the World Summit Outcome document adopted in September 2005, emphasis added). This underlying “right to a dignified life” (which Baxi 1987 and Offerdal 2003 have defined in essence as the “right to be human”) is gradually being recognized in international conventional and customary law, and in the norms and jurisprudence of the European and Inter-American regional human rights systems, as well as in those states where constitutional and other legal standards as to economic, social, and cultural rights explicitly contribute to, converge with, reflect, and/or reinforce evolving international norms in this context.

Social movements have also influenced the framing of issues at the cutting edge of human rights concerns through tribunals of conscience directed at mobilizing international public opinion (Klinghoffer and Klinghoffer 2002). Examples include the Russell Tribunal of the 1960s led by Lord (Bertrand) Russell and Jean-Paul Sartre, and its most widely recognized successor, the Permanent Peoples’ Tribunal (PPT) (based at the Lelio Basso Foundation in Rome). The PPT has expressed support for the convening of an international tribunal of conscience



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– the International Poverty Tribunal – to address state and corporate responsibility for global poverty and inequality, within the framework of the international commemoration of the 50th anniversary in 2018 of the Rev. Dr. Martin Luther King Jr.’s “Poor People’s Campaign.” The new GP provide an important conceptual basis for such an effort.

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