GLOBAL OBLIGATIONS FOR CHILDREN’S RIGHTS

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June 18, 2007

The United Nations Committee on the Rights of the Child organized a Day of General Discussion on September 21, 2007 to address the issue of "Resources for the Rights of the Child - Responsibility of States.” The theme refers particularly to article 4 of the Convention on the Rights of the Child, which says:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

The Day of General Discussion is to give particular attention to State parties’ obligations with regard to the implementation of economic, social and cultural rights. Most work on this issue has focused on the obligations of states with regard to children under their own jurisdiction. Little attention has been given to the obligations of states to children elsewhere, outside their jurisdiction. Article 4 refers to the importance of international cooperation, but the obligations that are implied have not been elaborated. The central argument here is that there is a need for a systematic effort to clarify the external obligations of states under the Convention on the Rights of the Child and related human rights instruments. Closely linked to the need to clarify the obligations of states is the need to work out the responsibilities of international organizations, corporations, and other international actors that may have an impact on people’s human rights.

A NORMATIVE FRAMEWORK

The task of working out the external obligations of states with regard to human rights is not so much one of interpreting existing law (de lege lata) as it is one of formulating new law as we think it should be (de lege ferenda). Of course these new formulations must be based in part on our understanding of established human rights law and principles. They also should be based on a clear and explicit understanding of the underlying moral obligations.

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Our premise is that human rights law generally derives from a broad consensus regarding the moral bases of our behavior toward one another. Some, but not all, of what we recognize as moral responsibilities are elevated to legal obligations through the systematic formulation of human rights law.

We live as social beings who provide support to and draw support from the people around us. We aspire to a measure of self-sufficiency, but we are vulnerable, especially at the beginning of the life cycle and at the end. Children are in training for independence. As highly dependent beings, small children need to have others take care of them. Who is responsible for children? The first line of responsibility for children is with the parents, but others have a role as well. In asking who is responsible, the question is not whose fault is it that children suffer so much (who caused the problems?), but who should take action to remedy the problems? Many different social agencies may have some role in looking after children. What should be the interrelationships among them? What should be the roles of churches, nongovernmental organizations, businesses, and local and national governments?

Most children have two vigorous advocates from the moment they are born, and even before they are born. Their parents devote enormous resources to serving their interests. These are not sacrifices. The best parents do not support their children out of a sense of obligation or as investments. Rather, they support their children as extensions of themselves, as part of their wholeness.

In many cases, however, that bond is broken or is never created. Fathers disappear. Many mothers disappear as well. In some cities hundreds of children are abandoned each month in the hospitals in which they are born. Bands of children live in the streets by their wits, preyed upon by others. Frequently children end up alone as a result of poverty, disease, warfare or other sorts of crises. Many children are abandoned because they are physically or mentally handicapped. Some parents become so disabled by drugs or alcohol or disease that they cannot care for their children.

In many cases the failures are not the parents’ own fault, but a result of the fact that others have failed to meet their responsibility toward the parents. In many cases parents are willing to work hard and do whatever needs to be done to care for their children, but cannot find the kind of employment opportunities they need to raise their children adequately.

In some cases others look after children who cannot be cared for by their biological parents. In many cultures children belong not only to their biological parents but also to the community as a whole. The responsibility and the joy of raising children are widely shared. Where communities mistreat children, through neglect or through exploitative child labor and trafficking, for example, the next higher level must step in to correct the situation.
In many places, especially in "developed" nations, community-based care is no longer available because of the collapse of the idea and the practice of community. Many of us live in nice neighborhoods in well-ordered societies, but the sense of community--of love and responsibility and commitment to one another--has vanished. In such cases the remaining hope of the abandoned or orphaned child is the government, the modern substitute for community. People look to government to provide human services that the local community no longer provides.

As children mature the first priority is to help them become responsible for themselves. So long as they are not mature, however, children ought to get their nurturance from their parents. Failing that, they ought to get it from their relatives. Failing that, they ought to get it from their local communities. Failing that, they ought to get it from the local nongovernmental organizations. Failing that, they should get it from local governments. Failing that, it should come from their national governments. Failing that, they ought to get it from the global community. The responsibility hierarchy is presented in Figure 1 as a set of nested circles, with the child in the center of the nest, surrounded, supported, and nurtured by family, community, government, and ultimately, international organizations.

![Rings of Responsibility](image-url)
Those who are closest to the needy individual generally have greatest responsibility. There are sometimes exceptions. For example, there are cases in which central governments provide services to the needy directly, bypassing local government. Often this is based on an agreed division of labor, and an understanding that services are likely to be distributed more equitably if they are funded out of the central treasury. Similarly, some programs, such as immunization, cannot be completely managed locally. Nevertheless, the general pattern is that we expect problems to be handled locally, and reach out to more distant agents only when local remedies are inadequate.

This is straightforward. The thought that should be added is that in cases of failure, agents more distant from the child should not simply substitute for those closer to the child. Instead, those who are more distant should try to work with and strengthen those who are closer, in order to help them become more capable of fulfilling their responsibilities toward children. Although there will be cases in which sanctions are necessary, agencies in the outer rings generally should focus on helping to overcome, rather than punish, failures in the inner rings. To the extent feasible, agencies should try to respond to failures in empowering, positive ways. Apart from exceptionally serious cases, local communities should not take children away from inadequate parents but rather should help them in their parenting role. State governments should not replace local governments, but instead should support local governments in their work with children. The global community should help national governments in their work with children.

Just as national governments ought to be representative of the people that live under their jurisdiction, speaking and acting on their behalf, the international governmental organizations in the outer ring should be understood as representing all people. They represent the global community and act on its behalf.

These ideas are based on subsidiarity, “the principle that each social and political group should help smaller or more local ones accomplish their respective ends without, however, arrogating those tasks to itself (Carozza 2003, 38, note 1; also see Bosnich 1996; Minus 2004).”

Governments’ responsibilities with regard to ordinary children in ordinary circumstances are limited, as they should be. Families should provide daily care and feeding. However, for children in extreme situations who are abused or who suffer from extremely poor health or serious malnutrition, governments have a role to play. Where there has been a failure in the inner rings of responsibility and no one else takes care of the problem, government must step in.

However, the responsibilities of agencies in the outer rings are not limited to situations in which there are failures in the inner rings. One should not say

... accountability of a State will only arise in circumstances where parents have failed in the performance of their responsibilities with respect to a child’s health. On the contrary, it is based on co-operation,
interdependence and assistance rather than intervention as a measure of last resort (Tobin 2006, 285).

All parties have some responsibilities all the time. For example, all parties always have the responsibility to do no harm to children. However, the scope of the responsibilities of parties in the outer rings is increased when there are failures in the inner rings.

There are similar rings of responsibility for others who cannot care for themselves, such as victims of disasters, the physically disabled, and mentally ill. These responsibilities need to be clarified so that the care of those who are unable to care for themselves is not left to chance. Thus this framework may be used in relation to all individuals who need protection and support, and not only children.

In some contexts, human rights specialists are concerned with justiciability, the question of whether individuals who feel their human rights have been violated can take their cases to appropriate courts to obtain authoritative decisions regarding guilt or innocence and appropriate remedies. The remedies may call for punishment of the violator, or compensation to the victim, or some sort of administrative remedy.

Approaches that focus on violations emphasize the prevention of wrong-doing. However, we should also give attention to the need for right-doing. We want to know how to go beyond the prevention of harm and identify the positive things that ought to be done. In this approach, the obligation to act to deal with a human rights problem derives not from having caused it, but from having the capacity to remedy it. Generally, if you have the capacity to protect someone from great harm, or you can deliver great benefits, and you can do that at small cost or risk to yourself, then you are obligated to do so.

The global community encompasses all actors that act globally, including international governmental organizations, international nongovernmental organizations, transnational business enterprises, and nation-states in their external relations. Although it has no recognized representative with authority to speak for it, and no means for entering into agreements, it is meaningful to speak of the responsibilities of the global community taken as a whole.

The global community should not be viewed as an independent entity with its own will and its own voice. It should be understood as the agent of the collectivity of all people, acting through their states and through other agencies, and subordinate to that collectivity. At present the global community is not explicitly and directly a subject of international law. However, it does have implied obligations under international law, obligations that could and should be spelled out more clearly.

The global community is no more amorphous than any single state. States manifest themselves by having their constituent members, their people, form governments that manage a specific population and territory. Similarly, it is up to the collectivity of all people, acting through their states, to form a global government, or at least elements of global governance. This would give the global community the voice and the visibility that
it needs to have. It is now primarily the United Nations and its associated agencies that serve these functions. Action is frequently taken in the name of the global community, on matters of security and trade, for example. If the global community can take responsibility for issues relating to security, there is no reason why it cannot take comparable responsibility for the well-being of children.

GLOBAL OBLIGATIONS UNDER EXISTING HUMAN RIGHTS LAW

The work of clarifying the external obligations of states in relation to the Convention on the Rights of the Child that is proposed here would fit into a broader movement to clarify global obligations with regard to human rights generally (Barry and Pogge 2006; Clapham 2006; Darrow 2003; Gosselin 2006; International Council 2003; Kuper 2005; Pinstrup-Andersen and Sandøe 2007; Skogly 2006). This broad effort is grounded in the core document of the modern global human rights system, the Universal Declaration of Human Rights, which says in article 28:

> Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

This in turn stands on the United Nations Charter, which says, in article 55

> With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56 of the Charter says:

> All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

Thus the charter and the declaration clearly acknowledge the responsibility of the global community, taken as a whole, for the realization of human rights. Human rights law already recognizes that some obligations are extra-territorial or, more precisely, extra-jurisdictional. For example, there is widespread recognition that gross human rights violations such as genocide, torture, and crimes against humanity are matters of concern
for the global community taken as a whole. The creation of the International Criminal Court demonstrates this recognition. The primary obligations of states are internal, but they have external obligations as well.

If everyone is entitled to an international order that will assure the full realization of all human rights, we must work on envisioning and establishing such an order. Surely it should be an order in which the world as a whole carries not only moral responsibilities but also legal obligations for the realization of those rights. We must begin with the understanding that there are global obligations that are beyond those of states to their own people. Then we can begin to work out their exact content.

**PROGRESSIVE REALIZATION**

Article 24 of the *Convention on the Rights of the Child*, on “the right of the child to the enjoyment of the highest attainable standard of health,” says, in paragraph 4:

States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 28 says, in paragraph 1:

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

It then proceeds to list several specific things that must be done in relation to education.

These are comparable to article 2 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), which says:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, 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.

An authoritative account of the meaning of progressive realization may be found in *General Comment 3* (United Nations. Office of the High Commissioner for Human Rights 1990).

In saying that each State Party to the ICESCR is to take action “to the maximum of its available resources,” the covenant says that expectations of duty bearers must be moderated by an appreciation of their limited capacities. The capacities of poor, weak
nations are very limited. Of course, as article 1 of the ICESCR recognizes, the resources that poor countries have available to them may be expanded through assistance from other countries. In General Comment 3, paragraph 13 makes it clear that “the maximum of its available resources” refers to “both the resources existing within a State and those available from the international community through international cooperation and assistance.”

What are the obligations of the richer countries? Paragraph 14 of General Comment 3 says, “international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard.” In practice, the widely accepted understanding has been that richer countries may or may not provide assistance, as they wish. “Maximum available resources” has been taken to refer only to the resources available to the poor country, not to the resources available to the donor countries. The obligation to assist has been seen as soft, with no requirement that the assistance must be raised to any particular level.

There is no reason to assume that rights to be realized are only those of the people of one’s own country. With this reading, just as the expectations of particular countries are to be calibrated to their capacities, the expectations of donor countries and the global community as a whole also should be calibrated to their capacities. ICESCR article 2, quoted above, could be read as meaning that not only poor countries but also rich countries must act to the maximum of their available resources.

If the global community’s capacity is high, as it is, to what level should it provide assistance to countries in need? An answer in implied in the previously cited article 28 of the Universal Declaration of Human Rights. If we are serious when we say, “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized,” then the global community is obligated to provide assistance up to the point at which all human rights are fully realized. With regard to food, for example, this means that the global community is obligated to assure that everyone’s human right to adequate food is fully realized.

Of course it is national governments that carry the primary obligation for realization of their own people’s human rights. Salil Shetty, the director of the United Nations Millennium Campaign, speaking about the prospects for meeting the Millennium Development Goals by 2015, argued, “any country where the leaders are serious about realizing the goals in the next 10 years can in fact make it happen (Sandrasagra 2006).” Whether or not that is so, we should explain what is to be done to assure the realization of the human rights of those people who live in countries whose national governments are either unwilling or unable to do what needs to be done. The global community cannot discharge its obligations simply by pointing to the obligations of national governments.

In many cases, poverty and hunger persist because national governments lack the capacity or the will to address the problem. The solution cannot then be based on the assumption that they all do have the capacity and the will.
Discussions of children’s rights generally focus on the correlative obligations of national governments to children under their jurisdictions. However, this approach treats rights and obligations as if they end at the national border. It implies that children of poor countries should have much lower expectations for the realization of their rights than children of rich countries.

Poverty and malnutrition should be addressed as global problems, and not only as a series of national problems. The World Bank says:

The reason undernutrition and micronutrient malnutrition persist at high levels is not that we do not know how to reduce them, nor that countries have applied best practice, yet failed to succeed. It is that most countries have not invested at a scale large enough to get these tested technologies to those who will benefit from them most (World Bank 2006, 37-38).

Why not say:

It is that the world has not invested at a scale large enough to get these tested technologies to those who will benefit from them most.

This formulation would acknowledge the role and responsibility of the global community taken as a whole, rather than pushing it off to the individual poor countries and allowing the rich countries to stand aside. Many countries do not have the capacity or the will to solve the problems of malnutrition within their jurisdictions. To treat this mainly as a problem of individual countries, and not of the world, is to abandon malnourished people in the weaker countries.

LEVELS OF OBLIGATION

The obligations of states in relation to human rights are commonly distinguished into three main categories, respect, protect, and fulfill. In turn, fulfill is divided into two categories, fulfill in the sense of facilitate, and fulfill in the sense of provide. Paragraph 15 of General Comment 12 interprets these as follows:

- **respect** - "The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access."
- **protect** - "The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food."
- **fulfil (facilitate)** - "The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security."
• **fulfil (provide)** - "Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. This obligation also applies for persons who are victims of natural or other disasters (United Nations. Economic and Social Council 1999)."

To put it simply,

- **Respect** means do no harm to others.
- **Protect** means prevent harm to others by third parties.
- **Facilitate** means help others to meet their own needs.
- **Provide** means meet others needs when they cannot do that themselves.

All of these categories apply not only to the internal obligations of states but also to their external obligations.

*Respect* and *protect* are basically obligations to assure that states themselves and other such as corporations, international agencies, and others that act internationally do no harm. States themselves must do no harm, and they must provide protection by assuring that others that they control or influence do no harm. The obligations to *facilitate* and *provide* emphasize positive obligations, especially for those who are needy.

These obligations apply to the global community as a whole. This means that if some aspects of the global order are systematically harmful to some groups of people, there is a positive obligation to correct that order. For example, if it is found that international trade systematically harms some while it benefits others, there is an obligation to protect those who are harmed (Pogge 2002; Pogge 2005). Similarly, if there is some group in extreme need that is systematically neglected, there is an obligation to come to that group’s assistance.

The final report of the Millennium Task Force on Hunger says that developed countries should contribute more generously to development in poor countries (UN Millennium Project 2005a). However, like *General Comment 3* (United Nations. Office of the High Commissioner for Human Rights 1990), it does not suggest that they have a legal obligation, or should have a legal obligation, to fund the program to any particular level. Reducing the role of the global community to that of an occasional donor or lender leaves the challenge almost entirely to the separate nations. This amounts to an evasion of responsibility. With their greater capacity, it falls primarily on the developed countries of the world to assure realization of the *Universal Declaration of Human Rights* article 28: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

A child may be born into a poor country, but that child is not born into a poor world. That child has rights claims not only against its own country and its own people; it has claims against the entire world. If human rights are meaningful, they must be seen as universal,
and not merely local. Neither rights nor obligations end at national borders. While national governments have primary responsibility for assuring the realization of human rights for people under their jurisdiction, all of us are responsible for all of us, in some measure. The task is to work out the nature and the depth of those global obligations.

**RECOMMENDATIONS**

In obtaining reports from States Parties to the *Convention on the Rights of the Child*, the Committee on the Rights of the Child should give more systematic attention to the external activities of States Parties, and to the adequacy of their control of business enterprises and other entities under their jurisdiction. They should also monitor the activities of States Parties in international organizations as they might have impacts on the rights of the child. The Committee should assure that the global obligations of nations are carried out through their bilateral assistance programs and through their participation in international organizations.

In coordination with the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child should work on clarifying the external obligations of states in relation to economic, social and cultural rights. This can be done by conducting a Day of General Discussion on Obligations of the Global Community and by preparing a General Comment on the issue. Consideration should be given to the preparation of a new Optional Protocol or other form of new international agreement on the issue.

The Committee should give attention not only to the obligations of states but also to the responsibilities of other agencies that act globally, including, in particular, United Nations agencies, the World Trade Organization, and agencies concerned with humanitarian assistance such as the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies. The deliberations should draw on the expertise of relevant Special Rapporteurs, and also the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises.
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