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IMF Human Rights Accountability: A Pragmatic Way to Break the Deadlock

Aldo Caliarì¹

In the three decades since the 1993 establishment of the World Bank Inspection Panel, almost all development finance institutions (DFIs) have established analogous panels, ombudsperson offices or other independent accountability mechanisms (IAMs) to allow people who believe they have been harmed by the DFI's activities to directly trigger processes of fact-finding, dispute resolution, and, if applicable, redress. The primary exception has been the International Monetary Fund.

This article proposes the creation of an expert panel on the human rights dimensions of IMF programs, as a similar avenue for individuals affected by IMF policy-affected individuals. The article begins with a brief context on the history and debates surrounding the human rights obligations of the Bretton Woods Institutions, including particularly the IMF. It then examines the relevance of human rights to a number of IMF areas of purview – whether the traditional ones or the expanded range of issues in member countries that the IMF covers today, including social spending, inequality, and climate change. The final section proposes an expert panel to address human rights impacts of IMF activities, designed to reflect particular differences between the IMF and other DFIs and serve as a practical means of advancing the deadlocked debate on the IMF's accountability for human rights.

The Debate over the IMF's Human Rights Obligations

In 2003, a group of experts drafted the *Tilburg Guiding Principles on the World Bank, IMF and Human Rights* to codify the obligations of the IMF and other Bretton Woods Institutions under international human rights law.² Twenty years later, none the institutions (including the IMF) appears to be any closer to agreeing that they have such obligations.³

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² Willem van Genugten, Paul Hunt, Susan Mathews (eds), *World Bank, IMF and Human Rights* (2003).

³ UN Human Rights Council, Report of the Special Rapporteur on extreme poverty and human rights, UN Doc. A/HRC/38/33 (2018).

The scholarly work that attributes human rights responsibilities to the IMF rests on three main lines of argument.⁴ First, as a subject of international law with its own legal personality, the IMF is bound by general rules of international law, including international human rights law. Second, international organizations are governed by their member countries, and these members are bound by international human rights law. They should not be allowed to do through their organizations what they are not allowed to do on their own. Third, the IMF is a specialized agency of the United Nations. The relationship agreement linking the institution to the UN emphasizes – as is the case for the World Bank – the independent status of the agency. However, this does not mean it is exempted from obligations arising from the UN Charter, including those relating to human rights.

Nevertheless, the IMF denies having such obligations. The closest reference to an official IMF definition on the subject of its obligations under human rights law is found in a 2005 paper by former IMF General Counsel Francois Gianviti.⁵ Referring to the International Covenant on Economic, Social and Cultural Rights, but on grounds that could extend to other human rights instruments, the paper contends that the Covenant does not apply to the IMF.⁶ The three lines of argument are that:

the IMF is not a party to the Covenant; the obligations imposed by the Covenant apply only to States, not to international organizations; and the Covenant, in its Article 24, explicitly recognizes that "[n]othing in the present Covenant shall be interpreted as impairing the provisions . . . of the constitutions of the specialized agencies which define the respective responsibilities . . . of the specialized agencies in regard to the matters dealt with in the present Covenant."⁷

A main thread running through Gianviti's paper is that the IMF is a monetary, not a development, agency. Gianviti shares the story that, back in the 1950s when the UN Commission on Human Rights started the work that would lead to the Covenant, it invited the IMF to take part in the deliberations. The IMF "took the position that the questions raised in the elaboration of the Covenant were outside its own mandate".⁸

⁴ Daniel D. Bradlow, *The World Bank, the IMF and Human Rights*, 6 *TRANSNATIONAL L. & CONTEMPORARY PROBLEMS* 46 (1996); SIGRUN I. SKOGLY, *THE HUMAN RIGHTS OBLIGATIONS OF THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND* (2001); MAC DARROW, *BETWEEN LIGHT AND SHADOW: THE WORLD BANK, THE INTERNATIONAL MONETARY FUND AND INTERNATIONAL HUMAN RIGHTS LAW*(2005); Van Genugten, *supra* note 2.

⁵ Francois Gianviti. *Economic, Social and Cultural Rights and the International Monetary Fund*. 3 *CURRENT DEVELOPMENTS IN MONETARY AND FINANCIAL LAW* (2009).

⁶ Yet, Gianviti argues, the IMF contributes to the conditions for the realization of rights set out in the Covenant. *Id.* at 43.

⁷ *Id.* at 6, fn 9.

Id. at 3-4.

This may have been a defensible position in the early years of the IMF, when it limited its interventions to a few macroeconomic variables – money supply, inflation, budget deficits – in a context of fixed exchange rates.⁹ But the transition to a flexible exchange rate system meant that multiple other variables could potentially have a bearing on how a country achieved stability. IMF monitoring, conditions, and policy advice could address—and have addressed, over the years—issues such as *inter alia* labor, agriculture, defense spending, corruption, poverty reduction, and health and social safety nets.¹⁰

Expansion of IMF’s Work on Inequality, Inclusiveness and Climate Change

The last decade has seen a further expansion and codification of the IMF’s remit beyond its core traditional areas. With the growing recognition that distributional issues affect sustainability of growth and macroeconomic stability, the Fund has expanded its work on inequality, inclusive growth, and jobs. In 2018, it issued a guidance note to operationalize inequality issues in country work, following more than 40 country pilot experiences.¹¹

In 2019 the institution released a strategy for engagement on social spending, reflecting its increased work on the subject. The strategy also responded to an IMF Independent Evaluation Office report on social protection that found the work had been uneven and needs strengthening.¹² One new strategy seeks to help IMF member countries foster resilient and inclusive economies by supporting them in addressing gender gaps and improving women’s economic empowerment. Although references to gender in IMF documents were rare before 2013, the recently adopted *IMF Strategy towards Mainstreaming Gender* seeks to systematize and provide a basis for what has been a rising involvement by the institution in the last decade.¹³ More recently, growing understanding of the macroeconomic implications of climate change and rising demand from the membership led the IMF to adopt, in 2021, its first-ever *Strategy to Help Members Address Climate Change Related Policy Challenges*.¹⁴

The establishment of the Resilience and Sustainability Trust further reflected the IMF’s engagement in climate, as well as health and potentially other issues. The creation of this trust responds to the members’ interest in finding ways wealthier members could re-channel Special

⁹ Bradlow, *supra* note 4.

¹⁰ *Id.*

¹¹ International Monetary Fund, *How to Operationalize Inequality Issues in Country Work* (2018).

¹² International Monetary Fund, IMF (2019) **IMF (2019)**. *A Strategy for IMF Engagement on Social Spending* (2019).

¹³ International Monetary Fund, *Strategy Towards Mainstreaming Gender* (2022).

¹⁴ International Monetary Fund, *IMF Strategy to Help Members Address Climate Change Related Policy Challenges: Priorities, Modes of Delivery, and Budget Implications* (2021).

Drawing Rights—an IMF-issued reserve asset—to poorer members.¹⁵ One of the innovative features of this fund is that it aims at financing longer-term structural challenges that pose macroeconomic risk, such as climate change and pandemics.¹⁶ Notably, the IMF has made important contributions in the last three years covering issues such as access to vaccines and therapeutics, and other elements of the pandemic response.¹⁷

The growing awareness within the IMF of the multiple social and environmental fields affected by its mandate is a positive development. It also erases any doubt that today's IMF has traveled a long way from the purely monetary agency that Gianviti's paper described – although it is debatable whether the IMF ever fit that description. What is more important for the purpose of understanding the IMF's current human rights responsibilities is that the environmental and social issues into which the IMF is lately venturing are all, to different but significant degrees, squarely within the scope of application of human rights principles and standards.¹⁸

Human Rights within IMF's Mandate and Expertise

The IMF is not the expert institution on climate change, public health, the gender gap, and other environmental and social issues; only where the issues are critical to a country's macro-economic stability – that is, for example, where they significantly influence present or prospective balance of payments or domestic stability—are the issues relevant to its activities. The need to demonstrate such “macro-criticality” is a threshold condition discussed for each of the topics of the IMF's expanded agenda.¹⁹ Where the IMF recognizes the existence of such a macro-critical issue—relevant to its operations but one in which the IMF does not have expertise—the IMF's most recent *Guidance Note on Surveillance* instructs staff to analyze the issue drawing on the expertise of, and in collaboration with, external partners, but the staff “are not expected to provide policy advice.”²⁰

¹⁵ Special Drawing Rights are a reserve asset the IMF can issue to complement reserves of member countries, provided certain global conditions are in place. In 2021, the IMF created \$650 billion in SDRs, the largest allocation in the institution's history, to help members withstand the pandemic shock.

¹⁶ International Monetary Fund, *Managing Director Welcomes the Creation of the Resilience and Sustainability Trust to Help Vulnerable Countries Meet Longer Term Challenges* (2022).

¹⁷ International Monetary Fund, *A Proposal to End the COVID-19 Pandemic*, IMF Staff Discussion Note, SDN/2021/4 (2019).

¹⁸ Although climate may superficially appear to be the exception, it has important human rights dimensions. In fact, the IMF strategy refers to the social costs of natural disasters and the need for a “just transition”. See, e.g., UN Office of the High Commissioner for Human Rights, *Human Rights and Climate Change* (2009).

¹⁹ International Monetary Fund, *Guidance Note for Surveillance under Article IV Consultations* (2022).

²⁰ *Id.*

This approach is problematic in several ways. The “macro-critical” filter seems to place a robust check on the number of issues extraneous to the IMF’s expertise that staff address. But this may not in fact be the case. On social spending, for example, a survey of mission chiefs conducted to inform the engagement strategy found that social spending was macro-critical in nearly 80 percent of countries and that 70 percent reported providing policy advice in this area, a ratio even higher for developing countries. The strategy on climate change considers it as “one the most critical macroeconomic policy challenges that the IMF’s membership will face in the coming years and decades”,²¹ seemingly heralding much more IMF input on the issue. Moreover, the surveillance guidance states that the determination of macro-criticality is country-specific and will depend, inter alia, on the members’ income level, structural characteristics, and institutional capacity.²²

In other words, the determination of whether the IMF should or should not address matters that may be directly covered by human rights legal standards is left with the IMF itself, on a country-by-country basis. If the IMF makes such a determination, the choice of partner agencies that it should consult, and how to incorporate their input, also rests with the IMF.

While these ‘new’ areas of IMF interest provide the starkest examples of human rights relevance, the human rights implications of policies more obviously within the IMF’s jurisdiction and expertise - that is, fiscal, macrofinancial, monetary, external and macro-structural – also deserve consideration. At present, there is no formal channel by which the IMF can receive input from human rights bodies when policies within its natural realm reach what could be called ‘rights-criticality’—including, for example, when IMF policies exacerbate climate change, gender gaps or health crises.

A Path Forward

Twenty years after the *Tilburg Principles*, it is not easy to see a way out of the deadlocked exchanges of legal arguments for and against the human rights obligations of the IMF. But human rights were enshrined in law to protect the most vulnerable against abuse of power. The simple fact remains that the average person has a hard time digesting the notion that one of the most powerful international organizations does not feel bound by any sense of duty towards human rights. More so if that person lives in an IMF-program country where the institution is seen – justifiably or not – as having significant influence on the economic policies the government adopts. Given that the IMF recognizes E&S issues can be macro-critical either as a factor into

²¹ International Monetary Fund, *IMF Strategy to Help Members Address Climate Change Related Policy Challenges: Priorities, Modes of Delivery, and Budget Implications* (2021).

²² International Monetary Fund, *Guidance Note for Surveillance under Article IV Consultations* (2022).

macroeconomic stability and as a result of macroeconomic policies, providing avenues for human rights assessments and accountability should not necessarily be driven by legal interpretations, but by a desire to lift the positive impact of the IMF's work in what it now recognizes is a more complex environment, and ensure the durability, legitimacy and effectiveness of the policy reforms it promotes.

A Proposed Human Rights Panel for IMF

In that spirit, the creation of an expert panel on the human rights dimensions of IMF programs could make a major contribution to embedding human rights in the policies and programs of the organization. The panel would be independent from the IMF, and take complaints from individuals or groups who allege adverse human rights impacts as a result of an IMF loan or program implemented by their government in contradiction with the human rights obligations of their country. The Panel could also be available at the IMF's own initiative to identify and investigate such potentially adverse impacts.

Panel members would have economic and human rights backgrounds, and examine the claims and potential alternatives that in the context of that program could better align with the country's human rights commitments. Its recommendations would be made public but would be non-binding. They would be provided to the staff with responsibilities for the country. Every year the compilation of cases would be presented to the Board along with recommendations that would give them the opportunity to consider implications for future programs and policies.

This pragmatic design sidesteps the need to take a position on the ongoing debate over whether the IMF has legal obligations under international human rights law. There is no illusion about the complexity of the many thorny issues that the creation of such a panel would still need to navigate, for example, composition, staffing, requirements for complaints, process, etc. In other respects, however, by explicitly making the institution non-binding and by staying anchored to concrete cases in a bottom-up way, it avoids the unending debate and wordsmithing that would dog attempts to come up with general definitions first. By staying focused on the obligations that a particular country already undertook, it would avoid the unwieldy task of having to define specific obligations applicable to the IMF and all its members.

The expectation is that such an approach would, over time, yield a number of cases that begin to form a body of knowledge on how to incorporate human rights into IMF policies. By helping flag prescriptions that are most commonly questioned from a human rights perspective they could provide to the IMF a "heat map" of "rights critical" areas where more systematic work on making IMF policies compatible with human rights is needed.

It would also be a space for joint learning. Volumes have been written reflecting the many ways human rights and economic expert analyses differ;²³ this panel would break down the silos, offering a space where such experts can put their heads together to find solutions that might elude their different communities working alone. The requirement to collaborate could be an antidote to the group-think that otherwise, inescapably pervades each discipline when addressing the other.

Amidst multiple crises and the reversals in development gains of the last few years, mechanisms to protect human rights and the most vulnerable in IMF programs cannot wait for more decades of clever legal debate. It is time to break the deadlock.

²³ *But see* International Council on Human Rights Policy, *Human Rights in the Global Economy: Report from a Colloquium* (2010).