



**Extract from the report:**

Spotlight on  
**Global Multilateralism**

Perspectives on the future  
of international cooperation  
in times of multiple crises

# IMF accountability to human rights: breaking the dead- lock?

BY ALDO CALIARI

## IMF accountability to human rights: breaking the deadlock?

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The human rights obligations of the Bretton Woods Institutions, and the IMF in particular, have been matters of debate for several decades. The IMF considers that, as a monetary agency, international human rights law does not apply to it. However, changes in the international monetary system and growing knowledge about drivers and implications of macroeconomic and structural policies have led the institution to address an expanded range of issues in member countries. Some of the topics currently covered by the IMF, such as social spending and inequality, clearly fall under the application of human rights standards, while others traditionally under IMF jurisdiction have, nonetheless, human rights implications to consider. This article proposes creating a panel on the human rights dimensions of IMF programmes as a way to break the deadlocked debate on the existence of obligations under international human rights law. The body would examine and provide recommendations to IMF staff on situations where individuals or groups allege damage as a result of an IMF loan or programme implemented by their government, in contradiction with the human rights obligations of their country.

In 2003, a group of outstanding experts, in the Tilburg Guiding Principles on World Bank, IMF and Human Rights,<sup>1</sup> sought to articulate the obligations of the Bretton Woods Institutions under international human rights law. Twenty years later, there is little to suggest that the institutions are close to agreeing that they have such obligations.<sup>2</sup> This article focuses on the case of the IMF.

The scholarly work that attributes human rights responsibilities to the IMF rests on three main lines of argument.<sup>3</sup> First, as subject of international law with their 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, which are bound by international human rights law.

Members 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 stresses – as is the case for the World Bank – the independent status of the agency. However, this does not mean an exemption from obligations arising from the UN Charter, with the primacy this latter gives to human rights.

Nevertheless, the IMF denies having such obligations. The closest to an official IMF definition on the subject of its obligations under human rights law is in a 2005 paper by former IMF General Counsel Francois Gianviti.<sup>4</sup> 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

1 Van Genugten et al. (2003)

2 UN Human Rights Council (2018)

3 Bradlow (1996); Skogly (2001); Darrow (2005); van Genugten et al. (2003)

4 Gianviti (2005)

to the IMF.<sup>5</sup> 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.”<sup>6</sup>

One of its main threads is that the IMF is a monetary agency, not a development one. It 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.”<sup>7</sup>

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.<sup>8</sup> 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 and have addressed, over the years, labour, agriculture, defense spending, corruption, poverty reduction, health and social safety nets, among other topics.<sup>9</sup>

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.<sup>10</sup>

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 the IMF and social protection that found the work had been uneven and required strengthening.<sup>11</sup>

The growing understanding about 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.<sup>12</sup>

Yet another 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 very sparse 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.<sup>13</sup>

The IMF establishment of the Resilience and Sustainability Trust ups its involvement in climate and health – among potentially other issues. One of the innovative features of this fund is that it will finance longer term structural challenges that pose macroeconomic risk, such as climate change and pandemics.<sup>14</sup> Notably, the IMF has made important contributions in the last three years covering issues such as vaccine and therapeutics access, and other elements of the pandemic response.<sup>15</sup>

Growing realization within the IMF of the multiple social and environmental fields its mandate affects

5 Yet, the paper argues, the IMF contributes to the conditions for the realization of rights set out in the Covenant; *Ibid.*, p. 43

6 *Ibid.*, p. 6, fn 9

7 *Ibid.*, pp 3-4

8 Bradlow (1996)

9 *Ibid.*

10 IMF (2018)

11 IMF (2019)

12 IMF (2021)

13 IMF (2022a)

14 IMF (2022)

15 IMF (2021a)

is a positive development. But it also erases any doubt that today's IMF has travelled a long way from the purely monetary agency that Gianviti's paper described – though the IMF fitting that description was already a debatable notion at the time of his writing.

What is important for the purpose of this article, the issues the IMF is lately venturing upon are all, to different but significant degrees, squarely within the scope of application of human rights principles and standards.<sup>16</sup>

The IMF largely recognizes that it is not the expert institution on these issues and, therefore, it is only where they become macro-critical – that is, where they significantly influence present or prospective balance of payments or domestic stability – that they are relevant to its activities. The need for macro-criticality is a theme repeated for each of the topics of IMF-expanded work.<sup>17</sup> With regards to macro-critical issues where the IMF does not have expertise, the IMF most recent Guidance Note on Surveillance says staff should analyse the issue drawing on the expertise, and in collaboration with, external partners, but staff “are not expected to provide policy advice.”<sup>18</sup>

The macro-criticality filter seems to place a robust check on the number of issues extraneous to the IMF's expertise that staff has to address. But that may not be the case. On social spending, a survey of mission chiefs conducted to inform the engagement strategy found that it was macro-critical in nearly 80 percent of countries, and 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 of the most critical macroeconomic policy challenges that the IMF's membership will face in the coming years and decades”<sup>19</sup>, seemingly heralding much more IMF input on the issue.

16 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”.

17 IMF (2022b)

18 Ibid.

19 IMF (2021)

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.<sup>20</sup>

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 itself.

While the above ‘new’ areas of IMF interest provide the starkest examples of human rights relevance, the human rights implications of policies clearly 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 we could call ‘rights-criticality’.

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 human rights obligations of the IMF. But human rights were enshrined in law to protect the most vulnerable against power abuse. 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 resides in an IMF programme country where the institution is seen – justifiably or not – as having significant influence on the economic policies the government adopts. Providing avenues of human rights accountability should, therefore, be an imperative driven, if not by legal interpretations, by a desire to lift the quality of the IMF's work, and ensure durability, legitimacy and effectiveness of the policy reforms it promotes.

20 IMF (2022b)

In that spirit, I believe the creation of an expert panel on the human rights dimensions of IMF programmes could make a large contribution to embedding human rights in the policies of the organization.

The panel would be independent from the IMF and take complaints from individuals or groups who allege damage as a result of an IMF loan or programme implemented by their government in contradiction with the human rights obligations of their country.

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

There is no naivete about the many thorny issues that the creation of such a panel would need to navigate, such as composition, staffing, requirements to admit complaints, process, and so on. But in other ways it offers the simplicity of staying anchored on concrete cases, in a bottom-up way – thus avoiding 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.

Such an approach would, over time, yield a number of cases to 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 a “heat map” of areas where more systematic work on making IMF policies compatible with human rights is needed and what the impacts and rethinking could be.

It will also be a space for joint learning. It would take volumes to explain the many ways human rights and

economic expert analyses could differ.<sup>21</sup> This panel would be a place where such experts can put their heads together to find solutions that perhaps elude their different communities working alone. The requirement to collaborate could be an antidote to group-think that might, otherwise, inescapably set in.

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 fancy legal debate. It is time to break the deadlock.

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<sup>21</sup> See, however, a good summary in International Council on Human Rights Policy (2010).

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