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# **Taxation and Human Rights: Impacts and Obligations of International Economic Organisations**

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Lund, 20 May 2024  
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## Summary

This thesis assesses the complex relationship between International Economic Organisations (IEOs), taxation, and human rights, shedding light on the impacts, obligations, and assessment practices of the World Bank, International Monetary Fund (IMF) and the Organisation for Economic Co-operation and Development (OECD). In an era of globalisation, the impact of these IEOs on financial policies, including taxation, and sustainable development, is undeniable. This thesis builds on the importance of taxation in funding the Sustainable Development Goals (SDGs) and promoting the green transition while also acknowledging taxation as an emerging issue on the human rights agenda.

Through multidisciplinary analysis, Chapter 2 examines the impacts of IEO interventions on states' tax revenues and human rights, revealing both positive contributions, such as Domestic Resource Mobilization (DRM) programs, and negative effects, including regressive taxation and facilitation of tax havens. Chapter 3 explores the human rights obligations of IEOs under international law following the legal doctrinal method. There are strong indicators that IEOs have a minimum obligation to respect all human rights in their operations, especially those related to development. This means IEOs should incorporate human rights considerations into their policies, programs, and operations. However, current interpretations of international law do not always clearly define whether IEOs have a legal obligation to respect human rights or if it is more of a duty, hence marking an area for further theoretical development and debate. Building upon these insights, Chapter 4 evaluates the integration of human rights considerations into IEOs' operations, particularly concerning tax policies. While a growing imperative exists for IEOs to incorporate human rights impact assessments (HRIA) into decision-making processes, challenges persist in ensuring the comprehensiveness and effectiveness of existing assessment practices.

The findings of this thesis present a need for IEOs to balance economic objectives with human rights considerations and enhance HRIA practices. They call for further theoretical development regarding IEOs' human rights obligations and underscore the importance of recognising the interconnectedness of tax policies and human rights outcomes. Ultimately, the thesis advocates for a more inclusive and rights-based approach to global development within the realm of IEOs, especially in light of Agenda 2030 and the green transition.

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## Abbreviations

ATAF	African Tax Administration Forum
BEPS	Base Erosion and Profit Shifting
CEQ	Commitment to Equity
DAC	Development Assistance Committee
DPF	Development Policy Financing
DPOs	Development Policy Operations
DRM	Domestic Resource Mobilisation
DRTD	Declaration on the Right to Development
ESF	Environmental and Social Framework
FAD	Fiscal Affairs Department
GAI	Generative Artificial Intelligence
GTP	Global Tax Program
HRIA	Human Rights Impact Assessment
IBRD	International Bank for Reconstruction and Development
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IDA	International Development Association
IEO	International Economic Organisation
IFC	International Finance Corporation
IFI	International Financial Institution
IMF	International Monetary Fund
IO	International Organisation
IPF	Investment Project Financing
MNEs	Multinational Enterprises
MTRS	Medium-Term Revenue Strategies
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
PCT	Platform for Collaboration on Tax
PSIA	Poverty and Social Impact Analysis
RMTF	Revenue Mobilization Trust Fund
SDGs	Sustainable Development Goals
TADAT	Tax Administration Diagnostic Assessment Tool
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights
VAT	Value Added Tax

# 1 Introduction

## 1.1 Background

In an increasingly interconnected world, the role of International Economic Organisations (IEOs) in shaping global economic policies and development agendas cannot be overstated. Especially for development finance for financing the Sustainable Development Goals (SDGs) of the Agenda 2030<sup>1</sup>, the green transition at large, and the human rights movement generally, IEOs' support is inevitable. From the World Bank and International Monetary Fund (IMF) to the Organisation for Economic Co-operation and Development (OECD), these IEOs wield significant influence over financing and policing development. However, alongside their economic mandates, IEOs also have profound implications for development and human rights, which are not exclusively beneficial. While these implications are prominently drawn with regard to austerity measures in case of the IMF and World Bank, they deserve particular attention in the context of taxation.

It is recognised that “[b]uilding tax capacity—the policy, institutions, and technical capabilities to collect tax revenue—is central to the role of government in development.”<sup>2</sup> More specifically, tax capacity is crucial to achieving the SDGs.<sup>3</sup> The SDGs acknowledge in their targets the importance of taxes for financing sustainable development, reducing inequalities, and promoting economic growth.<sup>4</sup> Moreover, tax policies can be crucial tools for generating revenue for the green transition. The IMF, OECD, and World Bank, along with the United Nations (UN), acknowledged already in 2011 that “[t]axation provides governments with the funds needed to invest in development, relieve poverty, and deliver public services. It offers an antidote to aid dependence in developing countries and provides fiscal reliance and sustainability that is needed to promote growth.”<sup>5</sup>

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<sup>1</sup> UN General Assembly, ‘Transforming Our World: The 2030 Agenda for Sustainable Development’ (2015) A/RES/70/1.

<sup>2</sup> Juan Carlos Benitez and others, ‘Building Tax Capacity in Developing Countries’ (IMF 2023) Staff Discussion Note SDN/2023/006 3.

<sup>3</sup> *ibid.*

<sup>4</sup> UN General Assembly, ‘Transforming Our World: The 2030 Agenda for Sustainable Development’ (n 1) Targets 10.5, 16.4 and 17.1.

<sup>5</sup> IMF and others, ‘Supporting the Development of More Effective Tax Systems, Report to the G20 Development Working Group’ (2011) 8.

Taxation is not only a crucial tool for financing the SDGs and the green transition but also an emerging issue on the human rights agenda.<sup>6</sup> In the context of the international human rights law regime, taxation is seen as a tool to realise human rights, especially economic, social and cultural rights. As the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona stated in her report about taxation policies as a significant factor for the enjoyment of human rights: “Taxation is a key tool when tackling inequality and for generating the resources necessary for poverty reduction and the realization of human rights”<sup>7</sup>. For governments, it is hence crucial for the realisation of their human rights obligations to raise sufficient revenue in order to be able to fund public services and social policies that provide, e.g., health care, education, adequate housing, or climate protection.

However, states encounter multiple problems in efficiently raising and collecting tax revenues. Globally, illicit financial flows, tax evasion, aggressive tax avoidance, and tax competition leading to a race to the bottom of tax rates alarmingly erode states’ tax revenues. Especially for lower and middle-income countries with limited capacities to counter tax abuse and efficiently collect taxes, the ability to realise human rights is impeded.

The World Bank, IMF, and OECD are known to intervene, assist, and advise on matters of fiscal policy. The OECD is an intergovernmental economic organisation that aims to promote policies to improve the economic and social well-being of people around the world. The OECD is a major player in shaping international tax policies, developing guidelines, model conventions, and recommendations on various tax matters, including Base Erosion and Profit Shifting (BEPS) initiatives. Widely debated and considered a milestone in the international collaboration to end tax avoidance is the OECD “Two-Pillar solution to address tax challenges arising from the digitalization of the economy” (referred to hereinafter as the ‘Two-Pillar Solution’) developed

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<sup>6</sup> Nikki Reisch, ‘Taxation and Human Rights: Mapping the Landscape’ in Philip G Alston and Nikki R Reisch (eds), *Tax, Inequality, and Human Rights* (Oxford University Press 2019).

<sup>7</sup> UN Human Rights Council, ‘Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona’ (2014) A/HRC/26/28.



under the OECD/G20 Inclusive Framework Base Erosion and Profit Shifting Project.<sup>8</sup> The Two-Pillar Solution calls for the negotiation of a treaty for a more just allocation of taxing rights on corporate profits under Pillar One and a global minimum corporate taxation rate for multinational enterprises (MNEs) of 15% under Pillar Two, which is already operative.

The World Bank and the IMF, which are often referred to as international financial institutions (IFIs)<sup>9</sup> as they have lending capacities, unlike the OECD, also take on matters of reforming and enhancing tax systems and policies.<sup>10</sup> The IMF, which primarily focuses on providing short to medium-term financial assistance to countries facing balance of payments crises, also offers policy advice to promote economic stability and growth, which includes offering guidance on tax policies as part of its economic assessments and programs. In contrast, the World Bank concentrates on providing long-term financial and technical assistance to developing countries for specific projects aimed at reducing poverty, improving infrastructure, enhancing education and healthcare systems, and promoting sustainable development. The World Bank is an association of five organisations, including the International Bank for Reconstruction and Development (IBRD), which is the main World Bank office providing loans and advisory services to middle-class and certain lower-income countries and the International Development Association (IDA) offering loans to poor countries to improve living conditions and spur economic growth. Through its International Finance Corporation (IFC) and other arms, the World Bank may engage with countries directly on tax-related issues as part of broader economic development projects and can provide technical assistance and policy advice in this area, for example, through Domestic Resource Mobilization (DRM) programmes.

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<sup>8</sup> OECD/G20 Inclusive Framework on BEPS, ‘Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy’ (2021).

<sup>9</sup> Siobhán McInerney-Lankford, ‘International Human Rights Law, Politics and International Financial Institutions: The Case of the World Bank’, *Research Handbook on the Politics of Human Rights Law* (Edward Elgar Publishing 2023) 343.

<sup>10</sup> IMF, ‘The IMF and the World Bank’ (*IMF*)

<<https://www.imf.org/en/About/Factsheets/Sheets/2022/IMF-World-Bank-New>> accessed 17 May 2024.

Since the OECD, IMF and World Bank all have mandates regarding tax matters and employ practices and mechanisms that affect taxation, it is common for those organisations to cooperate on tax matters. For instance, the World Bank, together with the IMF, OECD, and UN, is responsible for the Platform for Collaboration on Tax (PCT), which aims to strengthen common efforts for tax and resource mobilisation and help countries establish resilient tax systems.<sup>11</sup>

## 1.2 Research Objectives and Questions

The impact of IEOs' interventions on tax policies and human rights presents a complex issue that warrants comprehensive examination, especially in the context of the current trend towards a restructuring of the global financial architecture. This has become apparent in the recent call of the UN High Commissioner of Human Rights for a "human rights economy", under which human rights are to be the guardrails for economic and fiscal policy, whereby reforms of the international financial and economic architecture seem inevitable.<sup>12</sup> Furthermore, academia has expressed a need for further research on the role of IEOs in redressing developing countries' loss of tax revenues.<sup>13</sup>

There is potential for human rights impacts to be overlooked and not adequately considered in IEOs' operations and activities. Inevitably, adverse human rights impacts are to be expected, which might have to do with the extent to which human rights considerations are integrated into IEO's policies and operations. To further the discourse on the human rights economy and, in particular, the restructuring of the global financial architecture, it is desirable to address the complex construct of human rights impacts, obligations and institutional human rights considerations of IEOs.

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<sup>11</sup> 'Platform for Collaboration on Tax' (*Platform for Collaboration on Tax*) <<https://www.tax-platform.org/>> accessed 17 May 2024.

<sup>12</sup> Volker Türk, 'Türk Calls for a Human Rights Economy' (Workshop on promoting and protecting economic, social and cultural rights within the context of addressing inequalities in the recovery from the COVID-19 pandemic, 6 February 2023) <<https://www.ohchr.org/en/statements-and-speeches/2023/02/turk-calls-human-rights-economy>> accessed 17 May 2024.

<sup>13</sup> Michael C Durst, 'Self-Help and Altruism' in Thomas Pogge and Krishen Mehta (eds), *Global Tax Fairness* (Oxford University Press 2016) 336.

Therefore, the research questions are as follows:

1. What potential impacts do IEOs have on states' tax revenues and human rights, particularly the ability of states to realise human rights?
2. What human rights obligations do IEOs have under international law, particularly with regard to the IEOs' interventions in taxation?
3. To what extent do the IEOs incorporate human rights considerations into their operations and decision-making processes?

Based on these three research questions, this thesis seeks to: first, elucidate the impacts of IEO interventions on the tax capacity of states and human rights; second, analyse IEOs' human rights obligations under international law; and finally, assess the integration of human rights considerations into IEOs' impact assessments.

By shedding light on the impacts and obligations inherent in IEOs' interventions in tax policies and the human rights considerations that transpire in IEOs' decision-making processes, this research aims to inform the debate on the global financial architecture in the emerging concept of the human rights economy, fostering a more inclusive and rights-based approach to global development and taxation in light of the Agenda 2030 and the green transition at large.

### **1.3 Methodology and Material**

The research in this thesis is guided by an overarching human rights perspective and is conducted through a desk study reviewing diverse materials. The thesis employs a multidisciplinary approach encompassing a multifaceted set of methodologies, incorporating primarily legal doctrinal analysis, critical analysis and policy review.

The legal doctrinal method will be particularly employed to answer the second research question on the human rights obligations of IEOs.<sup>14</sup> The legal doctrinal method provides a structured framework for analysing human rights obligations under international law. This method will be complemented by

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<sup>14</sup> P Ishwara Bhat, 'Doctrinal Legal Research as a Means of Synthesizing Facts, Thoughts, and Legal Principles' in P Ishwara Bhat, *Idea and Methods of Legal Research* (Oxford University Press 2020) 155ff <<https://academic.oup.com/book/41749/chapter/354157753>> accessed 17 May 2024.

critical analysis to allow for a contextualised and interdisciplinary approach, which helps to analyse complex issues more adequately.<sup>15</sup> The analysis will involve a thorough examination of relevant international legal instruments, jurisprudence, UN literature, academic literature, and IEOs literature and documents.

Regarding the first research inquiry to assess the impacts of IEOs on states' tax capacity and human rights, various sources will be critically evaluated using a human rights lens. By critically analysing the mechanisms through which IEOs' activities and operations impact tax systems and revenue collection efforts of states, both the positive and adverse effects on human rights can be uncovered. This approach will draw from multidisciplinary academic articles, IEOs' literature, and literature and sources from the UN and Non-Governmental Organisations (NGOs).

The third research question will be answered by critically examining the legal obligations of IEOs to integrate human rights considerations in their operations, as well as the methodologies and practices employed by IEOs to incorporate human rights considerations. To assess the comprehensiveness and effectiveness of existing approaches to integrate human rights in decision-making processes within IEOs, the theoretical framework of the World Bank's and IMF's Poverty and Social Impact Analysis (PSIA) will be analysed in contrast to the theoretical framework of Human Rights Impact Assessments (HRIAs). This method leverages a comparative approach and draws from IMF's and World Bank's policies and literature, multidisciplinary academic literature, UN literature and reports, NGO reports, and international legal instruments.

In this thesis, Generative Artificial Intelligence (GAI) tools, such as Notion and Grammarly, have been utilised as permitted for language correction and language enhancement. No GAI-generated data or materials have been used.

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<sup>15</sup> Markus D Dubber, 'Critical Analysis of Law: Interdisciplinarity, Contextuality, and the Future of Legal Studies' (2014) 1 *Critical Analysis of Law: An International & Interdisciplinary Law Review* <<https://papers.ssrn.com/abstract=2385656>> accessed 17 May 2024.

#### 1.4 Delimitations

The research focuses specifically on the IMF, the World Bank with its respective sub-organisations, and the OECD. These organisations are chosen due to their significant influence and involvement in tax policies and development finance, as elaborated above. The scope of the potential impacts of these IEOs will be limited to interventions on tax policies and the tax capacity of states, both directly and indirectly. However, it does not cover the broader impacts of IEOs on budgetary policies, austerity measures, or the realisation of human rights through other financial mechanisms. While the research acknowledges the global implications of IEOs' interventions, it primarily focuses on their effects on lower and middle-income countries, particularly those with limited capacities to counter tax abuse and efficiently collect taxes.

When assessing the impacts of IEO interventions regarding taxation on human rights, a particular focus will be on the impacts on the realisation of human rights. For the purpose of this thesis, the meaning of human rights shall be broad as states can utilise tax revenues to implement and safeguard many human rights, including the right to vote, health, adequate standard of living, education, climate protection, and social security. While the study acknowledges the interconnectedness of taxation and various human rights issues, it does not extensively address these specific rights issues beyond their connection to taxation policies. However, it may be noted that in the context of tax and human rights, especially economic, social and cultural rights as stipulated in the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>16</sup> are of relevance.<sup>17</sup>

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<sup>16</sup> International Covenant on Economic, Social and Cultural Rights 1966.

<sup>17</sup> Michael Thomson, Alexander Kentikelenis and Thomas Stubbs, 'Structural Adjustment Programmes Adversely Affect Vulnerable Populations: A Systematic-Narrative Review of Their Effect on Child and Maternal Health' (2017) 38 Public Health Reviews 13; Thomas Stubbs and Alexander Kentikelenis, 'International Financial Institutions and Human Rights: Implications for Public Health' (2017) 38 Public Health Reviews 27.

## **1.5 Outline**

This thesis is structured in five chapters. Chapter 1, above, has introduced the background, research objectives and questions, methodology, and delimitations of this thesis.

Chapter 2 sets the stage by exploring the impacts of IEOs on states' tax capacity and human rights. The impacts are categorised into four areas. The first subsection will analyse the impacts of fiscal consolidation programmes of the IMF and World Bank (2.1), followed by an assessment of the impacts through technical assistance and advice for DRM programmes in the second subsection (2.2). The third subsection will delve into the impacts of the World Bank's involvement in tax havens (2.3). The fourth subsection will deal with the impacts of the OECD/G20 Inclusive Framework on BEPS 'Two-Pillar Solution' (2.4). Lastly, the concluding remarks will be presented in the fifth subsection (2.5).

Chapter 3 provides an analysis of the human rights obligations of IEOs under international law. After establishing the framework of human rights obligations (3.1), this chapter will assess whether IEOs have international human rights obligations and, if so, what kind of obligations they have based on their status under international law (3.2), their relationship with the UN in the case of the IMF and World Bank (3.3), their member countries' obligations (3.4), and their legal mandates and practice (3.5). The concluding remarks (3.6) will connect the findings of this chapter with the impacts analysed in Chapter 2.

Building upon these foundations, Chapter 4 evaluates whether an obligation to conduct HRIAs exists under international law for IEOs (4.1). The chapter then assesses the extent to which the World Bank (4.2), the IMF (4.3), and the OECD (4.4) incorporate human rights considerations into their operations, particularly concerning tax policies. The concluding remarks of this chapter attempt to contextualise the preliminary findings (4.5).

Finally, Chapter 5 provides the conclusion with a summary of key findings and their implications for further research and debate.

## **2 The Impact of International Economic Organisations on Tax Revenues and Human Rights**

The IMF, World Bank and OECD are powerful institutions that significantly impact the policy and programmes of national governments, particularly those of developing countries. This affects the lives of millions of people, especially the most vulnerable.<sup>18</sup> This chapter assesses the potential impacts IEOs can have on a state's tax capacity and the ability to realise human rights. The impacts are categorised into four areas: (i) the impacts through fiscal consolidation programmes of the IMF and World Bank; (ii) the impacts through technical assistance and advice for DRM programmes; (iii) the impacts through the World Bank's involvement in tax havens; and (iv) the impacts through the OECD/G20 Inclusive Framework on BEPS 'Two-Pillar Solution'.

### **2.1 Fiscal Consolidation Programmes of the IMF and World Bank**

Often, being a lender of last resort "has afforded international financial institutions substantial policy influence on governments throughout the world and in a wide array of policy areas of direct bearing on human rights."<sup>19</sup> The policy reforms mandated by the World Bank and IMF are not without consequences for the enjoyment and realisation of human rights. Generally, conditionality, defined as "the practice of requiring policy reforms in exchange for access to resources," can lead IFIs to risk limiting national policy flexibility and undermining national development agendas.<sup>20</sup> Part of IFIs' conditionality is structural adjustment programmes, which include revenue generation measures as part of stabilisation policies to reduce fiscal deficits of the lending state.<sup>21</sup> Such revenue conditionality entails "reform of the tax system – including both tax policy and revenue administration

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<sup>18</sup> 'IMF Needs Radical Reform to Halt "Failed Policies" of Privatization and Austerity – UN Expert' (*OHCHR*, 17 October 2017) <<https://www.ohchr.org/en/press-releases/2017/10/imf-needs-radical-reform-halt-failed-policies-privatization-and-austerity-un>> accessed 17 May 2024; UN Commission on Human Rights, 'The Right to Food: Report of the Special Rapporteur on the Right to Food, Jean Ziegler' (UN, 2006) E/CN.4/2006/44 para 39.

<sup>19</sup> Stubbs and Kentikelenis (n 17) 1.

<sup>20</sup> *ibid* 2.

<sup>21</sup> *ibid* 3.

measures”<sup>22</sup> and aims “to support the implementation of needed structural tax measures.”<sup>23</sup> These revenue generation measures translate into fiscal consolidation programmes, which are government policy responses to address budget deficits and public debt. Fiscal consolidation programmes often entail a significant focus on tax policies, including measures to increase revenue through tax hikes of income taxes, corporate taxes, consumption taxes (such as value-added tax (VAT) or sales tax) or the introduction of new taxes on specific goods or services. Further structural reforms to improve revenue collection efficiency may involve measures to improve tax compliance. While these fiscal consolidation programmes can positively impact the state’s financial capacity and ability to realise the ICRSCR rights, there are scenarios where they can adversely impact a state’s human rights situation.

The Committee on Economic, Social and Cultural Rights, in its report on public debt, austerity measures and the ICESCR, found itself confronted with the issue that states who are party to the ICESCR are frequently “unable to comply with their obligations to fully realize the rights enshrined in the [ICESCR] owing to the adoption of fiscal consolidation programmes, including structural adjustment programmes and austerity programmes, as a condition for obtaining loans.”<sup>24</sup> The Committee pointed out that “fiscal consolidation programmes may be necessary for the implementation of economic and social rights”<sup>25</sup> but “[i]f such programmes are not implemented with full respect for human rights standards and do not take into account the obligations of States towards the rights holders, [...] they may adversely affect a range of rights protected by the [ICESCR].”<sup>26</sup> While labour rights, as stipulated in Arts 6,7,8 and 11 ICESCR, are most at risk, measures included in fiscal consolidation programs can also negatively impact rights relating to food, housing, health care, and education, according to Arts 11, 12, 13, and

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<sup>22</sup> Ernesto Crivelli and Sanjeev Gupta, ‘Does Conditionality in IMF-Supported Programs Promote Revenue Reform?’ (2015) 23 *International Tax and Public Finance* 550, 551.

<sup>23</sup> *ibid.*

<sup>24</sup> UN Committee on Economic, Social and Cultural Rights, ‘Public Debt, Austerity Measures and the International Covenant on Economic, Social and Cultural Rights’ (UN, 2016) E/C.12/2016/1 para 1.

<sup>25</sup> *ibid.* 2.

<sup>26</sup> *ibid.*



14 ICESCR.<sup>27</sup> Considering that low-income families, low-qualified workers and women are especially vulnerable to measures such as cuts in social services, fiscal consolidation programmes potentially are at risk of resulting in discrimination (Art 2(2) ICESCR) and representing a step backwards for gender equality (Arts 3 and 10 ICESCR).<sup>28</sup> Although the Committee on Economic, Social and Cultural Rights does not explicitly address the role and impact of tax measures in realising the ICESCR, they can be seen as implied as part of the fiscal consolidation programme at large. For the Committee, it is “to ensure that the conditionalities do not disproportionately affect economic, social and cultural rights nor lead to discrimination”<sup>29</sup>, which could apply to conditionalities on tax rates and improving tax collection.

One scenario in which fiscal consolidation programmes can negatively impact the human rights situation, especially for vulnerable groups, involves measures that introduce regressive taxes. A report reviewing 267 IMF country reports found that increasing consumption taxes, particularly VAT on goods and services, are among the most commonly considered austerity measures by the IMF to boost government revenue.<sup>30</sup> A report by Human Rights Watch concluded that „[i]n practice, IMF programs rely significantly on value-added taxes to raise revenues; 19 of 33 programs reviewed included advice or conditionalities on raising VATs or eliminating exemptions such as on food.”<sup>31</sup>

Indirect taxes like VAT “tend to be regressive since they are the same for people regardless of income.”<sup>32</sup> These taxes exacerbate inequalities by “weighing proportionally more on lower income households since they consume a larger share of their income than richer ones.”<sup>33</sup> Stubbs and Kentikelenis argue that “the introduction of regressive forms of taxation can

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<sup>27</sup> *ibid.*

<sup>28</sup> *ibid.*

<sup>29</sup> *ibid.* 11.

<sup>30</sup> Isabel Ortiz and Matthew Cummings, ‘End Austerity: A Global Report on Budget Cuts and Harmful Social Reforms in 2022-25’ (Initiative for Policy Dialogue et al 2022) 20.

<sup>31</sup> Human Rights Watch, ‘Bandage on a Bullet Wound IMF Social Spending Floors and the Covid-19 Pandemic’ (2023) 79.

<sup>32</sup> *ibid.* 8.

<sup>33</sup> Isabel Ortiz and others, ‘The Decade of Adjustment: A Review of Austerity Trends 2010-2020 in 187 Countries’ (International Labour Organization, Columbia University and the The South Centre 2015) ESS Working Paper No. 53 36.

reduce poor households' incomes and thus their ability to afford healthcare or lead healthy lives (footnotes omitted)."<sup>34</sup> Therefore, raising revenue through increasing consumption taxes could potentially be problematic from a human rights perspective.

Furthermore, research highlights another scenario - the indirect effects of conditionality on the right to health due to reduced tax revenues.<sup>35</sup> Stubbs and Kentikelenis argue that liberalisation policies, such as the removal of customs duties, can lead to short-term reductions in trade tax revenues. This, if not compensated by alternative revenue sources, can undermine the fiscal foundation of health policy.<sup>36</sup> While it was concluded that tax revenues can be raised in other ways, and liberalisation policies can stimulate economic growth and draw foreign direct investment in the medium term,<sup>37</sup> concerns remain. Scholars worry "about both the short-run loss of tariff revenue available for healthcare and the long-term repatriation of profits by multinationals receiving tax holidays (footnotes omitted)."<sup>38</sup> Moreover, the introduction of new consumption taxes to make up for lost revenue raises concerns about VAT fairness.

Nevertheless, fiscal consolidation programmes have great potential to benefit a state's ability to realise human rights. Empirical research shows that "revenue conditionality contained in IMF-supported programs has a positive impact on tax revenue"<sup>39</sup>, further showing a positive impact on increased spending in health and education, particularly in low-income countries.<sup>40</sup> In their operations, the IMF and the World Bank both undertake efforts to support member countries in mobilising domestic revenue. To what extent these efforts can be seen as positively contributing to the ability of states to realise human rights will be further assessed in the next section.

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<sup>34</sup> Stubbs and Kentikelenis (n 17) 8.

<sup>35</sup> *ibid* 7.

<sup>36</sup> *ibid*.

<sup>37</sup> *ibid*.

<sup>38</sup> Thomson, Kentikelenis and Stubbs (n 17) 12.

<sup>39</sup> Crivelli and Gupta (n 22) 560.

<sup>40</sup> *ibid* 561; Benedict Clements, Sanjeev Gupta and Masahiro Nozaki, 'What Happens to Social Spending in IMF-Supported Programmes?' (2013) 45 *Applied Economics* 4022, 4028, 4030.

## 2.2 Technical Assistance and Advice for Domestic Resource Mobilisation (DRM)

The IMF, World Bank, and OECD can have considerable impacts on states' tax capacity, particularly in the context of DRM programmes, by providing technical assistance, policy advice, capacity building, and knowledge sharing.

The World Bank, IMF, OECD and UN have established the PCT<sup>41</sup>, where the IOs have made a “commitment to deepening their collaboration on tax and resource mobilisation through the PCT, in order to help countries develop resilient tax systems and better fiscal policies in response to the rapidly changing global tax landscape.”<sup>42</sup> With regard to the evolving international taxation landscape the PCT aims “to provide practical guidance and toolkits as part of capacity development for countries on [key international issues]”<sup>43</sup>. In 2016 the IOs introduced the development and implementation of Medium-Term Revenue Strategies (MTRS),<sup>44</sup> which “is a comprehensive approach for undertaking effective tax systems reform for boosting tax revenues and improving the tax system over the medium term through a country-led and whole-of-government approach.”<sup>45</sup> Currently, 29 countries are discussing, formulating or implementing an MTRS with extensive support from PCT partners, mainly the IMF or World Bank.<sup>46</sup> In some cases, reform engagements are financed by the IMF or World Bank and supported by the OECD.<sup>47</sup>

For the World Bank, DRM has become a central objective, with currently US\$ 3.9 billion being lent to support DRM-specific lending interventions, making the World Bank the largest concessional lender on DRM.<sup>48</sup> The World

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<sup>41</sup> ‘Platform for Collaboration on Tax’ (n 11).

<sup>42</sup> The Platform for Collaboration on Tax, ‘PCT PROGRESS REPORT 2023’ (2023) 5.

<sup>43</sup> *ibid* 10.

<sup>44</sup> IMF and others, ‘Enhancing the Effectiveness of External Support in Building Tax Capacity in Developing Countries’ (2016).

<sup>45</sup> ‘Medium-Term Revenue Strategy (MTRS)’ (*Platform for Collaboration on Tax*) <<https://www.tax-platform.org/medium-term-revenue-strategy>> accessed 17 May 2024.

<sup>46</sup> The Platform for Collaboration on Tax (n 42) 16.

<sup>47</sup> *ibid*.

<sup>48</sup> World Bank, ‘Global Tax Program - FY23 Annual Progress Report’ (World Bank Group 2023) 9.

Bank set up the Global Tax Program (GTP) in 2018,<sup>49</sup> which is the Bank's key vehicle to support DRM in developing countries.<sup>50</sup> With the GTP, the World Bank aims to support countries in raising more revenues more efficiently to achieve the SDGs.<sup>51</sup> The portfolio of GTP is comprised of advisory and analytical services performed by the World Bank, "to support design or implementation of better policies, strengthen institutions, build capacity, inform development strategies or operations, and contribute to the global development agenda."<sup>52</sup> While the World Bank's DRM programs do not directly reference human rights, they implicitly connect to them, particularly within the thematic areas of environment, gender equality, and health. The Environmental Tax Workstream focuses on tax reforms that support the growth of green economies and development.<sup>53</sup> The Gender Equality and Tax Reform Workstream aims to help lower and middle-income countries use taxation as a tool to decrease gender gaps.<sup>54</sup> The Health Tax Workstream deals with taxes on products that adversely affect public health, aiming to broaden tax bases.<sup>55</sup> Hence, DRM strategies can extend beyond revenue mobilisation, incorporating development-oriented tax policies to encourage gender equality, safeguard the environment, and "promote sustainable consumption and production patterns"<sup>56</sup>.

The IMF established the Revenue Mobilization Trust Fund (RMTF) in 2016 as a response to DRM.<sup>57</sup> The RMTF is envisaged as a US\$ 77 million program

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<sup>49</sup> World Bank, 'The Global Tax Program' (*World Bank*)

<<https://www.worldbank.org/en/programs/the-global-tax-program>> accessed 17 May 2024.

<sup>50</sup> World Bank Group, 'World Bank Board Briefing on Domestic Resource Mobilization (DRM)' (2021) EFI Board Update; World Bank, 'Global Tax Program - FY23 Annual Progress Report' (n 48) 8.

<sup>51</sup> World Bank, 'The Global Tax Program' (n 49).

<sup>52</sup> World Bank, 'Global Tax Program - FY23 Annual Progress Report' (n 48) 9.

<sup>53</sup> World Bank, 'Environmental Tax' (*The World Bank*)

<<https://www.worldbank.org/en/programs/the-global-tax-program/environmental-taxes>> accessed 17 May 2024.

<sup>54</sup> World Bank, 'Gender Equality and Tax Reform' (*The World Bank*)

<<https://www.worldbank.org/en/programs/the-global-tax-program/gender>> accessed 17 May 2024.

<sup>55</sup> World Bank, 'Health Tax' (*The World Bank*, 2 September 2022)

<<https://www.worldbank.org/en/programs/the-global-tax-program/priority-themes>> accessed 17 May 2024.

<sup>56</sup> Committee of Experts on International Cooperation in Tax Matters, 'The Role of Taxation and Domestic Resource Mobilization in the Implementation of the Sustainable Development Goals' (2018) E/C.18/2018/CRP.19 3.

<sup>57</sup> IMF, 'Revenue Mobilization Trust Fund (RM-TF)' (IMF 2016) Program Document.

with over 30 country-specific and regional capacity development projects.<sup>58</sup> Its general aim is holistic, medium-term capacity development to strengthen tax policies and administrations, particularly for low- and lower-middle-income countries.<sup>59</sup> An important component of the RMTF work is the IMF's Tax Administration Diagnostic Assessment Tool<sup>60</sup> (TADAT).<sup>61</sup> It is used to assess the effectiveness of tax administrations in member countries and identify areas for improvement. Based on the assessment results, the IMF provides tailored recommendations and assistance to enhance tax administration capacity. Further, the IMF combines technical assistance with training for low-capacity countries on tax policy and administration topics.<sup>62</sup>

The OECD provides policy advice, best practices, and tax policy and administration guidelines to help countries design and implement effective tax reforms, combat tax evasion and avoidance, and improve international tax cooperation. The OECD/G20 Inclusive Framework on BEPS is a key example of how the OECD provides guidance and tools to help countries address tax avoidance strategies used by multinational enterprises, thereby enhancing tax fairness and revenue collection globally.<sup>63</sup> The OECD/G20 Inclusive Framework on BEPS includes the implementation of 15 Actions in over 140 countries and jurisdictions to “equip governments with domestic and international rules and instruments to address tax avoidance, ensuring that profits are taxed where economic activities generating the profits are performed and where value is created.”<sup>64</sup> Within this framework, the OECD offers training workshops, e-learning programmes, and direct support for BEPS implementation, particularly for developing countries.<sup>65</sup> Besides providing toolkits for low-capacity countries via the joint PCT with the IMF,

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<sup>58</sup> IMF, ‘Revenue Mobilization Thematic Fund’ (*IMF*)

<<https://www.imf.org/external/np/ins/english/rmtf.htm>> accessed 17 May 2024.

<sup>59</sup> IMF, ‘Revenue Mobilization Trust Fund (RM-TF)’ (n 57) 5.

<sup>60</sup> ‘TADAT - Tax Administration Diagnostic Assessment Tool’ (*TADAT*)

<<https://www.tadat.org/home>> accessed 17 May 2024.

<sup>61</sup> IMF, ‘Revenue Mobilization Trust Fund (RM-TF)’ (n 57) 5.

<sup>62</sup> *ibid.*

<sup>63</sup> OECD, ‘Base Erosion and Profit Shifting - OECD BEPS’ (*OECD*)

<<https://www.oecd.org/tax/beps/>> accessed 17 May 2024.

<sup>64</sup> OECD, ‘BEPS Actions’ (*OECD*) <<https://www.oecd.org/tax/beps/beps-actions/>> accessed 17 May 2024.

<sup>65</sup> OECD, ‘About - OECD BEPS’ (*OECD*) <<https://www.oecd.org/tax/beps/about/#tools>> accessed 17 May 2024.

UN and World Bank, the OECD provides support for tax audit capacity building through its Tax Inspectors Without Borders program.<sup>66</sup>

In essence, the IMF, World Bank, and OECD are instrumental in aiding countries to establish solid, sustainable tax systems, enhance revenue mobilisation, and fortify fiscal governance. This, in turn, promotes economic development and poverty alleviation. The connection between DRM and the realisation of SDGs is widely acknowledged and endorsed by the IEOs.<sup>67</sup> DRM programs have significant potential to positively impact countries' human rights situations. They can be viewed as “[providing] a tool to fight poverty, income inequality, and gender injustice while strengthening the social contract between citizens and states.”<sup>68</sup> However, “aid to DRM does not always seek to create explicit linkages between revenues and inequality-reducing expenditures.”<sup>69</sup> Further, DRM programs that envision regressive tax measures and disregard VAT fairness can intensify disparities, especially when designed gender-exclusionary, or when equity issues are overlooked.<sup>70</sup> Oxfam discovered that most of the projects they analysed fail to integrate gender equality in development cooperation.<sup>71</sup> This is despite the fact that women tend to be more affected by consumption taxes for household necessities due to their majority role in unpaid care work, which shrinks women’s income and reduces their purchasing power.<sup>72</sup> Tax policies can also overlook gender by exempting necessities like food but not essential

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<sup>66</sup> OECD, ‘Tax Inspectors Without Borders’ (*OECD*) <<https://www.tiwb.org/>> accessed 17 May 2024.

<sup>67</sup> IMF, ‘Revenue Mobilization Trust Fund (RM-TF)’ (n 57) 5; World Bank, ‘The Global Tax Program’ (n 49); OECD, ‘Tax Co-Operation for Development Progress Report on 2022’ (OECD 2023) 27.

<sup>68</sup> Marc J. Cohen, Nathan Coplin, and Marc James-Finel, ‘Does Aid to Domestic Revenue Mobilization Support Tax Fairness? A Synthesis of Oxfam Research’ (Oxfam International 2023) 18.

<sup>69</sup> *ibid* 3.

<sup>70</sup> *ibid*.

<sup>71</sup> *ibid* 4.

<sup>72</sup> *ibid* 3; Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, Particularly Economic, Social and Cultural Rights, ‘Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, Particularly Economic, Social and Cultural Rights: Note by the Secretary-General’ (2018) A/73/179 para 54.

menstrual products, which are heavily taxed in many countries.<sup>73</sup> Women are also disproportionately impacted by business license taxes as they often make up the majority of micro-, small-, and medium-sized business owners.<sup>74</sup> Therefore, attention to gendered impacts is crucial, as taxation policies can disproportionately affect women's rights and equality.

Positive outcomes are likely when DRM strategies focus on efficient progressive taxation and direct wealth redistribution, thus bolstering public services, social protection and mitigating inequality.<sup>75</sup> A holistic approach rooted in human rights principles, providing for equitable, gender-sensitive DRM strategies with linkages to inequality-busting expenditures, seems imperative to harnessing DRM's potential for sustainable development and realising human rights. Considering the extensive technical assistance and advisory services IEOs provide in the context of MTRS programmes, they have a significant influence on the design, implementation and enforcement of DRM programmes and, thus, on the impact on the human rights situation of the country, particularly with regard to linking DRM programmes to inequality-busting expenditures.

### **2.3 The World Bank's Involvement with Tax Havens**

The World Bank Group has, in multiple cases, been implicated in facilitating tax evasion and avoidance through its dealings with tax havens. A recent communication by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health have revealed allegations against the IFC for allowing tax avoidance practices using tax havens for investments in healthcare from IFC-supported financial intermediaries.<sup>76</sup>

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<sup>73</sup> Marc J. Cohen, Nathan Coplin, and Marc James-Finel (n 68) 4; Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, Particularly Economic, Social and Cultural Rights (n 72) para 54.

<sup>74</sup> Marc J. Cohen, Nathan Coplin, and Marc James-Finel (n 68) 3.

<sup>75</sup> *ibid.*

<sup>76</sup> Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights,

Moreover, a 2016 Oxfam report on the IFC and tax havens indicated that “51 of the 68 companies that were lent money by the World Bank’s private lending arm in 2015 to finance investments in sub-Saharan Africa use tax havens.”<sup>77</sup> Another study revealed a potential leakage of 5% of World Bank assistance to governments to tax havens.<sup>78</sup> While the project funds are not necessarily lost when transiting through tax havens, the host country could be deprived of raising much-needed corporate tax revenues.

Alfred de Zayas, the Independent Expert on the promotion of a democratic and equitable international order, noted that “by financing enterprises that evade taxes, the World Bank abets the diversion of public resources away from public services.”<sup>79</sup> As the Independent Expert explained in his 2016 report to the General Assembly,<sup>80</sup> “that risks depriving countries in the region of essential tax revenue which could be used to meet their human rights obligations, fulfil the Sustainable Development Goals and repay foreign debts.”<sup>81</sup> Hence, the IFC’s lending modality, which allows funds to be redirected through tax havens, threatens the ability of host governments to collect necessary tax revenues. This could potentially impact the fulfilment of the country's human rights obligations. Moreover, the siphoning away of corporate tax revenue makes governments more dependent on less progressive options, such as increased VAT, to fund their budgets.<sup>82</sup>

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particularly economic, social and cultural rights and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, ‘AL OTH 138/2023’ (7 December 2023); Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, ‘AL OTH 141/2023’ (7 December 2023).

<sup>77</sup> Oxfam, ‘The IFC and Tax Havens: The Need to Support More Responsible Corporate Tax Behaviour’ (2016) Briefing Note 1.

<sup>78</sup> Jørgen Juel Andersen, Niels Johannesen, and Bob Rijkers, ‘Elite Capture of Foreign Aid: Evidence from Offshore Bank Accounts’ [2020] World Bank Group 4.

<sup>79</sup> Human Rights Council, ‘Report of the Independent Expert on the Promotion of a Democratic and Equitable International Order: Note by The Secretariat’ (2017) A/HRC/36/40 para 3.

<sup>80</sup> Independent Expert on the promotion of a democratic and equitable international order, ‘Promotion of a Democratic and Equitable International Order: Note by the Secretary-General’ (2016) A/71/286.

<sup>81</sup> Human Rights Council, ‘A/HRC/36/40’ (n 79) para 21.

<sup>82</sup> Didier Jacobs, ‘The World Bank Has a Tax Havens Problem’ (*Oxfam America*, 6 March 2020) <<https://politicsofpoverty.oxfamamerica.org/the-world-bank-has-a-tax-havens-problem/>> accessed 17 May 2024.



It can be concluded that the IFC's conduct in loan modalities and investments involving tax havens openly contradicts the World Bank Group's efforts and commitments to combat tax dodging and mobilise domestic revenue. By facilitating the use of tax havens, the World Bank is potentially contributing to creating situations in member countries that imply adverse human rights impacts.

#### **2.4 The OECD/G20 Inclusive Framework on BEPS 'Two-Pillar Solution'**

Considered a milestone in the international collaboration to end tax avoidance is the OECD/G20 Inclusive Framework on BEPS Two-Pillar Solution. The Two-Pillar Solution calls for the negotiation of a treaty for a more just allocation of taxing rights on corporate profits under Pillar One and a global minimum corporate taxation rate for MNEs of 15% under Pillar Two, which is already operative.<sup>83</sup> As of 15 November 2023, 140 member jurisdictions of the OECD/G20 Inclusive Framework on BEPS participate in the agreement to the Two-Pillar Solution.<sup>84</sup>

The Two-Pillar Solution seeks to reform international tax rules to ensure that multinational enterprises pay their fair share of taxes and profits are taxed where economic activities and value creation occur rather than being shifted to low-tax jurisdictions to avoid taxation. By promoting fair and equitable taxation, the Two-Pillar Solution theoretically contributes to strengthening the tax capacity of states, thereby enhancing the redistributive capacity of states, which could be used to realise human rights, particularly for marginalised and vulnerable groups.

In 2020, the OECD published an economic impact assessment of the Two-Pillar Solution proposal, which considered the proposal's effects on investment and economic activities in developing countries. The assessment highlights that increasing tax revenues removes the pressure on governments

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<sup>83</sup> OECD/G20 Inclusive Framework on BEPS (n 8).

<sup>84</sup> OECD, 'Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy – 11 July 2023 - OECD' (*OECD*) <<https://www.oecd.org/tax/beps/outcome-statement-on-the-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2023.htm>> accessed 17 May 2024.

to rely on more retrogressive tax measures or expenditure cuts to finance public needs after the COVID-19 crisis.<sup>85</sup> The assessment highlights that the proposal would further DRM in developing economies.<sup>86</sup>

The OECD released an updated economic impact assessment of Pillar One in October 2023 and of Pillar Two in January 2024.<sup>87</sup> Pillar One is expected to be beneficial to developing jurisdictions in relation to transfer pricing capacity constraints.<sup>88</sup> Pillar Two is estimated to benefit developing countries through reduced profit-shifting incentives.<sup>89</sup> However, other than these positive results, the reports do not delve deeper into impacts, positive and negative, on developing countries.

A 2023 policy paper by IMF staff assessing the economic impact of the Two-Pillar Solution concluded “that the agreement makes the international tax system more robust to tax spillovers, better equipped to address digitalization, and modestly raises global tax revenues.”<sup>90</sup> Besides the fact that revenue-raising effects are only expected to be modest for developing countries in relation to the revenues needed for development,<sup>91</sup> implementation challenges for developing countries are particularly highlighted. Based on evaluations conducted with the help of the TADAT, administrative complexity poses a particular challenge for developing countries.<sup>92</sup> These include a lack of capacity to reform in many tax administrations, competing priorities, limited experience and a challenging timeline for implementation.<sup>93</sup> The IMF impact assessment is of an economic nature and does not provide linkages to human rights or concrete adverse impacts on developing countries besides those

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<sup>85</sup> OECD, ‘Tax Challenges Arising from Digitalisation – Economic Impact Assessment: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project’ (OECD 2020) para 38.

<sup>86</sup> *ibid.*

<sup>87</sup> Samuel Delpuech and others, ‘Update to the Economic Impact Assessment of Pillar One: OECD/G20 Base Erosion and Profit Shifting Project’ (OECD 2023) OECD Taxation Working Papers No. 66; Felix Hugger and others, ‘The Global Minimum Tax and the Taxation of MNE Profit’ (OECD 2024) OECD Taxation Working Papers No. 68.

<sup>88</sup> Samuel Delpuech and others (n 87) para 93.

<sup>89</sup> Felix Hugger and others (n 87) para 14.

<sup>90</sup> IMF, ‘International Corporate Tax Reform’ (IMF 2023) Policy Paper No. 2023/001 1.

<sup>91</sup> *ibid.*

<sup>92</sup> *ibid* 18.

<sup>93</sup> *ibid* 18f.

challenges. It, nevertheless, provides a better starting point to dive deeper into possible impacts on developing countries than the OECD assessments.

In contrast, the Two-Pillar Solution has raised considerable concerns about fairness for developing countries<sup>94</sup> and under international human rights law, which led to the UN's special procedures scrutinising its potential negative impacts.<sup>95</sup> In a communication to the OECD, UN Experts, including the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, the Special Rapporteur on the right to development, the Independent Expert on the promotion of a democratic and equitable international order and the Special Rapporteur on extreme poverty and human rights (referred to hereinafter as 'the UN Experts'), expressed concern "that the Two Pillar solution, as it stands, would significantly undermine the revenue collection and taxing rights of low and middle-income countries."<sup>96</sup> They noted that a reduction of tax revenues for developing countries could "affect the availability of resources to ensure the progressive realization of all economic, social and cultural rights, as well as of the right to development, as expeditiously and effectively as possible."<sup>97</sup> This "may constitute a retrogressive step in the implementation of the International Covenant on Economic, Social and Cultural Rights"<sup>98</sup>.

In relation to Pillar One, the UN Experts expressed concern "that the reallocation of taxing rights towards "market jurisdictions" is likely to be of

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<sup>94</sup> Rita de la Feria, 'The Perceived (Un)Fairness of the Global Minimum Corporate Tax Rate' (30 October 2023) <<https://papers.ssrn.com/abstract=4205720>> accessed 17 May 2024.

<sup>95</sup> Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and others, 'AL OTH 21/2022' (30 March 2022); Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and others, 'OL OTH 145/2023' (22 December 2023).

<sup>96</sup> Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and others, 'AL OTH 21/2022' (n 95) 5.

<sup>97</sup> *ibid.*

<sup>98</sup> *ibid.*

little benefit to non-OECD countries and may reduce revenues for a range of lower-income countries.”<sup>99</sup> They are also concerned about the analysis to identify the amount of profit subject to reallocation, which may “entail a disproportionately high administrative burden for countries with low or overly stressed capacities”<sup>100</sup>, which could lead to more tax avoidance.<sup>101</sup> The issue of complexity was also raised, which creates uncertainties about double taxation and hinders monitoring and accountability mechanisms.<sup>102</sup> Moreover, Pillar One and the division into profits subject to reallocation and other profits could facilitate “aggressive tax optimisation strategies and tax evasion”<sup>103, 104</sup>.

Regarding Pillar Two, the UN Experts have flagged concern that the global minimum taxation rate of 15% for MNEs is insufficient, particularly for low—and middle-income countries. They elaborated that “[t]his 15 per cent minimum will drive low and middle income States, notably in Africa, to lose considerable portions of their revenue since their average effective corporate tax is often significantly higher [...]”<sup>105</sup> The African Tax Administration Forum (ATAF) stated in its communication that the average statutory corporate income tax of most African countries ranges between 25% and 35%.<sup>106</sup> The UN Experts noted that the Pillar Two minimum tax rate “is much lower than what had been advocated for by a number of organizations and stakeholders”<sup>107</sup>. For instance, the ATAF demands a tax rate of at least 20% to disincentivise MNEs from profit shifting in Africa.<sup>108</sup> As the UN Experts

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<sup>99</sup> *ibid* 4.

<sup>100</sup> *ibid*.

<sup>101</sup> *ibid*.

<sup>102</sup> *ibid*.

<sup>103</sup> *ibid* 6.

<sup>104</sup> *ibid*.

<sup>105</sup> *ibid* 5.

<sup>106</sup> African Tax Administration Forum, ‘A New Era of International Taxation Rules – What Does This Mean for Africa?’ (*African Tax Administration Forum*, 8 October 2021) <<https://www.ataftax.org/a-new-era-of-international-taxation-rules-what-does-this-mean-for-africa>> accessed 17 May 2024.

<sup>107</sup> Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and others, ‘AL OTH 21/2022’ (n 95) 4.

<sup>108</sup> African Tax Administration Forum (n 106).

state, the proposed minimum tax rate could potentially become a ceiling rather than a floor due to fiscal competition between states.<sup>109</sup>

Additionally, the UN Experts noted their concerns that “not all declared income of MNEs in a particular jurisdiction will be included in the calculation of the 15 per cent”<sup>110</sup>. They worry that this could still allow for profit shifting and a potential race to the bottom for other portions of corporate income.<sup>111</sup> In this respect, they believe Pillar Two is not ambitious enough to effectively end fiscal competition.<sup>112</sup>

Developing countries have also voiced criticism. In a statement, the South Centre, an intergovernmental organisation of developing countries, assesses the Two-Pillar Solution from the perspective of developing countries.<sup>113</sup> It concluded that the agreement is “not just deeply disappointing but downright unacceptable,” especially with regard to Pillar Two.<sup>114</sup>

An underlying issue seems to be the participation challenges for developing countries, which limited their options to promote their interests in the negotiations of the Two-Pillar Solution.<sup>115</sup> The political reality seems to be that the developed jurisdictions responsible for policy proposals, and balanced policy discussions and decisions seem to be lacking, putting into question how much inclusivity the Inclusive Framework contains. Brauner concluded on the process that “the developing world was again left behind in the international tax discourse”<sup>116</sup>.

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<sup>109</sup> Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and others, ‘AL OTH 21/2022’ (n 95) 5.

<sup>110</sup> *ibid.*

<sup>111</sup> *ibid.*

<sup>112</sup> *ibid.*

<sup>113</sup> South Centre, ‘Statement by the South Centre on the Two Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy’ <<https://www.southcentre.int/wp-content/uploads/2021/10/SC-Statement-on-IF-Two-Pillar-Solution-13- Oct-2021.pdf>> accessed 17 May 2024.

<sup>114</sup> *ibid.*

<sup>115</sup> Irene Ovonji-Odida, Veronica Grondona, and Samuel Victor Makwe, ‘Assessment of the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalization of the Economy’ (South Centre 2020) 10.

<sup>116</sup> Yariv Brauner, ‘Agreement? What Agreement? The 8 October 2021, OECD Statement in Perspective’ (2022) 50 *Intertax* 5f.

Even though a vast majority of jurisdictions participate in the OECD/G20 Inclusive Framework on BEPS, effective participation was limited for developing countries as developed countries, such as the UK or the Netherlands, made up a considerable portion of participating jurisdictions due to their colonial ties with its overseas territories, many of which are known as tax havens and secrecy jurisdictions.<sup>117</sup> Developing countries have only limited membership in the Inclusive Framework and limited representation in the Working Groups.<sup>118</sup>

The UN Experts similarly argued that “[w]hile the OECD may appear to have sought to provide an inclusive forum for these negotiations, it does not provide equal voice, access to information and participation to all States, which are not its members.”<sup>119</sup> Given that the negotiation of the Two-Pillar Solution has occurred amidst significant inequalities between OECD and developing countries,<sup>120</sup> the UN Experts express concern that the “Two-Pillar-Solution may mainly benefit some high-income countries while lower-income countries will lose important shares of their revenues.”<sup>121</sup>

Moreover, Capacity constraints further limit the effective participation of developing countries, given the tight timeline of discussions and the typically highly technical policy proposals brought forward.<sup>122</sup> Most concerning seems to be the lack of transparency in the inclusive framework's decision-making and working style. It does not provide for formal rules of procedure and is not transparent about how interests are balanced.<sup>123</sup>

Notably, the IMF economic impact assessment paper proposes an agenda for developing countries, including “[a] new reform program—or “third pillar”—targeting lower income, capital importing economies [which] could build on and go beyond the scope of the initial BEPS agenda and the two-pillar

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<sup>117</sup> Irene Ovonji-Odida, Veronica Grondona, and Samuel Victor Makwe (n 115) 10f.

<sup>118</sup> *ibid* 11.

<sup>119</sup> Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and others, ‘AL OTH 21/2022’ (n 95) 2.

<sup>120</sup> *ibid* 3.

<sup>121</sup> *ibid* 2.

<sup>122</sup> Irene Ovonji-Odida, Veronica Grondona, and Samuel Victor Makwe (n 115) 12.

<sup>123</sup> *ibid*.

reform.”<sup>124</sup> At the heart of this proposal is the interest of low-income countries, which should shape more fundamental reforms, with simplicity as a primary objective.<sup>125</sup> The IMF paper seems to support the importance of integrating the interests of developing countries for better policies.

It is to agree with the UN Expert on the promotion of a democratic and equitable international order, who asserts that

[i]n order for Governments to be able to fund Sustainable Development Goals and deliver on their human rights obligations to provide public health care, education, water and sanitation, affordable housing and transportation, all countries must have an equal seat at the table to determine equitable international tax practices.<sup>126</sup>

The discussions on the Two-Pillar Solution agreement reveal a significant controversy common to many international (tax) agreements: the equal effective participation and consideration of (human rights) interests of developing countries. The communications and statements by the UN Experts, the South Centre, the ATAF and even the IMF economic impact assessment raise considerable concerns about the impacts of the Two-Pillar Solution on developing countries, not only with regard to their economic situation but also human rights.

## **2.5 Concluding Remarks**

This chapter assesses the impacts IEOs can have on a state's tax revenues and human rights situation. IEOs play a crucial role in raising tax revenue and realising human rights. However, certain conduct and practices of IEOs can lead to adverse human rights impacts.

Firstly, revenue conditionality can positively impact tax revenue through revenue generation measures, which are linked to increased spending on health and education, particularly in low-income countries. However, regressive taxation measures such as VAT, a common measure in IMF

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<sup>124</sup> IMF, ‘International Corporate Tax Reform’ (n 90) 36.

<sup>125</sup> *ibid* 40.

<sup>126</sup> Independent Expert on the promotion of a democratic and equitable international order (n 80) para 64.

programmes, may have negative impacts, particularly on lower-income households. Additionally, liberalisation measures such as the removal of customs duties can result in short-term losses of tariff revenue and long-term struggle for repatriation of MNEs profits, undermining health policy's fiscal basis. Despite this, revenue could be raised to realise human rights through revenue-raising measures and the medium-term effect of liberalisation policies, which encourage economic growth and attract foreign direct investment.

Secondly, in the context of DRM, IEOs can assist states in raising tax revenue and improving tax collection. However, IEOs can risk adversely affecting human rights through regressive taxation, which could exacerbate disparities if designed gender-exclusionary, ignores equity issues, and does not include linkages to inequality-reducing expenditures.

Thirdly, the World Bank's facilitation of tax havens potentially contributes to situations in member countries that result in lost corporate tax revenue, implying potential adverse human rights impacts.

Lastly, the OECD/G20 Inclusive Framework on BEPS "Two-Pillar Solution" theoretically contributes to strengthening states' tax capacity by promoting fair and equitable taxation of MNEs, thereby enhancing states' redistributive capacity. However, there is considerable concern that the Two-Pillar Solution will be of little benefit to developing countries, as they could lose substantial portions of their revenue, for instance, due to the insufficient 15% minimum tax rate for portions of MNEs profits. This could be seen as a retrogressive step in the implementation of the ICESCR, further considering that reallocation rights would mainly profit OECD "market jurisdictions". That negative human rights impacts of such an agreement are particularly felt by developing countries, highlights preexisting inequities between OECD and non-OECD countries, which are predominantly developing countries, as well as the importance of effective participation of developing jurisdictions in the negotiation process.

The possible adverse impact of IEOs on states' tax revenues and their capacity to realise human rights underscores the importance of ensuring that IEOs



consider human rights impacts in their operations. The question arises as to what obligations IEOs have under international law and how the impacts discussed in this chapter should be reviewed considering these obligations. This will be assessed in the subsequent chapter.

### **3 Human Rights Obligations of International Economic Organisations**

At present, there is no specific law or agreement in existence to pinpoint if and to what extent IEOs have direct legal obligations under international law in the same way that states do. The legal obligations of IOs are a complex subject matter that is still under debate in the international community and in need of theoretical development. This chapter attempts to give a brief yet comprehensive assessment of IEOs' obligations under international law regarding human rights. The aim is to establish through which approaches and to what extent legal human rights obligations can be seen as attributable to IEOs under international law. After establishing the framework of human rights obligations, this chapter will assess whether IEOs have international human rights obligations and, if so, what kind of obligations they have based on their status under international law, their relationship with the UN in the case of the IMF and World Bank, their member countries' obligations, and their legal mandates and practice.

It is important to note that this chapter will primarily be theoretical in nature, with a focus on drawing connections between human rights obligations and measures impacting a state's tax capacity. The review of established literature on IFIs' obligations will be a key part of this, with a primary focus on the established and still widely relevant works of Skogly,<sup>127</sup> Darrow<sup>128</sup>, as well as more recent work of Van Genugten<sup>129</sup> and McInerney-Lankford<sup>130</sup> and pertinent UN documents. It is to remark that the lack of recent theoretical

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<sup>127</sup> Sigrun Skogly, *The Human Rights Obligations of the World Bank and the International Monetary Fund* (Cavendish 2001).

<sup>128</sup> Mac Darrow, *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law* (Hart Publishing 2006); Mac Darrow, 'World Bank and International Monetary Fund' in David P. Forsythe (ed), *Encyclopedia of Human Rights*, vol 5 (Oxford University Press 2009).

<sup>129</sup> Willem Van Genugten, *The World Bank Group, the IMF and Human Rights: A Contextualised Way Forward* (Intersentia 2015).

<sup>130</sup> McInerney-Lankford (n 9).

developments in international law over the past two decades has made it difficult to find more updated academic literature. Further, it is worth mentioning that the human rights obligations of the OECD have yet to be the subject of academic discussions, which is why the IMF and World Bank will be the focus, with the OECD integrated into the assessments where possible.

### **3.1 The Framework of Human Rights Obligations**

It is first to lay down the framework of human rights obligation in general. In line with Skogly's definition of 'obligations', in this thesis, the term shall mean “a legally identifiable duty in relation to the respect, protection and promotion of human rights, based on any of the sources of international human rights law, such as treaties, customary international law and general principles of international law.”<sup>131</sup> The term 'obligation' will be understood as signifying a legal obligation, while the term 'duty' will describe moral aspects of obligations.<sup>132</sup>

This thesis will define the notion of obligation regarding human rights following the 'respect, protect and fulfil framework' as developed by Asbjorn Eide<sup>133</sup>, implemented by Skogly<sup>134</sup> and widely applied within the UN, especially by the Committee on Economic, Social and Cultural Rights. The Special Rapporteur on the Right to Food, Jean Ziegler, has applied this framework to IOs regarding their obligations towards the right to food, clarifying what the three levels of the human rights obligation framework entail for IFIs.<sup>135</sup> Applying this interpretation to human rights more generally, the framework implies the following for IOs, particularly the IMF and World Bank: The obligation to respect involves avoiding harm through IOs' policies, advice, and practices. In other words, IOs must not promote damaging development projects or exacerbate suffering.<sup>136</sup> The obligation to protect becomes relevant to IOs in ensuring that partners to the IOs in development

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<sup>131</sup> Skogly (n 127) 43.

<sup>132</sup> *ibid.*

<sup>133</sup> UN Commission on Human Rights, 'Report on the Right to Adequate Food as a Human Right Submitted by Asbjorn Eide, Special Rapporteur.' (1987) E/CN.4/Sub.2/1987/23.

<sup>134</sup> Skogly (n 127) 44f.

<sup>135</sup> UN Commission on Human Rights, 'The Right to Food' (n 18); UN Secretary-General, 'The Right to Food: Note by the Secretary-General' (UN, 2005) A/60/350.

<sup>136</sup> UN Secretary-General (n 135) para 51; UN Commission on Human Rights, 'The Right to Food' (n 18) para 43.

projects do not violate human rights.<sup>137</sup> Lastly, the obligation to support the fulfilment of human rights would involve facilitating the realisation of human rights, providing necessary assistance, and enhancing capacity.<sup>138</sup>

The obligations deriving from this framework can further be divided into positive and negative obligations. "Negative' obligations refer to the obligation not to violate human rights, or not to interfere"<sup>139</sup>, which can be associated with obligations to respect human rights. In contrast, "positive' obligations relate to the obligation to take steps to ensure human rights enjoyment, which will correlate with the latter two levels of obligations, the obligations to protect and to fulfil."<sup>140</sup> Additionally, Skogly added the concept of neutral obligations, which "captures situations where there are human rights problems, but where the obligation holder is not under an obligation to improve the situation, but rather not to make it worse."<sup>141</sup> This interpretation of the human rights obligation framework will henceforth be used to assess the sources and scope of IEOs' human rights obligations under international law.

### **3.2 Obligations of International Economic Organisations under International Law**

International organisations, such as the IMF, World Bank, and OECD, possess legal personality and are subjects of international law, as confirmed by the International Court of Justice (ICJ).<sup>142</sup> These entities, while not identical to states, are capable of possessing international rights and duties.<sup>143</sup> The UN Bretton Woods Conference established the IMF and IBRD as IOs with full juridical personality<sup>144</sup> while the OECD Convention gives the OECD

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<sup>137</sup> UN Secretary-General (n 135) para 52; UN Commission on Human Rights, 'The Right to Food' (n 18) para 44.

<sup>138</sup> UN Secretary-General (n 135) para 53; UN Commission on Human Rights, 'The Right to Food' (n 18) para 45.

<sup>139</sup> Skogly (n 127) 45.

<sup>140</sup> *ibid.*

<sup>141</sup> *ibid.*

<sup>142</sup> ICJ, 'Reparation for Injuries Suffered in the Service of the United Nations' (1949) Advisory Opinion 179; ICJ, 'Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt' (1980) Advisory Opinion para 37.

<sup>143</sup> ICJ, 'Reparation for Injuries Suffered in the Service of the United Nations' (n 142) 179.

<sup>144</sup> International Bank for Reconstruction and Development, 'Articles of Agreement' (2012); IMF, 'Articles of Agreement of the International Monetary Fund' (2022).

legal capacity under public international law in connection with its supplementary protocol no. 2.<sup>145</sup> However, the rights and duties of these organisations are relative, depending on their purposes and functions, as outlined in their constituent documents.<sup>146</sup>

The extent to which the international human rights law regime applies to IEOs directly as subjects of international law with international legal personality seems to be limited to human rights obligations under general rules of international law. These human rights obligations are understood to be mainly based on *ius cogens* norms, general principles of international law, and customary international law.<sup>147</sup>

As to the scope of this obligation to respect the customary international law, the Committee on Economic, Social and Cultural Rights concluded that IFIs are “obligated to comply with human rights, as listed in particular in the Universal Declaration of Human Rights, that are part of customary international law or of the general principles of law, both of which are sources of international law.”<sup>148</sup> It can be recognised that “most of the norms that have gained the status of customary international human rights law or general principles of international human rights law are found in the Universal Declaration on Human Rights.”<sup>149</sup> However, while the provisions of the Universal Declaration of Human Rights (UDHR)<sup>150</sup> can be seen as entailing obligations as customary international law, their extent is very disputed. They are reduced to a small list, with economic, social, and cultural rights not likely to be included.<sup>151</sup> Nevertheless, it can be concluded that

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<sup>145</sup> ‘Convention on the OECD’ (1960); ‘Supplementary Protocol No. 2 to the Convention on the OECD’ (OECD 1960).

<sup>146</sup> Henry G Schermers and Niels Blokker, *International Institutional Law : Unity within Diversity* (5. ed., Martinus Nijhoff Publishers 2011) paras 1570, 1566.

<sup>147</sup> Van Genugten (n 129) 14f; Jan Wouters and Michiel Hoornick, ‘The Triangle of Human Rights, International Law, and Sustainable Development’ in Siobhan McInerney-Lankford and Robert McCorquodale (eds), *The Roles of International Law in Development* (Oxford University Press 2023) 64; Human Rights Council, ‘A/HRC/36/40’ (n 79) para 2.

<sup>148</sup> UN Committee on Economic, Social and Cultural Rights (n 24) para 7.

<sup>149</sup> Skogly (n 127) 125.

<sup>150</sup> ‘Universal Declaration of Human Rights’ (1948) UNGA Res 217 A(III).

<sup>151</sup> Sanae Fujita, *The World Bank, Asian Development Bank and Human Rights: Developing Standards of Transparency, Participation and Accountability* (Edward Elgar Publishing 2013) 8; Darrow, *Between Light and Shadow* (n 128) 130.

to the extent that the Universal Declaration is part of customary international law or general principles of law, the World Bank and the IMF will have a negative obligation not to violate it, as they are bound by these sources of international law like all other entities with international legal personality.<sup>152</sup>

Since this somewhat limited direct application of international human rights norms, which are also unlikely to be touched by IEOs' policies,<sup>153</sup> does not provide much insight into possible obligations revolving around IEOs' operations impacting a state's tax capacity and ability to realise human rights, especially economic, social and cultural rights, it is to consider further scenarios that possibly allow a broader application of the international human rights regime. This will be assessed accordingly in the subsequent sections.

### **3.3 Obligations of the World Bank and IMF as UN Specialised Agencies**

The World Bank and IMF, as specialised agencies within the UN System,<sup>154</sup> are generally considered bound by UN Charter obligations, including human rights obligations,<sup>155</sup> despite being non-treaty members. Their implied obligations, however, are not explicitly stated in their relationship agreements, leading to debates about their independence and possible exemption from UN Charter obligations.<sup>156</sup>

It is, however, established that even though the IMF and World Bank are described as independent IOs in their respective agreements with the UN, this is to be understood as independence from interference by the UN rather than independence from international law obligations found in the UN Charter.<sup>157</sup> Consequently, the independence of these institutions should not be viewed as

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<sup>152</sup> Skogly (n 127) 125.

<sup>153</sup> *ibid* 91.

<sup>154</sup> UN General Assembly, 'Resolution 124(II)' (1947).

<sup>155</sup> Van Genugten (n 129) 15; Danilo Türk, 'The Realization of Economic, Social and Cultural Rights: 2nd Progress Report Prepared by Danilo Türk, Special Rapporteur' (1991) E/CN.4/Sub.2/1991/17 para 53; Darrow, *Between Light and Shadow* (n 128) 127–129; Skogly (n 127) 99–106; *ibid* 118–120.

<sup>156</sup> Van Genugten (n 129) 15.

<sup>157</sup> Skogly (n 127) 109.

contradictory to respecting the UN Charter, including its human rights provisions.

Skogly asserts that, at a minimum, the IFIs “are legally obligated not to conduct actions contravening the principles and purposes of the UN Charter, and also to respect the Charter, including the human rights provisions.”<sup>158</sup> This obligation to respect human rights has two implications for the World Bank and the IMF, according to Skogly:

First, in designing their policies, the World Bank and the IMF would be under the obligation to be certain that the planned policy or programmes would not violate human rights. Secondly, the current level of human rights protection should be observed. This would imply that no policies should introduce restrictions in human rights enjoyment that are currently in place, or at least not to an extent that would result in a violation of the core content of the right in question.<sup>159</sup>

Since the IFIs are not party to human rights treaties such as the ICESCR, they arguably cannot be held to an obligation to fulfil human rights.<sup>160</sup> Moreover, an obligation to promote human rights may “require a much more active human rights policy operation than the institutions have been set up to handle”<sup>161</sup>. However, this does not prevent the World Bank and IMF from deciding to assist in international measures to contribute to the progressive realisation of the Covenant rights in accordance with Art 22 ICESCR.

The UDHR and its associated human rights body are often consulted to define the scope of the human rights provisions of the UN Charter.<sup>162</sup> In particular, with regard to the ICESCR, Skogly argues that, as specialised agencies bound by the UN Charter, “the application of the Covenant brings more clarity to the substantive content of the human rights standards, which the two

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<sup>158</sup> *ibid* 101.

<sup>159</sup> *ibid* 151.

<sup>160</sup> *ibid*.

<sup>161</sup> *ibid*.

<sup>162</sup> Henry J Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals* (3. ed., Oxford University Press 2008) 137; Darrow, *Between Light and Shadow* (n 128) 127f; Skogly (n 127) 125.

organisations have a negative and neutral obligation not to violate and to respect, according to their legal relationship to the Charter.”<sup>163</sup>

In conclusion, despite their operational independence, the World Bank and IMF are generally considered obligated to respect the UN Charter, including human rights provisions, which are to be interpreted in the context of the UDHR and particularly the ICESCR.

### **3.4 International Economic Organisations and Obligations of Their Member Countries**

The UN Charter's human rights provisions could indirectly bind IEOs through the obligations of their respective member countries. This argument is often made about the World Bank and the IMF.<sup>164</sup> This indirect approach is based on the view that particularly these "IFIs are States' innovations and are controlled by States"<sup>165</sup>. The World Bank and the IMF ultimately consist of governments that all have international human rights obligations based on the UN Charter and customary law as the lowest denominator, encompassing an obligation to respect human rights.<sup>166</sup> When states are operating through the specialised agencies of the UN, in this case, the World Bank and the IMF, they “are legally obligated to carry out the mandate of the organisation, and at the same to do this within the general framework of international law”,<sup>167</sup> which implies that “the human rights obligations that each individual State has voluntarily accepted are retained when acting through the IMF and the World Bank.”<sup>168</sup> Therefore, the operations of IOs, as states intend, need to be in line with the rules of international law, especially those included in the United Nations Charter.<sup>169</sup>

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<sup>163</sup> Skogly (n 127) 136.

<sup>164</sup> Fujita (n 151) 4; Skogly (n 127) 107.

<sup>165</sup> Fujita (n 151) 4.

<sup>166</sup> *ibid* 4f.

<sup>167</sup> Sigrun Skogly, *Beyond National Borders: States' Human Rights Obligations in International Cooperation* (Intersentia 2006) 195.

<sup>168</sup> Skogly (n 127) 107.

<sup>169</sup> Skogly (n 167) 195.

The United Nations Guiding Principles on Business and Human Rights (UNGPs)<sup>170</sup>, which is an influential UN framework, acknowledge precisely that. Principle 10 states that

States, when acting as members of multilateral institutions that deal with business-related issues, should: (a) seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights; (b) encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising; (c) draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

The UNGP and particularly Principle 10 are referred to as important human rights norms and standards by the UN Experts in their recent communication to the OECD to guide the OECD's Two-Pillar Solution.<sup>171</sup>

Although this indirect approach does not directly transfer obligations to the respective IEO, which are independent international legal entities,<sup>172</sup> “their governance, and thus their decision-making, is formally dominated by their Member States.”<sup>173</sup> Since “the governments are obliged to ensure that the organisations operate in a manner consistent with the human rights provisions of the UN Charter, and other general principles of international law and

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<sup>170</sup> John Gerard Ruggie and UN Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises, ‘Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie: Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (UN, 2011) A/HRC/17/31.

<sup>171</sup> Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and others, ‘OL OTH 145/2023’ (n 95) 5f.

<sup>172</sup> Skogly (n 127) 109.

<sup>173</sup> Daniel Bradlow and David B Hunter (eds), *International Financial Institutions and International Law* (Kluwer Law International 2010) xxvi.



international human rights law”<sup>174</sup>, IOs could be said to have an inherent and implied obligation to respect the obligations of their member countries, which in practice would result in the IEOs themselves respecting human rights provisions initially intended only to bind states.

The significance of this is seen in the OECD's operations, which are linked to the UN's purposes through the preamble of the OECD Convention, especially the human rights obligations of the UN Charter and member states arising from other international institutions and agreements.<sup>175</sup> Most importantly, regarding the World Bank and the IMF, the Committee on Economic, Social and Cultural Rights stated, "it is in the exercise of the powers that have been delegated to them by their member States that they should refrain from adopting measures that would result in human rights violations."<sup>176</sup> Since the majority of the IMF and World Bank's member states are parties to the ICESCR, this primarily translates to a neutral and negative obligation for these IFIs to respect their member states' economic, social and cultural rights. However, this argument needs to be considered in perspective with the fact that the U.S., as the dominant power in the international community and home to the headquarters of the IMF and World Bank, has signed but not ratified the ICESCR. Hence, it seems difficult to argue for a universal legal obligation for IEOs to respect the ICESCR rights based on the majority argument.

However, it can be seen as established that IEOs must ensure their policies respect the human rights commitments of their member states, do not undermine human rights, and do not impede state efforts to gradually fulfil ICESCR rights. While it can be contested that this embodies an indirect obligation for IEOs, it is not clearly developed under international law and in academia whether this indirect obligation encompasses a legally binding obligation or a duty. More theoretical development seems to be necessary to develop on this issue.

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<sup>174</sup> Skogly (n 127) 109.

<sup>175</sup> 'Convention on the OECD' (n 145).

<sup>176</sup> UN Committee on Economic, Social and Cultural Rights (n 24) para 8.

### **3.5 Obligations of Legal Mandates and Practice**

So far, it has been established that the IEOs can be argued to have a minimum obligation to respect human rights arising from customary international law and indirectly through the UN Charter as an obligation or duty to respect their member countries' obligations. As specialised agencies, the World Bank and the IMF have particular obligations to respect the human rights provisions of the UN Charter. For defining the scope of the human rights obligations of the IEOs, the ICESCR is well relevant as an interpretative document and human rights instrument, influencing IEOs' obligations through member states' obligations indirectly and, in particular, the IFIs' obligations as specialised agencies.

IEOs' human rights obligations are also based on their engagement with their constituents and their practice.<sup>177</sup> Since the purpose and functions of an IO define its rights and duties under international law, evidence as to its purpose and functions is to be found specified or implied in its constitution and also in its practice developed over time.<sup>178</sup> Hence, it is to assess what obligations and possible limitations regarding human rights can be seen as arising from the IEOs' mandates and practice.

#### **3.5.1 The World Bank and IMF: Political Prohibition and Implied Powers**

The Articles of Agreement for the IBRD and the IMF do not stipulate any obligations regarding human rights protection or fulfilment. Some argue that the Articles of Agreement restrict these IFIs to purely economic operations. This argument is based on the 'political prohibition' clause<sup>179</sup> of the World Bank's Articles of Agreement and the 'implied powers' of the IMF, which lacks a political prohibition clause. However, over time, due to changes in the importance of international law and the evolution of human rights in

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<sup>177</sup> Wouters and Hoornick (n 147) 64; ICJ, 'Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt' (n 142) para 37.

<sup>178</sup> Schermers and Blokker (n 146) para 1566.

<sup>179</sup> International Bank for Reconstruction and Development (n 144) Article IV Section 10; International Development Association, 'Articles of Agreement' (1960) Article I and V Section 6.

development finance, it is now argued that these institutions cannot exclude human rights considerations alongside economic ones.<sup>180</sup>

The World Bank initially considered human rights as political matters and thus excluded them from consideration.<sup>181</sup> However, the changing global context and the recognition that human rights are central to global challenges have led to a reinterpretation of the Bank's political prohibition clause. It can be contested that because of the global developments and global challenges to which human rights are central, it is not against the political prohibitions of the World Bank to take human rights into consideration.<sup>182</sup>

Today's interpretation of this provision sees that "no automatic dismissal of [International Human Rights Law] norms should be accepted, including on grounds of the political content which they share with all legal norms."<sup>183</sup> It is to interpret the provision according to its original purpose<sup>184</sup> to "keep IFIs from being embroiled in domestic or partisan politics of members and prevent them from being influenced by the political 'character' or systems of said member."<sup>185</sup>

The IMF's Articles of Agreement appear more permissive towards human rights matters than the World Bank's Articles of Agreement, as no political prohibition provision influences the interpretation of the IMF's mandate and powers.<sup>186</sup> However, the IMF has adopted a conservative approach in interpreting its powers as implied in its Articles of Agreement, seemingly disavowing its human rights responsibilities.<sup>187</sup> Despite this "implied power" doctrine, it has been argued that the IMF, as an entity governed by

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<sup>180</sup> Antonio Morelli, 'International Financial Institutions and Their Human Rights Silent Agenda: A Forward-Looking View on the "Protect, Respect and Remedy" Model in Development Finance' (2020) Vol. 36 *American University International Law Review* 51, 67ff.

<sup>181</sup> Van Genugten (n 129) 18.

<sup>182</sup> Roberto Dañino, 'The Legal Aspects of the World Bank's Work on Human Rights: Some Preliminary Thoughts' in Philip Alston and Mary Robinson (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford University Press 2005) 19f.

<sup>183</sup> McInerney-Lankford (n 9) 361.

<sup>184</sup> Van Genugten (n 129) 17f.

<sup>185</sup> McInerney-Lankford (n 9) 360.

<sup>186</sup> Darrow, 'World Bank and International Monetary Fund' (n 128) 379; Van Genugten (n 129) 14.

<sup>187</sup> Darrow, *Between Light and Shadow* (n 128) 170f, 193.

international law, is always obliged to respect the human rights commitments of its members when exercising its powers.<sup>188</sup> By adhering to a conservative interpretation of its implied powers and economic mandate, the IMF cannot evade accountability for its lending practices' adverse effects on human rights.<sup>189</sup> Hence, the 'implied power' provision of the IMF neither precludes nor exempts the IFI from addressing human rights.

To conclude with Skogly, "there is nothing in the Articles of Agreement which will prevent the two institutions from taking human rights issues into consideration as to the effects of their operations side by side with 'pure' economic considerations."<sup>190</sup> This means that both the World Bank and the IMF cannot categorically object to human rights duties and obligations based on their respective Articles of Agreements. At least from a legal point of view, the Articles of Agreements are no limitation for the World Bank and the IMF to ever operationalise human rights duties and obligations. However, it needs to be acknowledged that from a diplomatic and political perspective, other objections might be brought forward. An elaboration on this would, however, exceed the scope of this thesis and needs. Keeping to a legal interpretation, it seems beneficial to provide a clearer understanding of the specialisation principle used by all IEOs to define their mandates and obligations before delving further into their mandates and practices.

### **3.5.2 Institutional Specialisation**

When examining the specialisation of IEOs and how it may limit their human rights obligations, the central issue is to what extent these organisations are expected to actively promote and fulfil human rights according to their constitutions.

Their specialised roles do limit their obligations, but this constraint applies only as far as it is necessary for effective functioning. The Articles of Agreement of the IMF and World Bank and the OECD Convention provide a

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<sup>188</sup> Darrow, 'World Bank and International Monetary Fund' (n 128) 379.

<sup>189</sup> Independent Expert on the promotion of a democratic and equitable international order, 'Promotion of a Democratic and Equitable International Order: Note by the Secretary-General' (2017) A/72/187 para 13.

<sup>190</sup> Skogly (n 127) 108.

framework for positive obligations, while the international law framework sets the guardrails with its negative and neutral obligations.<sup>191</sup>

Given that IEOs are not primarily established to fulfil human rights, it may not be feasible to imply such responsibilities based on their constitutions. There might also be no reason whatsoever to wish for a reform of the IEOs to human rights organisations. However, “their respective charters certainly should not be read as limiting the possibilities for constructive engagement with human rights principles, to the extent desirable for the fulfilment of their purposes or necessary as a matter of international law.”<sup>192</sup>

Moreover, “even if the conclusion is that the institutions are not under an obligation to protect and fulfil human rights, this does not prevent them from promoting and fulfilling human rights through their policies.”<sup>193</sup> In that sense, the institutional law of the IEOs needs to be interpreted as permissive to the extent that it does not exempt them from assuming a proactive role in promoting and fulfilling human rights within the framework of their institutional mandates.

### **3.5.3 Human Rights Position and Practice of IEOs**

The roles of the IMF, World Bank and OECD are dynamic, continually developing and expanding. Therefore, the actual operations and practices of the IEOs should be the indicator for the applicability of international law.<sup>194</sup> It is crucial to assess how the IEOs position themselves with the human rights regime and to what extent their mandates and practices coincide with human rights.

The OECD's primary goal is to advance global policies that enhance social and economic well-being, whereby the significance of human rights is acknowledged in accomplishing its objectives of sustainable development, economic growth, and social advancement, even though human rights are not precisely at the centre of its primary mandate.

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<sup>191</sup> *ibid* 92.

<sup>192</sup> Darrow, *Between Light and Shadow* (n 128) 194.

<sup>193</sup> Skogly (n 127) 172.

<sup>194</sup> *ibid* 92.

The OECD's approach to human rights is primarily indirect, as it integrates human rights considerations into its various policy areas, especially in the context of the work of the OECD Development Assistance Committee (DAC). For example, the OECD Guidelines for Multinational Enterprises refer to the UDHR and include recommendations for businesses to respect human rights in their operations.<sup>195</sup>

In its 1993 "DAC Orientations on Participatory Development and Good Governance," the OECD recognised the significance of human rights for development."<sup>196</sup> In these orientations, "DAC Members reiterate their adherence to the internationally defined principles and standards contained in the UN Charter, the International Bill of Human Rights and other instruments, notably the various UN Conventions which target particular human rights abuses"<sup>197</sup>.

Further, human rights are frequently mentioned in the DAC Guidelines on Poverty Reduction,<sup>198</sup> which emphasises the significance of human rights concepts like empowerment and engagement for pro-poor results and the denial of human rights as a significant component of a multidimensional understanding of poverty.<sup>199</sup> It can be observed that the DAC Guidelines on Poverty Reduction "and other DAC documents describe human rights, alongside governance, democracy and the rule of law, as part of the qualitative elements of development."<sup>200</sup>

The DAC Ad Hoc Working Group on Participatory Development and Good Governance stated that "[r]espect for human rights is seen as an objective in its own right but also as a critical factor for the longer-term sustainability of development activities."<sup>201</sup> It can be concluded that promoting policy

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<sup>195</sup> OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD 2023).

<sup>196</sup> OECD, 'DAC Orientations on Participatory Development and Good Governance' (1993) OCDE/GD(93)191.

<sup>197</sup> *ibid* 66.

<sup>198</sup> OECD, 'The DAC Guidelines Poverty Reduction' (2001).

<sup>199</sup> OECD, 'Integrating Human Rights into Development' (OECD 2006) 3.

<sup>200</sup> *ibid* 29.

<sup>201</sup> OECD, 'Final Report of the Ad Hoc Working Group on Participatory Development and Good Governance' (OECD 1997) 8.

coherence by integrating human rights into development assistance is part of the DAC agenda.<sup>202</sup>

Furthermore, the preamble of the OECD Convention implicitly acknowledges the significance of human rights.<sup>203</sup> The preamble links the OECD to the purposes of the UN, especially the UN Charter's obligations and member state obligations arising from other international institutions and agreements, including respecting and protecting human rights.

The World Bank and the IMF have increasingly positioned themselves in the human rights field,<sup>204</sup> which could imply that human rights duties cannot be seen as something externally imposed upon them. Morelli has observed that “notwithstanding their original economic mandate, IFIs have adopted a silent agenda on human rights that mirrors the global effort to move toward sustainability.”<sup>205</sup> He further establishes that IFI's status might as well have changed “from spectators to actors” when it comes to promoting human rights in developing countries.<sup>206</sup> Evidence for this development can be seen in the World Bank and IMF's shared dual mission to end extreme poverty and foster economic growth through shared prosperity.<sup>207</sup> The IMF and World Bank both adopted the Poverty Reduction Strategy Paper approach in 1999.

Regarding the positions of the IMF and World Bank in the human rights field, there is still an ongoing debate, more so in the context of the IMF, which seems more focused on a macro-economic perspective, while the World Bank seems clearer in its human rights position.<sup>208</sup> Van Genugten analysed that “the [World Bank Group] has chosen not to interpret its mandate in isolation from developments taking place in the human rights domain, while sometimes touching upon legal terminology.”<sup>209</sup> The IMF deals with several issues related to human rights, but it is “even less pronounced on linking such

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<sup>202</sup> OECD, ‘Integrating Human Rights into Development’ (n 199) 85.

<sup>203</sup> ‘Convention on the OECD’ (n 145).

<sup>204</sup> Van Genugten (n 129) 3ff.

<sup>205</sup> Antonio Morelli (n 180) 53.

<sup>206</sup> *ibid* 70ff.

<sup>207</sup> *ibid* 71.

<sup>208</sup> Van Genugten (n 129) 8.

<sup>209</sup> *ibid* 9.

activities to obligations stemming from international human rights law.”<sup>210</sup> As to the relationship with international human rights law, it can be concluded with Van Genugten that

[b]oth IFIs have entered the human rights doorway, be it to different degrees. And should they want to move backwards or reconsider their respective ways forward, international human rights law as it presently stands can serve as an invitation, but also as a stop sign.<sup>211</sup>

The World Bank, IMF, and OECD have all assumed mandates related to development in accordance with their constitutions according to their mandates and practices. While the IMF “promotes global macroeconomic and financial stability and provides policy advice and capacity development support to help countries build and maintain strong economies”<sup>212</sup>, the World Bank “promotes long-term economic development and poverty reduction by providing technical and financial support to help countries implement reforms or projects”<sup>213</sup>. The OECD aims to contribute to economic development by promoting policies designed for substantial economic growth and raising the standard of living in member countries besides others.<sup>214</sup>

Overall, the IEOs can be said to be connected to the human rights field because of their involvement in development and poverty reduction matters, which are inherently intertwined with international human rights law.<sup>215</sup> Their mandates generally constrain and dictate the space IEOs engage with human rights. Although it is uncertain whether legally binding human rights obligations stem from the IEOs' general mandates and practice, they must consider human rights in practice when fulfilling their mandates and formal

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<sup>210</sup> *ibid* 5.

<sup>211</sup> *ibid* 53.

<sup>212</sup> IMF, ‘The IMF and the World Bank’ (n 10).

<sup>213</sup> *ibid*.

<sup>214</sup> ‘Convention on the OECD’ (n 145).

<sup>215</sup> UN General Assembly, ‘Declaration on the Right to Development: Resolution Adopted by the General Assembly’ (1987) A/RES/41/128; UN Commission on Human Rights, ‘Human Rights and Extreme Poverty: Report of the Independent Expert, Arjun Sengupta’ (2006) E/CN.4/2006/43.



commitments.<sup>216</sup> The huge variety of practice opens up manifold areas where international human rights law must be taken into consideration.

### **3.5.4 The Development Mandate and the Sustainable Development Goals in Context of Human Rights**

Given that IEOs must consider human rights in the fulfilment of their mandates and considering the focus of this thesis on financial development, particularly DRM, it is to specifically assess to what extent the IEOs' involvement in development activities might influence the human rights considerations of their operations. The assumption is that precisely because the organisations are engaged in the development field and because development is so closely linked to human rights, the IEOs have a particular obligation to take human rights into account in their operations.

It is to agree that “[t]here is an increasing recognition that human rights concerns are important within the overall development framework, in particular within the context of adjustment.”<sup>217</sup> Considering that “[h]uman rights concerns have been increasingly incorporated in a broad range of development activities”<sup>218</sup> and that human rights can be seen as implied in sustainable development, the “link between human rights and development has become inseparable”<sup>219, 220</sup> This link has also become relevant for IEOs. As McInerney-Lankford proposed, “[international human rights law] is potentially relevant for development and IFIs because it is the source of international obligations that bind all members at all times and in all places.”<sup>221</sup>

Recently, steps were taken to convert the right to development, as defined in the 1986 Declaration on the Right to Development (DRTD)<sup>222</sup> into a legally binding instrument. This resulted in the 2023 draft international covenant on

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<sup>216</sup> Fujita (n 151) 14f.

<sup>217</sup> Türk (n 155) para 53.

<sup>218</sup> *ibid.*

<sup>219</sup> *ibid.*

<sup>220</sup> *ibid.*

<sup>221</sup> McInerney-Lankford (n 9) 360.

<sup>222</sup> UN General Assembly, ‘Declaration on the Right to Development’ (n 215).

the right to development.<sup>223</sup> The DRTD originally underlined the indivisibility between development and human rights to the extent that the IEOs cannot disregard human rights considerations when fulfilling their development mandates.<sup>224</sup> The draft covenant, while not creating new obligations, “reaffirms existing obligations of international organizations and legal persons under international law.”<sup>225</sup>

Taking the DRTD as a point of reference,<sup>226</sup> Article 4(1) of the draft covenant stipulates the right to development:

Every individual and all peoples have the inalienable right to development, by virtue of which they are entitled to participate in, contribute to and enjoy civil, cultural, economic, environmental, political and social development that is indivisible from and interdependent and interrelated with all other human rights and fundamental freedoms.

The draft covenant recognises in its preamble “that every organ of society at the national or international level has a duty to respect the human rights of all, including the right to development”<sup>227</sup>, which, according to its commentary, is based on “the principle in existing international law that everyone – whether a State or an international organization or any other non-State actor – has the general duty to respect, that is do no harm, to human rights of others.”<sup>228</sup> Article 3 of the draft covenant listing well-established general principles in international law<sup>229</sup> contains in Article 3(k) the “universal duty to respect human rights”, which stipulates that “everyone has the duty to respect all human rights, including the right to development, in accordance with international law”. According to the commentary, the term

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<sup>223</sup> Human Rights Council, ‘Draft International Covenant on the Right to Development’ (2023) A/HRC/54/50.

<sup>224</sup> Fujita (n 151) 13.

<sup>225</sup> Human Rights Council, ‘Draft International Covenant on the Right to Development, with Commentaries’ (2023) A/HRC/54/50/Add.1 para 16.

<sup>226</sup> *ibid* 37f.

<sup>227</sup> Human Rights Council, ‘Draft International Covenant on the Right to Development’ (n 223) preamble.

<sup>228</sup> Human Rights Council, ‘Draft International Covenant on the Right to Development, with Commentaries’ (n 225) 19.

<sup>229</sup> *ibid* 28.

“everyone” includes IOs, whereby it is differentiated between states’ human rights obligations under international law, which include the full “respect, protect and fulfil framework” and the minimum obligation for everyone else to respect human rights of others, that is, to do no harm to, abuse or violate the human rights of others.”<sup>230</sup> In the context of this draft covenant, the ‘duty to respect’ means a legally binding obligation that is not just of moral character, as elaborated on in the commentary of Article 7 of the draft covenant.<sup>231</sup> Article 7, on the relationship with the responsibility of everyone to respect human rights under international law, is the central provision of the draft connecting to the preambular paragraph and the principle in Article 3(k).<sup>232</sup> The article stipulates that “all natural and legal persons, peoples, groups and States have the general duty under international law to refrain from participating in the violation of the right to development.”

This draft international covenant on the rights to development, while not in force yet, provides crucial linkages based on well-established international law between IOs, like the IEOs in question, and the universal obligation to respect human rights, also in the context of development. While this draft international covenant will most likely not be ratified by the IEOs nor by most of the global north states, this document serves as a useful source of existing obligations under international law for this analysis. It seems to confirm that IEOs have a minimum obligation to respect all human rights in their operations, particularly in the context of development.

That IEOs, as development institutions, understand the relevance of development in the context of human rights could be seen as implied in their support for the SDGs of Agenda 2030, which relates to many human rights. The Agenda 2030 could also be seen as further elaborating human rights obligations for IEOs when engaging in development activities.

The SDGs, adopted by UN member states in 2015, provide a framework for action by states, IOs, and other stakeholders to promote sustainable

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<sup>230</sup> *ibid* 36.

<sup>231</sup> *ibid* 52.

<sup>232</sup> *ibid* 19,36.

development, which includes the realisation of many human rights.<sup>233</sup> In their report about synergies between human rights and sustainable development, the Permanent Missions of Denmark and Chile to the UN in Geneva observed that “the entire 2030 Agenda is premised and founded upon universal human rights”<sup>234</sup> and “[i]f SDG implementation fails to uphold human rights, then progress will ultimately prove illusory.”<sup>235</sup> It was pointed out that since “over 90% of SDG targets are embedded in human rights treaties [...] without progress on implementing those treaties, 90% of SDG targets cannot be realised”<sup>236</sup>. This could imply the necessity that when states, international institutions, or other stakeholders commit to the SDGs, they are required to uphold and implement human rights to fully achieve their goals.

Most notably, the Agenda 2030 framework acknowledges the importance of tax for financing sustainable development, reducing inequalities, and promoting economic growth. SDG 10 for reduced inequalities in Target 10.5 calls for improving the regulation and monitoring of global financial markets and institutions and strengthening the implementation of international agreements, including taxation, to ensure that developing countries have access to financial resources.<sup>237</sup> The SDG 17 on Global Partnership for Sustainable Development calls to “[s]trengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection”<sup>238</sup> in Target 17.1. While these SDGs explicitly address tax-related issues, taxation naturally intersects with various other SDGs and targets since effective and equitable tax systems can contribute to achieving multiple SDGs by generating revenue for public services, reducing inequalities, promoting inclusive economic growth, and supporting environmental sustainability. The Agenda 2030 explicitly acknowledges “the importance for international

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<sup>233</sup> UN General Assembly, ‘Transforming Our World: The 2030 Agenda for Sustainable Development’ (n 1).

<sup>234</sup> The Permanent Missions of Denmark and Chile to the UN in Geneva, ‘Human Rights and the SDGs: Pursuing Synergies’ (2017) 4.

<sup>235</sup> *ibid.*

<sup>236</sup> *ibid.*

<sup>237</sup> UN General Assembly, ‘Transforming Our World: The 2030 Agenda for Sustainable Development’ (n 1) 21.

<sup>238</sup> *ibid.* 26.

financial institutions to support, in line with their mandates, the policy space of each country, in particular developing countries."<sup>239</sup> This puts taxation for sustainable development and the realisation of human rights on the agenda of IOs such as the World Bank, IMF, and OECD, which all have mandates touching upon the above-mentioned goals.

The IMF, World Bank, and OECD are engaged in achieving the SDGs and can be seen as committed IOs to Agenda 2030.<sup>240</sup> The IMF fully supports the SDGs with numerous activities supporting member countries as they work toward achieving them. The World Bank has participated in formulating the SDGs and sees itself as deeply engaged with the UN to achieve the Agenda 2030 since its goals to end poverty and build shared property are consistent with the SDGs. The World Bank has made several commitments towards the 2030 Agenda and is working with its client countries in areas of finance, data, and implementation to attain the SDGs. The IMF's RMTF was set up to improve developing countries' tax capacities and support them in addressing the challenges of adopting the 2030 Agenda.<sup>241</sup> The RMTF was designed in the context of SDG 17 with the key objective of strengthening domestic revenue performance acknowledging that "[m]obilizing public revenue has become a centerpiece of the international development agenda."<sup>242</sup> The World Bank's GTP also serves as a key vehicle to support DRM as a central pillar to finance the SDGs in developing countries.<sup>243</sup>

The OECD claims to support the implementation of the SDGs with its expertise in policy work, data, and monitoring. As a strategic response to the Agenda 2030, the OECD has enacted an action plan called "Better Policies for 2030",<sup>244</sup> which includes the application of an SDG lens to all its strategies

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<sup>239</sup> *ibid* 44.

<sup>240</sup> OECD, 'OECD and the Sustainable Development Goals: Delivering on Universal Goals and Targets - OECD' (*OECD*) <<https://www.oecd.org/dac/sustainable-development-goals.htm>> accessed 17 May 2024; World Bank Group, 'World Bank Group and The 2030 Agenda' (*World Bank*) <<https://www.worldbank.org/en/programs/sdgs-2030-agenda>> accessed 17 May 2024; IMF, 'The IMF and the Sustainable Development Goals' (*IMF*) <<https://www.imf.org/en/About/Factsheets/Sheets/2023/IMF-Sustainable-development-goals-SDGs>> accessed 17 May 2024.

<sup>241</sup> IMF, 'Revenue Mobilization Trust Fund (RM-TF)' (n 57) 5.

<sup>242</sup> *ibid* 7.

<sup>243</sup> World Bank, 'The Global Tax Program' (n 49).

<sup>244</sup> OECD, 'Better Policies for 2030 An OECD Action Plan on the Sustainable Development Goals' (2016).

and policy tools. Additionally, the DAC has adopted as its overarching mandate objective

to promote development co-operation and other relevant policies so as to contribute to implementation of the 2030 Agenda for Sustainable Development, including inclusive and sustainable economic development, the advancement of equalities within and among countries, poverty eradication, improvement of living standards in developing countries, and to a future in which no country will depend on aid.<sup>245</sup>

Furthermore, all IEOs recognise the role of taxation in delivering the SDGs, especially by supporting developing countries in boosting domestic revenue mobilisation.<sup>246</sup> This is shown in their joint initiatives with the UN through the PCT.<sup>247</sup>

Given the engagement of the IEOs with the SDGs, it might be inferred that these organisations are committed to using the SDGs as guidelines in their operations. This would include a responsibility to respect and fulfil human rights to fully realise the SDGs. However, the SDGs are non-legally binding policy objectives that do not impose legal obligations on the IEOs related to their development mandates. Although the SDGs are not legally binding, “[i]n numerous instances, 2030 Agenda refers to the obligations of states set out in international human rights treaties.”<sup>248</sup> Therefore, at minimum, the SDGs can be viewed as providing an authoritative, widely accepted framework that should guide the IEOs' activities towards sustainable development.

To return to the assumption posed at the beginning of this section, it can be concluded that as entities deeply engaged in development activities, IEOs are

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<sup>245</sup> OECD, ‘The Development Assistance Committee’s Mandate’ <<https://www.oecd.org/dac/thedevelopmentassistancecommitteesmandate.htm>> accessed 17 May 2024.

<sup>246</sup> IMF, ‘The IMF and the Sustainable Development Goals’ (n 240); OECD, ‘Tax Co-Operation for Development Progress Report on 2022’ (n 67); Juan Carlos Benitez and others (n 2) 3; World Bank, ‘Countries Must Strengthen Tax Systems to Meet SDGs’ (*World Bank*, 14 February 2018) <<https://www.worldbank.org/en/news/press-release/2018/02/12/countries-called-to-strengthen-tax-systems-to-meet-sdgs>> accessed 17 May 2024.

<sup>247</sup> ‘Platform for Collaboration on Tax’ (n 11).

<sup>248</sup> Wouters and Hoornick (n 147) 64.

ostensibly not only encouraged but obligated to consider human rights in their operations. This obligation, which entails a negative and neutral obligation, can be seen as indicated by the draft international covenant on the rights to development and further interpreted with the comprehensive framework of the SDGs. However, this conclusion has to be handled with caution, as still more theoretical development is needed under international law.

### **3.6 Concluding Remarks**

This chapter aims to determine the extent to which legally binding human rights obligations can be attributed to IEOs under international law.

It is well established that IEOs, as subjects of international law with international legal capacity, have a direct minimum obligation to respect human rights arising from customary international law and general principles of international law. However, this direct approach only covers a minimal list of human rights obligations.

As specialised agencies of the UN, the World Bank and the IMF have an obligation to respect the human rights provisions of the UN Charter. The UDHR and the human rights body built upon it, including the ICESCR, are to further define these provisions while not legally binding per se. It needs to be highlighted that even though most human rights instruments, including the ICESCR, do not confer direct legal obligations upon IEOs, they give authoritative, relevant interpretations and elaborate on IEOs' obligations under international law.

It can be seen as established that all IEOs must ensure their policies respect the human rights commitments of their member states, do not undermine human rights, and do not impede state efforts to gradually fulfil ICESCR rights. While it can be contested that this embodies an indirect obligation and, hence, a legal obligation, this matter necessitates further theoretical development. Thus, respecting the human rights commitments of their member states is most certainly a duty for IEOs.

While IEOs have primarily negative and neutral human rights obligations, this does not exempt them from assuming a proactive role in promoting and

fulfilling human rights within the framework of their institutional mandates. IEOs are in no way prevented nor exempted due to their specialisation in considering human rights issues in addition to economic considerations in their operations.

Moreover, the IEOs have positioned themselves in the human rights field, although to varying degrees. Particularly through their development mandates, the IEOs have established notable human rights linkages. In exercising their mandates, IEOs must consider and cannot disregard human rights in their operations. This can be particularly argued based on the indivisibility between human rights and development, which becomes apparent, especially with regard to the right to development and the IEOs' commitment to the SDGs. As seen in the draft international covenant on the rights to development, IOs are duty-bearers subjected to the universal international legal obligation to respect all human rights. The SDGs, on the other hand, can be viewed as providing an authoritative, widely accepted framework that should guide the IEOs' activities towards sustainable development.

To conclude, strong indicators can be found for a minimum obligation for IEOs to respect all human rights in their operations, particularly with regard to development. Consequently, this implies that IEOs must integrate human rights considerations into their policies, programs, and operations. However, it needs to be acknowledged that the current interpretations of international law with regard to the obligations of IOs do not provide clear answers in every case as to whether IEOs have a legal obligation to respect human rights or if it is more to be seen as a duty. While this necessitates more research and theoretical development, this discussion will nonetheless move forward, contesting a minimum obligation for IEOs to respect all human rights in their operations.

Applied to the complexities between IEOs, tax policies and human rights, these findings would constitute an obligation not to worsen human rights conditions and not to interfere with the progressive realisation of human rights, especially economic, social and cultural rights. This obligation



includes not reducing tax revenue without providing a compensatory measure. When their structural adjustment programs could negatively impact human rights, IEOs should be obligated to implement efficient and fair tax programs and offer assistance. More specifically, IEOs must ensure that their tax policies do not undermine or impede state efforts to progressively fulfil the rights set out in the ICESCR. IEOs are generally obligated to respect the host states' human rights obligations and commitments when assisting and advising on matters of tax policy and agreements.

Considering the impacts of the IEOs assessed in Chapter 2 in light of their international human rights obligations, particularly the responsibility to respect human rights in all their activities, it appears questionable whether IEOs upheld their international legal obligations in their decision-making processes and carefully considered the potential impacts of their policy programmes and agreements. Particularly noteworthy is their obligation to mitigate negative impacts, which may encompass implementing safeguards to protect against regressive taxation measures or providing assistance to states to offset any adverse effects of structural adjustment programs. In summary, considering the impacts of IEOs in light of their international human rights obligations and duties underscores the importance of integrating human rights considerations into economic decision-making processes and promoting a more inclusive and rights-based approach to financial development. The extent to which the IEOs regard human rights in their policies of financial development will be assessed in the subsequent chapter.

#### **4 Human Rights in International Economic Organisations' Impact Assessments**

After determining the potential impacts of the World Bank, IMF and OECD on states' tax revenues and human rights (Chapter 2) and the obligations these organisations have under international law (Chapter 3), it seems desirable to evaluate to what extent these organisations incorporate human rights considerations into their operations. This chapter builds on the increasingly recognised importance of HRIAs and the assumption that when an adequate HRIA is conducted and integrated into IEOs' operations, negative human rights impacts, as presented in Chapter 2, can potentially be mitigated.

Further, conducting and integrating HRIAs could be seen as discharging their obligations to respect international human rights and not interfere with states' human rights obligations. This chapter aims to examine whether the organisations conduct such impact assessments and, if so, to what extent these further the integration of human rights considerations in their operations. The goal of this chapter is to gain insights into the nature of these impact assessments and how they can and should be enhanced.

#### **4.1 An Obligation to Conduct Human Rights Impact Assessments (HRIA)?**

Having contested that IEOs have an obligation to respect all human rights under international law at a minimum, it could be inferred that they also have an obligation to conduct HRIAs. They can help to identify risks and impacts, as well as corrective measures to potentially safeguard human rights in their operations if implemented.

The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (referred to hereinafter as the 'Maastricht ETO Principles'),<sup>249</sup> developed in 2011 by a group of international law, could be seen as defining such an obligation. While not legally binding themselves, they are considered authoritative interpretations of existing international human rights law, particularly the ICESCR, not only for states but also for IOs.

According to Maastricht ETO Principle 14 on impact assessment and prevention, “[s]tates must conduct prior assessment, with public participation, of the risks and potential extraterritorial impacts of their laws, policies and practices on the enjoyment of economic, social and cultural rights.”<sup>250</sup> This obligation applies likewise to states as members of IOs as stipulated in Principle 15, which states that “[a] State that transfers competences to, or participates in, an international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with the international

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<sup>249</sup> Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights 2011.

<sup>250</sup> *ibid* principle 14.

human rights obligations of that State.”<sup>251</sup> According to Principle 16 on obligations of IOs, the obligation to conduct impact assessments is furthermore applicable to IOs with regard to their human rights obligations under general international law and international agreements they participate in.<sup>252</sup>

Based on these Maastricht ETO Principles, Van Genugten posits that IFIs have to integrate HRIA into their operations.<sup>253</sup> This thesis primarily explores the obligation of IOs to conduct HRIA rather than contributing to the development of HRIA requirements for IOs. Therefore, a brief explanation of what an HRIA entails is sufficient. Van Genugten emphasises that

the assessment itself should focus on the equity of impacts, negative or positive, across groups, communities and sections of society and should lead to manageable and implementable conclusions and recommendations, allowing evaluation mechanisms to see to it that the conclusions and recommendations are implemented<sup>254</sup>.

Though Van Genugten does not explicitly label HRIA as an obligation, he presents a compelling argument for a *de lege ferenda* obligation for IEOs to conduct HRIA. He particularly emphasises that for the World Bank and the IMF, “a human rights analysis should be viewed by IFIs as necessary prior to the decision-making process and integral to the creation and selection of options.”<sup>255</sup> However, Van Genugten notes a “continuing resistance from IFIs, albeit from the IMF more than from the World Bank, to integrate ‘human rights checks’ into their operations more progressively.”<sup>256</sup> This resistance notably includes the integration of *ex-ante* HRIA into decision-making processes.<sup>257</sup>

Human Rights Watch asserts that “governments and international financial institutions are expected to conduct human rights impact assessments that

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<sup>251</sup> *ibid* principle 15.

<sup>252</sup> *ibid* principle 16.

<sup>253</sup> Van Genugten (n 129) 43ff.

<sup>254</sup> *ibid* 44.

<sup>255</sup> *ibid* 44f.

<sup>256</sup> *ibid* 43.

<sup>257</sup> *ibid*.

weigh the potential impacts of policy alternatives”<sup>258</sup> in relation to austerity measures.<sup>259</sup> This is based on the human rights obligations of IFIs as addressed in the Committee on Economic, Social and Cultural Rights’ July 2016 statement on austerity<sup>260</sup> and three sets of guiding principles that require states as well as IFIs to undertake HRIA to safeguard that policy choices align with human rights obligations.

The first two sets of principles include the “Guiding principles on foreign debt and human rights”<sup>261</sup> and the “Final draft of the guiding principles on extreme poverty and human rights”<sup>262</sup>. The former states

[L]enders should not finance activities or projects that violate, or would foreseeably violate, human rights in the Borrower States. To avoid this eventuality, it is incumbent upon lenders intending to finance specific activities or projects in Borrower States to conduct a credible [HRIA] as a prerequisite to providing a new loan.<sup>263</sup>

Though the latter does not explicitly address IFIs, it outlines the responsibilities of states as members of IOs and non-state actors, which include identifying human rights impacts and undertaking human rights due diligence, respectively.<sup>264</sup>

In 2019, the Human Rights Council adopted the “Guiding principles on human rights impact assessments of economic reforms”<sup>265</sup>, which were

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<sup>258</sup> Human Rights Watch (n 31) 6.

<sup>259</sup> *ibid.*

<sup>260</sup> UN Committee on Economic, Social and Cultural Rights (n 24) para 8.

<sup>261</sup> UN Human Rights Council, ‘Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, Particularly Economic, Social and Cultural Rights, Cephias Lumina: Guiding Principles on Foreign Debt and Human Rights’ (2012) A/HRC/20/23.

<sup>262</sup> UN Human Rights Council, ‘Final Draft of the Guiding Principles on Extreme Poverty and Human Rights, Submitted by the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona’ (2012) A/HRC/21/39.

<sup>263</sup> UN Human Rights Council, ‘Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, Particularly Economic, Social and Cultural Rights, Cephias Lumina’ (n 261) para 40.

<sup>264</sup> UN Human Rights Council, ‘Final Draft of the Guiding Principles on Extreme Poverty and Human Rights, Submitted by the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona’ (n 262) paras 97f, 100f.

<sup>265</sup> UN Human Rights Council, ‘Guiding Principles on Human Rights Impact Assessments of Economic Reforms’ (2018) A/HRC/40/57.

developed by the UN Independent Expert on foreign debt, Juan Pablo Bohoslavsky. This third set of principles is based on existing human rights obligations and responsibilities not only for states but also for IFIs. The guiding principles emphasise that:

[e]conomic policymaking must be anchored in and guided by substantive and procedural human rights standards, and human rights impact assessments are a crucial process that enables States and other actors to ensure that economic reforms advance, rather than hinder, the enjoyment of human rights by all.<sup>266</sup>

Therefore, conducting an HRIA “is an essential review and accountability procedure for the design, monitoring and implementation of economic reform policies.”<sup>267</sup> Guiding Principle 3 stipulates that “States and other creditors, including international financial institutions such as development banks, must carry out a human rights impact assessment before recommending or implementing economic reform policies that could foreseeably undermine the enjoyment of human rights.”<sup>268</sup> Principle 15 also requires IFIs to ensure that their operations, which include policy reforms and conditionalities, “do not undermine the borrower/recipient State’s ability to respect, protect and fulfil its human rights obligations.”<sup>269</sup> Based on this, Principle 15 prescribes that IFIs “have an obligation to assess the human rights impact of those measures.”<sup>270</sup> The Commentary to Principle 15 notes that “[h]uman rights impact assessments should be a mandatory element in the design of all economic reform and adjustment programmes and avoid human rights violations”<sup>271</sup>, which applies to any measures and conditionality proposed by IFIs.<sup>272</sup>

Furthermore, these guiding principles on human rights impact assessments of economic reforms emphasise gender equality. Principle 7 states that “[e]conomic reform policies and measures must not be discriminatory, and

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<sup>266</sup> *ibid.*

<sup>267</sup> *ibid.* 7.

<sup>268</sup> *ibid.* Commentary 3.1.

<sup>269</sup> *ibid.* Principle 15.

<sup>270</sup> *ibid.*

<sup>271</sup> *ibid.* Commentary 15.1.

<sup>272</sup> *ibid.*

they must endeavour to ensure equality and non-discrimination for all.”<sup>273</sup> It also highlights that women and marginalised groups are particularly susceptible to discrimination. Principle 8 specifies that “[h]uman rights impact assessments should always include a comprehensive gender analysis”<sup>274</sup> for economic reforms. This is particularly relevant as assessed above, tax policies can disproportionately burden women.

Based on these three sets of principles and particularly on the “Guiding principles on human rights impact assessments of economic reforms”, Human Rights Watch concluded that

[u]nder international human rights law, governments and international financial institutions have an obligation to conduct thorough human rights impact assessments of loan programs prior to the provision of the loan and pursue policies based on the outcome of these assessments that best protect and progressively realize, rather than erode, people’s economic and social rights.<sup>275</sup>

While the three sets of principles and the Maastricht ETO Principles are authoritative and rooted in international law, there is no blanket legal obligation for IOs to conduct HRIA. Yet, there's a growing acknowledgement of the importance of factoring human rights into their decision-making processes, driven by evolving norms and expectations within the international community. The duty of IEOs to pay greater attention to human rights is becoming more explicitly formulated, potentially indicating future legal developments (*de lege ferenda*).

In the United Nations realm, the need for IFIs to conduct HRIsAs is increasingly recognised. As early as 2005, Jean Ziegler, the Special Rapporteur of the Commission on Human Rights on the right to food, noted the need for IFIs, particularly the IMF and the World Bank, to conduct impact studies for vulnerable groups before implementing any adjustment measures.<sup>276</sup> In his 2017 report, Alfred de Zayas, the Independent Expert on

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<sup>273</sup> *ibid* Principle 7.

<sup>274</sup> *ibid* Principle 8.

<sup>275</sup> Human Rights Watch (n 31) 2.

<sup>276</sup> UN Secretary-General (n 135) para 51.

the promotion of a democratic and equitable international order, argued that IFIs, among others, should adopt a human rights-based approach to lending and conduct impact assessments<sup>277</sup> considering that policies of IFIs “have resulted in the erosion of the enabling human rights environment in some countries”<sup>278</sup>.

The IMF and the World Bank have increasingly acknowledged the importance of considering human rights implications in their policies and operations, albeit covertly and to varying degrees. The following sections will assess to what extent the impact assessments implemented by the IEOs regarding tax policies safeguard considerations of human rights within their operations.

#### **4.2 The World Bank – Poverty and Social Impact Analysis (PSIA)**

The World Bank Policy on Development Policy Financing (DPF)<sup>279</sup> stipulates that development policy operations (DPOs) should be supported by a PSIA of proposed policies.<sup>280</sup> Especially with regard to poor people and vulnerable groups,<sup>281</sup> PSIAs aim to “analyze any potential significant impact of DPF programs on poverty and income distribution.”<sup>282</sup> The policy also notes that significant effects, gaps, and shortcomings must be addressed in the World Bank’s program document, with strategies to minimise negative impacts.<sup>283</sup> Moreover, PSIAs should be “made available to the public as part of the consultation process, in accordance with the Bank’s Policy on Access to Information.”<sup>284</sup> Since distributional impacts are more frequently relevant to DPF than, for instance, investment projects, PSIAs are particularly relevant

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<sup>277</sup> Human Rights Council, ‘A/HRC/36/40’ (n 79) para 3.

<sup>278</sup> *ibid.*

<sup>279</sup> ‘Bank Policy Development Policy Financing’ (World Bank 2017) OPS5.02-POL.105.

<sup>280</sup> *ibid* 12.

<sup>281</sup> *ibid* 13.

<sup>282</sup> World Bank, ‘2021 Development Policy Financing Retrospective’ (World Bank 2022) 17.

<sup>283</sup> ‘Bank Policy Development Policy Financing’ (n 279) para 13.

<sup>284</sup> *ibid* 9.

in the context of DPF with regard to prior actions related to tax policy in DPOs.<sup>285</sup> Generally, PSIA are considered “a core element of DPFs.”<sup>286</sup>

According to a 2016 Multi-Donor Trust Fund Report, PSIA has been mainstreamed, and awareness and understanding within the Bank have increased.<sup>287</sup> Furthermore, the 2021 Development Policy Financing Retrospective report concluded that the quality of PSIA had improved.<sup>288</sup> A recent report on the World Bank Support for DRM by the World Bank Independent Evaluation Group noted, “[a]ttention to the expected distributional implications of DRM interventions has increased, particularly in low-income countries, but less so in middle-income countries”<sup>289</sup>. It also highlighted “the World Bank increased analytical work on the distributional impact of tax reform”<sup>290</sup> and that “findings are increasingly reflected in World Bank analytical and diagnostic work”<sup>291</sup>. However, the report also pointed out that “ex post impact is rarely discussed in completion reports.”<sup>292</sup>

The extent to which the World Bank's PSIA contributes to the promotion and protection of human rights, particularly via DRM strategies and fiscal consolidation programs, remains unclear. Data on the frequency of HRIAs or the use of ex-ante impact assessments prior to loan agreements or development projects is scant. The Multi-Donor Trust Fund Report on PSIA has previously stated that “it is difficult to estimate the entire universe of PSIA being conducted at the Bank”<sup>293</sup> since PSIA are often not identifiable in the Bank’s reporting system and appear in the form of different products, not just as a single report.<sup>294</sup> The fact that “ex post impact is rarely discussed in completion reports”<sup>295</sup> raises concerns about the quality and effectiveness

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<sup>285</sup> World Bank Independent Evaluation Group, ‘World Bank Support for Domestic Revenue Mobilization’ (World Bank 2023); World Bank, ‘2021 Development Policy Financing Retrospective’ (n 282).

<sup>286</sup> World Bank, ‘2021 Development Policy Financing Retrospective’ (n 282) 17.

<sup>287</sup> Multi-Donor Trust Fund, ‘Poverty and Social Impact Analysis (PSIA) Final Report’ (2016).

<sup>288</sup> World Bank, ‘2021 Development Policy Financing Retrospective’ (n 282) iii.

<sup>289</sup> World Bank Independent Evaluation Group (n 285) ix.

<sup>290</sup> *ibid* 25.

<sup>291</sup> *ibid* 26.

<sup>292</sup> *ibid* ix.

<sup>293</sup> Multi-Donor Trust Fund (n 287) 7.

<sup>294</sup> *ibid*.

<sup>295</sup> World Bank Independent Evaluation Group (n 285) ix.



of impact assessments conducted by the World Bank. In his 2016 questionnaire, the Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas, inquired about such issues.<sup>296</sup> He also questioned how the World Bank ensures that its projects “do not involve a regression in the enjoyment of human rights”<sup>297</sup>. However, his report does not provide answers to these questions, implying that the World Bank may not have adequately responded.

Consequently, the focus is on examining the scope and nature of the PSIA more theoretically in comparison to HRIAs. The guiding question is to what extent PSIAs address human rights issues and include human rights principles.

A study on HRIAs commissioned by the Nordic Trust Fund examined the differences between HRIAs and other forms of assessments, including PSIAs.<sup>298</sup> The study concluded that “HRIAs differ from other types of impact assessments on both the level of detail and specificity with which human rights issues are addressed and in the comprehensive way in which they are covered.”<sup>299</sup> On the other hand, PSIAs “tend to be more narrowly focused and can fail to capture the full range of factors that might prompt or exacerbate human rights risks involved in a particular intervention or activity.”<sup>300</sup>

Since PSIA “involves the analysis of the distributional impact of policy reforms on the well-being of different stakeholder groups, with a particular focus on the poor and vulnerable”<sup>301</sup>, equality can be regarded as a key principle in context of this discussion. The notion of equality is a fundamental human rights principle and an essential element of HRIAs as well as of social

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<sup>296</sup> Human Rights Council, ‘A/HRC/36/40’ (n 79) annex I.

<sup>297</sup> *ibid.*

<sup>298</sup> Nordic Trust Fund and World Bank, ‘Study on Human Rights Impact Assessments’ (World Bank 2013).

<sup>299</sup> *ibid.* x.

<sup>300</sup> *ibid.*

<sup>301</sup> World Bank, ‘A User’s Guide to Poverty and Social Impact Analysis’ (World Bank 2003) vii.

impact assessments more generally.<sup>302</sup> Therefore, human rights considerations may be factored into PSIAAs through the lens of equality.

The topic of DRM and Equity received considerable attention during the World Bank Board briefing on DRM in 2021.<sup>303</sup> The broader goals of the World Bank for tax reforms aim at fairness and redistribution, particularly for low-income, gendered, and low-skilled demographics.<sup>304</sup> The World Bank's DRM approach appears to concentrate heavily on addressing inequality and gender bias, striving for fairness and progressivity in the tax system, and focusing on equity-driven revenues.<sup>305</sup> Notably, the World Bank professes a commitment to equity and uses the Commitment to Equity (CEQ) methodology<sup>306</sup>. This methodology involves “[a]ssessing the incidence of tax and expenditure systems to make informed policy decisions”<sup>307</sup>. Moreover, the World Bank is working to innovate by including gendered CEQ by “[a]dding a gender lens to fiscal incidence analysis”<sup>308</sup>. The Management also noted in their response to the 2023 report on the World Bank Support for DRM that future core Advisory Services and Analytics would include the CEQ tool.<sup>309</sup>

If this focus on equality is incorporated into the World Bank's impact assessment methodology, PSIAAs could have considerable potential to safeguard and promote social equality. In turn, this could prevent adverse impacts on human rights and support host countries in realising human rights. However, PSIAAs lack a binding commitment to protect human rights.<sup>310</sup> The analyses and impact assessments the World Bank conducts, especially in the context of DPFs, adopt a limited and highly technocratic rights-based approach. Neither PSIAAs nor the CEQ, which is a crucial tool for determining

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<sup>302</sup> Nordic Trust Fund and World Bank (n 298) x, 14.

<sup>303</sup> World Bank Group (n 50).

<sup>304</sup> *ibid* 12.

<sup>305</sup> *ibid* 4, 12, 39.

<sup>306</sup> Nora Lustig (ed), *Fiscal Incidence Analysis: Methodology, Implementation, and Applications*, vol 1 (2. ed., Brookings Institution Press 2022).

<sup>307</sup> World Bank Group (n 50) 16.

<sup>308</sup> *ibid*.

<sup>309</sup> World Bank Independent Evaluation Group (n 285) xvi.

<sup>310</sup> Human Rights Council, ‘A/HRC/36/40’ (n 79) para 65.

policy outcomes related to equality, follow a rights-based approach or incorporate the human rights framework.

It is no surprise that the PSIA policy does not directly refer to the human rights framework. Philip Alston, as Special Rapporteur on extreme poverty and human rights, in attempting to comprehend the human rights policy of the World Bank<sup>311</sup> described the World Bank's stance on human rights as dismissive. He noted, “[f]or most purposes, the World Bank is a human rights-free zone. In its operational policies, in particular, it treats human rights more like an infectious disease than universal values and obligations.”<sup>312</sup> He observed a “systematic avoidance of human rights language, frameworks and institutions in the context of Bank projects”<sup>313</sup>.

Furthermore, Morelli noted that the World Bank’s Environmental and Social Framework (ESF), which applies to Investment Project Financing (IPF),<sup>314</sup> does not formalistically include human rights but rather takes a functionalist approach to expanding its mandate to a more socially oriented approach because of the World Bank’s Articles of Agreement’s political prohibition.<sup>315</sup> However, by integrating environmental and social considerations into its standards and assessments, the World Bank indirectly furthers human rights protection.<sup>316</sup> This approach may also apply to how the World Bank integrates equality considerations into tax policy assessments and PSIAs more broadly.

Given the World Bank's impact on tax policy and human rights through DRM programs and conditionalities as evaluated above, it is important to consider the potential for distributive inequalities. These inequalities are not only economic but also human rights concerns. The current practice of conducting a PSIA seems insufficient for understanding the complex impacts, especially when there's a lack of mainstreamed and adequate gender analysis.

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<sup>311</sup> United Nations General Assembly, ‘Extreme Poverty and Human Rights’ (2015) A/70/274 paras 5–33.

<sup>312</sup> United Nations General Assembly (n 311).

<sup>313</sup> *ibid* 31.

<sup>314</sup> World Bank, ‘World Bank Environmental and Social Policy for Investment Project Financing’ (2016) 5.

<sup>315</sup> Antonio Morelli (n 180) 82f.

<sup>316</sup> *ibid* 83.

In not taking a rights-based approach in their impact assessments, the World Bank risks that adverse impacts on human rights and the impact on the ability of states to fulfil their human rights obligations are being overlooked and ignored. In order for the World Bank to fulfil its obligations as an IO and specialised agency of the UN to respect human rights and the human rights obligations of their member states and host countries, it would seem inevitable that the World Bank conducts impact studies, which consider impacts on human rights comprehensively. As Amnesty International suggested similarly regarding the ESF, the World Bank should ensure that the PSIA “allows for adequate human rights due diligence to identify, prevent and/or mitigate all potential adverse impacts on human rights”<sup>317</sup>. Drawing from the comment of Alfred de Zayas, the Independent Expert on the promotion of a democratic and equitable international order, on the ESF, it can be suggested that DPOs should also undergo ex-ante human rights impact assessments and establish additional review mechanisms to monitor impacts throughout the duration of each project.<sup>318</sup>

In addition to safeguarding the fulfilment of international human rights obligations, including the human rights framework in PSIA could enhance their effectiveness and legitimacy in promoting poverty reduction and equity. As the Nordic Trust Fund study asserted, “[u]sing the framework of international human rights law as the objective standard of assessment contributes both moral legitimacy and legal accountability to the whole exercise as human rights have become the dominant language for social justice claims in many parts of the world.”<sup>319</sup> The study on HRIA further concluded that HRIA adds value to and complements PSIA, whether integrated into these assessments or conducted separately.<sup>320</sup>

In conclusion, while the World Bank's Policy on DPF stresses the significance of PSIA in evaluating the distributional consequences of policy reforms, it lacks a rights-based approach and explicit reference to human rights frameworks. The narrow focus and the absence of a binding commitment to

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<sup>317</sup> Human Rights Council, ‘A/HRC/36/40’ (n 79) para 66.

<sup>318</sup> *ibid* 68.

<sup>319</sup> Nordic Trust Fund and World Bank (n 298) x.

<sup>320</sup> *ibid* 37.

human rights within PSIAs raise concerns about potential oversights of negative impacts on human rights and states' obligations fulfilment. Integrating human rights considerations into PSIAs could not only enhance their effectiveness and legitimacy but also contribute to promoting poverty reduction and equity in a more comprehensive manner, aligning with international human rights standards and enhancing accountability.

### **4.3 The IMF – Poverty and Social Impact Analysis (PSIA)**

The IMF incorporates PSIAs into its operation, albeit not as extensively as the World Bank and not based on operational policy. Within the IMF, PSIA is deemed a crucial tool for assessing distributive concerns and mitigating the negative impacts of policy reforms.<sup>321</sup> Hence, “[t]he IMF has developed expertise in conducting poverty and social impact analysis [...] that can contribute to its work on appropriate targeting by assessing the distributional and social impacts of policy reforms on different groups of the population, particularly the poor and vulnerable.”<sup>322</sup> While IMF staff do not usually conduct PSIAs themselves, they are expected to incorporate PSIAs conducted by other institutions, mainly the World Bank, into program design.<sup>323</sup>

From 2004 to 2008, the IMF housed a dedicated unit within the Fiscal Affairs Department (FAD) that facilitated the integration of PSIA work.<sup>324</sup> PSIAs are of particular interest to the FAD as they have significantly shaped the IMF’s approach to evaluating social protection from a fiscal policy viewpoint since these policies typically involve public expenditure.<sup>325</sup> However, the PSIA group only conducted PSIAs in limited cases where such assessments were crucial, and no external analysis was available.<sup>326</sup> After the PSIA unit was disbanded in 2008, PSIAs were mainstreamed in FAD, with the FAD’s

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<sup>321</sup> Robert Gillingham (ed), *Poverty and Social Impact Analysis by the IMF: Review of Methodology and Selected Evidence* (IMF 2008) 1; IMF Independent Evaluation Office, ‘The IMF’s Role in and Approach to Social Protection’, *IEO Evaluation Report* (IMF 2017) 11.

<sup>322</sup> IMF Independent Evaluation Office (n 321) 11.

<sup>323</sup> Gillingham (n 321) 1.

<sup>324</sup> Jianping Zhou, ‘IMF Collaboration with Partner Institutions on Social Protection’ (Independent Evaluation Office of the IMF 2017) 7; IMF Independent Evaluation Office (n 321) 11.

<sup>325</sup> IMF Independent Evaluation Office (n 321) 11; Jianping Zhou (n 324) 7.

<sup>326</sup> Gillingham (n 321) 1.

Expenditure Policy division staff continuing to engage with PSIAs, particularly in context of technical assistance contexts.<sup>327</sup> While there is no general policy on PSIAs, IMF policy papers often list Gillingham’s 2008 “Poverty and Social Impact Analysis by the IMF: Review of Methodology and Selected Evidence”<sup>328</sup> as a substantial resource for IMF country teams’ analytical work and policy design.<sup>329</sup> However, as Zhou observed, “[a] consequence of the “mainstreaming” is that PSIA missions and related work are no longer classified as such in FAD’s recordkeeping, making it harder to identify the amount of PSIA work carried out by IMF staff.”<sup>330</sup> This raises concerns about adequate public access and accountability, from both a quantitative and qualitative standpoint, similar to issues faced by the World Bank.

Human Rights Watch, in a report analysing IMF loan programs approved between 2020 and 2023, noted that “[w]hile many loan programs acknowledge likely harmful social impacts and the importance of “protecting the poor and vulnerable,” they do not generally include an analysis of these impacts, despite guidance in its social spending strategy to do so.”<sup>331</sup> The report asserts the IMF “does not adequately [...] assess their rights impact on people on low incomes, including women and marginalized groups.”<sup>332</sup>

Furthermore, Human Rights Watch observed that IMF loan programmes lack analysis and documentation of harmful distributional impacts of adjustment requirements relating to social spending.<sup>333</sup> It is suggested that “[t]he IMF should publish these analyses prior to the approval of programs to facilitate an informed and meaningful dialogue with the public as part of loan negotiations.”<sup>334</sup> Regarding conditionality and austerity measures, which include regressive taxation, the recommendation is for the IMF to conduct HRIAs of programmes, which include calculations of “the expected and

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<sup>327</sup> IMF Independent Evaluation Office (n 321) 11; Jianping Zhou (n 324) 7.

<sup>328</sup> Gillingham (n 321).

<sup>329</sup> IMF, ‘A Strategy for IMF Engagement on Social Spending’ (IMF 2019) Policy Paper No. 2019/016 36.

<sup>330</sup> Jianping Zhou (n 324) 7.

<sup>331</sup> Human Rights Watch (n 31) 2.

<sup>332</sup> *ibid* 126.

<sup>333</sup> *ibid* 6.

<sup>334</sup> *ibid*.

actual impact of program conditionalities by income decile, as well as on groups that face discrimination”<sup>335</sup>, whereby respect for the minimum core human rights obligations needs to be safeguarded.<sup>336</sup> Human Rights Watch also emphasises the need for periodic review of these assessments and their advance publication prior to program approval and throughout the project's duration.<sup>337</sup>

Human Rights Watch's critique and recommendations suggest that the IMF's social impact assessments, whether through PSIAs or other methods and their integration, may not fully capture the impact on human rights. Given that the World Bank is playing a crucial role in supplying PSIAs for the IMF, the importance of ensuring high-quality and holistic PSIAs, including rights-based considerations, needs to be emphasised. As analysed in the World Bank context, PSIAs tend to be more narrowly focused than HRIAs and may overlook key factors that could indicate negative human rights impacts. Given the recent recommendations from Human Rights Watch, incorporating HRIAs could enhance the value and completeness of the PSIAs conducted and integrated by IMF staff.

#### **4.4 The OECD – Human Rights Impact Assessment (HRIA) and the Two-Pillar Solution**

The OECD does not have a specific mandate or requirement to conduct impact assessments in a formal, codified sense as part of its policy development process, including the drafting of international agreements such as the OECD/G20 Framework on BEPS and the Two-Pillar Solution.

With regard to the Two-Pillar Solution, the UN Experts, in their November 2022 communication to the OECD, noted the “continuing absence of a public assessment from the OECD”<sup>338</sup>. They expressed concern “that the OECD/G20 proposals may undermine rather than support revenue mobilisation in many countries – and with it, the realisation of human rights,

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<sup>335</sup> *ibid* 17.

<sup>336</sup> *ibid*.

<sup>337</sup> *ibid*.

<sup>338</sup> Mandates of the Special Rapporteur on the right to development and others, ‘OL OTH 107/2022’ (4 November 2022) 1.

in particular, economic, social and cultural rights.”<sup>339</sup> In their March and November 2022 communication to the OECD,<sup>340</sup> the UN Experts requested the OECD to clarify “if an assessment of the extraterritorial impact of the OECD/G20 tax deal on the resources necessary in developing countries in order to realize human rights in line with their obligations and commitments was conducted and known in the course of the negotiations.”<sup>341</sup>

As assessed above in Section 2.2, the OECD has conducted economic impact assessments with a few considerations of the impacts on developing countries. However, the assessment does not go very deep and does not provide any linkages to human rights, social impacts, or concerns voiced by the UN Experts. Considering the request of the UN Experts, it can be concluded that an HRIA or similar assessment has not been conducted or considered in the trajectory of the Two-Pillar Solution.

In their communications, the UN Experts seem to make a case for the OECD to conduct and consider HRIAs. They reference international human rights law applicable to the issues brought forward. They notably cite the Guiding Principles on Extreme Poverty and Human Rights,<sup>342</sup> which state that States, even when members of an IO must identify “possible human rights impact, including on persons living in poverty, of measures agreed at the international level.”<sup>343</sup> This implies that the OECD should not disregard the obligations of its member countries, which include conducting HRIAs. Referencing the Guiding Principles on Extreme Poverty and Human Rights and the UN Experts' inquiries about HRIAs suggests an obligation or expectation for the OECD to use its expertise to perform these assessments to ensure the

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<sup>339</sup> *ibid.*

<sup>340</sup> Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and others, ‘AL OTH 21/2022’ (n 95) 6; Mandates of the Special Rapporteur on the right to development and others (n 338) 3.

<sup>341</sup> Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and others, ‘AL OTH 21/2022’ (n 95) 6.

<sup>342</sup> Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and others, ‘OL OTH 145/2023’ (n 95) 6.

<sup>343</sup> UN Human Rights Council, ‘Final Draft of the Guiding Principles on Extreme Poverty and Human Rights, Submitted by the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona’ (n 262) para 97.



protection and realisation of human rights. However, the document does not explicitly link the mentioned international law to the OECD's international obligations.

The OECD responded to the first UN Experts' communication, clarifying that "[t]he OECD provides the forum and technical support for the BEPS [Inclusive Framework] but the negotiations are in the hands of the member jurisdictions of the BEPS [Inclusive Framework]"<sup>344</sup>. It was added that "[i]n its support to BEPS [Inclusive Framework] members, the OECD is acting under its mandate as set out in the OECD Convention and draws on its vast experience supporting the development and implementation of international tax standards in particular in the fight against tax evasion and avoidance."<sup>345</sup> While this response seems to deflect the OECD's obligation and duties and focuses on the participating jurisdictions, it does not rule out the possibility that the OECD could and should facilitate HRIAs.

In seeking further clarification on human rights issues brought to the UN Expert's attention, they requested in their December 2023 communication that the OECD provide "[i]nformation on any plans to conduct a human rights impact assessment of the Two Pillar Solution to address the tax challenges arising from the digitalisation of the economy, including its racial and gender impacts, and if there are plans to make this assessment publicly available."<sup>346</sup> The repeated inquiry about conducting and publishing an HRIA for the Two-Pillar Solution highlights the importance of such an assessment to address potential adverse human rights impacts.

Given the controversy over the impacts of the Two-Pillar Solution, particularly on developing countries and the concerns of inclusivity, quality and fairness as assessed in Section 2.2, it seems advisable for the OECD to

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<sup>344</sup> Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and others, 'AL OTH 21/2022' (n 95) 2.

<sup>345</sup> *ibid.*

<sup>346</sup> Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and others, 'OL OTH 145/2023' (n 95) 7.

facilitate and integrate formalised impact assessments in its procedures ex-ante and ex-post.

#### **4.5 Concluding Remarks**

In conclusion, this chapter aims to evaluate the extent to which the World Bank, IMF, and OECD incorporate human rights considerations into their operations with regard to tax policies. Beginning with an exploration of IEOs' obligations under international law, including their responsibility to conduct HRIA, the chapter examines specific practices within the World Bank, the IMF, and the OECD. While no blanket legal obligation explicitly mandates IEOs to undertake HRIAs, a confluence of factors suggests a growing imperative for them to integrate human rights considerations into their decision-making processes.

The World Bank's PSIA and the IMF's use of PSIA, albeit not extensively, are scrutinised in light of their potential to address distributive concerns and mitigate negative human rights impacts on vulnerable populations. While both institutions have made strides in mainstreaming PSIA, concerns remain regarding the comprehensiveness and effectiveness of these assessments in safeguarding human rights.

Similarly, the OECD's approach to HRIA, particularly in the context of agreements such as the Two-Pillar Solution, is analysed, highlighting the absence of a formal mandate for conducting assessments. However, the controversy over the impacts of the Two-Pillar Solution, particularly on developing countries, concerns of inclusivity, quality, and fairness, and the increasing scrutiny from UN Experts underscore the importance of integrating human rights considerations into international policy development processes to address potential adverse human rights impacts.

Overall, the chapter underscores the need for IEOs to enhance their HRIA practices to align with international human rights standards and obligations. By ensuring the comprehensive assessment of potential human rights impacts, these organisations can fulfil their obligations under international law and contribute to the protection and realisation of human rights worldwide. Moving forward, it seems imperative for IEOs to prioritise the

integration of human rights considerations into their operations to mitigate negative human rights impacts and promote social justice on a global scale.

However, the IMF and World Bank's general reluctance to use the human rights framework and adopt a rights-based approach makes it unlikely that IFIs will conduct full HRIA soon. Based on the observations of Morelli,<sup>347</sup> it seems more probable that the organisations will continue to pursue a silent human rights agenda on their terms by, for instance, increasingly considering distributive effects, gender analyses, and equality assessments.

Despite this, considering the ongoing UN advocacy to integrate human rights and HRIA into these institutions and the recent trend towards a human rights economy, which includes the restructuring of the global financial architecture, the topic of human rights within IEOs, especially within the World Bank and IMF, is likely to be a focus of future discussions. Given their international obligations and operations, IEOs inevitably face human rights issues. This makes it essential for IEOs to develop and use methodologies to ensure their operations do not negatively impact human rights. This growing challenge will likely spark more discussions within the international community, academia, and IEOs. It is hoped that the impacts IEOs have on fiscal policy and, therefore also, human rights will find their place in the debate.

This thesis suggests that HRIAs and similar assessments could be valuable tools to ensure the protection of human rights in IEOs' operations. However, this does not mean that HRIAs are a silver bullet that prevents adverse human rights impacts and ensures IEOs' accountability. HRIAs have the potential to raise awareness and encourage more debate about accountability and obligations. This thesis has shown that human rights impacts can initially be invisible and require more complex assessments, which is where HRIAs could help illuminate the shadows cast by IEOs' work.

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<sup>347</sup> Antonio Morelli (n 180).

## 5 Conclusion

This thesis has assessed the complex relationship between IEOs, taxation, and human rights, shedding light on the impacts, obligations, and assessment practices of IEOs.

Chapter 2 scrutinised the impacts of IEO interventions on states' tax revenues and human rights, revealing both positive and negative effects. While IEOs can have a crucial impact on raising tax revenue and realising human rights, especially through DRM programmes, certain practices, such as regressive taxation, liberalisation measures and facilitation of tax havens, can lead to adverse human rights impacts. The OECD/G20 Inclusive Framework on BEPS "Two-Pillar Solution", though theoretically beneficial to raise revenue, may particularly disadvantage developing countries, further highlighting issues of inclusivity and fairness of international tax policies.

Building upon this analysis, Chapter 3 examined the human rights obligations of IEOs under international law. There are strong indicators that IEOs have a minimum obligation to respect all human rights in their operations, especially those related to development. This means IEOs should incorporate human rights considerations into their policies, programs, and operations. However, current interpretations of international law regarding IOs' obligations do not always clearly define whether IEOs have a legal obligation to respect human rights or if it is more of a duty, hence marking an area for further theoretical development and debate.

Chapter 4 focused on evaluating the extent to which IEOs incorporate human rights considerations into their operations, particularly concerning tax policies. While no blanket legal obligation explicitly mandates IEOs to undertake HRIAs, a growing imperative exists for them to integrate human rights considerations into their decision-making processes. However, concerns remain regarding the comprehensiveness and effectiveness of existing assessment practices such as the PSIA as utilised by the IMF and World Bank.

In light of these findings, several conclusions can be drawn. Firstly, there is a need for IEOs to balance economic objectives with human rights

considerations, ensuring that their operations do not exacerbate inequalities or adversely impact human rights. Secondly, IEOs must enhance their HRIA practices as a measure to discharge their human rights obligations and duties under international law. While HRIsAs are valuable tools for raising awareness and encouraging accountability for human rights, they are not a panacea. However, they have the potential to shed light on otherwise invisible human rights impacts of IEO operations, particularly in the field of taxation and spark necessary discussions about accountability and obligations. This might be of particular relevance considering the current trend towards a human rights economy, which entails the restructuring of the global financial architecture. Thirdly, the lack of clarity regarding the human rights obligations of IEOs under international law necessitates further theoretical development. It is hoped that this issue will be picked up by academia and will find a place in the debate surrounding the emerging concept of a human rights economy.

Moving forward, it seems imperative for IEOs to integrate human rights considerations into their operations to mitigate negative human rights impacts and promote good practices on a global scale. In conclusion, this thesis underscores the importance of recognising the interconnectedness of tax policies and human rights outcomes and advocates for a more inclusive and rights-based approach to taxation and global development within the realm of IEOs, especially in light of the Agenda 2030 and the green transition at large.

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