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DEVELOPMENTS IN THE FIELD

Business Impacts on Economic Inequality: An Agenda for Defining Related Human Rights Impacts and Economic Inequality Due Diligence

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I. Introduction

Economic inequality, in particular vertical inequality in income and wealth within countries,[1] has widened considerably with potentially dramatic economic, political and social consequences.[2] Reflecting the need for urgent action on inequality, the United Nation's Sustainable Development Goal (SDG) 10 focuses on the reduction of various forms of inequality within and between countries.[3] In that context, a number of recent interventions have sought to highlight how business affects inequality,[4] recognizing that businesses have a central function in creating and distributing economic value in society.

[1] Vertical economic inequality is measured between individuals and households while horizontal economic inequality is measured between status-groups. On the growth of economic inequality generally, see Lucas Chancel et al, World Inequality Report 2022 (Creative Commons License 2021).

[2] A large scholarship has argued that extreme inequality hampers, e.g., economic growth, poverty eradication and social cohesion. For a critical review, see Ines A Ferreira, Rachel M Gisselquist and Finn Tarp, 'On the Impact of Inequality on Growth, Human Development and Governance' (2022) 24 *International Studies Review* 1.

[3] The SDG approach to inequality has limits, see Sakiko Fukuda-Parr, 'Keeping Out Extreme Inequality from the SDG Agenda – The Politics of Indicators' (2019) 10 *Global Policy* 61.

[4] See, e.g., KPMG, 'Social Inequality as a Business Risk' (May 2022); British Institute of Comparative and International Law, 'Human Rights Due Diligence and Systemic Inequalities: Conference Report' (March 2022); EU Platform on Sustainable Finance, 'Final Report on Social Taxonomy' (February 2022), p 24; Casey O'Connor-Willis, 'Making ESG Work: How Investors can Help Improve Low-Wage Labor and Ease Income Inequality' (2021), NYU Stern Center for Business and Human Rights; Test for Corporate Purpose and KKS Advisors, 'Covid-19 and Inequality: A Test of Corporate Purpose' (September 2020); Hari Bapuji, Gokhan Ertug and Jason D Shaw, 'Organizations and Societal Economic Inequality: A Review and Way Forward' (2019) 14 *Academy of Management Annals* 60.

Significantly, two emerging initiatives, the Task Force on Inequality-Related Financial Disclosure (TIFD)[5] and the Business Commission to Tackle Inequality (BCTI) by the World Business Council for Sustainable Development,[6] seek to notably identify business impacts on inequality and provide approaches for their alleviation.

This growing concern for how business impacts inequality has implications for the field of business and human rights (BHR). The international human rights community has increasingly engaged with the link between economic inequality and the effective enjoyment of human rights.[7] Yet the field of BHR 'has either remained silent to such stark [economic] inequalities and entrenched poverty or treated these as a given'.[8] Accordingly, there is a pressing need for BHR to consider how these business impacts on economic inequality may be a 'root cause'[9] for adverse human rights impacts, defined here as 'economic inequality-related human rights impacts'.

This piece contends that the field of BHR can contribute to these various interventions by defining business economic inequality-related human rights impacts and the business responsibilities that ought to be derived from them.[10] Section II situates two major interventions, TIFD and the BCTI, to explain their current[11] approach to identifying business impacts on economic inequality. Critically comparing the distinct origin, objectives and conceptualization of inequality of these initiatives explains their scope and its gaps – illustrating which business impacts are included and omitted. Section III takes the human rights implications of these business impacts on economic inequality and traces an agenda for BHR. This agenda includes identifying and evaluating business economic inequality-related human rights impacts, and their management by recognizing economic inequality as a dimension of human rights due diligence (HRDD).

Before proceeding, an important conceptual clarification is needed. The multiple dimensions of economic inequality are reflected in how differently TIFD and the BCTI, amongst others, define inequality 'of what' (e.g., income, wealth, opportunities, power) and inequality 'between whom' (e.g., individuals, gender, countries). The choice to emphasize certain dimensions of inequality over others needs to be carefully problematized, particularly when the absence of consistency could engender confusion and measurement divergence on how business impacts on inequality are disclosed and evaluated.[12] Some of these divergences and their implications are briefly discussed below. This piece adopts a practical approach that places emphasis on the direction of change in vertical inequality in income and wealth, that is economic distribution across society as a whole, and its consequences on human rights. Although this concept of economic inequality might not fully grasp the antecedents of inequality and capabilities,[13] or its normative dimensions in terms of distributive justice,[14]

[5] Task Force on Inequality-related Financial Disclosure, https://thetifd.org/.

[6] The Business Commission to Tackle Inequality, https://tacklinginequality.org.

[7] Contrast Philip Alston, 'Report of the Special Rapporteur on Extreme Poverty and Human Rights' (27 May 2015), UN Doc. A/HRC/29/31 and Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press, 2018).

[8] Surya Deva et al, 'Business and Human Rights Scholarship: Past Trends and Future Directions' (2019) 4 *Business and Human Rights Journal* 201, 204.

[9] On root cause analysis in human rights and its limits, see Susan Marks, 'Human Rights and Root Causes' (2011) 74 *The Modern Law Review* 57.

[10] For an important intervention, see Georges Enderle, *Corporate Responsibility for Wealth Creation and Human Rights* (Cambridge: Cambridge University Press, 2021).

[11] TIFD describes its FAQ on which this paper is based as a 'living document' that is revised over time.

[12] Confusion and divergence is widely examined in the context of environmental, social and governance (ESG) ratings of business, see MIT Sloan School of Management, 'The Aggregate Confusion Project', https://mitsloan.mit.edu/sustainability-initiative/aggregate-confusion-project (accessed 15 August 2022).

[13] See Amartya Sen, 'From Income Inequality to Economic Inequality' (1997) 64 *Southern Economic Journal* 383.

[14] See, e.g., Florian Wettstein, *Multinational Corporations and Global Justice: Human Rights Obligations of a Quasi-Governmental Institution* (Stanford University Press, 2009).

it underpins most of the widely disseminated empirical evidence about the growth of economic inequality.[15]

II. How the TIFD and the BCTI Approach Business Impacts on Economic Inequality

Participation and Expert Based Legitimation Strategies

TIFD and the BCTI originate in distinct communities (although they are 'allies'),[16] and their different approaches to stakeholder participation shape the business impacts that they seek to identify. TIFD originates within civil society. Adopting the naming scheme and symbolic capital – but with substantive differences from the successful model developed by the Task Force on Climate Related Financial Disclosures[17] – TIFD is a multi-stakeholder process that originated with a group of four civil society organizations.[18] TIFD's legitimation strategy rests largely on building a coalition of diverse stakeholders to co-create it.[19] with decision-making taking place under a 'co-creation' process that includes rights-holders.[20] By attempting to centre local knowledge and minority voices, TIFD can be said to facilitate the identification of more spatially scaled business impacts on inequality. The BCTI in turn is a business initiative led by the World Business Council for Sustainable Development, principally a business community of over 200 large companies. Self-describing as a multi-stakeholder coalition,[21] the BCTI's legitimation strategy relies principally on the participation of powerful actors, CEOs from large multinationals,[22] and expertise notably with 'commissioners' taken from private sector and civil society leadership that support and steer the initiative.[23] Expert participation facilitates the identification of business impacts that emerge from the vast interdisciplinary and technical literature about economic inequality.

A Focus on the Business Case

TIFD aims to provide context-based reporting and performance standards (e.g., metrics, targets and guidance) for companies and investors to measure and manage the reduction or elimination of their contribution to inequality, as well as inequality's impacts on company and investor performance.[24] TIFD's effective focus, however, is largely on investors, both in terms of business case and accountability. Indeed, TIFD places

[15] See notably Thomas Piketty, *Capital in the Twenty-First Century* (Harvard University Press, 2014).

[16] TIFD Allies, https://thetifd.org/tifd-allies (accessed 15 August 2022).

[17] Task Force on Inequality-Related Financial Disclosure, Frequently Asked Questions (TIFD FAQ) Beta Version, p 11, https://thetifd.org/resources (accessed 15 August 2022).

[18] Its interim secretariat was composed of the Argentine Network for International Cooperation (RACI), Predistribution Initiative (PDI), Rights CoLab, and the Southern Centre for Inequality Studies (SCIS). It has recently been joined by the United Nations Development Programme.

[19] Input legitimacy focuses on the openness of the initiative to stakeholder participation, see Sébastien Mena and Guido Palazzo, 'Input and Output Legitimacy of Multi-Stakeholder Initiatives' (2015) 22 *Business Ethics Quarterly* 527.

[20] TIFD FAQ, 17, p 17.

[21] See BCTI, 'Tackling Inequality: The Need and Opportunity for Business Action: An Introduction by the Business Commission to Tackle Inequality', https://tacklinginequality.org/news-and-insights/the-business-commission-to-tackle-inequality-makes-the-case-for-business-to-take-a-stand-on-inequality (accessed 15 August 2022) (BCTI Introduction).

[22] The co-chairs of the BCTI are notably Alan Jope, CEO of Unilever, Ilham Kadri, CEO of Solvay, and Sunny Verghese, CEO of Olam.

[23] See BCTI, 'Our Commissioners', https://tacklinginequality.org/our-commissioners (accessed 15 August 2022).

[24] TIFD FAQ, p 1.

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emphasis on inequality as a risk with system-wide implications for the economy.[25] Although climate change risk and financial stability risks are commonly characterized as such risks, it remains to be seen whether inequality will gain similar recognition.[26] In its discussion of accountability for inequality, TIFD prominently features investors that consider environmental, social and governance (ESG) factors.[27] The implicit assumption is that greater transparency of business impacts on inequality will lead to a response, at least by pension funds, that is aligned with the public interest, i.e., the reduction of inequality. Besides testing the validity of this assumption, this approach also raises questions about the democratic legitimacy and interests behind such asset owners effectively 'regulating'[28] conduct, particularly with respect to inequality as investors are largely wealthier than non-investors.[29]

The BCTI mobilizes the private sector to tackle inequality by building awareness and setting an agenda for action around best practices.[30] The BCTI primarily accounts for risks and opportunities to business by emphasizing inequality's impact on companies and, similarly to TIFD, its nature as a system-wide risk.[31] The initiative is voluntary and a matter of private responsibility rather than public accountability. As such, the BCTI's approach could be loosely assimilated to a form of corporate social responsibility or instrumental stakeholderism.[32] In that sense, the business community determines how it engages with economic inequality giving it important room to interpret its responsibilities. The BCTI does, however, place human rights at the core of its initiative – this external normative framework constrains interpretive space,[33] albeit with weak accountability.

Diverging Conceptualizations of Inequality

The way TIFD and the BCTI conceptualize inequality highlights different business impacts. At present, TIFD discuses income in the context of inequality 'of what', while the BCTI also includes well-being.[34] Significantly, the BCTI and the TIFD include wealth,[35] a source of greater vertical inequalities than income.[36] Inequality 'between whom' in TIFD includes both horizontal inequality (between status-groups) and vertical inequality (between individuals/households) within and between countries.[37] Thus, TIFD has the ambition of linking business conduct with vastly different scales, both the national and

[25] Large institutional asset owners or index funds that invest across the global economy cannot diversify from these 'systematic risks' and therefore benefit from addressing them, see Jeffrey Gordon, 'Systematic Stewardship' (2022) Columbia Law and Economics Working Paper No. 640; TIFD FAQ, pp 1–2.

[26] For an intervention in that direction, see Principles for Responsible Investment (PRI) and The Investment Integration Project, *Why and How Investors Can Respond to Income Inequality* (2018), https://www.unpri.org/research/why-and-how-investors-can-respond-to-income-inequality/3777.article (accessed 15 August 2022).

[27] TIFD FAQ, p 14.

[28] See Dorothy S Lund, 'Asset Managers as Regulators' (2022), USC Law Legal Studies Paper No. 22-12.

[29] Especially when wealth has been growing faster than income, see Piketty, 15.

[30] See BCTI Introduction, p 26.

[31] Ibid, p 20.

[32] On the limits of stakeholder governance in addressing inequality, see Matteo Gatti and Chrystin Onderma, 'Can A Broader Corporate Purpose Redress Inequality? The Stakeholder Approach Chimera' (2020) 46 *Journal of Corporation Law* 1.

[33] See BCTI, Introduction, p 5.

[34] BCTI Introduction, p 7; TIFD FAQ, p. 7.

[35] Ibid. Reference is made to 'wealth inequality' in the context of compensation, see TIFD FAQ, p 4.

[36] See Chancel et al, 1.

[37] Ibid.

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the international, each of these having their own significant empirical, normative and jurisdictional challenges.

III. Defining Economic Inequality-Related Human Rights Impacts and Economic Inequality Due Diligence

Economic Inequality-Related Human Rights Impacts

The field of BHR could build on TIFD, the BCTI, and other interventions by considering how the business impacts on economic inequality that they identify (or omit as a result of their scope) are root causes of severe human rights impacts.[38] Indeed, TIFD and the BCTI already recognize that economic inequality can engender human rights impacts: they situate human rights at the centre of their initiatives as normative thresholds[39] and align themselves expressly with the UNGPs.[40] These business impacts on economic inequality could be more expressly articulated with how inequality's adverse economic, political and social consequences 'severely affect a range of civil, political, economic, social, and cultural rights',[41] particularly those business impacts that are the most severe. Indeed, a range of economic inequality issues connected to business along both predistribution (e.g., fair wages) and redistribution (e.g., tax optimization),[42] have been examined by the international human rights community for their human rights implications, notably by UN treaty bodies,[43] special procedures,[44] and scholarship both within[45] and outside BHR.[46] These economic inequality-related human rights impacts fall within the scope of the business responsibility to respect human rights.[47]

In addition, the field of BHR could develop TIFD and the BCTI's engagement with human rights by interpreting international human rights standards in the context of business impacts on economic inequality.[48] For instance, human rights are said to be the normative thresholds for TIFD's 'social science-based' targets and metrics.[49] Aside from the challenges of measuring the complex social dimensions associated with human rights,[50] significant

[38] With BRIL, this author is undertaking research into business economic inequality-related human rights impacts.

[39] BCTI Introduction, p 5; see Joanne Bauer and Paul Rissman, 'Inequality has Become an Investor Priority – How Human Rights Advocates can Respond' (2022), https://www.business-humanrights.org/en/blog/how-inequality-became-an-investor-priority-towards-a-task-force-on-inequality-related-financial-disclosures/ (accessed 15 August 2022).

[40] See TIFD FAQ, p 16; BCTI, Introduction, p 23.

[41] Alston, 7, p 10.

[42] On the limits of tax-and-transfer (i.e. redistribution) as the best means of distribution for reasons of efficiency, see, e.g., Lee Anne Fennel and Richard H McAdams, 'The Distributive Deficit in Law and Economics' (2016) 100 *Minnesota Law Review* 1052.

[43] See, e.g., Committee on Economic, Social, and Cultural Rights, 'Social and Cultural Rights, Concluding Observations on the Initial Report of South Africa' (2018), E/C.12/ZAF/CO/1, para 16.

[44] Alston, 7.

[45] See, e.g., Shane Darcy, '"The Elephant in the Room": Corporate Tax Avoidance and Business and Human Rights' (2016) 2 *Business Human Rights Journal* 1.

[46] See generally Gilian MacNaughton, Diane F Frey and Catherine Porter (eds), *Human Rights and Economic Inequality* (Cambridge: Cambridge University Press, 2021).

[47] UNGPs, Principle 11.

[48] Accounting for concerns about human rights expansionism, see Hurst Hannum, *Rescuing Human Rights: A Radically Moderate Approach* (Cambridge: Cambridge University Press, 2019). But these concerns can also be seen as sustaining a *status quo*, see Jens T Theilen, 'The Inflation of Human Rights: A Deconstruction' (2021) 34 *Leiden Journal of International Law* 831.

[49] Bauer and Rissman, 39.

[50] See Sally Engle Meary, 'Measuring the World Indicators, Human Rights, and Global Governance' (2011) 52 *Current Anthropology* 83.

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conceptual work is required to advance human rights as targets and metrics since the international human rights community has only begun to seriously engage with vertical inequality as opposed to horizontal inequality.[51] Furthermore, the examples of business impacts on inequality listed by the BCTI and their agenda for action are largely focused on minimum subsistence requirements[52] – mention is made in TIFD of narrowing compensation ratios between the top and the bottom of income distribution within the firm.[53] Generally, this form of 'minimalism' or distributive sufficiency has been aptly criticized within the international human rights community for obscuring the difference between poverty alleviation and inequality by not considering relative difference,[54] that is the actual gaps between the worse off and the better off, and their consequences. After all, the perfect fulfilment of human rights as minimal needs can readily co-exist with inequality if there is excessive concentration at the top.[55]

Economic Inequality Due Diligence

Defining economic inequality-related human rights impacts would allow for the inclusion of 'economic inequality due diligence' in HRDD to implement and evaluate corporate efforts at managing business impacts on economic inequality. It would also complement TIFD's focus on disclosure and with HRDD's increased legalization,[56] the current voluntarism of these initiatives.

The human rights due diligence of economic inequality would require businesses to identify, assess and address their actual and potential economic inequality-related adverse human rights impacts.[57] At the beginning of this process, businesses identify and assess activities that have a negative impact on economic inequality accounting for the size, sector and the nature of their operations.[58] Guidance for this process can begin to be found in the business impacts identified by the BCTI and TIFD, together with emerging research,[59] and related initiatives.[60] Even if focus is limited to vertical economic inequality for reasons of practicality, these largely intersect with horizontal inequality, as discriminated status groups are over-represented at the bottom and under-represented at the top of income and wealth distribution. As part of this process, a law and political economy lens could dig deeper to identify and address the structures that underpin these impacts.[61]

The identification and assessment of actual and potential economic inequality-related human rights impacts is followed by taking appropriate action to prevent potential impacts,

[51] See Gilian MacNaughton, 'Emerging Human Rights Norms and Standards on Vertical Inequalities' in 46.

[52] BCTI, Introduction, p 5.

[53] See TIFD FAQ, pp 3–4; Bauer and Rissman, 39.

[54] See Olivier De Schutter, *The Rights-Based Welfare State: Public Budgets and Economic and Social Rights* (Friedrich Ebert Stiftung, 2018), p 21. See generally Moyn, 7, see also 1.

[55] Addressing top distribution can be justified in terms other than demanding egalitarianism, see Ingrid Robeys, 'Why Limitarianism?' (2022) 30 *Journal of Political Philosophy* 249.

[56] In addition to several countries having adopted HRDD legislation, see recently EU Commission, 'Proposal for a Directive on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937', https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071 (accessed 15 August 2022).

[57] UNGPs, Principle 18.

[58] UNGPs, Principle 17.

[59] See, e.g., Daniel Litwin, 'Mapping Business Impacts on Economic Inequality: Identifying Significant Corporate Distributive Factors' (2022), SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4252790; Bapuji et al, 4.

[60] See UN Global Compact, Blueprint for Business Leadership on the SDGs, SDG 10, https://blueprint.unglobalcompact.org/sdgs/sdg10/ (accessed 15 August 2022).

[61] See Jedediah Britton-Purdy, Davind Singh Grewal, Amy Kapczynsky and K Sabeel Rahman, 'Building a Law and Political Economy Framework: Beyond the Twentieth-Century Synthesis' (2020) 129 *Yale Law Journal* 1600.

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end existing ones, and mitigate any remaining impact.[62] Appropriate action depends on the degree of involvement in the adverse human rights impact according to the UNGPs' three categories of involvement: causing, contributing, and being linked to an adverse impact.[63] This determination would require substantial conceptual work as economic inequality is a systemic issue with multiple co-contributors and a large number of affected individuals. Indeed, the causes of economic inequality are numerous and contested,[64] and inequality is largely aggravated or alleviated by the cumulative acts or omissions of both private and public actors.[65] As a result, businesses are unlikely to be the only 'cause' for economic inequality-related human rights impacts, making attribution difficult. They are more likely to be 'contributing' to or being 'linked' to these impacts. Although the concept of contribution under the UNGPs 'implies an element of causality',[66] different adjustments to the understanding of causation and the UNGPs' concept of contribution have been put forward in the context of other systemic challenges.[67] These adjustments could be further adapted to economic inequality, together with an emphasis on the 'foreseeability' of an impact and HRDD as a management process rather than a source of tortuous liability. A finding of contribution would bring access to remediation requirements for individuals affected by the harmful consequences of economic inequality,[68] with its related challenges to standing. A finding of linkage would see companies find new ways to use their leverage to address impacts on economic inequality across their global value chain.

IV. Conclusion

The impact of business on economic inequality is increasingly on the agenda of businesses and civil society. These impacts are structurally implicated with a number of adverse human rights impacts, and should therefore be on the BHR agenda too. Building on TIFD, the BCTI, and other initiatives, this piece has drawn the contours of this agenda, with BHR helping to define business economic inequality-related human rights impacts, and the steps and challenges to managing these impacts through economic inequality due diligence. The current momentum around the interface of business and economic inequality presents an opportunity for the field of BHR to finally start engaging with economic inequality, one of today's most important system-level challenges.

Conflicts of interest. The author declares none.

[62] See UNGPs, Principle 19.

[63] Ibid, Principle 13.

[64] See Frank Stilwell, *The Political Economy of Inequality* (Polity Press, 2019), chapters 6 and 7.

[65] On the notion of 'cumulative impacts' see Danish Institute of Human Rights, *Human Rights Impact Assessment Guidance and Toolbox* (2020), p 86.

[66] See OHCHR, 'Response to Request from BankTrack for Advice Regarding the Application of the UNGPs in the Context of the Banking Sector' (2017), p 5.

[67] See, e.g., David Birchall, 'Irremediable Impacts and Unaccountable Contributors: The Possibility of a Trust Fund for Victims to Remedy Large-Scale Human Rights Impacts' (2019) 25 *Australian Journal of Human Rights*; Chiara Macchi, 'The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence' (2020) *Business and Human Rights Journal.*

[68] See UNGPs, Principle 25.

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