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Towards a global fiscal architecture using a human rights lens

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, **Attiya Waris**

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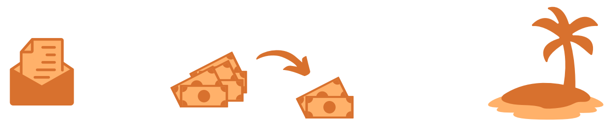
The Human Rights Council, in its resolution 46/11, noted with concern that illicit financial flows "deprive countries of resources required to progressively realize human rights, including economic, social and cultural rights, and in particular the right to development", and that illicit financial flows have particular detrimental effects on developing countries.

Unequal revenue collection within and between countries is a partial cause of uneven wealth distribution and the pervasive increase in poverty and exclusion around the world.

Inequality can be exacerbated by the existing international financial architecture and its weaknesses and loopholes. The movement of money across borders where either the method of movement, its earning or its use is not legal is referred to as an illicit financial flow (IFF). IFFs reduce the resources that countries could use to finance the protection, promotion and progressive realization of all human rights.

As wealthier individuals and business institutions that transact across borders are able to use the international fiscal system to their advantage, fewer resources may be available for public services and human rights.

While there are many different forms and definitions of IFFs, tax- and commercial-related IFFs are the most significant components of such flows on a global scale. These include:



- trade misinvoicing
- transfer pricing
- shifting of profits into or through low-tax offshore jurisdictions

According to The State of Tax Justice 2021, countries lose

$483 billion

in revenues a year.

This includes:

$171 billion owing to offshore tax abuse by wealthy individuals

$312 billion owing to corporate tax abuse

The current complex and competitive global taxation system has created fertile ground for multinational corporations and high net-worth individuals to avoid their tax obligations. Adapting existing fiscal governance structures, including law and policy, to the changing nature of economic activity is being further complicated in an increasingly digitalized world.

The Human Rights Council, in its resolution 49/15 recalls that every State has the primary responsibility to promote the economic, social and cultural development of its people, while acknowledging that inequality continues to increase worldwide, which often contributes to social exclusion and the marginalization of certain groups and individuals.

Addressing corporate tax-related IFFs by multinationals and offshoring of wealth by high net-worth individuals and corporations is a shared global concern.

In the view of the Independent Expert, the pervasiveness of tax-related IFFs is indicative of fundamental deficiencies in the international, continental, regional and national tax governance architecture.

"THE PROLIFERATION OF TAX HAVENS OR SECREcY JURISDICTIONS AND THE INDUSTRIAL SCALE OF UNTAXED OFFSHORE WEALTH SENDS A SIGN. IT SIGNALS THE POTENTIAL DIRECTION OF POLITICAL WILL OF SOME GOVERNMENTS, MULTILATERAL ORGANIZATIONS AND ECONOMIC BLOCS."

Human rights can underpin an international tax overhaul. Such reforms are part of a larger set of reforms at the international level that should promote a rights-based economy. They must be designed and implemented with the aims of

- enhancing the well-being and dignity of people, particularly the most marginalized;
- ensuring that human rights obligations are at the centre of financial and fiscal decision-making;
- reducing inequalities within countries; and
- promoting a multilateral response that considers all countries on an equal footing.

Governments cannot tackle these issues alone. A multilateral, inclusive and democratic fiscal architecture is crucial to addressing global tax avoidance and evasion.

In the present report, the Independent Expert will address the issue of international tax governance through the creation and development of a global United Nations-led tax convention and a global tax body using a human rights lens.

An overview of international commitments to tackle tax-related illicit financial flows

The guiding principles on human rights impact assessments of economic reforms (A/HRC/40/57) reaffirm that States ought to design and implement fiscal policy to ensure that they use the maximum available resources for the progressive realization of human rights. In addition, fiscal policy should be anchored in the core democratic principles of transparency, participation and accountability.

HOW TO MAKE ECONOMIC REFORMS CONSISTENT WITH HUMAN RIGHTS OBLIGATIONS

2000 The Millennium Development Goals allowed for the fiscal assessment of the most pressing human rights goals to be achieved by 2015.

2002 The Monterrey Consensus of the International Conference on Financing for Development (A/CONF.198/11) recognized the important role of equitable and efficient tax systems in international cooperation for development.

2015 International commitments to tackle IFFs in general were solidified in the 2030 Agenda for Sustainable Development.

Target 16.4 calls for countries to significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime.

Target 17.1 mandates countries to cooperate to ensure that developing countries have the requisite capacity to mobilize domestic resources for the achievement of the 2030 Agenda

While many approaches have been explored, one remains siloed from fiscal spaces, and that is the human rights approach. Looking to alternative proposals for international tax governance will require a deeper understanding and adherence to the fiscal legitimacy principles of transparency, accountability, participation and social justice.

> **"FISCAL POLICY IS NOT ENOUGH: FISCAL LAW, POLICY, REGULATIONS AND GUIDELINES NEED TO REFLECT THOSE PRINCIPLES AT NATIONAL, REGIONAL, CONTINENTAL AND GLOBAL LEVELS."**

International tax reform and human rights

In reforming the international tax system, there are already elements in both human rights and fiscal spaces that could be examined in conjunction with each other and pulled together with the aim of ensuring adequate funding for the realization of human rights.

Those instruments and guidelines all recognize that the human rights obligations of States in relation to fiscal law and policy in general, and taxation more specifically, go beyond one-sided efforts at the domestic level. States have an obligation to:

- ensure that fiscal law and policy respect and protect the human rights of people beyond their borders;
- contribute to the creation of an enabling international environment; and
- refrain from exerting undue influence on other States in ways that undermine their ability to fulfil their human rights obligations.

Using the tax principle of ability to pay and equity, all taxpayers, including multinational corporations and high net-worth individuals, should have the same tax obligations and provide the same level of transparency.

Progress at a national level

Although individual measures and policies have recently been adopted by many countries around the world in order to enhance transparency in commercial transactions and to prevent illegal financial activities, they do not meet the level of financial transparency needed to stop illegal cross-border financial activities.

Progress at an international level

Currently, while various draft instruments guide international and regional fiscal policies, (a) none have yet been concluded, (b) the scope and function to enforce a fair and inclusive international fiscal framework remain elusive and (c) no bodies are currently actively working to align the protection of human rights with taxation.

In November 2021, 137 members of the Inclusive Framework on Base Erosion and Profit Shifting joined the :

Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy

Pillar One provides a system for **dividing taxing rights** between market and residence jurisdictions.

Pillar Two is a **minimum global corporate tax** of 15%, on all multinational enterprises with global revenues of more than $750 million.

However, many countries continue not to be part of the agreement...

...and there is a lack of transparency regarding how country interests are balanced.

International tax governance

In 2014, the Special Rapporteur on extreme poverty and human rights produced analysis on the human rights implications of taxation policies. She recommended:

- *working towards a multilateral regime for tax transparency,*
- *strengthening frameworks for the automatic exchange of information,*
- *adoption of national reporting standards for transnational organizations,*
- *the establishment of national public registries to improve beneficial ownership transparency,*
- *the effective participation of developing countries in international forums.*

States have made commitments pertaining to the combating of illicit financial flows and the promotion of more progressive, transparent and efficient global tax governance. Various organizations continue to advocate for instruments that establish inclusive and legitimate global coordination with a view to financial health and economic development.

An international fiscal authority (which would include a global tax body) should assess the possible adverse impact on inequality, poverty and social inclusion of fiscal consolidation and spending cuts. It should also emphasize the need for careful design of fiscal policy, in particular tax and transfers systems, to strengthen the fight against the hiding of money and laundering of funds from criminal activities and eliminate IFFs.

In the discussions around international tax governance, two important issues have been emphasized:

Regulation of enablers

The discussion around "enablers" includes the professionals and enterprises that are set up to assist high net-worth individuals and companies in evading taxation. The list of enablers can be long and may often include:

- legal firms
- accounting firms
- financial advisers and services
- information technology specialists.

Beneficial ownership registry

A global registry can help track IFFs by enabling the analysis of complex ownership structures across different jurisdictions. A necessary condition for a global registry is the development of robust data at the national level that is housed in a place where all taxpayers feel their information is safe and protected.

There have been calls for a globally regulated registry, hosted by am internationally recognized and credible organisation.

International tax treaties in a human rights context

Emerging issues in digital taxation highlight the need for a global approach that prioritizes the needs and sustainable development of all countries over the economic interests of a small number of nations.

In recent years, there have been a number of discussions and proposals to address the limitations and challenges of the global tax system in a more comprehensive and multilateral way, including through a possible United Nations convention creating a global tax governance structure in which all countries can participate on an equal footing.

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Benefits of a convention

A global tax governance convention would:

- gradually replace the incoherent and highly complex network tax treaties and agreements, with a view to introducing one coherent overall global framework;
- discourage multinationals from shifting profits and tax revenues to low-tax countries and/or tax havens based on where their goods or services are sold, regardless of whether they have a physical presence in that nation;
- remove opportunities for international tax dodging; and
- ensure the suitability international tax agreements for each State.

THE WAY FORWARD

Recommendations

The Independent Expert makes the following recommendations to States, both individually and as members of various multilateral and international financial institutions and regional blocs:

(a) Reform the global taxation system as part of genuine efforts to combat illicit financial flows, in line with human rights law and standards, including extraterritorial obligations.
(b) Ensure that the promotion and realization of human rights, without discrimination, is at the core of the reform.
(c) Combat illicit financial flows, especially those that are commercially and tax-related, and in particular those resulting from the tax planning activities of transnational corporations.
(d) Convene, without delay, a fourth International Conference on Financing for Development.
(e) Create an international authority, global tax body or world tax organization.
(f) Launch the negotiation of a United Nations-led global tax convention.
(g) Ensure a high standard of transparency, while incorporating the interests, concerns and needs of developing countries.

About the independent expert

Ms. Attiya Waris took office the 1st August 2021 as Independent Expert on debt, otherinternational financial obligations and human rights.

She is the only Professor of Fiscal Law and Policy in Eastern and Central Africa. She is the first female Director of Research and Enterprise at the University of Nairobi. She holds a PhD in Law and is a specialist in Fiscal Law, Policy and Development.

She is an advocate, company secretary and arbitrator of over 20 years standing and was the founding Chair, Fiscal Studies Committee from 2017 - 2020. She spearheaded the first agreement on sharing of data between a University and a revenue agency globally in 2016. She is an Observer to the UN Tax Committee.

She teaches at the Law School, University of Nairobi, Kenya and has previously taught in South Africa, Rwanda, Malaysia and the United Kingdom. She has researched and published on global, African, Asian, European as well as Latin American issues. Her book 'Tax and Development' (2013) is the first publication globally that links the areas of tax and human rights and her more recent publication 'Financing Africa' is the first publication globally to map out African fiscal systems.

Further information

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