# **International Financial Obligations, Digital Systems, and Human Rights: The Role of Global Digital Tax in the Realization of Human Rights in Africa**

**Afronomicslaw Submission to the Call for Input by the UN Independent Expert on foreign debt, other international financial obligations and human rights**

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# **Introduction**

The inadequacies of the existing international digital tax regime are conspicuous. Recent proposals to address the tax challenges arising from the digitalization and globalization of the world economy include a G7 proposal to establish a global minimum tax on corporate incomes, under the [Organization for Economic Cooperation and Development’s (OECD) Inclusive Framework on BEPS (base erosion and profit shifting).](https://www.oecd.org/tax/beps/) This framework, *inter alia,* aims to eliminate aggressive tax avoidance used by multinational enterprises (MNEs) that exploit gaps in international tax rules and incorporates various [UN Tax Committee](https://www.un.org/development/desa/financing/what-we-do/ECOSOC/tax-committee/tax-committee-home) proposals aimed at increasing taxation of the global economy.

Despite the inadequacies of the extant global digital tax architecture, taxation remains a crucial instrument for the realisation of human rights. This is not only because of its importance as a source of income but also because [tax policies and taxation themselves play a pivotal role in remedying inequalities](https://www.eataxgovernance.net/wp-content/uploads/2020/03/EATGN-Tax-and-Human-Rights-Report.pdf). For states to meet their human rights obligations such as education, housing, adequate living standards, equality in access to opportunities, access to justice, access to clean water and healthcare among others as stipulated by the [Universal Declaration of Human Rights](https://www.un.org/en/about-us/universal-declaration-of-human-rights), [it is essential to have a progressive tax system that can collect and utilise the revenue generated accountably and equitably.](https://www.eataxgovernance.net/wp-content/uploads/2020/03/EATGN-Tax-and-Human-Rights-Report.pdf) While linking taxation to human rights, [Philip Alston](https://www.ohchr.org/Documents/Issues/EPoverty/Alston-Tax_policy.docx) notes that tax makes resources available whereas tax policy demonstrates tangible action towards priority setting. This is particularly relevant as the state invests in sectors that enhance human rights. On the other hand, human rights policies have an indispensable element of redistributing societal resources and remain central to political accountability. The nexus, therefore, of tax and human rights [is in their very existence; mutually dependent and mutually reinforcing.](https://www.eataxgovernance.net/wp-content/uploads/2020/03/EATGN-Tax-and-Human-Rights-Report.pdf)

This response to the call for input by the Special Rapporteur on foreign debt explores further this nexus between taxation and human rights, paying particular focus to the global tax reform proposals in the context of the realization of human rights. It puts into perspective the controversy surrounding the implementation of digital services tax (DSTs). This could possibly galvanize and provoke new conceptions that need to be addressed. The brief first links taxation to human rights, thereafter interrogating the challenges of regulating digital taxation from the perspective of Global South countries which disproportionately suffer the brunt of inadequate resource collection as a result of the current international financial architecture. It then proposes mechanisms that should be put in place to ensure that a global digital tax incorporates human rights principles both in the way it is levied and how tax revenue generated is used.

# **Tax and Human Rights: The Link**

The [1986 UN Declaration on the Right to Development](https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-development) requires that States formulate national development policies that equitably improve human well-being (Article 2(3)). It also mandates States to create national and international conditions favourable to the realization of the right to development (Article 3(1)), that they ensure that developing countries have the appropriate means and facilities to foster their comprehensive development” (Article 4(2)); and that they are to “fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States” (Article 3(3)). The collection of adequate tax revenue is essential to ensure that States “undertake…all necessary measures for the realization of the right to development and …ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income,” as required by Article 7(1) of the Declaration.

Despite the express provisions, the link between taxation and human rights is not necessarily an intuitive one. [Philip Alston](https://www.ohchr.org/Documents/Issues/EPoverty/Alston-Tax_policy.docx), however, explains that the most obvious link relates to resource availability. In that by refusing to levy taxes, or failing to collect them, both of which are commonplace in many countries, there will be inadequate public revenue necessary to fund human rights-related expenses. For example, [newspapers that employ hundreds of workers in printing and distribution facilities are becoming obsolete with the emergence of online news sites and news aggregators to which local advertisers are shifting *en masse*.](https://www.africaportal.org/documents/19747/Addressing_the_challenges.pdf) This largely results in the loss of jobs and lowers the living standards of the affected. At the same time, music, e-books, films, software and video games are now digital products which are traded across borders without payment of customs duties. In 1998, the World Trade Organisation (WTO) instituted [a two-year moratorium on imposing customs duties on electronic transmissions](https://iccwbo.org/publication/wto-moratorium-on-customs-duties-on-electronic-transmissions-a-primer-for-business/). [This moratorium, which has since been renewed every two years, is estimated to cost Sub-Saharan African countries up to USD 2.6 billion annually in uncollected revenue](https://www.wto.org/english/tratop_e/ecom_e/wkmoratorium29419_e/rashmi_banga.pdf). Therefore, unless addressed, tax revenues shall continue to decline due to reduced land use and unemployment brought about by the digitalisation of the economy, consequently resulting in adverse human rights implications.

Secondly, as explained by Alston, human rights policies have an indispensable element of redistributing societal resources. The regressive or progressive nature of a state’s tax structure shapes the allocation of income and assets across the population, and thereby affects various types of inequality. Thirdly, tax policy is central to political accountability, which is an essential element in the human rights framework. When designed and implemented well, taxes have the ability to reinforce the state’s accountability to the public and strengthen democracy. On the other hand, [the process can undermine democracy by having crucial decisions made behind closed doors in the name of ‘commercial in-confidence’ insider deals.](https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_31_en.doc) At the same time, [levying taxes on internet access can impact negatively on human rights](https://cipesa.org/2021/07/digital-taxation-doing-more-harm-than-good-for-access-and-rights-in-africa/) given that the [internet serves as an enabler of human rights such as the right to free expression](https://www.kictanet.or.ke/what-we-do/digital-taxation-and-human-rights/) and states have a responsibility to ensure citizens’ access to the internet is guaranteed by ensuring that access policies are in line with the requirements of [Article 19 of the Universal Declaration of Human Rights](https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf) as well as [Article 19 of the International Covenant on Civil and Political Rights](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights). Lastly, given crucial international cooperation dimension of tax, the differential tax treatment of domestic and foreign entities in a given country, and variations in tax law between jurisdictions, greatly influence the global flow and distribution of assets.

Nonetheless, despite this rather obvious nexus between taxation and human rights, little attention has been paid because of several reasons. First, human rights and economic policy-making have for quite some time been distinct and separate fields, a fact attributable to the human rights field being dominated by lawyers who have tended to steer clear of economic policy issues despite their centrality. Besides, the proponents of civil and political rights have long hid behind the myth that resource availability is irrelevant to a government’s obligations, as such, bringing up the economics of human rights would seem to violate the status of human rights as being above and superior to such mundane considerations. However, the reality is that many of the world’s worst human rights situations are driven overwhelmingly by economic factors such as illicit financial flows, theft, corruption, extortion, the failure to tax, and the failure to regulate economic actors.

# **The Challenges of Regulating Digital Taxation in Africa**

While the diversity of African nations in economic, political, and social environments as well as in the tax administration structures and fiscal capacities and capabilities signal the need to have contextual policy formulation, several challenges arising from the implementation of digital taxes in some African countries are apparent. Foremost, DST may result in the [reduction of growth of the digital sector and economic growth in African countries](https://www.mdpi.com/2227-7099/10/9/219/pdf), which could lower the living standards of people. Importantly, the digital economy is a consequential driver of economic growth and development in Africa. If anything, [in response to every 10% increase in mobile broadband in internet usage, there is a corresponding increase of around 0.82% to 1.4% in the gross domestic product (GDP) in African countries.](https://www.ibanet.org/Taxing-the-digital-economy-sub-Saharan-Africa) Taxation would thus increase the cost of the internet which is [already prohibitively high in some African countries.](https://cipesa.org/2021/07/digital-taxation-doing-more-harm-than-good-for-access-and-rights-in-africa/) Digital services tax might also result in reduced usage of digital services. High costs of internet-connected devices and data equally limit the use and connectivity of the internet in Africa. Coupled with significant customs duties on digital devices on digital mediums (such as eco-cash in Zimbabwe, and e-wallet in South Africa), digital taxes may have unfavourable effects.

Secondly, most African governments experience administrative challenges in their tax revenue generation efforts, including inadequate legal, technical, and institutional structures and capacities. The construction and collection of digital taxes especially DSTs implies a [reliance on an international specialist to assist in the early stages of design and implementation, yet these specialists are often expensive and difficult to retain](https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/14990/ICTD_WP105.pdf?sequence=1). Similarly, financial constraints make it difficult to pay competitive remuneration or to engage in intensive training programs or even to second personnel to countries with more developed digital taxes. Thirdly, digital taxes in various forms are not only regressive, but they also [disenfranchise poor and marginalised groups such as the informal sector, women and the youth in rural areas](https://www.ibanet.org/Taxing-the-digital-economy-sub-Saharan-Africa) – who need the internet the most. Countries which have introduced digital taxes have registered a subsequent decline in the number of people accessing and using the internet and other ICT-related services, ultimately leading to less revenue generated for the government. For example, when Uganda introduced a [1% excise duty on the value of all mobile money transactions](https://cipesa.org/2021/07/digital-taxation-doing-more-harm-than-good-for-access-and-rights-in-africa/) as well as a tax on social media in 2018, the government failed to collect the anticipated revenue as most users turned to virtual private networks (VPNs) to access social media platforms.

Fourthly, the [construction, implementation, administration, and enforcement of tax policy, especially for a new one often takes time, money, and effort](https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16968/914_Digital_Service_Tax.pdf?sequence=1). Similarly, the implementation of the interim DSTs in some African countries may take up substantial resources as well as time to bring them to functionality. On the other hand, the [OECD guidelines](https://www.oecd.org/tax/beps/about/#:~:text=Base%20erosion%20and%20profit%20shifting%20(BEPS)%20refers%20to%20tax%20planning,they%20suffer%20from%20BEPS%20disproportionately.) on digital tax are taking long to finalize and implement, with some African countries implementing their own country’ contextual digital taxes that they would have to repeal later when adopting the multilateral OECD framework consensus-motivated digital taxes. However, the implementation of the [OECD agreed digital tax regulations](https://www.oecd.org/tax/beps/about/#:~:text=Base%20erosion%20and%20profit%20shifting%20(BEPS)%20refers%20to%20tax%20planning,they%20suffer%20from%20BEPS%20disproportionately.) implies new additional costs in the form of effort, administration, and enforcement, resources as well as in the form of processes and increased compliance costs. The [practicability and feasibility of such a transition are problematic, given that the cost and benefit of having the individual country’s digital taxes for a short time and then repealing them later raises questions on the prudence of implementing temporary digital taxes in the short term and later the OECD consensus-based one](https://www.mdpi.com/2227-7099/10/9/219/pdf).

Fifthly, digital systems, including digital tax systems, rely heavily on processing personal data for the digital economy. This raises an important consideration which relates to [protecting traditional privacy while expanding the scope of the right to data protection.](https://link.springer.com/article/10.1057/s41261-022-00189-1) States are grappling with whether to consider data protection as entitled to separate regulation or whether to assign the role to existing financial regulators. Privacy is a basic human right provided for in national, regional, and international legal frameworks. The concept has to be extended in the digital plane and accorded sufficient protection in terms of the data shared, collected, stored, and otherwise processed on the digital plane. Closely linked to the data protection and privacy angles is [information security which safeguards digital systems from unauthorized access.](https://link.springer.com/article/10.1057/s41261-022-00189-1) With national and international legal systems requiring organizations operating on the digital plane to have a privacy policy, it is now acknowledged that websites could be a doorway for breaching the right to privacy. However, the policies that digital entities are required to provide to readers consist of lengthy and complicated terminologies. The user would ordinarily find it difficult to appreciate the type of data that is collected and the rationale for the processing of each data type. [Emerging storage technologies such as cloud computing make it difficult to ascertain the geographical location in which the data may be stored.](https://link.springer.com/article/10.1057/s41261-022-00189-1) For purposes of privacy, the difficulty in identifying the place of storage makes it more challenging to enforce the national data protection requirements in digital tax spaces. This ability of digital systems to transcend national borders makes it even more complicated to apply national standalone regulations.

Sixthly, effective regulation of the digital taxation is hampered by unequal access to information, communication, and technology. In order for individuals to participate meaningfully in the digital economy, individuals need to access particular information and communications technologies. There remain huge disparities between access to the internet for different groups globally and in Africa. Broadband access in developed countries compared to developing nations remains unequal. Besides, the use of the internet for e-commerce is lower in the global South countries compared to their global North counterparts. [Whereas about 80% of internet users in Europe use the internet for shopping, the figure in the global south countries is about 10%](https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2016/07/Consumer-Barriers-to-mobile-internet-adoption-in-Africa.pdf). Noteworthy, regulation of the digital economy requires a vibrant e-commerce society which is dependent on the readiness or capacity of people to use the digital economy. The COVID-19 pandemic exposed the stark differences in internet access and use. Due to the unpreparedness of the countries in the global south, policy priorities shifted to attending to the pandemic instead of developing robust digital taxation systems. [Even after the pandemic seems to have receded, there have been long term effects on the economies of most countries](http://southernvoice.org/covid-19-in-the-global-south-impacts-and-policy-responses/). This may cause African governments to fail to prioritize regulation of the digital economy.

Finally, DSTs may distort economic decisions, in that they may [undermine digital and financial inclusion in African countries through reduced internet usage and funds for development](https://www.brookings.edu/wp-content/uploads/2019/08/Taxing_mobile_transactions_20190806.pdf). The DSTs not only affect connectivity and affordability (consumption and pricing decisions) but also investment in information technology and the internet value chain (capital investment decisions). These decisions might lead to the loss of household incomes, and business incomes, and ultimately reduced tax revenue, with adverse effects on human rights. Moreover, taxation, even at the global level, may remain the preserve of law and economics in its formulation. However, [rights of the citizen in an increasingly connected world may drive change even here](http://classic.austlii.edu.au/au/journals/SydLawRw/2000/8.pdf). In a digital world, there is a danger that neither governments nor their citizens may realise the impact of developments on taxpayer rights. [The result could be a significant loss of trust.](https://psycnet.apa.org/record/2008-03002-006)

# **The OECD’s Inclusive Framework from a Human Rights’ Perspective**

The OECD Inclusive Framework (IF) has several procedural inadequacies. [Membership in the IF is open to jurisdictions rather than sovereign nations](https://www.cesr.org/sites/default/files/2022/Half_Measures_-_Working_Paper_CESR.pdf), meaning many powerful nations have an overrepresented voice. For example, according to the South Centre, “[the United Kingdom has an astounding eight jurisdictions in the IF which are a mix of crown dependencies and overseas territories](https://www.southcentre.int/wp-content/uploads/2020/12/Assessment-of-the-Two-Pillar-Approach-to-Address-the-Tax-Challenges-Arising-from-the-Digitalization-of-the-Economy-reduced.pdf)”. This happens at a time when many low-income countries that suffer from unfair digital taxation in reality lack a voice in the IF process. Unfairly so, a large number of African countries are not a part of the IF, including Algeria, Ghana, Uganda, and Zimbabwe, a process which violates the [Principles for Human Rights in Fiscal Policy](https://www.cesr.org/principles-human-rights-fiscal-policy/) that sovereign nations have a right to make decisions regarding their own fiscal policy. This proves that [calling a process inclusive does not make it so](https://press.un.org/en/2019/ecosoc6978.doc.htm).

Furthermore, as Matthew Forgette observes, by lacking formal rules on decision-making and procedure, the [IF lacks transparency in decision-making](https://www.cesr.org/sites/default/files/2022/Half_Measures_-_Working_Paper_CESR.pdf). This violates the provisions of the [Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social, and Cultural Rights](https://www.fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf) which mandate States to “observe international human rights standards, including…the right to participate in decision-making…as well as the principles of…transparency and accountability.” Forgette criticises the OECD feeble attempt at providing for a decision-making process for tax purposes, which the OECD describes in vague terms to comprise a “two-layer structure.” The first level includes working groups of member jurisdictions (which have limited developing country participation) and the second level, the Committee on Fiscal Affairs, reaches decisions on an unclear basis of “consensus. The lack of transparency inhibits criticism and input from less represented and less influential developing countries, especially those in Africa.

The IF also has some substantive inadequacies. The rules have been criticized not only for being overly complex, but for [prioritizing taxing rights according to the residency of a top parent entity, which is likely going to be located in a tax haven, over the taxing rights of source countries (most likely a Global South country)](https://www.cesr.org/sites/default/files/2022/Half_Measures_-_Working_Paper_CESR.pdf). This means that tax havens like Ireland and other such conduit countries will receive the first right to tax the MNE’s undertaxed profits, rather than the jurisdiction where the real economic activity of the MNE took place, i.e., where the employees, users and assets are. Additionally, the rules also raise a bit of a chicken-and-egg problem. Some African market jurisdictions have national DSTs. [They may not want to drop DSTs until developed countries like the U.S. adopt Pillar One and the multilateral instrument. But the U.S. may not adopt a Pillar One instrument unless DSTs are dropped.](https://taxprof.typepad.com/taxprof_blog/2022/04/weekly-ssrn-tax-article-review-and-roundup-saito-reviews-daviss-a-new-framework-for-digital-taxation.html) Furthermore, implementing the multilateral instrument not only requires complex negotiations, but it also requires adoption, which raises particular problems when it comes to African countries. These problems stem from the status of treaties in African domestic laws. Currently, most African economies have numerous bilateral tax treaties. But implementing Pillar One through a multilateral instrument would require overriding provisions of these treaties.

At the same time, the OECD IF takes away countries’ [right to engage in unilateral taxation](https://www.ohchr.org/sites/default/files/Documents/Issues/RtD/InfoNote_Taxation.pdf) under the two-pillar solution, which also fails to cater for the concerns of the Global South, including African countries. If anything, [developing countries have a sovereign right under international law to undertake national measures to tax the digitalized economy](https://www.oecd.org/tax/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report-9789264241046-en.htm), including the imposition of equalization levies and of withholding taxes on digital transactions. However, the supposed developing country-sovereignty is a myth rather than reality. In 2016, the Indian government imposed an equalization levy of 6% on digital advertising services, and a [2% levy on non-resident e-commerce players in 2020](https://news.bloombergtax.com/daily-tax-report-international/insight-indian-equalization-levy-under-u-s-scrutiny-what-comes-next). The levy raised over $204 million in the fiscal year (Seth, 2021). Shockingly, according to the [Financial Transparency Coalition](https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c_FACTI_Panel_Report.pdf), under the G7 proposal, India would be forced to forego that revenue, and the United States threatened [trade sanctions on India if it continued to impose the equalization levy](https://news.bloombergtax.com/daily-tax-report-international/insight-indian-equalization-levy-under-u-s-scrutiny-what-comes-next). This infringement on states’ sovereign right to tax is not only a violation of international law, but it particularly harms Global South countries because it prevents them from taxing in a way that maximizes their resource allocation and their adequate realization of human rights.

Additionally, IF lacks an organized structure for dispute prevention and resolution. Given the complicated nature of the new taxation regime under Pillar One, disputes will inevitably arise between countries, with consequent high arbitration costs. The [OECD indicated](https://www.oecd.org/tax/dispute/public-comments-action-14-make-dispute-resolution-mechanisms-more-effective.pdf) that in the event of a tax dispute, recourse would be to mandatory and binding arbitration mechanisms. This approach disadvantages poorer countries (mostly in Africa) with fewer resources to dedicate towards litigation. If anything, this could result in [tensions between arbitration processes and the sovereign right of states to enforce tax rules, the possibility of unfair outcomes and biased arbitrators, the lack of transparency in the arbitration process, and concerns about the cost of arbitration and lack of resources.](https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c_FACTI_Panel_Report.pdf) As such, it is imperative that the following be considered: clearer and more equitable rules towards global taxation in order to minimise disputes, impartial and transparent dispute resolution mechanisms, as well as less costly alternatives to arbitration, such as mediation and conciliation.

Furthermore, the OECD has consistently been against African narratives on illicit financial flows and the UN Tax Treaty despite [several calls for anticorruption efforts to be expanded beyond the narrow focus of bribery of governmental officials to include illicit flows of financial resources from developing countries to tax havens and low tax jurisdictions](https://www.cambridge.org/core/journals/american-journal-of-international-law/article/recharacterizing-corruption-to-encompass-illicit-financial-flows/55FA500893E68A01CEA06CCD51759404). [James Gathii](https://www.cambridge.org/core/journals/american-journal-of-international-law/article/recharacterizing-corruption-to-encompass-illicit-financial-flows/55FA500893E68A01CEA06CCD51759404) opines, correctly so, that transactions such as trade misinvoicing, base-erosion, and abusive transfer pricing are a form of corruption that hurts the poor. If anything, efforts to obtain transparency about how much multinationals are paying tax authorities requires those seeking that information to overcome the high levels of confidentiality that limit how much tax information multinationals are required to disclose. Besides, these transactions are also shrouded in an opacity that is facilitated in part by tax havens and secrecy jurisdictions. Transactions in which governments lose large amounts of revenue become public only through concerted efforts, such as when the [Panama Papers were disclosed through a coordinated global media project organized by the International Consortium of Investigative Journalists in 2016](https://www.icij.org/investigations/panama-papers/). In many jurisdictions, multinationals are only required to disclose piecemeal information that does not adequately provide [“a globally comprehensive picture of their geographic operations, inter-company transfers or tax-payments.”](https://www.elgaronline.com/view/edcoll/9780857930019/9780857930019.00024.xml) The importance of overcoming such secrecy was demonstrated when a leaked tax audit report showed that [Zambia was collecting only a 0.6 percent royalty on the profits of its major export, copper, following privatization reforms.](https://www.cambridge.org/core/journals/american-journal-of-international-law/article/recharacterizing-corruption-to-encompass-illicit-financial-flows/55FA500893E68A01CEA06CCD51759404#fn15) Under pressure from the public following the disclosure that copper exporters were enjoying high profits while paying extremely low taxes, [the government of Zambia increased its royalty rates to 3 percent in 2007](https://www.elgaronline.com/view/edcoll/9780857930019/9780857930019.00024.xml).

A major premise of the campaign led by activist groups therefore is that [multinational corporations are operating in developing countries while contributing little to public revenues at a time when these firms are enjoying very large profits](https://www.elgaronline.com/view/edcoll/9780857930019/9780857930019.00024.xml). Shockingly, the OECD has sought to [limit the broad definitions of illicit financial flows made by tax justice groups](https://www.cambridge.org/core/journals/american-journal-of-international-law/article/recharacterizing-corruption-to-encompass-illicit-financial-flows/55FA500893E68A01CEA06CCD51759404#fn19). It has done this in part by limiting the direct participation of non-governmental groups in its work. Its main tax policy body, [the Business and Industry Advisory Council, is made up of business representatives](https://www.cambridge.org/core/journals/american-journal-of-international-law/article/recharacterizing-corruption-to-encompass-illicit-financial-flows/55FA500893E68A01CEA06CCD51759404#fn23) and [does not allow NGOs and non-OECD member countries to participate in its work](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=257679). The OECD's pushback against the illicit financial flows agenda and the fact that its main policy organs are inaccessible explains why the [African Union views the United Nations as the preferable forum in which to advance its agenda](https://www.cambridge.org/core/journals/american-journal-of-international-law/article/recharacterizing-corruption-to-encompass-illicit-financial-flows/55FA500893E68A01CEA06CCD51759404#fn23).

# Towards a Human Rights-Centred Global Digital Tax System

As discussed above, the global digital tax landscape is still far from being fair and equitable for all countries. It is clear that IF falls short of the comprehensive reform the world needs and does not reflect the demands that developing countries have made towards a bigger and fairer reallocation of taxing rights. Nonetheless, in order for human rights to be effectively fulfilled by African governments, it is important that any enacted global tax policy be exhaustively and democratically critiqued for the benefit of less-influential less-represented African countries. The following mechanisms could be adopted:

1. **Adopt the United Nations’ proposal on taxing automated digital services.** Numerous human rights organizations have called for the establishment of a UN tax body to overhaul the international tax framework, and international tax work within the UN is ongoing. In [April 2021, the UN Committee of Experts on Tax Matters approved a recommendation to add Article 12B to the existing UN Model Tax Convention.](https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2021-10/CRP.22%20UN%20Model%20Double%20Taxation%20Convention%20between%20Developed%20and%20Developing%20Countries.pdf) Article 12B seeks to tax “automated digital services” through bilaterally negotiated tax treaties. The Article 12B method, as proposed, allows source countries to institute a withholding tax at a rate agreed to through bilateral negotiation. Alternatively, if this approach is too burdensome on a multinational enterprise, a tax can be levied based on the domestic tax rate of the source country. Besides, having the tax proposal formed under the auspices of the UN, a more inclusive multilateral body, may allow for greater representation of developing countries.
2. The Global South countries ought to be **allowed a greater voice in the global tax policy adoption process**, particularly with regard to dispute resolution mechanisms and ability to impose their own domestic digital taxes.
3. African countries should **adopt unilateral tax measures to raise more revenue in an equitable way**, especially where the extant global digital tax rules do not work for them. This will ensure that African countries adopt, implement, and enforce digital tax measures that adequately consider the human rights challenges of digital taxation and also take into account the unique challenges facing regulation of digital taxes in Africa.
4. In order to achieve equitable and human rights-centred development, tax systems must be **progressive, transparent, accountable and effective**. Digital tax should not shift the tax burden towards the poor and marginalized, thus failing to live up to the 1986 UN Declaration on the Right to Development’s mandate of national and international policies and conditions that are favourable to just and equitable development.
5. Under core human rights treaties, States acting individually and collectively, are obligated to mobilize and allocate the maximum available resources for the progressive realization of economic, social and cultural rights, as well as the advancement of civil and political rights. As elaborated in the UN’s Guiding Principles on Extreme Poverty, “States should make certain that adequate resources are raised and used to ensure the realization of the human rights of persons living in poverty. Fiscal policies on revenue collection, budget allocations and expenditure, including those related to digital taxes, **must comply with human rights standards and principles**, in particular equality and non-discrimination.” In order to eradicate poverty, achieve the Sustainable Development Goals, and fulfil their human rights commitments, States must **improve tax cooperation and fulfil their commitments to equitable development finance** including those made at the [Third International Conference on Financing for Development in Addis Ababa](http://www.undocs.org/A/RES/69/313).
6. In addition, **DSTs can be a tool for maximizing tax revenue collection**. Improved transparency in taxation could help boost the public coffers of African countries that were severely affected by the effects of the COVID19 pandemic especially the reduction in corporate taxes and other trade taxes such as customs duty. The taxation of non-tax paying digital MNEs could boost tax morale among domestic digital companies that are paying tax. This could increase tax compliance, resulting in improved resource mobilization to fund SDGs.
7. The main focus must be on dispute prevention instead of resolution. This requires clear, objective and administrable rules. Further, [mandatory and binding arbitration must be strongly opposed as it is structurally disadvantageous for developing countries](https://www.southcentre.int/wp-content/uploads/2020/12/Assessment-of-the-Two-Pillar-Approach-to-Address-the-Tax-Challenges-Arising-from-the-Digitalization-of-the-Economy-reduced.pdf).
8. The minimum tax rate should be commensurate with the revenue requirements of countries, especially in the COVID19 scenario when healthcare financing needs have increased. An excessively low rate has the dangerous implication of institutionalizing and encouraging the ‘race to the bottom’ where countries are forced to competitively lower tax rates. This could lead to the [minimum rate becoming the maximum rate](https://www.icrict.com/press-release/2019/12/9/m9fwnyj7krhupqbasqygn9kkx9msai).

# **Conclusion**

This response to the call for input explored digital taxation in African countries, and the possible challenges on human rights that could arise from the implementation of digital taxes in African countries. It is evident that while digital taxes offer a chance for African countries to mobilize more tax revenue, these taxes might result in negative externalities that can compromise the revenue mobilization objective, causing adverse impacts on human rights. Therefore, African countries need a more comprehensive solution to address some of the challenges and limitations of digital taxation. Participating at multilateral platforms such as the IF on BEPS is crucial to address digital tax challenges, but ultimately solutions will have to cater for the specific challenges faced by African economies, requiring extensive regional consultations across the continent. Strengthening regional collaboration through a unified digital tax regime is also more likely to provide better compliance, since individual African countries are relatively insignificant markets for digital MNEs and African states that are members of the IF on BEPS hold limited sway in the international tax world. Besides, in order for African countries to draw maximum resources from DST for the realization of human rights, the African unified digital tax regime must ensure that anticorruption efforts are expanded beyond the narrow focus of bribery of governmental officials to include illicit flows of DST-related financial resources from developing countries to tax havens and low tax jurisdictions

Finally, global DST should be implemented but subject to the recommendations stipulated in this paper’s recommendation section. However, African countries should find better ways of navigating through the DST regulation challenges in order to realise better outcomes – including human rights outcomes – from global DST.