

**Human Rights Council****Forty-ninth session**

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Taking stock and identifying priority areas: a vision for the  
future work of the mandate holder****Report of the Independent Expert on the effects of foreign debt and  
other related international financial obligations of States on the full  
enjoyment of human rights, particularly economic, social and cultural  
rights, Attiya Waris***Summary*

The present report sets out the preliminary workplan 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, in line with Human Rights Council resolutions 43/10, 46/8 and 46/11.

The Independent Expert intends to focus her work on the following six thematic areas:

- (a) Fiscal legitimacy and human rights;
- (b) Engaging the evolving nature and role of the State;
- (c) Crises, natural emergencies and financial obligations;
- (d) The environment, illicit financial flows, debt and financial transactions;
- (e) Transparency of financial and tax information and digital systems;
- (f) The global fiscal system and its implications for human rights.

In accordance with her mandate from the Human Rights Council, the Independent Expert will engage actively, including with member States, in various forums, as well as with the Committee of Experts on International Cooperation in Tax Matters, the Group of 20 and the Group of 77, international financial institutions, United Nations entities and other international organizations, civil society organizations, the private sector and academia. She will also play an active role in the implementation of the 2030 Agenda for Sustainable Development and related events.

The Independent Expert will undertake official country visits, at the invitation of Governments, to identify good practices, obtain an in-depth understanding of current trends affecting human rights related to her mandate and, in particular, in relation to the six thematic areas identified above. She will pursue a long-term vision, including programming and



planning, as well as assisting Governments in implementing the internationally agreed Sustainable Development Goals, and will address foreign debt and other policies related to international financial obligations, as informed by international human rights law and standards. The Independent Expert will also provide advice and, if needed, undertake advocacy and raise concerns through the established working methods of the special procedure mandate holders. Throughout her work, she will focus on the impact of fiscal policies at the international, national and local levels on marginalized population groups. The Independent Expert will provide advice and policy recommendations based on international human rights law and existing empirical evidence, with the aim of demonstrating that putting human rights law and policy at the heart of development and fiscal law, policies and systems lead to better and more sustainable results and an overall improvement in living standards.

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## I. Introduction

1. The present report of the Independent Expert, who took up her mandate on 1 August 2021, is submitted pursuant to Human Rights Council resolutions 43/10 and 46/08. The report sets out a preliminary identification of priority areas of her work as the new mandate holder and outlines some of the central opportunities and priorities she has considered and wishes to continue consulting on with States, civil society, academia and international financial institutions, as well as with other relevant stakeholders.
2. In this initial report to the Human Rights Council, the Independent Expert shares, first, a stocktaking of the work carried out by the previous mandate holders over the past 27 years and, second, preliminary observations and reflections on how she intends to address key issues related to the mandate. The report reflects the context and the contributions received for the preparation of the report,<sup>1</sup> as well as the consultations held with the Independent Expert in Geneva and online in October and November of 2021, for which she is most grateful. The Independent Expert will build on the valuable work of her predecessors, as well as that of other relevant human rights mechanisms, including key initiatives that are already under way.
3. In the brief history of the mandate presented in section II of the report, the Independent Expert reflects on the work of past mandate holders, including an evaluation of their achievements, and outlines an effective approach to her future work. In section III, the Independent Expert shares preliminary observations and reflections on international financial obligations and their implications for all human rights, particularly economic, social and cultural rights globally and at continental, regional, national and subnational levels. She will also explore ideas on how she intends to address key issues through the mandate.
4. In line with Human Rights Council resolutions 43/10, 46/08 and 46/11, the Independent Expert intends to deepen existing engagements and to continue to assist States, civil society and other stakeholders, including private actors, by contributing to the existing body of work of various human rights mechanisms in furthering the understanding of what it means to fiscally realize human rights.
5. The Independent Expert focuses on six priorities: (a) fiscal legitimacy and human rights; (b) engaging the evolving nature and role of the State; (c) crises, natural emergencies and financial obligations; (d) the environment, illicit financial flows, debt and financial transactions; (e) transparency of financial and tax information and digital systems; and (f) the global fiscal system and its implications for human rights. The Independent Expert is also mandated to work on international financial obligations and international cooperation, as well as the issue of repatriation of funds of illicit origin to the countries of origin, and their impact on the enjoyment of human rights.
6. In fulfilment of the mandate, the Independent Expert aims to emphasize ways to address ongoing and emerging challenges, identify new opportunities and ensure concrete advances towards the progressive realization of human rights, particularly economic, social and cultural rights, with reference to her areas of expertise: fiscal law and policy, including but not limited to illicit financial flows; and tax law and policy and their implications for the realization of human rights.
7. While all population groups and their human rights are critical, the Independent Expert will focus on priority groups living below the poverty line, including but not limited to women.<sup>2</sup> She will pay particular attention to the impact of all international financial

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<sup>1</sup> See:

<https://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/TakingsStockLookingForward.aspx>.

<sup>2</sup> As noted by the Special Rapporteur on extreme poverty and human rights, in reference to the International Labour Organization (ILO) *World Social Protection Report 2017–2019*, “[the]majority of people – 55 per cent, or 4 billion people – were without any form of social protection whatsoever” (A/HRC/47/36, para. 5). Oxfam, in its 2020 report, *Shelter from the storm: the global need for universal social protection in times of COVID-19*, noted that “2.7 billion people have not received any public financial support to deal with the economic devastation caused by the coronavirus

obligations at the international, national and local levels on women, youth, children, persons with disabilities, indigenous peoples, migrants, minorities and other groups suffering from socioeconomic inequalities and discrimination.

8. The methodological approach that the Independent Expert aims to follow while implementing her mandate is outlined in section IV, including participation in international debates on debt relief, debt restructuring, financing for development and illicit financial flows, especially those related to the further development and implementation of her vision. She will use a process of foresight in her approach: in the view of the Independent Expert, foresight processes are separate from strategy, decision-making, formulation and planning. Using this approach will ensure that her work is relevant in the longer term – foresight thinking is increasingly used by Governments and civil society to inform their vision and subsequent strategic planning and implementation.

9. In fulfilling her mandate, the Independent Expert will provide advice and guidance, take part in discussions and decisions about methods of work of the special procedures mechanisms with her peers and make use of the various tools and instruments at her disposal, in line with the Code of Conduct for Special Procedure Mandate Holders, the Manual of special procedures and the decisions of the Coordination Committee. She will base her advice and policy recommendations on the obligations and policy guidance provided under international human rights law. Her intention is to support States and other stakeholders in ensuring that financial obligations are utilized to realize human rights and to provide advice, when required, to take difficult decisions in challenging circumstances.

## II. Brief history of the mandate

10. Between 1997 and 2000, the Commission on Human Rights, the precursor to the Human Rights Council, established the mandate for the Independent Expert on structural adjustment policies and the mandate for the Special Rapporteur on the effects of foreign debt on the full enjoyment of economic, social and cultural rights. In 2000, the two mandates were merged in a single mandate of the “Independent Expert on the effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights”.<sup>3</sup> In 2005, the title of the mandate was reformulated as the “Independent Expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights”,<sup>4</sup> including a request for general guidelines to be followed by States and by private, public, national and international financial institutions in the decision-making on and execution of debt repayments and structural reform programmes, including those arising from foreign debt relief.

11. In June 2006, pursuant to the General Assembly resolution 60/251, the Commission on Human Rights was replaced by the Human Rights Council. On 18 June 2007, the Council adopted resolution 5/1, by which it extended the mandate. The Council also adopted resolution 5/2, containing a Code of Conduct for Special Procedures Mandate Holders. In 2008 the title of the mandate was reformulated by the Council as 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 since then it has not been changed. Ms. Waris is the fourth mandate holder.

12. Between 1997 and 2005, the mandate of the Independent Expert was mentioned in, at least, 11 resolutions; between 2006 and 2012, at least 8 additional resolutions on the mandate were adopted; and since 2012, at least 16 resolutions on the effects of foreign debt and the

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pandemic”, and the World Bank reported that “between 88 million and 115 million people could fall back into extreme poverty as a result of the pandemic, with an additional increase of between 23 million and 35 million in 2021”, World Bank, *Poverty and Shared Prosperity 2020: Reversals of Fortune*, p. xi, third para.

<sup>3</sup> Fantu Cheru (2000–2002); and Bernard Mudho (2002–2008).

<sup>4</sup> Cephas Lumina (2008–2014); Juan Pablo Bohoslavsky (2014–2020); and Yuefen Li (2020–2021).

mandate of the Independent Expert have been adopted.<sup>5</sup> There are numerous references to the mandate since its inception. All mandate holders have maintained their focus on the issues of foreign debt and international financial obligations in realizing human rights, as set out in Human Rights Council resolution 34/3, which highlighted the following seven key areas of work:

- (a) The effects of foreign debt and the policies adopted to address them on the full enjoyment of all human rights, in particular economic, social and cultural rights;
- (b) The impact of foreign debt and other related international financial obligations on the capacity of States to design and implement their policies and programmes, including national budgets that respond to vital requirements for the promotion of the realization of social rights;
- (c) Measures taken by Governments, the private sector and international financial institutions to alleviate such effects in developing countries, especially the poorest and heavily indebted countries;
- (d) New developments in actions and initiatives being taken by international financial institutions, other United Nations bodies and intergovernmental and non-governmental organizations with respect to economic reform policies and human rights;
- (e) The effects of public debt, economic reform and financial consolidation policies on the realization of the Sustainable Development Goals;
- (f) The impact of illicit financial flows on the enjoyment of human rights;
- (g) The process entrusted with the follow-up to the International Conference on Financing for Development, with a view to bringing to its attention the issue of the effects of structural adjustment and foreign debt on the enjoyment of human rights, particularly economic, social and cultural rights.

13. The Independent Expert is deeply appreciative of the work of her predecessors, who have made significant contributions to the advancement of a wide set of specific topics and issues. Since the beginning of the mandate, including the amalgamation of mandates and subsequent changes, there have been 41 thematic reports, all of which remain invaluable to the current mandate holder. These reports mainly concentrate, however, on issues around the following six of the seven key areas of work listed above: foreign debt; the role of international financial institutions; economic reform policies; dispute resolution; illicit financial flows; and new and emerging issues.

14. Several thematic reports of the mandate have explored the link between foreign debt and human rights. Some of the more recent reports include: integration of human rights into debt policies and debt sustainability;<sup>6</sup> economic inequality and financial crises and human rights (2016);<sup>7</sup> debt-related problems of developing countries caused by the coronavirus disease (COVID-19) pandemic (2020);<sup>8</sup> international debt architecture reform and human rights (2021);<sup>9</sup> other international financial obligations, such as debt disputes, international investment arbitration and human rights (2017),<sup>10</sup> and illicit financial flows, human rights and the 2030 Agenda for Sustainable Development (2016).<sup>11</sup>

15. Past reports have also focused on the analysis of specific human rights, for example structural adjustment and labour rights (2017),<sup>12</sup> and on specific population groups, for instance the impact of foreign debt on women's rights (2012)<sup>13</sup> and the impact of economic

<sup>5</sup> All resolutions are available at <https://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/Mandate.aspx>.

<sup>6</sup> [A/71/305](#).

<sup>7</sup> [A/HRC/31/60](#).

<sup>8</sup> [A/75/164](#).

<sup>9</sup> [A/76/167](#).

<sup>10</sup> [A/72/153](#).

<sup>11</sup> [A/HRC/31/61](#).

<sup>12</sup> [A/HRC/34/57](#).

<sup>13</sup> [A/67/304](#).

reform policies on women's human rights (2018).<sup>14</sup> There has also been analysis of the private debt of individuals and households and its link to human rights (2020).<sup>15</sup> Previous Independent Experts also reported on the role of key stakeholders, for instance the responsibility for complicity of international financial institutions in human rights violations (2019)<sup>16</sup> and the role of credit rating agencies in debt relief, debt crisis prevention and human rights (2021)<sup>17</sup> and an official visit was made to institutions of the European Union (2016).<sup>18</sup>

16. Since 2004, Independent Experts have undertaken 25 country visits, including all regions of the world and a wide array of issues and contexts. These visits included high, middle and low-income countries and conflict and post-conflict societies.<sup>19</sup>

17. Since January 2010, the mandate has also sent over 90 communications, many of which are joint letters of allegation, urgent appeals or joint letters with other mandates, under the special procedures communication procedure. These communications have been addressed to States, as well as to international financial institutions, including the International Monetary Fund (IMF) and the World Bank, banks and other institutions in the financial sector, such as Credit Suisse, VTB Capital and NML Capital Ltd., the European Bank for Reconstruction and Development and other stakeholders, such as the United Nations Commission on International Trade Law (UNCITRAL) Working Group III on Investor-State Dispute Settlement Reform.<sup>20</sup>

18. Previous mandate holders have developed guiding principles that clarify the primacy of international human rights standards and obligations over debt servicing, offer a framework for understanding why sovereign debt is a human rights issue and address the importance of human rights impact assessments in the context of economic reform programmes. These instruments include the guiding principles on foreign debt and human rights (2011), endorsed by the Human Rights Council in 2012,<sup>21</sup> and the guiding principles on human rights impact assessments of economic reforms (2019).<sup>22</sup>

19. In the view of the Independent Expert, the guiding principles on human rights impact assessments of economic reforms can play a role in identifying the potentially adverse human rights impacts relating to particular policy initiatives so that States can take measures to prevent those impacts. The Human Rights Council also requested the Independent Expert to undertake a further analysis of guidelines on non-repatriation of assets and to present an interim report on the topic to the Council in March 2023.

20. The mandate has come a long way. It has examined an ample range of issues in dialogue with States and other relevant stakeholders, making use of a variety of tools and procedures at its disposal, including, notably, thematic reports, country missions, guiding principles, expert consultations and events, letters of allegation, urgent appeals and joint letters with other mandate holders.

<sup>14</sup> [A/73/179](#).

<sup>15</sup> [A/HRC/43/45](#).

<sup>16</sup> [A/74/178](#).

<sup>17</sup> [A/HRC/46/29](#).

<sup>18</sup> [A/HRC/34/57/Add.1](#).

<sup>19</sup> Countries visited include: Argentina, Australia, Bolivia (Plurinational State of), Burkina Faso, China, the Democratic Republic of the Congo, Ecuador; Greece, Iceland, Japan, Kyrgyzstan, Latvia, Mongolia, Mozambique, Norway, Panama, Solomon Islands, Sri Lanka, Switzerland, Tunisia, Uganda, Ukraine and Viet Nam. Reports of all visit and comments by States are available at <https://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/CountryVisits.aspx>.

<sup>20</sup> All communications, as well as responses from various States and other recipients, can be found at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>21</sup> [A/HRC/20/23](#) and Corr.1, endorsed by the Human Rights Council in its resolution 20/10.

<sup>22</sup> [A/HRC/40/57](#).

### III. Interlinkages between human rights and international financial obligations

21. The Independent Expert sets out below the key themes that will underpin and guide her approach to the work under her mandate during her tenure, followed by a description of specific research areas and projects she wishes to undertake.

#### A. Human rights require resources

22. Having considered emerging socioeconomic patterns, the important work of many stakeholders and developments in the field of economic, social and cultural rights more generally, the Independent Expert begins her mandate with an understanding of several key challenges to the fiscal realization of human rights and a recognition of emerging opportunities, which she aims to address and engage in as she undertakes further consultations.

23. Central to State party obligations with respect to the realization of human rights, according to article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, each State party is obliged “to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures”. In implementation and compliance with those obligations, however, there are particular challenges for international human rights bodies, as well as for national courts, in developing precise requirements for compliance with the responsibility emanating from all of the elements set out in article 2 (1) of the Covenant.<sup>23</sup>

24. In relation to international assistance and cooperation: States often have limited mechanisms in place for the assessment of international financial obligations, including in relation to legislation, policies or commitments made regarding illicit financial flows and foreign debt, as well as relevant budgetary decisions or commensurate administrative decisions. Global, continental, regional, national and subnational institutions, including fiscal institutions and human rights bodies, need to be provided with reliable evidence and data concerning resource constraints and competing needs. Participatory approaches to budgetary and fiscal decision-making processes need to be strengthened and expanded to ensure that all stakeholders, including marginalized groups, are able to have their voices heard. All three arms of government – the legislature, executive and judiciary – should consider putting mechanisms of fiscal legitimacy in place and working in partnership with all stakeholders to improve legislation and policies and ensure fiscal legitimacy.<sup>24</sup>

25. In relation to the use of maximum available resources: fiscal and resource-based obligations should be assessed in relation not only to the law and to society but also to the racial, ethnic, historical, economic, political, ideological and belief systems in which they exist. This context, inclusive of an understanding of available resources, competing needs, economic policy and international cooperation and assistance, as well as solidarity, is the bedrock upon which support to human rights should be viewed. There is no simple formula for defining the precise fiscal law, policies or enforcement measures required to ascertain the necessary budgetary allocations in all countries. However, the fact that compliance with aspects of human rights can only be assessed in the context of specific circumstances should not lead to a lack of accountability for violations of human rights, to the ignoring of such violations or even misuse of the underlying elements of fiscal legitimacy.

26. With regard to the progressive realization of human rights through fiscal interventions: fiscal legitimacy includes seven key principles: accountability; transparency; responsibility; efficiency; effectiveness; fairness; and justice. Arguably, the element of justice should have

<sup>23</sup> Attiya Waris, *Tax and Development: Solving Kenya’s Fiscal Crisis through Human Rights*, 2013, LawAfrica Publishing.

<sup>24</sup> Attiya Waris, *Financing Africa*, 2019, Langaa Publishers.

primacy over all the other elements.<sup>25</sup> The Independent Expert recognizes that States should take positive measures towards the fiscal realization of human rights. Such measures should not only be taken at the State level but also through international cooperation and assistance in support of State efforts.

27. The nature of State obligations in different circumstances should be clarified through procedures and mechanisms and contextual obligations. Obligations linked to the progressive realization of human rights, such as maximum available resources and appropriate legislative measures, should continue to be developed by human rights bodies and mechanisms, as well as by courts, in order to clarify their scope and content in specific circumstances. The approach of the Independent Expert will include looking into the practical aspects of what she refers to as the “progressive fiscal realization of all human rights”.

28. Fiscal resources are essential for investment in housing, health, social security, food, education and other economic and social rights. In order for human rights to be effectively respected, protected and promoted, resources are needed. In her work, the Independent Expert will explore how international financial obligations should be managed to ensure that the realization of human rights and the achievement of the commitments made in the Sustainable Development Goals are met. While citizen audits and gender-based budgeting have been effective ways to highlight illegitimate fiscal practices, holding local and national governments to account for budgetary processes and enhancing transparency, there is a need to broaden this discourse to include not only marginalized groups but also to mainstream human rights-based budgeting within international institutions globally.

## **B. Stakeholder synergies and interactions**

29. The Independent Expert intends to continue and to facilitate discussions on her mandate with relevant United Nations entities and departments and with global, continental and regional human rights and fiscal bodies. In the view of the Independent Expert, promoting the work of the mandate so that it can gain more visibility at the global, regional and national levels could assist in ensuring that it is more widely implemented and deeply embedded into the ongoing work of States and institutions. Such activity can also lead to dialogue on issues with States and civil society, both of which may benefit from a period of in-depth discussion before the consideration of legislative or policy reforms.

30. The Independent Expert will continue to develop and deepen links with other mandate holders and to identify areas of possible collaboration, including with mandates linked to issues of development, poverty and freedom of expression, as well as those on economic, social and cultural rights. Consideration of issues related to the financialization of rights and how financial resources are prioritized globally and nationally in the context of human rights obligations will also be explored with other mandate holders and, where possible, input welcomed as well as provided. Discussions on financial obligations and the impact that they have on the work of the other mandates will be key to the approach of the Independent Expert.

31. In her collaborative work with other practitioners in the field, the Independent Expert has learned the importance of sustaining a dynamic interconnection between activities at the national and the international levels. If international human rights norms and standards are to be made meaningful and effectively implemented at the national level, they must be developed and interpreted in the context of national experiences and must benefit from advances made in domestic law, policy and practice. Similarly, domestic human rights must be nurtured and strengthened by substantive norms and universal principles developed at the international level. While the international dimension is key, solutions are often times found in domestic legislation and policy; this is often the case in relation to fiscal systems where sovereignty remains the underlying principle.

32. Over the past four decades, the understanding of the effects of foreign debt and other international financial obligations, not only on economic, social and cultural rights but on all human rights, has slowly increased, especially in the last decade. National and global movements and campaigns have emerged to address fundamental issues related to the effects

<sup>25</sup> Ibn Khaldun, *The Muqaddimah*; and Mohammareza Shahidipak,

of financial obligations on the realization of labour rights and women's rights, housing rights, sustainable development, the impact of the financial crisis and the denial of services essential for the raising of living standards. There is growing awareness that foreign debt and austerity measures have crippled domestic expenditures on health and education and that social protection is extremely weak and needs to be strengthened; this awareness is growing because there is a better global understanding of how fiscal systems operate. Analysis of this subject is presented not only in reports under this mandate but also in reports of other special procedure experts.<sup>26</sup>

33. Increasingly, academia, States, international and regional institutions and civil society organizations (CSOs) are applying international human rights principles to specific national circumstances and using the United Nations human rights system, including treaty monitoring bodies, the universal periodic review process and special procedures, to promote the development of interpretation and application about the ability of States to take on foreign debt and other financial obligations, addressing regional, national and local challenge as well as clarifying the human rights obligations of States in this regard.

34. The challenge presented by the complexity of financial transactions and financial flows within and between countries has been a crucial aspect of present-day national-international interaction in the area of fiscal law and policy. For example, the outcomes of a number of legal cases involving the need to return funds that have been illicitly transferred highlights the inability of States to secure adequate financial resources to realize human rights progressively or immediately. These issues have been brought before domestic courts and regional and international bodies in recent years,<sup>27</sup> and courts are increasingly relying on international human rights norms in the adjudication of such cases.<sup>28</sup>

35. The Independent Expert will solicit input from States, treaty bodies, national human rights institutions, CSOs, academia and fiscal and human rights practitioners in considering how she can support the critical dialogue between domestic, regional, continental and international human rights norms and practices. She is committed to fostering and enhancing the interdependence of national and international law and practice in all aspects of her work, including communications, country visits and thematic reports.

#### IV. Thematic and substantive priorities

36. While continuing to build on what previous mandate holders have worked on, the Independent Expert will pay special attention to the organization of and participation in events and consultations on subjects such as: illicit financial flows; non-repatriation of funds; the financing for development process; and ongoing discussions on financing for the Sustainable Development Goals. In line with the report of the Secretary-General "Our Common Agenda", the Independent Expert will take part in discussions aimed at ensuring that the global economy works for all, including in areas such as ensuring sustainable financing, enhancing measures to address weaknesses in the international debt architecture and the need for reforms.<sup>29</sup> In particular, these fiscal issues will be explored in reference to their impact on the enjoyment of economic, social and cultural rights. The Independent

<sup>26</sup> See, for example: report of the Special Rapporteur on adequate housing, [A/HRC/34/51](#); report of the Special Rapporteur on the human rights to safe drinking water and sanitation, [A/75/208](#); report of the Special Rapporteur on extreme poverty and human rights, [A/73/396](#); report of the Special Rapporteur on extreme poverty and human rights on the global fund for social protection, [A/HRC/47/36](#); and study of the Working Group on the issue of business and human rights on best practices and how to improve on the effectiveness of cross-border cooperation between States with respect to law enforcement on the issue of business and human rights, [A/HRC/35/33](#). See also several communications to States and other actors, under various mandates, on austerity measures and the impact of the financial crisis and foreign debt on human rights, available at <https://spcommreports.ohchr.org/>.

<sup>27</sup> African Union Commission/Economic Commission for Africa, High level Panel on Illicit Financial Flows from Africa (2015).

<sup>28</sup> International Consortium of Investigative Journalists, *Pandora Papers*, 2021. Available at <https://www.icij.org/investigations/pandora-papers/>.

<sup>29</sup> Our Common Agenda, report of the Secretary-General ([A/75/982](#), paras. 73 and 131).

Expert aims to assist States, civil society and other relevant stakeholders in ensuring the enhancement of human rights by focusing on several key thematic areas in the course of her mandate.

37. As noted above, the themes and priority areas of work identified in the present report are preliminary in nature, as the Independent Expert wishes to continue her consultations with States and other relevant stakeholders, in particular, United Nations agencies, the private sector, international institutions, other special procedure mandate holders, CSOs and national human rights institutions, in order to refine her future workplan. The Independent Expert plans to develop each of these themes in a collaborative and participatory manner.

## A. Fiscal legitimacy and human rights

38. Fiscal systems, and by extension fiscal legitimacy, should be recognized in terms not only of law, economics, politics and social context but also in terms of the racial, ethnic, historical, economic, political, ideological and belief systems in which they exist.<sup>30</sup> Any understanding of financial systems in this context, by necessity, would include the aim of raising living standards and improving the level of development. Those goals, in the view of the Independent Expert, should be seen through a human rights lens.

39. Fiscal legitimacy, as seen through a human rights-based approach, rests on the relationship between the State and society: the social contract. The State, on the one hand, is a creation of society tasked with responsibilities towards its citizens. The right to collect revenue; the amount of revenue collected; the source from which it is collected; the manner of collection; and the use and distribution of the collected revenue is traditionally a constitutional right or power of the national government. Fiscal policy and national resource collection and distribution have always been placed at the discretion of government.<sup>31</sup> Throughout history, such revenue, and hence fiscal policy, has been analysed and spending priorities have remained largely at the discretion of the State.<sup>32</sup>

40. Society on the other hand, contributes resources to the State to allow for its creation and functioning for certain fixed purposes. These functions, including basic issues such as security, which require resources in one form or another, need to be met. The State requires such resources from society during its first, most basic, developmental level of existence. However, with the growing complexity of the State and its obligation to provide more goods and services, there is a commensurate growth in its need for resources, which leads to a recognition that there is a limited resource base and thus that needs and requirements must be prioritized.

41. The Independent Expert intends to explore human rights as part of her consideration of revenue collection and expenditure policy within the framework of the mandate. In formulating this approach, her analysis will not assess the global economy as a single whole that can be broken apart and analysed. On the contrary, the global economy is a combination of multiple economies working sometimes in parallel and at other times in conflict with each other. The Independent Expert considers that there are six key economies working at any one point in time, whether or not they are legally recognized or regulated. These economies feed into the global economy of foreign debt and international financial obligations and, in turn, impact human rights in a multitude of ways. The six economic models are:

- (a) Formal legally recognized economy;
- (b) Informal economy;
- (c) Unpaid economy (for example, unpaid care work – the unrecognized economy);

<sup>30</sup> See Attiya Waris, *Tax and Development*, 2013, and Attiya Waris, *Financing Africa*, 2019.

“Mohammareza: Ibn Khaldun as a paradigm for the past and future of sociology and humanity”, 2020, *Sociology International Journal* (MedCrave publishing online), vol. 4, No. 5, pp. 153–159.

<sup>31</sup> See, generally, G. Brennan and J. M. Buchanan, *The Power to Tax: analytical foundations of a fiscal constitution*, 1980, Cambridge University Press; and A. Buchanan, *The Heart of Human Rights*, 2013, Oxford University Press.

<sup>32</sup> See, generally, M. Levi, *Of Rule and Revenue*, 1988, University of California Press.

- (d) Shadow economy (combination of legal and illegal);
- (e) Digitally supported economy;
- (f) Barter (non-monetary economy).

42. While recognizing the complexity of State-society relations, which are different for different groups of people, and recognizing the different types of economies listed above, the relationship that seems to have developed between the population at large and the State through State mechanisms and institutions has not always been successful in improving the lives of citizens and other persons in the population, including migrants, refugees, undocumented migrants and stateless persons. The improvement of State spending priorities in the context of greater resource constraints will be influenced by the compromise that States find themselves making at subnational, national, regional, continental and global levels as a result of their inability to secure adequate resources within the scope of existing fiscal laws and policies, as well as the additional layer of compromises that are continually being made within all of the different economic systems as a result of the continued cycle of failure to raise living standards. The use of a human rights lens, including the principle of progressive realization, which calls upon States to provide international cooperation and assistance with regard to foreign debt and international financial obligations, would assist with efforts to increase the amount of resources available.

## **B. Engaging the evolving nature and role of the State**

43. Under international human rights law, the State is held responsible for compliance with international human rights to which it is bound. The focus of monitoring and constructive dialogue at the international level has been on national Governments. National Governments, however, cannot be viewed as the only relevant actors with respect to the implementation of international human rights. Subnational governments, including State/provincial and municipal governments, often have significant authority with respect to the realization of rights and therefore share responsibility in implementing the international human rights responsibilities of the State. The realization of human rights through financial policy has become ever more complex, affected by recent changes in the economy, such as patterns of debt swaps, climate change and the failure to clearly mark climate-related funds to those countries most affected, as well as by growing concerns around access to fiscal information in the digital age and illicit financial flows. While increased engagement with private actors can provide more political space, questions remain with regard to the ability and willingness of private actors to respect and comply with legislation, a matter requiring further exploration. Globalization and the rising power of cities (local governments) rather than national Governments may be leading to an underestimation of the power of local interventions.

44. Moreover, global actors such as transnational corporations and multilateral or bilateral financial institutions play significant roles in supporting the realization of rights as well as, conversely, in the creation of violations and abuses. The actions of transnational extractive industries or development projects initiated and overseen by multiple partners, including international financial institutions, may have far-reaching effects. The evolving nature and diversification of the State and the multiplicity of actors involved in fulfilling human rights obligations make the implementation of fiscal policies all the more complex. This pattern is evident, for example, in cases where financial institutions are increasingly unwilling to finance coal mines and others are taken to court for violating the rights of the next generation.

45. Governments often engage in partnerships with private service providers or community-based organizations to administer programmes. Some advances have been made at the international level towards a better understanding of the responsibilities of businesses and private actors, for example with the adoption of the Guiding Principles on Business and Human Rights,<sup>33</sup> however the obligation of States to regulate businesses to ensure that their

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<sup>33</sup> [A/HRC/17/31](#).

actions are consistent with the realization of human rights will be critical to their effective implementation.

46. While the Independent Expert considers that it is important to emphasize the ultimate responsibility of States to ensure compliance with their international human rights obligations so that there is no “contracting-out” of fundamental human rights guarantees, she also recognizes that effective implementation requires that all members of a society, as well as all levels and branches of Government, be cognizant of and fully committed to implementing the State’s obligations. The respect and implementation of human rights often relies on local governments, community organizations and private actors acting in partnership, thus affirming such implementation as a joint responsibility and commitment.

### **C. Crises, natural emergencies and financial obligations**

47. The COVID-19 pandemic, like other types of grave emergencies and crises, has exacerbated existing inequalities, simultaneously revealing competition over scarce resources and limited access to needed liquidity. This is further aggravated by the limitation of States in regulating cross-border financial transactions. The Independent Expert intends to address foreign debt and other financial obligations as part of the COVID-19 recovery process, while also playing closer attention to other crisis-related financial obligations.

48. Many assessments looking into pre-crisis financial signals and the linkage between foreign debt and humanitarian crises have been developed. Many signals may be well known, but it is often unclear as to how the new nature of crises, including multiple crises that are merging and taking place almost simultaneously, are to be managed. The Independent Expert intends to spend time reflecting and consulting widely on this issue in order to better understand how States, societies and other stakeholders may benefit from an analysis and find a way forward in the event of future diverse and multiple crises, with specific reference to emergency funds in national budgets.

49. It has been noted that profiteering during and after crises is widespread; if these situations are not managed carefully they can lead to a deepening of poverty and inequality in countries where populations are already experiencing unstable economic conditions. Often, this sort of situation affects the least developed countries and small island States more deeply.<sup>34</sup> For example, it has been argued that profiteering during the pandemic has been rife. This is evidenced by how some companies have made huge profits during the pandemic: it has been reported that 17 out of the top 25 most profitable companies in the United States of America made \$85 billion more in 2020 than in previous years,<sup>35</sup> and that billionaires saw their wealth increase by \$5.5 trillion during the pandemic.<sup>36</sup> This underlines the lack of fiscal space caused by potentially illegitimate fiscal systems.

50. The Independent Expert intends to explore not only traditional areas of financing for human rights but also new measures that have emerged in the wake of the COVID-19 pandemic, including solidarity funds and taxes; debt for climate swaps; and other novel ways of simplifying global and national fiscal systems.

### **D. The environment, illicit financial flows, debt and financial transactions**

51. In some low and middle-income countries, scarce resources are currently being directed to repaying public and private creditors – resources which, in time, may end up in foreign country bank accounts through illicit transactions. As the climate crisis deepens, the financing required to achieve climate targets will push countries deeper into a fiscal crisis. The potential negative consequences for human rights are manifold: populations could be left without access to food and livelihoods, be displaced, lack access to water and suffer hunger

<sup>34</sup> <https://www.etoconsortium.org/nc/en/main-navigation/library/>.

<sup>35</sup> Oxfam, “Pandemic profiteers exposed”, 22 July 2020. Available at <https://www.oxfam.org/en/press-releases/pandemic-profiteers-exposed-report>.

<sup>36</sup> C. Collins, “Global billionaires see \$5.5 trillion pandemic wealth surge”, 2021, *Institute for Policy Studies*, available at <https://ips-dc.org/global-billionaires-see-5-5-trillion-pandemic-wealth-surge/>.

and extreme poverty. Millions of people may be caught in the vicious cycle of climate-aggravated poverty, without alternatives. This could also lead to environmental deterioration as activities such as illegal hunting and logging worsen the environmental conditions of local communities, potentially driving an increase in damage from climate change and higher levels of personal/household debt.

52. The subject of foreign debt is critical, specifically in developing States where debt is used to build, rebuild, jumpstart or develop the domestic economy. However, most developing States tend to borrow to service their existing debt rather than servicing debt from their own resources. This can result in potentially large fiscal deficits without necessarily producing development.<sup>37</sup> If an inverse relationship between the real interest rate and the real gross domestic product growth rate in highly indebted countries is created, resulting in the incurrence of odious debt. Borrowing countries should use foreign debt in productive sectors and in essential infrastructure that both improve the productivity of the economy and also protect the environment.<sup>38</sup>

53. Illicit financial flows cause negative impacts on the economy. As identified by most multilateral development banks, developing countries often fail to mobilize sufficient domestic investment capital to fund robust, long-term economic growth.<sup>39</sup> Illicit financial flows lessen the availability of public investments in funding infrastructure and social policy standards, such as measures for poverty alleviation and equality that include environmental protections. From the above, it can be deduced that illicit financial flows push Governments to engage in external borrowing as a result of a lower amount of money circulating in the economy. However, borrowing can also result in increased capital flight.<sup>40</sup> Every year approximately \$1 trillion escapes developing countries through a variety of means, including smuggling, money-laundering and corporate tax evasion. The exodus of capital dwarfs what flows into the country in terms of development assistance: “Illicit financial flows removed \$10 for every dollar spent on overall development assistance, and \$80 for every dollar spent on basic social services.”<sup>41</sup>

54. In several contributions to the report, the importance of future work by the mandate on the combined effects of debt service, illicit financial flows and vulnerability to the climate emergency on the fulfilment of human rights have been stressed.<sup>42</sup> Some States have noted in their contributions<sup>43</sup> the need to: strengthen mechanisms to promote “green growth”, such as Kenya; develop the assessment of financial instruments and mechanisms to fund adaptation to climate change and realize the right to a healthy environment, such as Mauritius; and identify financial and fiscal instruments to ensure the reduction of climate change drivers, such as Mexico.<sup>44</sup>

55. The Independent Expert will also focus on existing fiscal approaches and systems that have not taken the issue of change or improvement of human rights into consideration. This includes but will not be limited to: hurricane clauses, debt-nature swaps, carbon exchanges and carbon taxes; the rise of digital taxes, increases in fees and levies; the rise in indirect taxes; the renewed discussion of a wealth tax; environmental taxes that cover externalization

<sup>37</sup> L. Signe, M. Sow and P. Madden, “Illicit financial flows in Africa”, 2020, Africa Growth Initiative.

<sup>38</sup> S.R. Dey and M. Tareque, “External debt and growth: role of stable macroeconomic policies”, 2019, *Journal of Economics, Finance and Administrative Science*, vol. 25, No. 50; K. Ali and M. Khalid, “Sources to finance fiscal deficit and their impact on inflation: a case study of Pakistan”, 2019, *The Pakistan Development Review*; and Sibel Aybarç, “Theory of public debt and current reflections” 2019, in Bernur Açıkgöz (ed.), *Public Economics and Finance*, IntechOpen.com.

<sup>39</sup> K. Nicolaou-Manias, “Illicit financial flows country risk assessment tool: summary” 2018, SSRN eLibrary.

<sup>40</sup> A. Thiao, “The effect of illicit financial flows on government revenues in the West African Economic and Monetary Union countries”, 2021, *Cogent Social Sciences*, vol. 7, No.1.

<sup>41</sup> “Illicit financial flows”, available at <https://globaljustice.yale.edu/illicit-financial-flows>.

<sup>42</sup> See contributions to this report from the European Network on Debt and Development (Eurodad), Center for Economic and Social Rights, Dialogo 2000, Marisol Lopez, Bernadette O’Hare and Lai’Latif and Co. Legal Services.

<sup>43</sup> All contributions to the report are available at <https://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/TakingsStockLookingForward.aspx>.

<sup>44</sup> Ibid.

of costs; universal basic income versus universal basic assets; and other key fiscal interventions related to the environment.

56. Local communities are also losing out on the opportunities based on the blue and green revolutions through illicit financial flows.<sup>45</sup> The Independent Expert will consider this issue in the context of the polluter pays theory and the pledge that no one should be left behind, while relying on international cooperation, assistance and solidarity in the fiscal realization of rights. Nature-based solutions need to be examined to see how they have been successful in improving the lives of communities while reducing illicit financial flows.<sup>46</sup> This has been arguably successful in small island States<sup>47</sup> and the Independent Expert will explore the potential of small island States to provide solutions while assessing what other interventions could be implemented or considered in this context.

## **E. Transparency of financial and tax information and digital systems**

57. Greater transparency is a commonly agreed public good for guiding financial transactions. Yet too often, public access to public finance contracts is minimal and bilateral agreements remain inaccessible.<sup>48</sup> The Independent Expert will explore issues related to access to the financial system at the global level. She will offer recommendations on key spaces where information would be key in ensuring that foreign debt and global fiscal systems are better managed.<sup>49</sup>

58. Participation, accountability and transparency are also critical to enhance the effective use of information and public resources for investment in human rights. Financial and technical mechanisms are necessary to enhance timely access to information in order to hold decision makers to account and to provide effective guidance to States and other stakeholders. Unequal access to information and general opacity is a problem with the global online system. Mobile money providers through their everyday transactions are leveraging the system, as are all others operating within it in the diverse economies discussed above. Two elements of fiscal legitimacy – transparency and accountability – will be the focus of the investigation of the Independent Expert into the limits of financial information data that countries are able to access in order to generate revenue that can promote the realization of human rights.

59. Remittances, which are the largest and most stable source of foreign exchange, have become a growing source of revenue in many countries around the world. The issue of remittances, when linked to other issues in development finance, such as lack of access to sufficient condition-free, debt-free liquidity, chronic under-provision of official development assistance and volatile private capital flows, will be analysed in order to better understand how to ensure that financial systems and information flows are supportive of the realization of human rights.

<sup>45</sup> Richard Munang, “Tackle climate change and illicit financial flows together”, 2014, *New African*, vol. 48, No. 554, available at [https://www.researchgate.net/publication/268507948\\_Tackle\\_Climate\\_Change\\_and\\_Illicit\\_Financial\\_flows\\_together](https://www.researchgate.net/publication/268507948_Tackle_Climate_Change_and_Illicit_Financial_flows_together).

<sup>46</sup> World Wide Fund for Nature (undated), Smart coasts: climate-smarting marine protected areas and coastal management in the Mesoamerican reef region, available at <https://www.wwfca.org/en/smartcoastsmar.cfm>.

<sup>47</sup> United Nations Environment Programme (UNEP) (undated), “Comoros: ecosystem-based adaptation 2017–2020”, available at <http://wedocs.unep.org/bitstream/handle/20.500.11822/28424/ComorosEba.pdf?sequence=1&isAllowed=y>.

<sup>48</sup> See contribution to the report from Argentina (<https://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/TakingsStockLookingForward.aspx>).

<sup>49</sup> The Basic Principles on Sovereign Debt Restructuring Processes, adopted by the General Assembly in its resolution 69/319, highlighted the need for greater transparency “in order to enhance the accountability of the actors concerned, which can be achieved through the timely sharing of both data and processes related to sovereign debt workouts”. Transparency and disclosure are also core components of the United Nations Conference on Trade and Development Principles on Promoting Responsible Sovereign Lending and Borrowing.

60. In measuring the diverse elements of the global, continental, regional, national and subnational economies, whether formal or informal, the Independent Expert, through consultations and stakeholder engagement, will set out what areas States could choose to engage with and what they may want to regulate better in order to improve protections for their populations and to lift living standards. This discussion will include but not be limited to cryptocurrencies, digital currencies and stakeholders active in the provision of digital services, often across borders.

61. Financial systems worldwide are already part of the digital economy and its growth and development are moving at a speed that makes it impossible for law and politics to assess potential impacts and effects. The result is not a surprise: as usual, economies and businesses are developing without law, regulation or policy. However, this added dimension, in a world of fiscal crises, austerity measures, high unemployment, illicit financial flows and decreasing revenue collection, is potentially impeding the commitments of States to the achievement of the Sustainable Development Goals. There is, as a result, a need to reflect on how to regulate and treat the financing aspects of the digital economy in the short, medium and long term.<sup>50</sup> The digital transactional speed in a world where most trade is done informally and where there is a vast underground and criminal economy can only add more complexity and tension to a system undergoing challenges to the concept of raising living standards.

62. In order to make actual progress on illicit financial flows, policymakers also need to consider interlinkages and critical interactions between Sustainable Development Goal 16, target 16.4 (also known as “the illicit financial flows target”), and the 17 individual Sustainable Development Goals with a total of 168 targets.<sup>51</sup> However, progress on the ground is very limited when compared to the magnitude of problems created by illicit financial flows. By late 2016, there had been little and uneven progress among the countries of the Organization for Economic Co-operation and Development (OECD) in dealing with illicit financial flows. While these flows are seen to stem from corruption, data clearly show that the main users of illicit financial flow mechanisms are multinational corporations. Again, however, data remain an impediment for the monitoring and control of these transfers, which, should they be controlled, would result in two financially related achievements in all countries: (a) more money would remain in an economy and therefore continue to circulate there, resulting in the lowering of prices of goods and services and possibly creating more jobs, promoting the progressive realization of human rights; and (b) the State would be in a better position to tax and collect tax revenue, thus financing its activities, including those related to human rights, resulting in their progressive realization, including an understanding of relevant challenges, opportunities and risks.

63. For decades there have been debates as to what the optimum amount of taxation is, and this debate has resulted in the development of a position at IMF, OECD and the World Bank. While developing countries have been engaging in the process, it remains unclear what the optimum rate is or should be and how this rate might interact with the human rights principle of international cooperation and assistance in achieving the maximum possible resources in order to realize human rights. In debates on the topic, the human rights approach has not, as yet, been clearly set out and it is therefore the intention of the Independent Expert to develop the position from a human rights perspective as part of this ongoing and extremely controversial global debate.

## **F. The global fiscal system and its implications for human rights**

64. The Independent Expert is cognizant of current debates about international financial obligations. For example, at present there are a number of different institutions and bodies working to develop positions on international taxes. The Independent Expert intends to

<sup>50</sup> See P.K. Ozili, “Impact of digital finance on financial inclusion and stability”, 2018, *Borsa Istanbul Review*, Vol. 18, No. 4.

<sup>51</sup> United Nations Office on Drugs and Crime (UNODC) – Organization for Economic Co-operation and Development (OECD), “Coherent policies for combatting illicit financial flows”, 2016, available at [https://www.un.org/esa/ffd/wp-content/uploads/2016/01/Coherent-policies-for-combatting-Illicit-Financial-Flows\\_UNODC-OECD\\_IATF-Issue-Brief.pdf](https://www.un.org/esa/ffd/wp-content/uploads/2016/01/Coherent-policies-for-combatting-Illicit-Financial-Flows_UNODC-OECD_IATF-Issue-Brief.pdf).

contribute to global debates on these matters, including, importantly, discussions on digital taxes, the creation of a new intergovernmental fiscal body and the adoption of global minimum corporate tax rates.

65. Over the past 20 years, and more recently through the development of the Addis Ababa Action Agenda on Financing for Sustainable Development in 2015, there have been repeated calls for the creation of an international tax body. However, while this is an important discussion, the Independent Expert intends to explore the need not only for an international tax body but also a wider body that would address fiscal issues more broadly, including foreign debt, illicit financial flows and taxation. This idea will be explored through a human rights lens.

66. While the Independent Expert is aware that the debate on the adoption of global minimum corporate tax rates has been going on for several decades, the links between what such taxes may entail and their impact on the realization of human rights has not been fully explored, although other issues, such as the relevance of a progressive taxation system for human rights and the gendered impact of tax policies, have been reported on.<sup>52</sup> While investigating other areas of fiscal responsibilities under the auspices of international cooperation and assistance and the solidarity principle, the Independent Expert stresses that it is crucial that the debate on the proposed reforms to the global and national system be focused on the urgent need for resources to address.

67. The Independent Expert is committed to seeking out proper channels through which to engage constructively with the full range of actors that play significant roles in relation to the enhancement of human rights and fiscal accountability at all levels of global, continental, regional, national and subnational governance. This includes exploring the importance of the role that the United Nations can and should play in the creation of an intergovernmental body on fiscal issues, which could include not only debt but also other financial obligations, including taxation and illicit financial flows, as has been consistently called for over several decades.

## V. Conclusion

68. **A number of reflections and key thematic priorities of the Independent Expert at the start of her mandate are outlined in the present report. The Independent Expert welcomes comments, contributions and suggestions regarding the present report and looks forward to engaging in further consultations with States and all relevant stakeholders.**

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<sup>52</sup> See contributions to the report from Womankind Worldwide, the Center for Economic and Social Rights and Eurodad.