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Fiscal legitimacy through human rights: a principled approach to financial resource collection and allocation for the realization of human rights

Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Attiya Waris

Summary

Pursuant to Human Rights Council resolution 52/17, the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Attiya Waris, presents her annual thematic report, in which she focuses on fiscal legitimacy and the import and requirements of a principle-based approach to the use of financial resources in the realization of human rights. She explores the challenges faced globally, nationally, regionally and within institutions in the collection and use of financial resources for the raising of living standards. The Independent Expert also sets out seven key principles that should be taken into consideration in ensuring that financial decisions uphold and maintain standards of living. The Independent Expert puts forward recommendations aimed at accelerating decarbonization and detoxification strategies that are guided by human rights principles.

Contents

I. Introduction

1. The realization of human rights (both collective and individual) remains a constant challenge for every country and territory in the world. It is often assumed that progressive financial realization of human rights rests on a poverty alleviation, development and growth model of the world that is predominantly linear. However, the past few decades have shown that this is not true and that diverse factors, such as inequality, climate instability, the absence of a global financial architecture, technological changes and conflicts and wars are not only impeding the financial realization of human rights, but are also resulting in unreliable strategies, while at the same time putting pressure on economies. The focus is on human beings as a tool in the process of wealth creation, instead of focusing on financing, with a lens on the progressive realization of human rights and raising standards of living.

2. However, the decision makers are human beings. A human being becomes a political leader, owner of a company, employee, politician, lobbyist, student, researcher or activist. Nationality, limited liability, media narratives and the emphasis placed upon artificial institutions and constructs is allowing for divisibility and the obfuscation of fiscal responsibility. The principle of State sovereignty creates a veil around the individuals leading a State. That limits responsibility and often dehumanizes laws, regulations and policies in the context of the financing of human rights. This can lead to an almost inevitable competition between States, triggering an even faster and tougher economic downturn across the world. That process is not linear but cyclical.

3. Human rights can be used as a tool when assessing revenue collection and expenditure policies. The global economy is a combination of multiple roles and multiple responsibilities, institutions and economies working in parallel or in conflict with each other. Those different teams and groupings are operating in and/or between six key types of economy, either individually or simultaneously, whether or not legally recognized or regulated: (a) the formal legally recognized economy; (b) the informal economy; (c) the unpaid economy (for example, unpaid care work as an unrecognized economy); (d) the shadow economy (a combination of legal and illegal activity); (e) the digitally supported economy; and (f) the barter (non-monetary) economy. Those economies feed into the global economy of foreign debt and international financial obligations and, in turn, have an impact on the human rights economy. Individuals moving through these economies feed revenue and resources into the State in diverse ways: in kind, through coercion and/or formally through official revenues, such as debt, aid, government business (shares, licences and fees) and taxation. However, no matter which economy feeds the finances of the State, the community of States and global institutions, the end result ought to be to make lives better today than they were yesterday.[1]

4. How can the world ensure that the fiscal systems adopted by States and regional, continental and international institutions and bodies are moving towards the progressive realization of human rights, both individually and as part of a global community? All individuals, and especially those with fiscal authority, should be, at a minimum, committed to protecting the most vulnerable through fiscal decision-making. In the present report, the Independent Expert engages with the term “fiscal legitimacy”, to which she has previously alluded in other publications; she considers some of the main challenges to and proposed solutions for fiscal legitimacy; and she outlines a principled approach to the realization of human rights. The Independent Expert considers that the use of a human rights lens, including the principle of the progressive realization of human rights and the duty to enhance international cooperation and provide international assistance, would assist with efforts to increase available resources, and that fiscal legitimacy is ensured when a fiscal system operates according to seven principles, namely accountability, transparency, responsibility, efficiency, effectiveness, fairness and justice, which she articulates in the present report.[2]

[1] See A/HRC/49/47.

[2] Submission by Maat for Peace, Development and Human Rights, p. 6. See also submission by Observatory on the Protection of Taxpayers’ Rights, p. 1, and A/HRC/49/47, para. 26.

5. The Independent Expert is grateful for all the contributions made by Member States, civil society and other stakeholders in the preparation of the present report.[3]

II. Understanding the financial realization of human rights

6. Both the collection and spending of resources are always at best suboptimal and a compromise between diverse stakeholders, including States, corporations, civil society, political parties, lobby groups, individuals and other entities. One fiscal element, debt, when negotiated among parties always includes some provisions that are the result of a compromise. However, debt agreements (for both private and public debt holders) are rarely if ever publicly accessible. A second element, tax collection, can theoretically create an ideal system, but it becomes compromised through politics, lobbying and negotiation. A third element, revenue-spending policies, is also a compromise between a ruling political party or coalition and society. A fourth element, natural resource revenue and government business, are similarly negotiated and subject to compromise among private stakeholders, such as international mining companies and State-owned corporations, often with varying degrees of clarity. The collection and use of resources can, however, change with the economy, politics, societal feedback, lobbies, crises and emergencies, and shifts during economic downturns or periods of growth. However, reactive responses are not a long-term solution and, as a result, it is crucial to consider a more proactive and principled approach to ensure that there is international cooperation and assistance, non-discrimination, equality and consistency in fiscal decision-making processes.

7. Fiscal legitimacy has not as yet been clearly defined, but it requires that a fiscal system respond to principles of good governance, namely transparency, accountability and responsibility. Applied in a fiscal context, the concept of fiscal legitimacy determines what valid and logical decision-making is with regard to State financing, resource allocation and spending. When set within the context of the fiscal State, fiscal legitimacy reflects the societal acceptance of State decisions regarding the collection of resources from society and the spending of those resources. In contemporary States, however, fiscal legitimacy should be rooted in the undertaking of reciprocal obligations by individuals and their collective institutions (first and foremost the State), and an agreement that those institutions will use their authority, including their fiscal authority, for the realization of people's needs and goals.[4] Such needs and goals ought to include the realization of all human rights.[5]

8. On one side, the State is a creation of society tasked with responsibilities towards the individuals living in it. The collection of taxes or issuance of debt, the amount of both and the sources from which revenues are generally collected, and the use and distribution of those resources are traditionally a constitutional power given to the State, while fiscal policymaking has always been at the discretion of the Government of the day.[6] The use of those funds is often decided by the decision makers with little or no transparency, participation by or accountability to the people who contributed those funds, or who will bear the costs in the case of borrowed funds. In addition, those funds may not necessarily be used in the interests of a society or for the priorities of that society. However, the State, on one side, is entrusted with the (legitimate) power to make and enforce public decisions on the collection, allocation and use of resources, and society, on the other side, accepts to submit to that authority and to contribute those resources, precisely so that they will be employed for the achievement of needs and wants of society. In order to be legitimate, in other words,

[3] All contributions are available at https://www.ohchr.org/en/calls-for-input/2023/call-inputs-fiscal-legitimacy-trough-human-rights-thematic-report-human-rights.

[4] A/HRC/49/47, paras. 26 and 38–42. See also Attiya Waris, *Tax & Development: Solving Kenya's Fiscal Crisis through Human Rights* (Nairobi, LawAfrica Publishing, 2013); and "Delineating a rights-based fiscal social contract using African fiscal constitutions" *East African Law Journal* (2015).

[5] *Our Common Agenda* (A/75/982) paras. 18, 19 and 33.

[6] Submission by Observatory on the Protection of Taxpayers' Rights, pp. 4 and 5.

fiscal policy must be grounded in, and aimed at realizing, the needs and wants of the population.[7]

9. By extrapolation, regional bodies and blocs and global and continental institutions that are recipients of taxpayer money through membership dues, need to ensure their own fiscal legitimacy. States and international financial institutions should also take into account the rights and needs of the people in debtor States. An institution that has a role in or is able to influence the tax policies or fiscal policymaking of States should be using a principled approach. At present, however, fiscal issues are often entrusted to different bodies and States often apply different standards. That creates the risk of double standards and pulls States and institutions away from a critical focus on improving the lives of those affected by their decisions. Some States, international organizations and stakeholders have taken steps to implement fiscal legitimacy principles, such as introducing comprehensive budgeting processes that involve citizens and civil society in decision-making, thus promoting accountability. Some States have undertaken transparency initiatives, such as publicizing budget allocations and expenditures, and improving public understanding of fiscal matters, while others have introduced progressive tax policies to reduce income inequalities. Examples include participatory budgeting in Brazil and the collection of data disaggregated by gender in South Africa. Other measures adopted to strengthen fiscal legitimacy include the initiative taken by several European and other countries, including, among others, Australia, to enforce country-by-country reporting obligations by multinational corporations; or the establishment of the Regional Tax Cooperation Platform for Latin America and the Caribbean to promote dialogue and collaboration regarding their tax systems among nations in the global South; or the beneficial ownership transparency measures implemented, among others, by organizations such as the African Union and the Economic Commission for Africa.[8]

10. Fiscal legitimacy is ensured when society is confident that the institutions governing the fiscal resources placed in their trust will do so in the interests of society and of human rights. The means by which States and institutions raise and deploy financial resources tell us more than any other single factor about their existing (and immediate potential) capacity to create or strengthen State organizations, employ personnel, co-opt political support, subsidize economic enterprises and fund social programmes.[9] Fiscal legitimacy requires that a fiscal system responds to the principles of good governance (transparency, accountability and responsibility) as well as being effective, efficient, fair and just. To achieve fiscal legitimacy, principles of taxation are used in national budgets and fiscal systems.[10]

11. Socially led taxation systems that encourage families and child-rearing are beneficial to young families, but are likely to be a hindrance to young migrants, who are usually single and unlikely to start a family immediately. Environmental taxation systems, which aim to shape behaviour around emissions and home-building, often have negative effects on the most vulnerable, as they limit housing supply, while the more economically capable usually live in newer buildings, drive newer cars and benefit from the taxation systems by default.[11]

12. Some theoretical approaches underpin the concept of fiscal legitimacy:

(a) The instrumental approach: in this approach, fiscal legitimacy is a means of achieving social objectives. Commentators have stated that democracies are expected to tax more efficiently because they trade taxation for more inclusive forms of representation. A counter-argument against this approach is that the more the State asks its citizens to pay taxes,

[7] A/HRC/49/47, paras. 26 and 38–42. See also, for example, Attiya Waris, "Delineating a rights-based fiscal social contract using African fiscal constitutions" and submission by Observatory on the Protection of Taxpayers' Rights. p. 3.

[8] Submission by Tax Justice Network, pp. 14 and 15.

[9] See Theda Skocpol, "Bringing the State back in: strategies of analysis in current research" in *Bringing the State Back In*, Peter B. Evans, Dietrich Rueschemeyer and Theda Skocpol, eds., (Cambridge, Cambridge University Press. 1985).

[10] See Attiya Waris, *Tax & Development: Solving Kenya's Fiscal Crisis through Human Rights*.

[11] Submission by Kuwait, p. 2.

the more its citizens will expect from the State.[12] Sectors controlling the relevant resources expect to contribute more in exchange for concessions; however, if those sectors see themselves as short-changed in the fiscal arrangement, they are likely to become less responsive and more oppositional;

(b) Procedural approaches: procedural legitimacy focuses on the transparency, accountability and participatory processes in fiscal decision-making. It suggests that involving the public in fiscal choices enhances legitimacy. Improvements to living standards must be linked to taxes as clearly as possible through proper tax collection, media awareness campaigns, finance and tax literacy classes, and a clear taxpayers' charter.[13]

III. Challenges facing fiscal legitimacy

13. Several factors affect whether particular collecting or spending decisions can be considered fiscally legitimate. Those factors affect the debate and discussions over making those decisions and the outcome and solution or compromise that is in the end reached. They include:

(a) Unequal distribution of wealth. The fairness and equity of the tax system, as well as the perceived redistribution of wealth through government spending, play a crucial role in determining fiscal legitimacy. The malady of debt is a clear challenge to fiscal legitimacy, particularly for the global South, which the Global Crisis Response Group on Food, Energy and Finance indicated in its recent report is extremely burdensome. In that report, the Group explains that the global South pays more for its debt than the global North. For instance, German and American bonds have average yields of 1.5 per cent and 3.1 per cent respectively, while bonds from Asia and Oceania, Latin America and the Caribbean and Africa have average yields of 6.5 per cent, 7.7 per cent and 11.6 per cent, respectively. That forces countries to prioritize debt repayment over servicing the well-being of their people. The report further states that 3.3 billion people live in countries where debt interest payments exceed their countries' spending on education and health;[14]

(b) Opaque systems and processes. Transparency in budgeting and fiscal decision-making processes is essential for citizens to trust that their Government is acting in their best interests. Where citizens participate in fiscal decisions, such as budget consultations through public participation and other similar forums, that plays a huge part in ensuring the legitimacy of a fiscal system. According to one submission received by the Independent Expert: "The other main challenge to fiscal legitimacy is the geopolitical imperative of 'defence' and 'security'. According to the World Development Indicators, governments spent USD 2.2 trillion on the military in 2022. This spending reveals a priority of governments, particularly in the global north … Basic human rights such as food, clothing and shelter are jettisoned, as is seen by the number of persons without adequate food, clothing and shelter";[15]

(c) Inherited economies and unpaid work. The system in place is one that was negotiated and developed over the centuries and was often based on terms and rules to which over 60 per cent of the global population was not privy, nor did they understand its logic. It was, however, developed with the consensus of the independent States of the time, but ignored not only colonized States but also women;[16]

[12] See Michael L. Ross, "Does taxation lead to representation?", *British Journal of Political Science*, vol. 34, No. 2.

[13] Dajana Cvlrje, "Tax literacy as an instrument of combating and overcoming tax system complexity, low tax morale and tax non-compliance", *Semantic Scholar* (2015).

[14] UN Global Crisis Response Group, "A world of debt, A growing burden to global prosperity" (July 2023), p. 4.

[15] Submission by Olivia C. Saunders, University of The Bahamas, p. 2.

[16] See Caren Grown, "What gender equality advocates should know about taxation", Association for Women's Rights in Development (AWID) (March 20026) and https://www.qmul.ac.uk/law/news/2012/items/dr-ann-mumford-to-present-at-applying-feminist-principles-to-tax-benefit-and-budgetary-policies-an-economic-justice-workshop-in-hawaii.html.

(d) Economic management and administration. The ability of a Government to manage the economy, maintain low inflation and promote economic growth can bolster its fiscal legitimacy. However, according to one submission received by the Independent Expert, “in designing fiscal policies and measures to strengthen fiscal legitimacy, fiscal undertakings must first prioritise human well-being. This means going beyond economic aggregates such as GNI, GNI growth, unemployment and inflation rates. Specific questions must be addressed, such as: how many persons are food insecure or malnourished? How many persons are unhoused? How reliable and accessible is the water supply? How effective is the education system? What is the nature of residents’ accessibility to healthcare services?”[17]

(e) Fiscal legitimacy cannot be established in the current international climate. In order to establish legitimacy in the global financial architecture and tax system, deep-rooted and systemic issues that result in inequality and corruption need to be addressed. International tax measures are, at present, largely designed by the global North for the interests of the global North, while disregarding the needs of the large majority of the world’s population. In 2021, the corporate tax haven index of the Tax Justice Network revealed that over two thirds of global corporate tax abuse risks were created and enabled by members of the Organisation for Economic Co-operation and Development (OECD) and their dependencies.[18] That is exacerbated by States in the global South currently having no legitimate forum or mechanism in which to effectively advocate for their needs;[19]

(f) Political lobbies and trust. Trust in, within and between Governments and political leaders is connected to fiscal legitimacy. High levels of trust in government can lead to greater acceptance of fiscal policies while similar thinking between Governments leads to tax spending and debt financing, as well as support in the equitable sharing of revenues across borders. However, one submission received by the Independent Expert stated that the abuse of public interest and the undermining of public confidence in the integrity of rules, systems and institutions that promote the public interest undermine fiscal legitimacy;[20]

(g) Illicit financial flows. Corruption scandals and the perception of corruption in fiscal matters can undermine fiscal legitimacy, as reflected in recent debates on tax havens or secrecy jurisdictions and illicit financial flows. First, such practices have exacerbated inequality by widening the income and wealth gap, thus hindering the ability of the State to fulfil not only its minimum core obligations, but also the progressive realization of human rights. Second, those illicit flows directly and indirectly facilitate a cyclical dependence on borrowing. The opaqueness of cross-border financial transactions that facilitate the erosion of resources is a major reason for the increasing wealth gap. In her recent report, the Independent Expert suggests that secrecy jurisdictions provide a habitat for these transactions and, in that sense, the wealthy who can afford such services get wealthier while the disadvantaged populations remain at the periphery;[21]

(h) Discrimination. Gender and racial discrimination, if not deliberate certainly overt, have been alluded to over the years. At the national level, fiscal legitimacy can be undermined by high levels of national debt, inequality and a lack of public trust in government. In some countries, national Governments have implemented austerity measures that disproportionately impact the poor and vulnerable. That can lead to a sense of injustice and a loss of faith in the ability of a Government to manage the public finances in a fair and responsible manner. At the regional level, fiscal legitimacy is often affected by the relationship between national and subnational governments. In some regions, subnational governments are heavily dependent on transfers from the national Government. That can make it difficult for them to raise their own revenues and set fiscal policies that meet the needs of their local communities. At the international level, fiscal legitimacy is challenged by the complexity of the global financial system and the lack of transparency and accountability in international financial institutions. In addition, the global tax system is often

17 Submission by Olivia C. Saunders, Professor, University of The Bahamas, p. 1.
18 Tax Justice Network, *State of Tax Justice 2023*, p. 27.
19 Submission by Tax Justice Network, p. 5. See also submission by Asia Pacific Forum on Women, Law and Development, pp. 1 and 5.
20 Submission by Tax Justice Network, p. 4.
21 See A/HRC/52/34.

criticized for being unfair and for allowing wealthy individuals and corporations to avoid paying their fair share of taxes.

IV. Guiding principles for the fiscal realization of human rights

14. In the past decade, the international human rights treaty bodies have shed unwavering light on the fiscal implications of human rights on one side and on the relevance and implications of international human rights law for the process, contents and outcomes of public budgets, public debt and more generally economic reform policies (not exclusively in times of crisis) on the other. They have done so not only through their interpretative practice,[22] but also, significantly, by putting together a series of principles, including the guiding principles on foreign debt and human rights,[23] the Basic Principles on Sovereign Debt Restructuring Processes, the guiding principles on human rights impact assessments of economic reforms[24] and, most recently, the guidelines on the repatriation of State assets.[25] Others have also developed useful guidance, for example the principles on responsible sovereign borrowing and lending issued by the United Nations Conference on Trade and Development (UNCTAD).[26]

15. International human rights treaty obligations and their financing require the realization of human rights for that financing to be fiscally legitimate. However that is done, it requires not only ensuring that there is logic and rationale in the decision-making process in relation to the collection and spending of resources, but also that the process is clear and understandable to the society that is affected, and that the financing remains focused on raising the standard of living of the population. In that process, not only the actual decision, but also the way it is received by the people, come under scrutiny. The management of the process needs to be guided by clear principles at the global, continental, regional, national and institutional levels. The key principles include accountability, transparency, responsibility, effectiveness, efficiency, fairness and justice.

A. Accountability

16. Fiscal systems should not be arbitrary or discriminatory and must include accountability mechanisms for collecting, allocating and using the public resources they create.

17. Governments are agents of the State and, as such, they have a responsibility to protect the interests of their citizens and a fiduciary duty to act in the interests of their principal, namely the State, which in turn represents its people in the international system.[27] That makes wrongful any form of self-interest or peculation by government officials involved in sovereign financing; national laws as well as international and regional conventions against corruption are relevant in assessing the legality of such behaviour.[28] Lenders, on their part, should recognize that government officials involved in sovereign lending and borrowing

[22] See, inter alia, Committee on the Rights of the Child, general comment No. 19 (2016), E/C.12/2016/2 and letter, dated 16 May 2012, addressed by the Chair of the Committee on Economic, Social and Cultural Rights to States parties to the International Covenant on Economic, Social and Cultural Rights (CESCR/48th/SP/MAB/SW). The Committee on Economic, Social and Cultural Rights is currently working on a new general comment on sustainable development and economic, social and cultural rights. See also A/75/164 and Office of the United Nations High Commissioner for Human Rights, United Nations Development Programme and United Nations Sustainable Development Group, "Checklist for a human rights-based approach to socio-economic country responses to COVID-19" (July 2020).

[23] A/HRC/20/23 and A/HRC/20/23/Corr.1.

[24] A/HRC/40/57.

[25] A/HRC/52/45.

[26] https://unctad.org/topic/debt-and-finance/Sovereign-Lending-and-Borrowing.

[27] UNCTAD Principles, principle 8 and A/HRC/20/23 and A/HRC/20/23/Corr.1, annex, para. 44.

[28] 2012 UNCTAD Principles, principle 8.

transactions are responsible for protecting the public interest, so that any attempt by a lender to suborn a government official to breach that duty (for example bribery) is wrongful.[29]

18. Accountability requires States to ensure that access to justice and the right to an effective remedy are guaranteed, through judicial, quasi-judicial, administrative and political mechanisms,[30] in order to guarantee that decision makers are answerable and held accountable, if warranted, for their actions and omissions regarding budgetary and debt policies and strategies.[31]

19. States are also under an obligation to ensure the prompt repatriation of funds of illicit origin to the countries of origin; actively participate in adopting a renewed, decisive and proactive commitment to tackling the phenomenon of illicit financial flows and their ensuing negative impact on human rights and the right to development; and take urgent action to push forward the procedures aimed at the recovery of assets.[32]

B. Transparency

20. Fiscal decision-making should be a transparent and participatory process.[33] Deep-rooted in the right to freely impart, seek and receive information (article 19 of the International Covenant on Civil and Political Rights) and essential to ensure accountability, transparency requires that in the planning, enactment, execution and follow-up of public budgets, States fully disclose timely, comprehensive and accessible information and make essential budget documents such as pre-budget statements, draft budgetary plans and audit reports, available to stakeholders, so that they can provide meaningful inputs on fiscal policies and agreements with supranational institutions and lenders.[34] Transparency also requires Governments to provide adequate justifications of policy choices to the population in general and specifically to those most likely to be affected by budgetary decisions.[35]

21. As sovereign debtors, States have a responsibility to disclose complete and accurate information on their economic and financial situation that conforms to standardized reporting requirements and is relevant to their debt situation.[36] The UNCTAD Principles, for instance, clearly state that transactions or accounting techniques that have the effect of misrepresenting the true nature or extent of a sovereign’s debt are inconsistent with a sovereign’s duty of candour to its citizens and its creditors, and that a State that does not provide full disclosure, subject only to a very limited category of exceptions involving national defence, or misrepresents its information at the time it incurs a debt, will be ill-positioned to argue that its creditors have a moral responsibility to participate in any necessary workout of the loan further down the road.[37]

22. Transparency in relation to beneficial ownership should be promoted to bolster fiscal legitimacy and ensure greater accountability for tax abuses by corrupt State officials, high net worth individuals and companies. For example, use of the BIDS platform is considered to confer reasonable transparency and standardization, and a reasonable level of legitimacy on the fiscal system.[38] However, concern lies with the ever-increasing costs of large-scale projects, which have drastically expanded, especially in the aftermath of the coronavirus disease (COVID-19) pandemic. Such projects have become a large burden on fiscal systems and create a cycle of fiscal stress that falls most heavily on the economically disadvantaged. Furthermore, hidden tax regimes, in which fees and costs arise in a manner that is not

[29] Ibid., principle 1.
[30] A/HRC/40/57, principle 21.
[31] A/HRC/20/23 and A/HRC/20/23/Corr.1, annex, para. 31.
[32] A/HRC/52/45, para. 52. See also A/HRC/25/52.
[33] See, for example, A/HRC/20/23 and A/HRC/20/23/Corr.1, annex, paras. 28–31; A/HRC/34/57/Add.1, para. 39; and General Assembly resolution 67/218.
[34] A/HRC/40/57, principle 19, para. 19.7; Committee on the Rights of the Child, general comment No. 19 (2016), para. 62; A/HRC/20/23 and A/HRC/20/23/Corr.1, annex, para. 29.
[35] A/HRC/40/57, principle 19, para. 19.3.
[36] UNCTAD Principles, principle 11.
[37] Ibid.
[38] See https://theperformagroup.com/finance-and-budgeting/.

systematized and usually not announced openly, create a feeling of fiscal unfairness and illegitimacy.[39]

23. The public should not have to rely on data leaks, such as the Lux leaks, the Panama papers, the Luanda leaks or the Pandora papers, which, among other things, put journalists and whistle-blowers at risk, to obtain information that should be in the public domain.[40]

C. Responsibility

24. States are responsible for creating the preconditions for fiscal legitimacy, which include the education of and information for all stakeholders, including the general population.

25. The principle of participation in the conduct of public affairs is entrenched in article 25 of the International Covenant on Civil and Political Rights and requires that all stakeholders, including subnational levels of government (local authorities), marginalized groups, and groups and individuals who are particularly vulnerable to the impacts of specific fiscal policies (women, children and persons with disabilities), are given a genuine and effective opportunity to participate in and provide inputs to the shaping of fiscal policies. The principle also requires that low-income or small high-income countries are given a genuine opportunity to participate and represent their interests, for instance in debates and negotiations over international tax reforms and in cooperation within supranational institutions, such as OECD. According to one submission received by the Independent Expert: "The adoption of a UN Tax Convention as the forum for international tax policy making has the potential to solve this issue."[41]

26. Furthermore, sovereign financing (including through borrowing) and fiscal management should generally be governed by a comprehensive legal framework that clearly defines procedures, responsibilities and accountability,[42] and should ensure proper approval and oversight (including through periodic audits).[43] Such a framework should also set limits for international loans through appropriate budgetary legislation.[44]

27. Rights holders and taxpayers also need clear guidance regarding the interpretation and application of tax law in a transparent way that enhances trust. The publication of guidance that is binding on the tax administration, that is public and easily accessible to all and cannot be used against taxpayers if they follow it, are components of a tax system that enhance its legitimacy.[45]

28. States and other creditors, including independent fiscal institutions, should demonstrate that their proposed economic reform measures will realize, and not undermine, the human rights obligations of States. That implies a duty to carry out human rights impact assessments to evaluate and address any foreseeable effects (including in terms of direct or indirect discrimination) of their economic policies on human rights.[46] The findings of human rights impact assessments should be used to inform debt strategies, debt relief programmes and restructuring negotiations.[47]

29. According to one submission received by the Independent Expert: "Among the unique challenges that stem from the digitalization of tax administrations worldwide, a phenomenon which is on the rise not only among OECD Member Countries but also in several developing ones, the reliance on algorithms and artificial intelligence in identifying tax audit priorities

[39] Submission by Kuwait, p. 2.
[40] Submission by Tax Justice Network, p. 9.
[41] Submission by Tax Justice Network, p. 7. See also guidelines for States on the effective implementation of the right to participate in public affairs.
[42] UNCTAD Principles, principle 10.
[43] A/HRC/20/23 and A/HRC/20/23/Corr.1, annex, paras. 67–70, and UNCTAD Principles, principle 13.
[44] A/HRC/20/23 and A/HRC/20/23/Corr.1, annex, paras. 33 and 34.
[45] Submission by Katerina Perrou, Fellow, University of Athens Law School, and legal counsel to the head of the Independent Authority for Public Revenue (the Greek tax administration), p. 3.
[46] A/HRC/40/57, principle 3.
[47] Ibid., principle 18.

in light of a 'risk-based' approach raises some questions, especially when it may unduly translate into profiling."[48] Beyond profiling, artificial intelligence may result in concerns over data privacy, the accuracy of algorithmic decision-making, transparency in tax administration practices and potential biases in the algorithms themselves.

D. Efficiency

30. The costs of a fiscal system should be the minimum possible for both the Government and the people. When financing their activities through loans, Governments have a responsibility to weigh the costs and benefits of borrowing and should only seek a sovereign loan if it would permit additional public or private investment with a prospective social return at least equal to the likely interest rate, or if the alternative would involve cutting back investment with a return greater than the interest rate.[49] States should conduct a transparent and participatory needs assessment as part of their annual debt strategy, in order to ascertain whether there is a genuine need to obtain new loans, should reassess the existing allocation of their financial resources and should satisfy themselves that the need for additional funds cannot be met by reorienting existing budgetary allocations.[50]

31. Creditors, for their part, are responsible for making a realistic assessment of the sovereign borrower's capacity to service a loan based on the best available information and following objective and agreed technical rules on due diligence and national accounts.[51] Among other things, that means that when assessing a borrower's situation, lenders should consider the broad and real financial scenario, including direct and contingent liabilities according to the System of National Accounts adopted by the Statistical Commission.[52] Significantly, whatever the underlying motivations or potential benefits of lending to sovereign borrowers (including, for instance, when a lending sovereign is using credit as a means to expand its geopolitical influence over the borrowing State), creditors should not avoid a serious assessment of the borrower's repayment capacity.[53]

32. With regard to debt servicing and repayment, the guiding principles on foreign debt and human rights affirm that States should ensure that their level of debt servicing is not so excessive or disproportionate relative to their financial capacity and other resources as to amount to a diversion of their resources away from the provision of social services to all persons living in their territory and under their jurisdiction, including those pertaining to economic, social and cultural rights, or to render States no longer able to perform their minimum core obligations.[54] In such cases, debt servicing should be adjusted or modified accordingly to reflect the primacy of human rights.[55] Similarly, procurement and spending must follow rules so that there is no unjust enrichment of service providers, whether they are arbitrators for agreements and treaties or building water pipes in rural areas.

E. Effectiveness

33. Fiscal systems should be devised in the most effective way to ensure the protection and promotion of human rights.

34. Fiscal choices made by States (including attempts at stabilizing the economy, especially in times of economic and financial crisis), whether acting alone or as members of international financial institutions, must at all times comply with their obligations under international human rights law.[56]

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48 Submission by the Observatory on the Protection of Taxpayers' Rights, p. 4.
49 2012 UNCTAD Principles, principle 14.
50 A/HRC/20/23 and A/HRC/20/23/Corr.1, annex, paras. 36 and 37.
51 UNCTAD Principles, principle 4.
52 Ibid.
53 Ibid.
54 A/HRC/20/23 and A/HRC/20/23/Corr.1, annex, paras. 48 and 50.
55 Ibid., para. 49.
56 A/HRC/40/57, principles 2 and 5.

35. States are required to design and implement fiscal, tax, debt, trade, aid, monetary and environmental policies in conjunction with other measures, so that they are deliberately directed towards the realization of human rights.[57] In particular, social policies should be designed to address and reverse the effect of economic downturns, while ensuring respect for human rights, and fiscal policy should be used as a countercyclical tool to prevent and/or manage crises, as well as to equalize opportunities and maximize the realization of human rights. Debt policies, in particular, should be consistent with broad goals related to sustainable economic development and the realization of human rights.[58]

36. In addition, direct and progressive taxes should be prioritized and tax policy should more generally promote the redistribution of wealth to overcome the disadvantages of the population in situations of social vulnerability (the poor, minorities and women, among others) and other priority care groups, notably older adults, children and persons with disabilities.[59] International, binational or regional regulation is crucial for efficiency in combating tax evasion, avoidance or fraud and illicit financial flows. States are responsible for carefully examining different policy options at any and all times and for determining the most appropriate measures, not only in the light of their circumstances, but also considering their international and domestic human rights obligations.

37. States must bear in mind that certain economic measures, for example restrictive loan conditionalities or constraints imposed by trade agreements privileging corporate interests, are clearly and directly linked to the ability of States to address phenomena that are manifest violations of multiple human rights, such as pollution, the prevalence of life-threatening diseases, widespread hunger and malnutrition, extreme poverty and homelessness, among others.[60] They must also bear in mind that some economic policies, such as fiscal consolidation, structural adjustment or reforms, privatization, deregulation of financial and labour markets and lowering environmental protection standards, can have adverse consequences on the enjoyment of human rights.[61] Commitments to fiscal discipline policies, whether stated in domestic constitutions or in regional or international agreements, must not lead to the sacrifice of international human rights obligations.[62]

F. Fairness

38. The fiscal system should not result in inequalities and discrimination and should be based on the ability to contribute.

39. States parties to international human rights instruments maintain considerable discretion in determining both what their available resources are and how to allocate and use them in their realization of social, economic and cultural rights. However, such discretion is not unlimited, and State conduct is subject to the scrutiny of human rights monitoring bodies, such as the Committee on Economic, Social and Cultural Rights. In particular, States must generate, adequately allocate and make use of the maximum of their available resources to move as expeditiously and effectively as possible towards the achievement of the full realization of economic, social and cultural rights.[63] Where domestic resources are not sufficient to ensure the realization of those rights, States should seek international assistance. They should also mobilize resources by tackling tax evasion or avoidance; ensuring a progressive tax system, including by widening the tax base with regard to multinational corporations and the richest; improving the efficiency of tax collection; and reprioritizing expenditures to ensure, among other things, the adequate funding of public services.[64]

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57 Ibid., principle 9.
58 Ibid., principle 11.
59 Ibid., principle 11, para. 11.4.
60 Ibid., principle 6, para. 6.3.
61 Ibid., principle 1, para. 1.1, and submission by Asia Pacific Forum on Women, Law and Development, pp. 1 and 5.
62 A/HRC/40/57, principle 2, para. 2.5.
63 Ibid., principle 9.
64 Ibid., paras. 9.2 and 9.3.

40. The United Nations has recommended the following international benchmarks on minimum levels of expenditure:

(a) Between 15 and 20 per cent of total expenditure and/or between 4 and 6 per cent of gross domestic product (GDP) should go to education and health;[65]

(b) Based on recent cost estimates by the World Health Organization (WHO), at least 7.5 per cent of GDP should be allocated to health spending to achieve universal health coverage in low- and middle-income countries;

(c) Based on a calculation by the International Labour Organization (ILO) of the cost of a universal package of four social protection benefits (namely basic social protection only for children, maternity, disability and old age, plus administrative costs) for low-income countries, a minimum of 8.5 per cent of GDP should be allocated to social spending.[66]

41. What constitutes adequate public spending on economic, social and cultural rights ultimately depends on the specific context of a country and its fiscal space.[67]

G. Justice

42. Fiscal systems should be guided by principles of social justice, combating inequalities and human rights.

43. Debt sustainability analyses are still based on an inadequate understanding of sustainability. They take primarily into account the economic growth prospects of a State and its ability to service debt without having to resort to exceptional financing or major policy adjustments, with the result that sometimes a stock of public debt may be considered sustainable even if its service entails the State’s failure to comply with its human rights obligations because the resources necessary for servicing its debt deprive it of the financial means to realize human rights.[68] On the contrary, debt cannot be called sustainable if the social and human rights dimensions of sustainability are ignored; a more comprehensive definition of debt sustainability incorporates economic, social and environmental sustainability, meaning that debt sustainability is only achieved when debt service does not result in violations of human rights and human dignity.[69] Debt sustainability analyses should, thus, incorporate human rights impact assessments.[70]

V. Conclusions and recommendations

44. **States, international institutions and regional trade blocs should consider the principles of fiscal legitimacy in their decision-making, while keeping all financial decisions focused on the realization of human rights and raising standards of living. The principles of fiscal legitimacy should be also taken into consideration in fiscal decision-making with a “do no harm” approach by actors and entities, including (a) States and State administrations (including national bodies, State-owned enterprises and all arms of government); (b) the private sector, namely corporations, trusts, investment firms and accounting, legal and company secretarial bodies, including professional bodies,**

[65] Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4, para. 14; Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases, para. 26; and WHO, *The World Health Report* (2010), pp. xii and xiii. See also UNICEF, “Covid-19 and shrinking finance for social spending: shortfalls in social spending in low- and middle-income countries” (February 2022), pp. 9 and 10.

[66] ILO, *World Social Protection Report 2020–2022*. See also UNICEF, “Covid-19 and shrinking finance for social spending: shortfalls in social spending in low- and middle-income countries”, pp. 9 and 10.

[67] UNICEF, “Covid-19 and shrinking finance for social spending: shortfalls in social spending in low- and middle-income countries, p. 10.

[68] A/HRC/40/57, principle 12, paras. 12.1 and 12.2. See also UNCTAD Secretary-General, “The world lacks an effective global system to deal with debt”, *Financial Times*, 2 February 2023.

[69] A/HRC/40/57, principle 12, paras. 12.3 and 12.4, and A/71/305, para. 54.

[70] A/HRC/40/57, principle 12.

and (c) the international institutions, including the United Nations, the International Monetary Fund (IMF), the World Bank and OECD.

45. **The global financial system should be reformed, re-engineered and revitalized to align it with the values of accountability, legitimacy, transparency and fairness. Those values should serve as the foundation for countries, businesses and other stakeholders to take concrete action towards establishing financial integrity and achieving sustainable development.**[71]

46. **States, international organizations and institutions should engage in international cooperation to share best practices in fiscal legitimacy and human rights.**

47. **States should work with international organizations to strengthen fiscal institutions and capacity.**

48. **All States should be encouraged to continue to engage constructively in international cooperation and assistance under the recently proposed United Nations framework convention on international tax cooperation as a comprehensive legal instrument and as a system of global financial integrity.**

49. **Existing capacity-building initiatives to address tax fraud, corruption, money-laundering, financial crime and asset recovery should be expanded.**[72]

50. **States should establish robust and coordinated national governance mechanisms to enhance financial integrity, in alignment with the Sustainable Development Goals. They should also publish national reviews to evaluate their performance in that regard.**

51. **The involvement of civil society in international policymaking forums should be ensured.**

52. **IMF, the World Bank and all multilateral and bilateral lenders should cancel all debts, along with conditionalities, to enable Governments to use their fiscal and monetary instruments to provide basic services, implement policies for women's human rights and ensure social protection for all people.**[73]

53. **Instead of loans, the international financial institutions and the Governments of the global North should provide grants and fulfil their official development assistance commitments.**

54. **The countries and industries of the global North should commit to climate financing that is new and separate from their existing official development assistance commitments.**[74]

55. **There should be a focus on human development and not just economic growth. In line with the ILO Social Protection Floors Recommendation, 2012 (No. 202), Governments should establish social protection floors as part of national social security systems. They should also adopt the proposed global fund for social protection, a solidarity-based financing mechanism for countries to design and implement national social protection floors.**

56. **By implementing these recommendations, Governments can contribute to building and maintaining fiscal legitimacy, fostering trust among citizens and promoting progressive realization of social and economic human rights, as well as sustainable economic development.**

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[71] See https://factipanel.org/docpdfs/FACTI_Panel_Report_AR.pdf (in Arabic only). See also submission by Maat for Peace, Development and Human Rights, p. 7.

[72] Submission by Maat for Peace, Development and Human Rights, p. 7.

[73] Submission by Asia Pacific Forum on Women, Law and Development, pp. 1 and 6.

[74] Ibid., p. 6.