Tax Justice & Human Rights:

The 4 Rs and the realisation of rights

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TAX JUSTICE NETWORK

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Foreword

This report on the 4 Rs of tax justice and the realisation of human rights could not be more timely. It makes the connections that I have seen all too clearly as a human rights lawyer, development practitioner and as a current member of the High-Level FACTI panel, the Independent Commission for the Reform of International Corporate Taxation (ICRICT) and formerly of the High Level Panel on Illicit Financial Flows out of Africa (Mbeki Panel). Illicit financial flows (IFFs) drive tax abuses that, as this Tax Justice Network report shows, give rise directly to some of the worst human rights failures around the world. Tax injustice thrives due to lack of global financial integrity, and contributes majorly to growing inequality between and within states, undermining development of countries in the global south, and privileging multinational corporations over smaller enterprises, communities, and citizens everywhere.

What is clear from the Tax Justice Network report, as it navigates through some of the most salient issues and helps to map the alarming contours of the human rights impacts, is that the actors at the centre of these abuses are high-income countries and their dependent territories, and the wide circles of tax and other professionals identified as enablers of IFFs by both the Mbeki and FACTI Panels, among others.

There is much more to do and to understand – but it starts by recognition that tax justice is fundamental to the progressive achievement of human rights. And if the global community has had any learnings from the Covid-19 global pandemic, it should be a realization of how interconnected the world is and therefore the imperative of inclusive development; the fundamental value to all society of public goods like public health systems and so why mobilizing domestic public revenues through taxation matters, for the necessary investment. Concrete progress will only follow from challenging directly the systemic global inequalities in taxing rights that mean lower-income countries lose the highest share of their tax revenues due to cross-border corporate and individual tax abuse. This will need transforming the toxic global eco-system of global finance.

The crucial first step to challenging this is to follow the FACTI panel recommendation to begin negotiations on a UN Tax Convention, to set minimum standards for transparency and cooperation that benefit countries at all income levels, and to establish a globally inclusive, intergovernmental body under UN auspices to set international tax rules in the future – fairly and with legitimacy.

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Acknowledgements

TAX JUSTICE NETWORK

The Tax Justice Network believes a fair world, where everyone has the opportunities to lead a meaningful and fulfilling life, can only be built on a fair code of tax, where we each pitch in our fair share for the society we all want. Our tax systems, gripped by powerful corporations, have been programmed to prioritise the desires of the wealthiest corporations and individuals over the needs of everybody else. The Tax Justice Network is fighting to repair this injustice. Every day, we equip people and governments everywhere with the information and tools they need to reprogramme their tax systems to work for everyone.

This report was written by Liz Nelson.

For their generous expert advice and guidance on methodologies, including feedback on successive drafts of material, we gratefully acknowledge the contributions of Stephen Hall (University of Leicester), Marisol Lopez and Bernadette O'Hare (University of St Andrews), Fariya Mohiuddin (International Budget Partnership), and colleagues at the Tax and Gender Working Group of the Global Alliance for Tax Justice, and across the Tax Justice Network.

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Introduction

Tax justice is a feminist issue. Tax justice is a human rights issue.

The continuing denial of tax justice, both nationally and internationally, underpins the deep, intersectional inequalities that scar our societies. But the combined forces of the tax justice and human rights movements around the world have only recently begun to find effective ways to respond to the shared opportunity this presents.

In this report, we set out to achieve four main aims. First, we demonstrate the depth and power of the linkages between tax justice and human rights. Second, we lay out the tax justice policy platform and contextualise its ability to advance human rights. Third, we detail the range of human rights instruments available, with particular attention to how they can support the achievement of tax justice. Finally, we present the position facing the emergent global movement for tax justice and human rights, and suggest a prioritisation of the key opportunities.

Overall, we aim to provide a reference point for this emergent movement: a laying out of the argument, and also a guide to the landscape within which we can come together to prosecute it.

The most dramatic findings are those that show some of the concrete human rights impacts of tax abuse – including the loss of 600,000 children and 73,000 mothers globally if the losses in 2020 are projected over a ten-year period. But the policy conclusions are equally clear. Lower-income countries lose the highest share of tax revenues to tax abuse, under the rules set by the rich countries that benefit most.

Energising the now intersecting tax justice and human right movements, we must mobilise around the immediate opportunity to begin negotiations on a United Nations (UN) Tax Convention – so that all countries can be heard when international tax rules are set, and the human rights of all their peoples equally valued in the decisions made.

Context

Our world is faced with a human rights crisis.[1] Debt distress, poverty, conflict, climate and ecological breakdown, health insecurities: these are underpinned by financial systems unfit for purpose acting as both a cause and a symptom of human rights failures.

Wealthy elites and multinational organisations profit from these vulnerabilities. At the same time political interests exploit populist narratives and create conditions by which to institute regressive tax policy reforms. This is not a new world order but a product and continuation of colonial histories, fiscal extraction and discrimination.

The Covid-19 pandemic which broke in January 2020 saw lives being torn apart and governments floundering to address hardships. The social and economic cost of the pandemic has yet to be calculated and indeed is unlikely to be fully defined for years to come. But we know, and it is widely accepted, that the foundations of these hardships were laid down through political decisions taken across recent decades and against a backdrop of colonial oppression and minoritisation.

The pandemic demands that we re-evaluate human rights: in law, the corresponding obligations, their application and an examination of how overall our governments can best realise them for their people. There is a renewed urgency for the design of national and international tax and financial transparency policies and laws which assist in the fulfilment of human rights obligations, address inequality and promote a philosophy of "care" and of justice within our societies.[2] Effective, progressive tax regimes are fundamental to the realisation of human rights.

Since 2008, the time of the last financial "crash", austerity has dominated the social and economic policy landscape in many countries. In Chad, to take just one example, a regime of austerity contributed to "arbitrarily determined budget cuts" in public health and education.[3] A complex set of factors from 2015 onwards – the price of crude oil, military commitments, security threats, hosting of some half a million refugees, and an oil backed loan, underlined by ongoing tax abuse - converged to rationalise "austerity" as a solution. The state failed, however, to explore tax revenue raising opportunities as an alternative.[4]

In other countries fiscal adjustments were, and continue to be, imposed by international financial institutions. In high income countries, these have largely deliberate policy aims. In Spain, for example, contradictions between underspending on social protections and public services and a low ratio of tax revenue to GDP (compared to the European average) do not provide justification for human rights failures.[5] Similarly, in the USA, the UN Special Rapporteur concluded that "the persistence of extreme poverty is a political choice made by those in power".[6] This economic and social policy agenda has been and continues to be the architect of widespread inequality and failures to respect, protect and fulfil human rights. The human rights issues at stake threaten to exacerbate divisions and competition within and between countries.

The flow of capital and people in this globalised community has, for a tiny minority, created unprecedented opportunities for wealth accumulation. Such is the extent of

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1 Amnesty International, *Amnesty International Report 2020/21: The State of the World's Human Rights*. (7 April 2021) https://www.amnesty.org/en/documents/document/?indexNumber=pol10%2f3202%2f2021&language=en [accessed 9 April 2021].
2 The Care Collective (2020) *The Care Manifesto: The Politics of Interdependence*. Verso. London.
3 Amnesty International, *Chad: Strangled Budgets, Silenced Dissent: The Human Cost of Austerity Measures in Chad*. (2018) https://www.amnesty.org/download/Documents/AFR2082032018ENGLISH.PDF [accessed 20 June 2021].
4 Amnesty International, *Chad: Strangled Budgets, Silenced Dissent: The Human Cost of Austerity Measures in Chad*. (2018) https://www.amnesty.org/download/Documents/AFR2082032018ENGLISH.PDF [accessed 20 June 2021]. P.48
5 Philip Alston, *Visit to Spain: Report of the Special Rapporteur on Extreme Poverty and Human Rights*. (12 April 2020) https://undocs.org/A/HRC/44/40/Add.2 [accessed 12 February 2021]. P.11.
6 Philip Alston, *Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America* (4 May 2018). https://undocs.org/A/HRC/38/33/Add.1 [accessed 21 June 2021].

this accumulation that corporate entities working across borders hold more wealth than the GDP of some countries.[7] Meanwhile, opportunities to advance human rights and human development are systemically and structurally denied for many citizens both in lower and higher-income countries.

The Covid-19 pandemic is one of a number of threats to have materialised which has thrown the presence of pre-existing inequalities into sharp relief. In the Sub-Saharan African region, for instance, governments have delivered comprehensive social and economic measures in response to the crisis, yet entrenched inequalities and long-lived human rights failures limit their impact.[8]

The pandemic has exposed the failures of governments in response and the realities of daily life, where intersectional identities of women and girls mean the most marginalised people disproportionately experience rights failures.[9] These fundamental rights are enshrined in the International Covenant on Economic, Social and Cultural Rights (Article 2.1).[10] The health inequalities and rights failures are, in 2021, revealed as stark – fewer than one in 500 people had received a Covid-19 vaccination in low-income countries by the middle of 2021, compared to nearly one in four people in high-income countries - and some such as the UK where over fifty percent of people had been vaccinated at the same point in time.[11]

Meanwhile, estimates of revenue needed to address the unequal distribution of vaccines is in the region of US$66 billion – if the profit margins of pharmaceutical companies are maintained, despite the huge public investment behind the vaccines.[12] Even this cost is far outweighed by the known scale of corporate and individual tax abuse, so the resulting human rights failures are profoundly political - and fixable.

Governments, with few exceptions,[13] have floundered in their response to the pandemic; torn between a narrowly defined and misunderstood sense of economic interest, and protecting their citizens (and with it the real economy). Many have fallen back on orthodox responses in their economic support to business, although important policy solutions were drawn to halt unfettered and unfair bailouts, especially for multinational companies.[14] However, analysis exposed that governments' responses fell far short of providing an equitable, comprehensive and sustainable approach that recognised pre-existing inequalities and rights failures.[15]

These challenges have rightly reinvigorated questions of failing human rights norms and strategies to tackle hidden or ignored inequalities. They also bring new potency to tax justice research and heightened urgency to collective human rights and tax justice advocacy and campaigns.

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7 Paul Dughi, 'Apple, Amazon Wealthier than More than 90% of the World's Countries', *Medium*, 2021. https://medium.com/digital-vault/apple-amazon-wealthier-than-more-than-90-of-the-worlds-countries-17dbae8b98fe [accessed 20 June 2021].
8 See e.g., Michael Danquah, Simone Schotte and Kunal Sen, 'Covid-19 And Employment: Insights From The Sub-Saharan African Experience', *UNU-WIDER*, 2020. https://www.wider.unu.edu/publication/covid-19-and-employment [accessed 20 June 2021].
9 SEATINI-UG, *Rethinking Domestic Resource Mobilisation Strategies Amidst the Covid-19 Pandemic in Uganda* (29 March 2020).
10 United Nations OHCHR, 'International Covenant on Economic, Social and Cultural Rights' (1966). https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx [accessed 12 November 2019].
11 UN News, 'Low-Income Countries Have Received Just 0.2 per Cent of All COVID-19 Shots Given', *UN News Global Perspective Human Stories*, 2021. https://news.un.org/en/story/2021/04/1089392 [accessed 30 June 2021].
12 Save the Children International, 'Rich Countries Need to Spend Just $0.80 a Week per Citizen to Stock World with COVID-19 Vaccines', *Save the Children International*, 2021. https://www.savethechildren.net/news/rich-countries-need-spend-just-080-week-citizen-stock-world-covid-19-vaccines [accessed 17 June 2021].
13 Emba Christine, 'What Nation Isn't Obsessed with Ensuring Economic Growth? New Zealand, Apparently.', *The Washington Post* (15 June 2019), Online edition, section Opinions. https://www.washingtonpost.com/opinions/what-nation-isnt-obsessed-with-ensuring-economic-growth-new-zealand-apparently/2019/06/14/f2aeabb8-8ee4-11e9-b08e-cfd89bd36d4e_story.html [accessed 16 June 2019]. Washington Post
14 Tax Justice Network, 'Bail, or Bailout? Tax Experts Publish 5-Step Test for Covid19 Business Bailouts', *Tax Justice Network*, 2020. https://taxjustice.net/press/bail-or-bailout-tax-experts-publish-5-step-test-for-covid19-business-bailouts/ [accessed 20 June 2020].
15 Isabel Gottlieb and Hamza Ali, 'Tax Haven-Blocking Rules in Virus Aid Carry Little Force', *Bloomberg Tax*, 1 July 2020, online edition, section Daily Tax Report. https://news.bloombergtax.com/daily-tax-report/tax-haven-blocking-rules-in-virus-aid-carry-little-force?utm_source=rss&utm_medium=DTNW&utm_campaign=00000172-ddab-d879-af72-ddfff67a0001 [accessed 2 July 2020].

Tax abuse and human rights

Since the early 2000s, many disparate interests have increasingly coalesced around a single concern – righting the wrongs of international and domestic tax regimes to bring about a just and fairer world for all. This concern responds not only to inequalities of income and wealth distribution within and between countries, but also to the **loss** or **failure** to realise fundamental social and economic rights for swathes of the world's population – especially, but not exclusively, in the global south.

Two main bodies of argument have developed over time and are now increasingly engaged with each other. The first addresses the failure of tax and broader fiscal systems to deliver on human rights. The second highlights how those failures are caused by illicit financial flows and the actors behind them. Together, these arguments provide the backbone of the case for tax justice to be understood fundamentally as a human rights issue, and for the recognition of human rights' dependence on tax justice.

Feminist analysis is critical to the understanding and development of tax justice policy reforms. A feminist analysis emphasises the systemic and structural issues in order to tackle intersectional inequalities.[16] This deeper, yet too often absent, analysis is important to the institutions, laws and policies underpinning the relationship between tax and human rights. Without this intersectional approach in both research and advocacy, the structures on which narratives of justice are built can risk perpetuating discrimination, abuse and rights failures.

Feminist critiques continue to refresh and recalibrate our understanding of broader macro-economic policies and fiscal policy as they impact the realisation of human rights.[17] Especially in the context of the Covid-19 pandemic, feminism within the tax justice movement is "calling out" failed concepts and design, and re-setting the dial for substantive equality and the realisation of rights.[18]

The Global Alliance for Tax Justice (GATJ) in its tax and gender advocacy has spearheaded critical campaigning and new literature to provide arguments and tools for national and global campaigns.[19] Valuable work which examines the impact, for instance, of illicit financial flows on gender equality have been published by the Association for Women's International Development (AWID)[20] and through Development Alternatives with Women for a New Era (DAWN).[21]

The complexity of tax abuse is, of course, exacerbated by financial secrecy.[22] The linking, at a global level, of financial secrecy with human rights failures began in earnest only a couple of decades ago. In 2000 Oxfam published the report 'Tax Havens: Releasing the Hidden Billions to Eradicate Poverty'.[23] The subsequent tax justice literature increasing-

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16 Kimberle Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics', *University of Chicago Legal Forum*, Volume 1989/Issue 1 (1989), 139–67.
17 Veronica Grondona, Nicole Bidegain Ponte and Corina Rodriguez Enriquez, *Illicit Financial Flows Undermining Gender Justice*. https://dawnnet.org/wp-content/uploads/2017/12/illicit_financial_flows_undermining_gender_justice.pdf [accessed 8 June 2020].
18 People Over Profit, 'Manifesto: Rebuilding the Social Organization of Care', *People over Profit*. https://peopleoverprof.it/resources/campaigns/rebuilding-the-social-organization-of-care?lang=en&id=11655#sign-the-manifesto [accessed 6 February 2021].
19 Global Alliance for Tax Justice and others, 'Framing Feminist Taxation - English - VF Two Page'. https://drive.google.com/file/d/1frcEe-82iunzmEo48jkQWrAIjjZ06NQz/view?usp=sharing&usp=embed_facebook [accessed 10 May 2021].
20 Attiya Waris, *Illicit Financial Flows: Why We Should Claim These Resources for Gender, Economic and Social Justice* (28 July 2017). https://www.awid.org/publications/illicit-financial-flows-why-we-should-claim-these-resources-gender-economic-and-social [accessed 30 September 2019].
21 Veronica Grondona, Nicole Bidegain Ponte and Corina Rodriguez Enriquez, *Illicit Financial Flows Undermining Gender Justice*. https://dawnnet.org/wp-content/uploads/2017/12/illicit_financial_flows_undermining_gender_justice.pdf [accessed 8 June 2020].
22 Tax Justice Network, 'Financial Secrecy Index: Introduction', 2020. https://fsi.taxjustice.net/en/ [accessed 20 June 2021].
23 Ruth Mayne and Jenny Kimmis, *Tax Havens: Releasing the Hidden Billions for Poverty Eradication* (1 June 2000). https://oxfamilibrary.openrepository.com/handle/10546/114611 [accessed 12 May 2020].

ly drew out the nature of the deliberate design of structures and systems that secured post-colonial financial power and constrained human development and rights. Such a "design" is an ongoing threat to the fulfilment of human rights and militates against the state obligation to realise the full range of human rights.

Tax abuse was and is "a very significant part of illicit financial flows…depriving governments, communities and citizens of substantial resources"[24] (International Bar Association, 2013; African Union Commission/United Nations Economic Commission for Africa [AUC/ECA] 2015). Many expert commentators have recognised and researched the important linkages between tax justice and human rights explaining both the human rights legal framework and the political authority needed to support it (Balakrishnan, Heintz & Elson, 2016; Alston & Reisch, eds. 2019).

The influence of tax design on gender equality is profound. The distinction between women taxed as a person within a "household" and not as an individual and legal entity in their own right, has been examined extensively (Grown & Valodia, eds. 2010). So too has the importance of the role of informal work, the social organisation of care and the structural and systemic underpinnings that, over decades, threaten women's rights and substantive gender equality. In-country tax policy responses to fiscal crisis also pinpoint the importance of a deepened assessment of the impact of tax on the human rights of women and girls (Waris, 2013).

Bringing these strands together is a new initiative focusing on normative "rights" and fiscal justice. This valuable contribution by a collaboration of leading civil society experts - 'The Principles of Human Rights in Fiscal Policy' - helps to cement the structural, systemic and political interconnectedness of human rights principles with fiscal justice.[25] It also acts as a powerful indicator of just how far the conversation has moved over the last two decades – as human rights analysis has become increasingly established in tax justice discourse, and vice versa. The 4 Rs of tax justice provide a core framework through which to understand the nature and importance of the inter-relationships at work.

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24 International Bar Association's Human Rights Institute Task Force on Illicit Financial Flows, Poverty and Human Rights, *Tax Abuses, Poverty and Human Rights: A Report of the International Bar Association's Human Rights Institute Task Force on Illicit Financial Flows, Poverty and Human Rights* (London, 2013).
25 Dayana Blanco and others, 'Principles for Human Rights in Fiscal Policy', *CESR*, 2021. https://www.cesr.org/principles-human-rights-fiscal-policy [accessed 20 June 2021].

The 4 Rs of tax justice

> *"There is a pressing need for governments now more than ever to address the inadequacies of measuring well-being through a single economic measure."*
>
> (Philip Alston, UN Special Rapporteur on Extreme Poverty,2014 – 2020)

In this section we use some of the most recent data to underline the importance of sustainable tax revenue for the advancement of economic and social rights. Our collaboration with the GRADE research team illustrates the possible impact of revenue that is foregone on determinants of health and education.[26]

Tax has a determinative impact on both the wellbeing of citizens and societies broadly through support of human development. It raises revenue and acts as a redistributive tool. It is also acknowledged as an important means of redistributing wealth and income to help curb the severest effects of inequality and of realising human rights.

Tax has a pivotal role in representation; building the social contract and supporting government accountability. This role in realising citizens aspirations for fairness, justice and substantive equality is often overlooked. Tax provides the critical underpinning to ensure that states are able to meet their obligations, including through funding public services and curtailing economic and social inequalities. It also enables a robust process of representation within society so that political inequalities can be overcome (for example, to ensure that wealthy elites are subject to effective, progressive taxation).

In 2014 Magdalena Sepulveda, then the United Nation's Special Rapporteur on Extreme Poverty, set out the case for progressive tax regimes as a central tool for alleviating poverty and the concomitant human rights failures experienced by those affected by extreme poverty.[27]

Tax justice is, however, more than a revenue raising tool. It represents a set of activities that analyse and explain the harmful impacts of abusive tax practices. These include the activities themselves including tax evasion, tax avoidance and tax competition, along with many types of tax incentives, subsidies, and tax reliefs.

Sepulveda's report is helpful in reminding us that it is state actors – governments – that are the primary duty bearers in realising the human rights of their citizens (International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 2). Human rights obligations as set out in the ICESCR also have relevance for other actors (Article 5). From this we should interpret that private actors – including multinational companies, and those that facilitate business on their behalf such as accountants, lawyers, and financial institutions – also bear a duty not to "perform any act aimed at the destruction of any of the rights or freedoms recognized" by the Covenant.

Tax justice requires equitable tax policies and laws to help states meet their human rights obligations. Fairness and justice are especially instrumental in reinforcing "the state's accountability to the public and the robustness of democratic institutions".[28] Moreover, tax justice provides a shield against the weakening of states in the face of powerful corporate influence and wealth.

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26 The Government and Revenue Development Estimations project, 'GRADE | University of St Andrews School of Medicine', 2020. https://med.st-andrews.ac.uk/grade/ [accessed 20 June 2021].
27 Magdalena Sepúlveda Carmona, *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona** (22 April 2014). https://undocs.org/A/HRC/26/28 [accessed 3 December 2019].
28 Philip Alston and Nikki Reisch, *Tax, Inequality and Human Rights* (New York, 2019). P.5

Revenue

This section elaborates on the role of tax revenue in relation to human rights and tries to deepen understanding of the impact when revenue is foregone.

One of the most important ways in which a government meets its human rights obligations is to raise sufficient revenue. The most sustainable way of doing so is to broaden and deepen the tax base. International human rights law sets out the obligation for states to maximise domestic resources progressively and through international cooperation while at the same time understanding and assessing the impact of policy design on people. The Maastricht Principles provide a set of normative standards that further define the international cooperation necessary to advance human rights obligations "across" borders and along the depth and breadth of the human value chain.[29]

In addition, General Comment No. 24 on State Obligations under the ICESCR in the Context of Business Activities states that:[30]

"States Parties are required to take the necessary steps to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction (whether they are incorporated under their laws, or have their statutory seat, central administration or principal place of business on the national territory), without infringing the sovereignty or diminishing the obligations of the host States under the Covenant. [...]

Moreover, article 2(1) refers to international assistance and cooperation as a means of fulfilling economic, social and cultural rights. It would be contradictory to such a reference to allow a State to remain passive where an actor domiciled in its territory and/or jurisdiction, and thus under its control or authority, harms the rights of others in other States, or where conduct by such an actor may lead to foreseeable harm being caused."

Raising more revenue is, of course, only part of the answer. A human rights approach demands that the overall incidence of tax is progressive since a tax regime must be able to mitigate the risk of human rights failures for all social groups. Key to this outcome is design that does not narrowly address the needs of one or limited social groups at the expense of other groups, thereby failing in rights obligations and/or exacerbating inequalities.[31]

Additional government revenue provides no guarantee that health and educational needs which drive development will be met. This is a political decision; but the availability of greater government revenue does open the possibility for the state to exercise its obligations to reduce inequalities as a central element of human rights approaches.

Taking a narrow or neutral policy on raising tax revenue can lead to unintended regressive impacts which in turn increase harm and hardship for people already pushed to the margins, discriminated against or simply "uncounted".[32] While state parties have an obligation to cooperate internationally, non-state actors such as international lending institutions push the inevitability of austerity in, for instance, their expectations on specific tax raising policies. At the same time there is an "absence of human rights accountability"[33] in their processes and in application a seeming disregard of their own

29 ETO Consortium, 'Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, and Social Rights', 2013. https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23 [accessed 13 September 2020].
30 ECOSOC United Nations Economic and Social Council, *Committee on Economic, Social and Cultural Rights: General Comment No. 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities* (10 August 2017) Paras 26-27. https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQcIMOuuG4TpS9jwIhCJcXiuZ1yrkMD%2FSj8YF%2BSXo4mYx7Y%2F3L3zvM2zSUbw6ujlnCawQrJx3hlK8Odka6DUwG3Y [accessed 22 June 2021].
31 Urban Institute, 'Nine Charts about Wealth Inequality in America (Updated)', *Urban Institute*, 10/052017. https://apps.urban.org/features/wealth-inequality-charts/ [accessed 22 June 2021].
32 Alex Cobham, *The Uncounted*, 1st edition (UK, 2019).
33 ETO Consortium, 'Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, and

guidance on safeguards for the most marginalised people especially women, indigenous communities, people with disabilities, and black and ethnic minority groups.[34]

The linkages between tax revenue generated and the impact on citizens' well-being, development and human rights are not always clear or direct. The cumulative impact of multiple factors – policies, events, decisions - can deny people their fundamental rights.

Since the global financial crisis of 2007/08 one of the characteristics of many governments' fiscal regimes has been an increasing reliance on reduction of public spending. This squeeze on expenditure over the last decade in many countries has introduced the idea that austerity is the orthodox or "go to" approach to address fiscal deficits.

Governments' obligation to realise human rights within "the maximum of its available resources" (ICESCR Part II Article 2, 1)[35] can be interpreted to mean fiscal capacity available within existing budgets. As such fiscal capacity might reasonably restrict the realisation of rights within the limit of the budget. This is a narrow definition and ignores the politics of fiscal decision making. A broader and more progressive regime will analyse and determine how broad or narrow the tax base can and needs to be to fully realise economic, social and cultural rights.[36] A failure to raise revenue through progressive taxes makes governments negligent and complicit in human rights failures.

The state of tax justice

Over the last two decades, various estimates of the scale of tax abuse have been presented. Different ways of establishing the scale of tax revenue losses can be blurred by use of different definitions of "tax abuse". The Tax Justice Network includes both evasion and avoidance in its definition, an increasingly common position also now adopted in the UN Conceptual Framework for the Statistical Measurement of Illicit Financial Flows.[37]

Estimates differ according to different methodologies.[38] The scale of global annual tax abuse is estimated between US$100 billion and US$500 billion. This is the loss in "tax revenue annually as a result of corporate profit shifting (Cobham & Janský, 2018; Janský & Palanský, 2019a); while between US$6 trillion and US$30 trillion of global private financial wealth is held offshore (Henry, 2012; Zucman, 2013)."[39]

In 2020, the Tax Justice Network (TJN) launched its first edition of the State of Tax Justice Report (SOTJ). The report analysed data published by the Organisation for

Social Rights', 2013. https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23 [accessed 13 September 2020]. P.3.

34 Bretton Woods Project, *The World Bank and Gender Equality: Development Policy Financing*., 2019. https://www.brettonwoodsproject.org/wp-content/uploads/2019/08/The-World-Bank-and-Gender-Equality-DPF-2.pdf [accessed 3 February 2020].

35 United Nations OHCHR, 'International Covenant on Economic, Social and Cultural Rights' (1966). https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx [accessed 12 November 2019].

36 Radhika Balakrishnan, James Heintz and Diane Elson, *Rethinking Economic Policy for Social Justice: The Radical Potential of Human Rights*, Ist (Abingdon, UK, 2016).

37 https://www.unodc.org/documents/data-and-analysis/statistics/IFF/IFF_Conceptual_Framework_for_publication_FINAL_16Oct_print.pdf [accessed 30 June 2021].

38 Alex Cobham and Petr Jansky, *Estimating Illicit Financial Flows: A Critical Guide to the Data, Methodologies and Findings*. (2020). https://global.oup.com/academic/product/estimating-illicit-financial-flows-9780198854418?q=9780198854418&cc=gb&lang=en#

This book represents the state of the art in methodologies for estimating illicit financial flows and is available in open access for free download. It embeds technical econometrics in key political debates and connects it to the Sustainable Development Goals.

39 Alex Cobham and Petr Jansky, 'Global Distribution of Revenue Loss from Corporate Tax Avoidance: Re-Estimation and Country Results', *Journal of International Development*, 30/2 (2018), 206–32. Henry, James S., *The Price of Offshore Revisited: New Estimates for 'Missing' Global Private Wealth, Income, Inequality, and Lost Taxes* (July 2012) http://www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_26072012.pdf [accessed 2 June 2020]. Petr Jansky and Miroslav Palansky, 'Estimating the Scale of Profit Shifting and Tax Revenue Losses Related to Foreign Direct Investment', *International Tax and Public Finance*, 26/5 (2019), 1048–1103.

Economic Co-operation and Development (OECD) – the inter-governmental body chiefly associated with setting global tax rules, which is dominated by the richest countries in the world. The country-by-country data on multinational companies' accounts "reveals how much tax each country in the world loses to international corporate tax abuse and private tax evasion".[40] The scale of the foregone revenue as a result of the abuse is striking as is the monstrous scale of the impact on public service. The SOTJ uses nurses' annual salaries, which directly impacts the right to health, lost each year as its metric:

> *"Countries are losing over $427 billion in tax each year to international corporate tax abuse and private tax evasion. That's nearly 34 million nurses' yearly salaries lost every year, or one nurse's yearly salary every second."*

TJN will publish this report annually using the latest country-by-country reporting data published by the OECD, and data on cross-border holdings of financial accounts.

As pressure grows on more companies to publish their data, and for better aggregate reporting of banking and other financial services, the estimates of scale will become increasingly more precise thereby opening to public scrutiny the level and coverage of abuse that continues to take place. The pressure on countries to require companies to publish accounting data on a "country-by-country" basis – in accordance with where actual economic activity takes place – took a major step forward in 2021 with both the European Union and the US Congress moving towards requiring at least some company level data to be published annually.[41]

Conflict, corruption and climate are often cited as reasons for a state's vulnerability. Economic activity can be both the cause of vulnerability and create the conditions for other multiplying factors, including conflict, corruption and environmental and ecological harm. Illicit financial flows drive vulnerability across the four Rs, including the threat of revenue losses – and this opens an additional channel to assess impact.

The State of Tax Justice 2020 Report analysed the scale of losses inflicted by particular countries on other jurisdictions as a result of the tax abuse they facilitate (see State of Tax Justice 2020 Report pp.17-21).[42] In addition, using the Illicit Financial Flow Tracker,[43] this report is able to ask important human rights questions about the impact these countries' economic activities have within a bilateral or cluster of bilateral relationships. Inward Foreign Direct Investment (FDI) is used as a starting point to explore the financial vulnerability created and the risks to rights outcomes. In total, risks are assessed in inward and outward flows (or stocks) of direct investment, portfolio investment, commodity trade and in banking.

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40 Tax Justice Network, 'Impact of Countries' Tax Policy on Women's Rights - UN CEDAW', *Tax Justice Network*, 2021. https://www.taxjustice.net/collections/impact-of-countries-tax-policy-on-womens-rights-submissions-to-un-committee-on-the-elimination-of-discrimination-against-women/ [accessed 22 April 2021].
41 Tove Ryding, 'Eurodad Reaction to EU Ministers' Discussion about Public Country by Country Reporting Today', *Eurodad*. https://www.eurodad.org/eurodad_reaction_to_eu_ministers_discussion_about_public_country_by_country_reporting_today [accessed 8 April 2021]. https://www.eurodad.org/eu_fails_to_introduce_real_public_country_by_country_reporting; https://thefactcoalition.org/house-takes-historic-step-in-advancing-corporate-tax-transparency/.
42 Alex Cobham and others, *The State of Tax Justice 2020* (20 November 2020). https://taxjustice.net/reports/the-state-of-tax-justice-2020/ [accessed 14 January 2021].
43 Tax Justice Network, 'Illicit Financial Flows Vulnerability Tracker' (2020). https://taxjustice.net/indexes-tools/ [accessed 9 January 2021].

Inward Foreign Direct Investment:

Foreign corporations and individuals set up companies in countries to carry out their business. This is called inward foreign direct investment (FDI). This might be, for example, in "livestock, telecommunications, and remittances".[44] FDI can help promote growth, but if these investments come from secrecy jurisdictions, they are unlikely to produce much growth in the "invested" country. In Somalia for example 92% of its vulnerability in inward direct investment is attributable to Mauritius. Tax revenue owed from the profits of those companies is minimised or avoided completely by the investors because, as Mauritius resident companies, tax treaty arrangements may enable them to decrease their tax to a low or zero effective rate. This then equates to revenue lost to the Somalia revenue budget.

Redistribution

"If you have more, you should pay more." (Professor Dorothy A. Brown, 2021).[45]

The report now looks at how inequalities and rights failures can be addressed using the redistributive role of tax and illustrates the importance of a systemic approach which assesses impact across the income distribution.

Redistribution, the second of the 4 Rs of taxation, is critical in the fight to tackle growing inequalities and for the realisation of human rights.[46] The redistributive qualities of tax can be progressive and far reaching. This section examines some of the key ways in which tax policy can alleviate or exacerbate inequalities.

Redistribution of revenue represents a set of tax policy interventions that can curb and reverse the damage created by inequalities. The redistribution of wealth and income can address individual and collective poverty, mental and physical distress; it also supports social mobility through the provision of public health and education services. Research has also shown that addressing these inequalities can build trust and security.[47]

Extreme levels of wealth held at the top of the social distribution have generated moral and political concern and condemnation from global finance leaders[48] to Nobel Laureates. The Covid-19 pandemic has brought renewed censure at the scale of wealth hoarded by the "one percent", especially at a time when many have suffered in multiple ways. Wealthy individuals and corporates, and their enablers, have seemingly flourished while "the many" have found themselves facing extreme hardships, discrimination and a weakening of their human rights.

The State of Tax Justice 2020 Report estimates that "people who move their wealth offshore short-change their governments out of $182 billion in tax every year".[49] The scale of such abuse, increasingly open to public scrutiny, flies in the face of the core equality and development theme of the Sustainable Development Goals (SDGs). Moreover, it has given rise to credible policy solutions which focus on wealth.

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44 International Trade Centre, 'Somalia - Country Brief', International Trade Centre, 2014. https://www.intracen.org/country/somalia/ [accessed 8 April 2021].
45 Dorothy A Brown, *The Whiteness of Wealth: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS–AND HOW WE CAN FIX IT*, 1st edn (New York, 2021).
46 Facundo Alvaredo and others, 2018. *World Inequality Report* (2018). https://wir2018.wid.world/ [accessed 2 December 2020].
47 The Equality Trust, 'About Inequality: Impacts', *The Equality Trust*, 2021. https://www.equalitytrust.org.uk/about-inequality/impacts [accessed 20 June 2021].
48 Christine Lagarde, 'Christine Lagarde: Global Economic Growth Can Fight Inequality', 23 January 2018. https://www.ft.com/content/19ed6640-f9ec-11e7-9bfc-052cbba03425 [accessed 8 April 2021].
49 Cobham and others, *The State of Tax Justice 2020*.

Progressive taxation

Personal Income Tax (PIT)

The Covid-19 pandemic has been significant in exposing the damage and injustice of inequalities. This is both evident within many countries and between countries especially between those categorised as low-income and those of high-income. This humanitarian health crisis has exposed vulnerabilities created by pre-existing regressive policy regimes and by weaknesses of legal and regulatory financial systems.

Illustrative of regimes that have failed people living at the low end of the income distribution is Brazil, where the current administrative regime used tax policy to compound wealth and income inequalities.

In 2020, the UN Committee on the Elimination of Discrimination against Women (CEDAW) Committee began to undertake their periodic review on Brazil. A collaborative shadow report, commissioned by CEDAW and prepared by Instituto Justiça Fiscal and the Tax Justice Network, analysed the relationship between the economic and the social hardships experienced by women, especially for black, brown and indigenous women within the Brazilian tax policy regime.[50]

The shadow report sets out how, in the case of women - many of whom are domestic workers and during Covid-19 highly exposed to the virus and/or burdened by taking on additional care duties - social protection in the form of cash transfers or "Auxílio Emergencial" have been inadequate to support their income needs. Although social protection is a constitutional right in Brazil under Article 194, the so-called "New Fiscal Regime" which was approved in December of 2016 through Constitutional Amendment 95/2016 sets a regressive budget ceiling on social protection. This arbitrary budget limit threatens the economic and social rights of women and girls.

In Brazil, as the IJF-TJN CEDAW shadow report explains, the distributive effect of tax policy proves to be grossly unfair. It targets those most marginalised with the most regressive taxes and has established an environment that allows those at the higher end of the income distribution to compound their wealth. In addition to top income earners being taxed at only 27.5%, the report points out the benefits, especially for men, that exist within income tax exemptions on profits and dividends.[51]

A normative framework which advances economic and social rights must seek to levy taxes that target personal income and wealth. In doing so these direct taxes serve to broaden a country's tax base, and help effect a principle of affordability. Tax reforms and tax design require a systemic approach and therefore reform of direct taxes such as income tax and wealth taxes will not in themselves remove discriminatory impacts and relieve hardships on the poorest. Indirect taxes also have to take on a progressive design.

Corporate Income Tax (CIT)

The revenue section of this report discusses in some detail the impact of corporate tax abuse. The level of abuse described underlines both the importance of CIT as the "backstop" in any tax regime, but also the challenge of collecting CIT. More progressive (higher CIT) rates must therefore work hand in hand with reform of the global tax rules, so that the access to increased income and wealth does not narrowly stop at "owners" and shareholders, but is secured by governments spending budgets, creating the opportunity to strengthen universal public services such as health and education.

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50 Grazielle David and others, *Submission to the Committee on the Elimination of Discrimination against Women. 79 (Virtual PSWG) Pre-Sessional Working Group. Brazil, CEDAW Collection* (9 November 2020). https://taxjustice.net/reports/brazil-submission-to-committee-on-the-elimination-of-discrimination-against-women/ [accessed 20 June 2021].

51 Grazielle David and others, *Submission to the Committee on the Elimination of Discrimination against Women. 79 (Virtual PSWG) Pre-Sessional Working Group. Brazil, CEDAW Collection* (9 November 2020). https://taxjustice.net/reports/brazil-submission-to-committee-on-the-elimination-of-discrimination-against-women/ [accessed 20 June 2021]. P.7.

Indirect tax

Lower-income households consume, of necessity, a larger share of their income than do higher-income households. Broad-based consumption taxes will therefore likely claim a larger share of the incomes of lower-income households, worsening the overall distribution. This will worsen not only vertical inequalities (inequality between individuals), but also horizontal inequalities between groups. Intersectional inequalities mean that those who are minoritised in multiple ways will be hardest hit.

In Brazil, the poorest quartile of society is disproportionately occupied by black women,[52] and it is reasonable to assume that as minoritised women, as care providers and low or no-income earners, they also take on a disproportionate role in purchasing daily necessities. The CEDAW report highlighted above examines the impact on women of consumption taxes. It explains that in 2018 "indirect taxes (on goods and services) accounted for 44.7% of the tax burden, while direct taxes (on income and property) represented only 26.2% of the tax burden (Federal Income, 2020a)".[53]

A different example from Viet Nam also explains the importance of approaching the design of the tax system holistically. While the personal income tax system seems on face value progressive in the way it levies a graduated tax rate, the value added tax is the same regardless of income and wealth.[54]

Consumption taxes such as VAT can be part of tax and transfer systems that are progressive overall, but this cannot be assumed – in general, or with respect to intersectional inequalities in particular. A partial approach to redistribution and the design and impact assessment of the tax regime is a significant barrier to advancing human rights.

Alongside this is the need to establish a comprehensive suite of measures to curb financial secrecy and identify the real beneficiaries of wealth and to ensure countries that have generated economic surpluses reap the benefits of fair taxation rather than it accruing to corporate tax havens and conduits. The levels of financial secrecy which operate within secrecy jurisdictions[55] hamper the ability of regulatory and enforcement authorities to track, monitor and repatriate hidden wealth. The scale of corporate and individual wealth lost to illicit financial flows (IFFs) dangerously impacts on the ability of governments to meet their human rights obligations. High executive rewards which allow for questionable hoarding of personal wealth and corporate use of secrecy jurisdictions combine to make the free-market business models unacceptable and incongruous with a society that is obliged to provide for citizens' fundamental rights (Sikka, 2021). Moreover, the depth of financial secrecy illuminated by the Financial Secrecy Index and more broadly by investigative journalists is not compatible with the human rights procedural principle of transparency and effective democratic governance.

To safeguard citizens' interests and rights, governments need to work globally and inter-governmentally to adopt progressive financial transparency measures. At the national level, increasingly recognised standards and domestic laws are being adopted to curb offshoring and illicit finance.[56]

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52 Ibid. P.7.
53 Grazielle David and others, *Submission to the Committee on the Elimination of Discrimination against Women. 79 (Virtual PSWG) Pre-Sessional Working Group. Brazil, CEDAW Collection* (9 November 2020). https://taxjustice.net/reports/brazil-submission-to-committee-on-the-elimination-of-discrimination-against-women/ [accessed 20 June 2021].
54 United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), *Gender Equality and Taxation in Viet Nam: Issues and Recommendations*. (2016). https://vietnam.un.org/sites/default/files/2019-08/gender%20and%20tax%20_FINAL%20_print_EN.pdf P.47.
55 Tax Justice Network, 'Financial Secrecy Index: Introduction', 2020. https://fsi.taxjustice.net/en/ [accessed 20 June 2021].
56 Ghana Business News, 'Ghana Introduces Beneficial Ownership Regime for Company Registration', *Ghana Business News*, 2021. https://www.ghanabusinessnews.com/2021/03/30/ghana-introduces-beneficial-ownership-regime-for-company-registration/ [accessed 31 March 2021].

The inequities of wealth and income distribution are defined by historic colonial legacies and current political ideologies. The economic, social and cultural policy choices which arise as a result compound the failure to raise domestic revenue while also driving down incomes and engendering asymmetric distribution of resources – via global tax rules and domestic tax policy – to drive "rights" failures, militate against human development and hardwire poverty and discrimination.

By definition, tax justice cannot be limited to narrow reforms of income taxes (personal and corporate) without, for instance, understanding the impact on individuals and social groups whose income is at the lowest levels and earned informally. Similarly, attention to other actual or material charges or "taxes" - to which low-income workers or zero income earners can be subject - is paramount in redistribution. Often operating outside the formal sector, or in the case of many women – black, brown, and indigenous women, for example - securing daily necessities with little or no independent income provokes a "crises" of rights failures. Social protections in the form of welfare – tax credits and benefits - need to be established by governments to mitigate unintended consequences.

The importance of this was given new impetus when the Millennium Development Goals were succeeded in 2015 by the Sustainable Development Goals. At the same time international financial institutions "imposed" on domestic policies a new orthodoxy of austerity, following the financial crisis of 2008 "austerity". The injustice in this hardwired approach disadvantaged low-income countries and set a course for entrenching inequalities

Feminist critiques have done much to explain the design faults in lending institutions' "guidance" and the regressive tax policies which have developed from that. Ostensibly gender neutral, tax policies, in particular but not exclusively, consumption taxes, fail to recognise the social and economic role women and girls have in society and to sufficiently assess the impact of fiscal policies.[57] A feminist approach to tax justice addresses the risks of further aggravating discriminatory impacts by providing important principles of intersectionality in design and by challenging orthodox models that continue to fail those most marginalised.[58] Moreover, a feminist tax justice approach serves to advance equalities by drawing upon a blueprint that does not ignore structural inequalities and addresses systemic risks.

> *"Many women face particular barriers because of various diverse factors in addition to their gender. Often these diverse factors isolate or marginalize such women. They are, inter alia, denied their human rights, they lack access or are denied access to education and vocational training, employment, housing and economic self-sufficiency and they are excluded from decision-making processes. Such women are often denied the opportunity to contribute to their communities as part of the mainstream". (The Beijing Declaration and Platform for Action. Para 31).*[59]

There are many examples of tax reforms that have directly or indirectly compounded inequalities by failing to recognise the discriminatory impact of policy change. In South Africa in the late 1990s low paid garment workers, many of whom were women, were adversely affected by a change in trade import tax. The lowering of taxes saw an influx of foreign imports with the consequence of women workers being laid off and losing income with little or no social protection to fall back on.[60] More recently in 2017 the United States introduced policy reforms to favour high income earners and enable the

57 JP Bohoslavsky, *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: Impact of Economic Reforms and Austerity Measures on Women's Human Rights* (2018). https://www.undocs.org/A/73/179 [accessed 20 March 2021].

58 Global Alliance for Tax Justice and others, 'Framing Feminist Taxation - English - VF Two Page'. https://drive.google.com/file/d/1frcEe-82iunzmEo48jkQWrAIjjZ06NQz/view?usp=sharing&usp=embed_facebook [accessed 10 May 2021].

59 The Fourth World Conference on Women UN Women, 'Beijing Declaration and Platform for Action', (1995). https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf [accessed 3 January 2021].

60 International Budget Partnership, *Realizing Human Rights Through Government Budgets. United Nations*. (2017). P.66

concentration of wealth whereas much evidence pointed to extremes of inequality and a need for greater redistribution of income and wealth through progressive tax.[61,62]

The "tax consensus" that has for decades guided the policy recommendations made to lower-income countries – by donor countries and international financial institutions – has been widely critiqued for its regressive impact, but remains dominant. Simplistic and ideological, the "consensus" prioritises indirect taxes on consumption at the expense of progressive direct taxes on income and wealth, and fiscal "conservatism" over public spending. In doing so it exacerbates inequalities across the board. Indirect taxes can form a part of an overall progressive system, with powerful progressive spending - through high-quality, universal public services and universal transfers, for example. But far too often, regressive taxes and budget "constraints" due to the failure of direct taxes are used to justify a further failure to deliver progressive spending.63 The human rights damage caused by the tax consensus has gone hand in hand with the failure to challenge the distorted nature of our economic and financial globalisation.

Secrecy jurisdictions, a threat to progressive taxation

Financial secrecy jurisdictions offer an escape from progressive taxation in the countries where real incomes and profits arise, and underpin the illicit financial flows which define the post-colonial era of globalisation.[64] Free flowing finance, casino capitalism, light-touch regulation and the fierce protection of secrecy have served to enrich a small minority of individuals and consolidate the wealth of corporations. At the same time this politically protected architecture, enabled by governments, intergovernmental institutions and others has, and continues, to thwart the realisation of the full range of human rights including in education, health, water and sanitation, economic opportunity, and effective justice and governance institutions.

For more than a decade the Tax Justice Network has been analysing the policies, laws, regulation and enforcement which characterise the global financial architecture. Using objectively verifiable measures, the twin indexes – the Financial Secrecy Index and the Corporate Tax Haven Index – evaluate the insidious role of 133 and 70 jurisdictions respectively which facilitate various illicit financial flows including corporate tax abuse. All manner of rationalisations are put forward to justify the enduring and nefarious power and influence that extends out of offshoring and tax havenry.

Fundamentally the actions of these countries undermine many of the same countries' commitments to the Sustainable Development Goals and to ratification of international human rights treaties. The consequence of this unfettered illicit finance moving into or through conduit jurisdictions comes at the expense of citizens' wellbeing and human development. Not only does it rob countries of their rightful revenues, it also neuters the ability of tax systems to deliver redistribution – because it is specifically the progressive, direct taxes on income, profits, capital gains and wealth that are undermined. In addition, the associated hiding of assets and income streams results in a downward bias to official statistics on inequality, weakening the scope for public and political support for redistributive measures because the true data is uncounted.

Political power remains a major obstacle to international progress. In contrast to Tax Justice Network's indexes based on objectively verifiable criteria, the EU "blacklist" of non-cooperative jurisdictions fails to identify major threat jurisdictions including the United States and many EU member countries; and the OECD's assessment of

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61 Alston, P (2018), *Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America* [Online] United Nations. https://undocs.org/A/HRC/38/33/Add.1 [Accessed 20 June 2020]. Para.5.
62 ibid. Para. 6
63 Alex Cobham, Fariya Mohiuddin and Liz Nelson, forthcoming, 'Global tax justice and human rights', in Gillian MacNaughton, Diane F. Frey and Catherine Porter, 2021, *Human Rights and Economic Inequalities*, Cambridge: Cambridge University Press.
64 John Christensen and Michael Oswald, *The Spider's Web: Britain's Second Empire* (2017). https://spiderswebfilm.com/ [accessed 23 November 2020].

"harmful" jurisdictions is even more limited. While OECD countries and their dependencies are "responsible for facilitating 68.1 per cent of observable tax losses through cross-border corporate tax abuse... countries graded "harmful" by the OECD account for just 1 per cent. Countries currently under review accounted for another 1 per cent".[65] This means that the tax loss between countries is more or less a one-way flow: from global south to global north; from non-OECD jurisdictions to OECD jurisdictions; from lower-income countries to high income countries.

The global community's continued failure effectively to address this regressive redistribution of wealth and income between countries, or its pernicious effect on the ability to redistribute progressively within countries, shackles lower-income states especially and predetermines long-term risks for human rights and human development.

Repricing

Here the report begins to look at how tax should take a holistic approach to change behaviours for the public "good". It also briefly examines the problems of taking a too narrow or one-dimensional approach.

The tax system is a mechanism for *repricing* the social costs and collateral "bads" of private interests. A well-functioning progressive tax system can be an important contributor to sustainable development. It can do this by changing the behaviour of the some of the highest users of carbon - wealthy individuals and corporations. Well-known examples of repricing include sugar taxes, tobacco taxes and alcohol taxes.66 These taxes are targeted because of increased health risks of non-communicable diseases (e.g. heart disease, strokes) in women, compared with men, associated with higher blood pressure, smoking and type I and II diabetes.[67] The risks are also highlighted as greater in low-income countries.[68]

There is widespread agreement that human rights norms apply to environmental issues. This was set out clearly in 2018 in a report for the Human Rights Council Resolution 37/8 by the UN Special Rapporteur on Human Rights and the Environment.[69] Progressive tax provides a means to "price" and reprice not just high carbon emissions, but also to target the heaviest emitters of carbon who use their considerable economic power to distort environmental safeguards in their favour.

Tax carbon subsidies, for example, represent an attack on economic and social rights. It is clear that high income countries (and their multinational companies) have to address emissions, and that the most pressing changes and gains must start with the companies that contribute the most.[70] Large corporations are high carbon users. They need to reprogramme their business models and recognise that the failure to do so negatively impacts human rights. Limiting the damage of carbon emissions is both urgent and complex, but for the sake of environmental and ecological sustainability business as usual is no longer an option.

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65 Mark Bou Mansour, 'Tax Haven Ranking Shows Countries Setting Global Tax Rules Do Most to Help Firms Bend Them', *Tax Justice Network*, 2021. https://www.taxjustice.net/press/tax-haven-ranking-shows-countries-setting-global-tax-rules-do-most-to-help-firms-bend-them/ [accessed 13 March 2021].
66 World Health Organization (WHO). 2017."Taxes on Sugary Drinks: Why Do It?" Geneva: World Health Organisation https://apps.who.int/iris/bitstream/handle/10665/260253/WHO-NMH-PND-16.5Rev.1-eng.pdf;jsessionid=7BA1C4E1D74F23271F83D62747857D4E sequence=1. [Accessed 01-05-2020]
67 R Norton and others, *Women's Health: A New Global Agenda* (Oxford Martin School, University of Oxford, 2016).
68 Louis W Niessen and others, 'Tackling Socioeconomic Inequalities and Non-Communicable Diseases in Low-Income and Middle-Income Countries under the Sustainable Development Agenda', *The Lancet*, THE LANCET TASKFORCE ON NCDS AND ECONOMICS, 391/10134 (2018), P2036-2046.
69 John H Knox, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (2018). https://undocs.org/A/HRC/37/59 [accessed 3 June 2021].
70 Matthew Taylor and Jonathan Watts, 'Revealed: The 20 Firms behind a Third of All Carbon Emissions', *The Guardian Online*, 9 October 2019, Online edition, section News. https://www.theguardian.com/environment/2019/oct/09/revealed-20-firms-third-carbon-emissions [accessed 4 March 2021].

There are no longer legitimate arguments against the claim that people and planet are deep in climate crisis. The immediate issues addressed here include what can be done to tackle the climate crisis and what role can tax justice, in repricing goods and services, play to reverse harms and restore the economic, social and cultural rights of people threatened by environmental and ecological destruction and degradation.

Mitigation measures for the climate crisis are outlined both in the UN's 2030 Agenda for Sustainable Development and in The Paris Agreement of 2016. The threats to life, food, water, and livelihoods are extreme and already underway, especially in small island developing states.[71] The policy framework to address the climate crisis is based on a strategy of net zero emissions. This in turn is premised on a commitment to Nationally Determined Contributions (NDCs). While governments as key duty bearers must work to deliver the NDCs, other significant actors, including multinational companies, have a catalytic role in determining the pace and nature of action to tackle the climate crisis

> *"The rights-holders and their entitlements must be identified as well as the corresponding duty-bearers and their obligations in order to find ways to strengthen the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations."*[72]

In a long-running and competitive race to the bottom, the energy industry has and is being subsidised through government tax breaks to produce more energy. While such incentivisation was once rationalised as a necessity to increase domestic energy production, the monopolistic nature of the industry has since made such arguments hollow. Many governments continue to appease the fossil fuel industry supporting it with tax subsidies. In 2018 governments reportedly spent $400 billion subsidising the fossil fuel industry.[73]

The fossil fuel industry needs to be repriced to mitigate the damage of carbon emissions and to generate revenue for a just transition that creates green jobs, re-designs infrastructure, and protects people and planet. The tax architecture that underpins it needs to be reprogrammed. While the subsidy model continues to drain tax revenue away from schools, hospitals, public transport, effective government administration and justice systems and much more by way of public services and social protection, direct taxes are turned aside. This double rechannelling, or abuse, of tax revenue represents the failure of governments to meet their NDC commitments and their human rights obligations.

The international human rights framework makes clear that, in the case of climate change, the "preventable violation of one right [to a healthy environment] can have far-reaching consequences for other, and in some instances, all human rights" - the rights to water and sanitation, the right to health, to development, to life and so on. [74,75,76]

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71 UN DESA (2020) World Social Report 2020. United Nations https://www.un.org/development/desa/dspd/world-social-report/2020-2.html [Accessed 05-03-21]
72 United Nations OHCHR, 'The Impacts of Climate Change on the Effective Enjoyment of Human Rights', *What Are Human Rights?*, 2021. https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/AboutClimateChangeHR.aspx [accessed 6 May 2021].
73 L Merril, *Fossil Fuel Subsidies and Taxation: Two Sides of the Same Coin in 'Financing Climate Justice* (2020). https://www.taxjustice.net/wp-content/uploads/2020/11/TJF_2020_11-2_V3.pdf [accessed 20 December 2020].
74 OHCHR, *Understanding Human Rights and Climate Change* (2015). https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf [accessed 7 January 2021].
75 International Federation of Human Rights, 'Ecuador: Waorani Community Sues Fossil Fuel Company for Contributing to Climate Change', *Press Release*, 2020. https://www.fidh.org/en/region/americas/ecuador/ecuador-waorani-community-sues-fossil-fuel-company-for-contributing [accessed 7 January 2021].
76 Fiona Harvey, 'State-Owned Fossil Fuel Firms' Plan to Invest $1.9tn Could Destroy Climate Hopes', *The Guardian Online*, 9 February 2021, Online edition. https://www.theguardian.com/environment/2021/feb/09/state-owned-fossil-fuel-firms-planning-19tn-investments#climate [accessed 9 February 2021].

Representation

> *"First public action includes not only what is done for the public by the state, but also what is done by the public for itself. It includes, for example, what people can do by demanding remedial action and through making governments accountable. The relevant legislation includes not only the protection of certain basic provisions of public support and social security, but also…guaranteeing of democratic rights…unfettered public criticism. They promote the political incentive for governments to be responsive, caring and prompt."*[77] (Amartya Sen, 1990).

In the fourth of the 4 Rs of tax we turn to understanding its role in strengthening the social contract and representation.

The realisation of human rights is dependent upon a high level of accountability and integrity. Tax is indispensable in ensuring that the state truly represents the needs, rights and aspirations of all its citizens. The greater the proportion of tax as part of total government revenue, the stronger the relationship between citizen and the state. This in turn increases the effectiveness of spending.

Research has shown that tax revenue, rather than revenue generated from extractive, natural or other resources, nurtures a "positive relationship between tax reliance and democracy and [there is] a statistically significant negative relationship between total non-tax revenue and democracy".[78] This contrasts with the destructive impact of tax abuse on public services and welfare systems which wealthy elites and corporations create.

Financial secrecy offered by a global network of jurisdictions and their Dependent territories provides a haven for unearned income, untaxed or lightly taxed wealth, and for criminal proceeds to escape regulatory authorities. Citizen taxpayers, meanwhile, by contributing their "earned income"[79] affirm trust in government and support the possibility of realising the full range of human rights obligations.

Moreover, because tax is imposed on citizens by their governments a greater duty is developed to meet the needs and wishes of citizens and therefore to spend effectively and for the public good. This contrasts with the relationship shareholders have with multinational corporations and between philanthropic foundations and citizens of a country receiving support. Here decisions can be autocratic and data opaque.[80] In the case of philanthropy, provision of services is something of a "gift" that is often accompanied by little or no accountability. This relationship wrongly depoliticises "highly political issues", neither providing systemic or transformative change for human development or the realisation of rights.[81]

Tax can and should ensure that governments establish channels and institutions that are responsible for the delivery of rights, wishes and aspirations. These include schools, health systems, and legal and regulatory institutions. At the same time raising and redistributing of revenue through progressive tax policies and financial transparency laws acts as a restraint and reins in the political and economic power of wealthy corporates and individuals.[82]

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77 Amartya Sen, 'Public Action to Remedy Hunger', *Interdisciplinary Science Reviews*, 16:4, 2013, 324–36.
78 Wilson Pritchard, Paola Salardi and Paul Segal, 'Taxation, Non-Tax Revenue and Democracy: New Evidence Using New Cross-Country Data', *Science Direct*, Volume 109 (2018), Pages 295-312.
79 Tax as 'earned revenue': "key analytical distinction for our purposes is between what Moore (1998) terms earned income, which is collected from citizens and expected to prompt bargaining and accountability, and unearned income, which is collected from narrow and relatively captive sources, and is expected to make governments more autonomous from citizens. Broadly speaking, most domestic taxes can be thought of as earned revenue, while revenue collected from natural resource operations are more akin to unearned revenue". (Pritchard et al p 11)
80 Cobham, Alex, Petr Janský and Markus Meinzer. 2018. "A Half-Century of Resistance to Corporate Disclosure." *Transnational Corporations* 25(3) pt.2: 1-26. https://unctad.org/en/PublicationChapters/diaeia2018d5a2_en.pdf.
81 A Voiculescu and H Yanacopulos (eds), *The Business of Human Rights: An Evolving Agenda for Corporate Responsibility* (2011). P.135.
82 D Acemoglu and J.A Robinson *Why Nations Fail: The Origins of Power, Prosperity and Poverty* (2012).

Tax abuse by multinationals and wealthy individuals adds to the denigration of the social contract. Tax abuse facilitated through a range of legal vehicles – trusts, corporations, foundations and partnerships[83] - contributes significantly to this weakening of state.[84] Evidence confirms too that in countries which show "increases in non-tax revenue [there is] a negative impact on democracy".[85]

The recent report of the UN High-Level Panel on Financial Accountability, Transparency and Integrity (FACTI Panel) set a milestone in assessment of the fault lines in tax and fiscal transparency that are militating against equality and human rights set out in the 2030 Agenda for Sustainable Development. This report, based on the work of a global panel of experts in fiscal systems and corruption, argues that "abusive tax practices arise out of fiscal systems characterised by weakness of social contracts, incentives that divert taxpayers (both corporate and individual) away from society's goals, and political systems that are vulnerable to capture by powerful interest groups."[86] (FACTI panel p.8).

The FACTI Commissioners have set out in their opening comments the importance of the development of *trust* between citizens and state and that the opportunities to strengthen, develop and rekindle the social *contract* happens in the accountability, transparency and integrity of financial systems, including of tax: "Trust will grow as States are better able to fulfil their human rights obligations".[87]

The steps necessary to achieve a progressive tax regime[88] and the realisation of greater equality and human rights may need to include both design of new policies and reform or cessation of existing "regressive" polices.[89] It also falls to tax revenue to build the capacity of administrations to monitor the effectiveness of policy. Here the narrative, especially for low-income countries, loops full circle to the first "R" and the challenge of curbing the loss of revenue.

83 Andres Knobel, Trusts: Weapons of Mass Injustice. Tax Justice Network (2017). https://www.taxjustice.net/wp-content/uploads/2020/11/Trusts-Weapons-of-Mass-Injustice-Final-12-FEB-2017.pdf [accessed 21 June 2020].
84 Tax Justice Network, 'Corporate Tax Haven Index 2021', 2021 https://www.corporatetaxhavenindex.org/en/ [accessed 15 March 2021].
85 Wilson Pritchard, Paola Salardi and Paul Segal, 'Taxation, Non-Tax Revenue and Democracy: New Evidence Using New Cross-Country Data', *Science Direct*, Volume 109 (2018), Pages 295-312.
86 FACTI Panel, *Financial Integrity for Sustainable Development: Report of the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda* (2021). https://www.factipanel.org/ [accessed 1 March 2021].P.8.
87 FACTI Panel, *Financial Integrity for Sustainable Development: Report of the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda* (2021). https://www.factipanel.org/ [accessed 1 March 2021]. Foreword
88 In 2020, amid the COVID-19 pandemic, efforts to standardise the terms of corporate bailouts illustrates a sharpened political 'ear' listening to public interest. Many governments moved swiftly to curb unconditional corporate bailouts, although few if any implemented standards reflected in a five step test – reflecting a progressive tax and human rights approach.
89 Radhika Balakrishnan, James Heintz and Diane Elson, *Rethinking Economic Policy for Social Justice: The Radical Potential of Human Rights*, Ist (Abingdon, UK, 2016). P.62

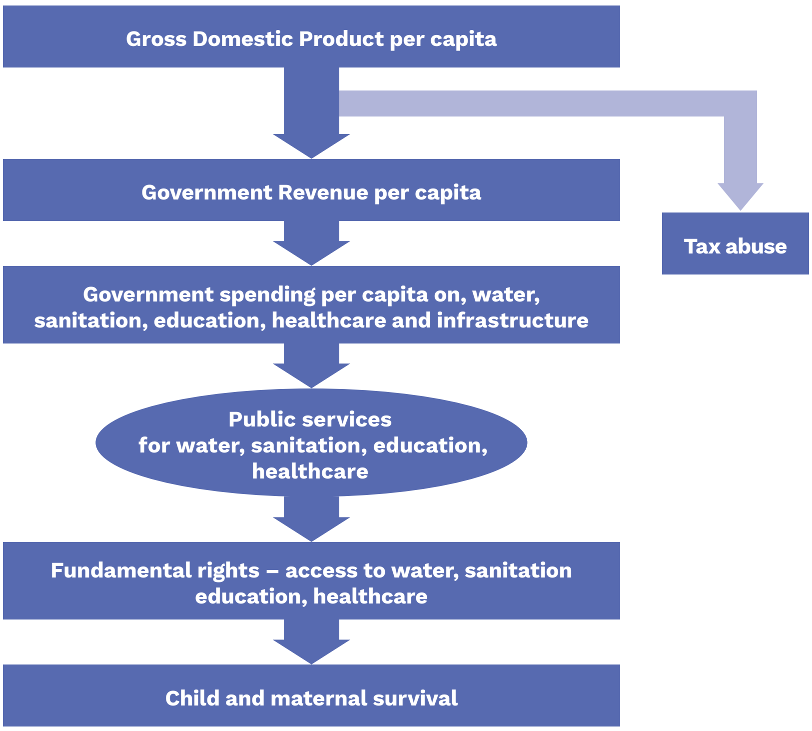
Evaluating the human rights impacts of tax abuse

The 4Rs provides a framework through which to assess the value of effective taxation, and the costs of tax injustice. It is not possible to sum up the comprehensive damage done to human rights by the failure to deliver on the 4 Rs. Through careful assessment of the relationships between tax and a set of human rights outcomes, however, it is possible to provide some partial evaluations of the damage done through revenue losses in particular, and to certain key elements of basic human development.

Recent research from the Government Revenue and Development Estimations project (GRADE) has modelled the relationship between government revenue and child and maternal mortality.[90] The model was extended to include the determinants of health (fundamental economic and social rights) and governance indicators. The outcomes have maternal and child survival, access to drinking water, access to sanitation and children's time in education.

The GRADE does not assume that additional revenue will be allocated to any given sector but more realistically assumes that spending will be the same as in recent years. Thus, the estimates provide a realistic picture of what would happen if government revenue were increased for any country. The relationship is nonlinear and additional revenue has a much more substantial impact on lower-income countries.[91] The research underlines the critical role that tax revenue plays in countries' ability to provide public services and thus the realisation of fundamental economic and social rights and, therefore, the right to health.

Figure 1. A simple framework to illustrate the pathway between tax abuse and fundamental rights.



90 Stephen Hall and others, 'Government Revenue and Child and Maternal Mortality', *Open Economies Review*, 2020.
91 Stephen Hall and others, 'Government Revenue and Child and Maternal Mortality', *Open Economies Review*, 2020. Stephen Hall and others, 'The Government Revenue and Development Estimations (GRADE)', *University of St Andrews School of Medicine*, 2021. https://med.st-andrews.ac.uk/grade/ [accessed 21 June 2021].

Right to health

The International Covenant on Economic, Social and Cultural Rights (ICESCR) requires that the state takes steps to "achieve progressively" the full realisation of rights and "to the maximum of its available resources...including particularly the adoption of legislative measures".[92] Progressive interpretation of this would include adopting new legislation as well as amending existing legislation that would otherwise lead to rights failures and discrimination. At the same time human rights law is explicit on the right to health,[93,94,95] setting out the state obligation to the right to health, to survival and development. The World Health Organisation states that the right to health includes the underlying determinants of health, and critical determinants of health include water, sanitation and education.[96]

Children's time spent in education is the other key determinant of under-five mortality and thus included in the GRADE model. For this reason, it is described, along with the right to health, as a "multiplier" which "when fully realized, enables right holders to realise or exercise a wide range of other civil, political, economic, social and cultural rights".[97] The right to education is provided for in the Universal Declaration of Human Rights (UDHR), article 26 and further set out in the ICESCR, article 13. Article 13 (2) defines the State's obligations:

"(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Secondary education...shall be made generally available and accessible to all;

(d) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education..."[98]

The right to education requires that education facilities are "available, accessible, affordable and appropriate for both sexes" as set out by the Committee for Economic, Social and Cultural Rights.[99] These are reinforced in the Abidjan Principles.[100] The right to education, foundational to human development, is often "weaponised" or is a casualty of weak, pre-existing policy.[101] This has particularly been the case

92 UN OHRHC, 'International Covenant on Economic, Social and Cultural Rights' (1966). https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx [accessed 12 December 2020]. Article 2.1.
93 Committee on the elimination of discrimination against women, 'General Recommendation No. 24' (1999). https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm [accessed 2 February 2021].
94 UN OHRHC, 'International Covenant on Economic, Social and Cultural Rights'. Article 12
95 UN OHRHC, 'Convention on the Rights of the Child' (1989). https://www.ohchr.org/en/professionalinterest/pages/crc.aspx [accessed 12 December 2020]. Articles 6 and 24.
96 World Health Organisation, 'Human Rights and Health', *World Health Organisation*, 2017. https://www.who.int/en/news-room/fact-sheets/detail/human-rights-and-health [accessed 22 June 2021].
97 Christine Chinkin, *Women's Economic and Social Rights: The Right to Education*, Women's Human Rights (Centre for the Study of Human Rights, 29 September 2016), p.6.
98 United Nations, OHCHR | *International Covenant on Economic, Social and Cultural Rights*, 1966. https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx [accessed 8 April 2021].
99 Chinkin, *Women's Economic and Social Rights: The Right to Education*, P.30.
100 Abidjan Principles, 'The Abidjan Principles', 2019. https://www.abidjanprinciples.org [accessed 8 April 2021].
101 Chinkin, *Women's Economic and Social Rights: The Right to Education*, p.1.

in low-income countries thrown into deeper economic crisis as a result of the Covid-19 pandemic.[102] Girls' education is a particular casualty of these externalities.

Right to education

About half the reduction in child mortality over the last forty years has been attributed to improvements in female education. For every year's increase in female education, child mortality is reduced by almost 10%.[103] The humanitarian tragedy of children not having their right to education is the subject of an important civil society collaboration - the TaxEd Alliance – that is beginning to track, quantify and illustrate the impact of lost public education and importantly the role of tax in meeting Sustainable Development Goal 4 - Quality Education.

Key findings: Tax abuse and rights

Using estimates in 2020 from the first edition of the State of Tax Justice Report and projecting these over ten years (as tax abuse often takes place over decades), the GRADE finds that if there were an increase in government revenue equivalent to the tax abuse, for countries where there is data available, the additional numbers accessing their fundamental human rights would be as follows:

- Sanitation - 34 million people.
- Drinking water - 17 million people.
- An additional year at school - 3 million children.
- Additional survivors - 600,000 children and 73,000 mothers.[104]

Data (for example, on government revenue or fundamental human rights) is unavailable for many countries, so these figures significantly underestimate the true impact. Nevertheless, they reflect the scale of the potential of curtailing tax abuse for fundamental rights and highlight the critical relationship between just and transparent tax regimes and human rights.

Several significant findings emerge from the GRADE findings. They reinforce previous research acknowledging the importance of revenue to make a well-functioning, democratic and accountable government that fulfils its obligation as a duty bearer of human rights.[105] They also highlight the disparity of impact between revenue loss in higher-income countries and lower-income countries. As shown in the SOTJ report, the scale of loss due to tax abuse in higher-income countries is much greater, but the impact is disproportionately greater in lower-income countries. Small revenue increases have a very significant impact on fundamental human rights in lower-income countries. Higher risks of illicit financial flows will likely exacerbate both the reduced revenues and the potential for public funds to be misdirected to secrecy jurisdictions. The inevitable consequence is an impact on fundamental rights that is much more significant in lower-income countries

Using the opportunity costs in terms of fundamental human rights due to tax abuse, we attributed responsibility according to the "vulnerability" to inward foreign direct

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102 UN News, 'Condemnation over New Attack on Nigeria School, "More than 300" Girls Missing', *UN News*, 2021. https://news.un.org/en/story/2021/02/1085822 [accessed 8 April 2021].
103 Emmanuela Gakidou and others, 'Increased Educational Attainment and Its Effect on Child Mortality in 175 Countries between 1970 and 2009: A Systematic Analysis', *The Lancet*, 376/9745 (2010), 959-74.
104 Stephen Hall and others, *Tax Abuse – The Potential for the Sustainable Development Goals* (2020). https://med.st-andrews.ac.uk/grade/wp-content/uploads/sites/13/2021/06/Tax-abuse-the-potential-for-the-Sustainable-Development-Goals-WP.pdf [accessed 22 June 2021].
105 Paddy Carter and Alex Cobham, *Are Taxes Good for Your Health?* (2016). https://www.wider.unu.edu/publication/are-taxes-good-your-health [accessed 1 January 2021].

investment created by different economic players. The rationale being that if an economic player is responsible for the vulnerabilities which result in tax abuses, it is reasonable to attribute responsibility for the human rights abuses that ensue.

Table 1 summarises the impact of tax abuses on fundamental rights attributable to the vulnerabilities created by the different economic players by region. Finally, Table 2 shows the effect of tax abuses on fundamental rights attributable to the vulnerability created by the OECD and their dependent countries.

OECD countries appear to have the most significant impact on fundamental rights in other countries and the most impact in Asia and Africa. Thus, regions with a high prevalence of poverty are most impacted by tax abuses attributable to the vulnerability created by OECD and their dependent countries, with respect to the right to water and sanitation. Government revenue needs to increase significantly before educational returns are seen in lower-income countries.

Table 1 The impact of tax abuses on fundamental rights attributable to the vulnerability created by different economic players

	Additional numbers accessing drinking water			Additional numbers accessing sanitation			Number of children attending school for an extra year	Child deaths averted	Maternal deaths averted
	All	Children < 5 years	Women	All	Children < 5 years	Women			
China	566,916	81,147	140,056	1,589,964	246,536	380,620	121,020	54,427	5,613
OECD	9,722,979	1,162,668	2,453,873	19,067,639	2,345,093	4,785,925	2,565,476	335,322	38,588
OECD-dependent	837,048	131,303	198,233	2,110,936	339,690	495,711	100,773	51,231	7,245
Others	5,885,146	679,501	1,495,793	10,830,528	1,255,832	2,749,905	501,875	151,252	21,498
Total	17,012,089	2,054,620	4,287,955	33,599,068	4,187,152	8,412,160	3,289,143	592,232	72,944

Table 2 The impact of tax abuses on fundamental rights attributable to the vulnerability created by the OECD and their dependent countries by region

OECD and OECD-dependent countries	Additional numbers accessing drinking water			Additional numbers accessing sanitation			Number of children attending school for an extra year	Child deaths averted	Maternal deaths averted
	All	Children < 5 years	Women	All	Children < 5 years	Women			
Africa	3,249,736	557,142	757,537	7,388,527	1,273,334	1,712,870	162,073	219,029	26,345
Asia	6,736,546	681,875	1,743,862	12,737,943	1,310,091	3,293,609	539,107	118,341	17,683
Caribbean/ American Islands	6,580	775	1,770	44,371	5,160	11,762	1,789	2,325	162
Europe	62,979	3,373	15,798	144,744	7,697	36,157	976,583	3,840	70
Latin America	492,632	49,244	130,283	844,461	86,029	222,648	330,623	42,281	1,529
North America	0	0	0	0	0	0	629,992	341	0
Oceania	11,553	1,562	2,855	18,529	2,471	4,590	26,080	395	44
TOTAL	10,560,026	1,293,971	2,652,105	21,178,575	2,684,782	5,281,636	2,666,247	386,552	45,833

Table 3 Tax justice aims and FACTI Panel Recommendations

Thematic area	Policy	TJN aim	UN FACTI panel recommendation
ABC of transparency	Automatic exchange of financial information	Years of our campaigning led to the creation of a multilateral mechanism for automatic exchange of information, but lower-income countries remain largely excluded – this must end.	8A. End information sharing asymmetries in relation to information shared for tax purposes, so that all countries receive information
	Beneficial ownership transparency	All countries should establish central and public registers of the beneficial ownership of all legal entities.	3A. International anti-money-laundering standards should require that all countries create a centralised registry for holding beneficial ownership information on all legal vehicles. The standards should encourage countries to make the information public.
	Country by country reporting by multinationals	All multinationals should be required to publish their country by country reporting (ideally to the Global Reporting Initiative standard, rather than the much weaker OECD standard)	3B. Improve tax transparency by having all private multinational entities publish accounting and financial information on a country-by-country basis.
International corporate tax rules	Unitary taxation	Multinationals should be taxed on a unitary basis (on their global group profit, apportioned between the countries where their real economic activity takes place), instead of current system of separate entity accounting based on the arm's length principle.	4A. Taxpayers, especially multinational corporations, should pay their fair share of taxes. The UN Tax Convention should provide for effective capital gains taxation. Taxation must be equitably applied on services delivered digitally. This requires taxing multinational corporations based on global group profit.
	Global minimum corporate tax	To end the race to the bottom on corporate tax rates, and to eliminate much of the incentive for abusive profit shifting, countries should introduce minimum corporate tax rates (e.g. METR proposal).	4B. Create fairer rules and stronger incentives to combat tax competition, tax avoidance and tax evasion, starting with an agreement on a global minimum corporate tax.
New international architecture	UN tax convention	A UN tax convention should be established, to set international standards of transparency and cooperation on a fully inclusive basis	2. International tax norms, particularly tax-transparency standards, should be established through an open and inclusive legal instrument with universal participation; to that end, the international community should initiate a process for a UN Tax Convention. 4C. Create an impartial and fair mechanism to resolve international tax disputes, under the UN Tax Convention.
	UN intergovernmental body	An intergovernmental and globally inclusive body should be established under UN auspices, to negotiate and to set international tax rules, replacing the OECD.	14A. Establish an inclusive and legitimate global coordination mechanism at the United Nations Economic and Social Council (ECOSOC) to address financial integrity on a systemic level. 14B. Building upon existing structures, create an inclusive intergovernmental body on tax matters under the United Nations.
	Centre for Monitoring Taxing Rights	Create a UN Centre for Monitoring Taxing Rights, to collate, analyse and disseminate data on the scale and distribution of tax abuse.	11A. Establish a Centre for Monitoring Taxing Rights to collect and disseminate national aggregate and detailed data about taxation and tax cooperation on a global basis.

Policy responses to advance human rights

The central policy implications of tax justice and human rights include reforms that, with political will and leadership, could divest wealthy elites and global corporations of their powerful means of influence. As Table 3 (above) illustrates, there are three main areas: the ABC of tax transparency; international corporate tax rules; and the global architecture within which taxing rights are established.

Exercised at scale and truly inclusive of all states, these tax justice aims would challenge long held positions that have relinquished little in taxing rights and bolstered private interests over and above public concerns, human rights and intersecting equalities. Through evolving models of institutional governance and the influence of powerful elite interests, the bonds of the social contract and of government accountability have been weakened, leaving states fragile and citizens vulnerable to capture by regressive ideologies. Layered on top of an existing global distribution of power and resources that reflects the preceding centuries of a gendered, racialised and colonial capitalism, the result is a world of deep, structural inequalities.

Tax justice is therefore a reparative justice, aiming not only to address the immediate inequalities between and within countries, but to reset the relationships that gave rise to these. Tax justice is also fundamentally optimistic about the role of the state to play a positive role in progressive achievement of human rights, recognising that greater reliance on taxation ultimately drives more responsive and accountable states. The 4 Rs of tax is a normative framework which helps to underpin substantive equality and the achievement of human rights. Through the agency of the state, this approach demands action and participation from multiple others – corporate actors, intergovernmental bodies, international financial institutions, journalism and the public at large. Its purpose is politically progressive.

The reform of tax regimes for the progressive realisation of human rights – which is the essence of the 4 Rs - does demand technical expertise. Yet it is no more complex than the tax system in its current incarnation. Political will, cooperation and changing a blinkered understanding of structural discrimination and systemic distortions are prerequisites for a progressive shift.

Much of the hard technical work to move to a progressive approach has been done. From the tax side, an **ABC** blueprint for progressive reform is in partial operation and widely regarded as the credible way forward – despite having once been written off by policymakers and international institutions as entirely unrealistic and impossible. The ABC policy platform developed by the tax justice movement over the past fifteen years targets private wealth and financial secrecy.

The ***(A) automatic exchange of financial information*** between jurisdictions follows two principles – cooperation across borders and between states, and financial transparency. This exchange of banking data, made publicly available, curtails the flight of wealth and assets (tax avoidance and tax evasion) and acts as a deterrent to the movement of illicit finance. Structured as a non-reciprocal agreement this allows low-income countries to be beneficiaries of the policy without being burdened by increased demands on poorly resourced administrations.

Identifying the real ***(B) beneficial and legal owners*** of wealth – individuals or companies - using publicly accessible registers is the second strand of the financial transparency policy platform. An assessment of the distance travelled in this policy area shows some major gaps and plenty of policy reform within many jurisdictions to make this “water tight" against continuing tax abuse.[106] The disclosure of beneficial ownership is a critical policy intervention especially for countries in, for instance, the African region. Research shows that between 1970 and 2015 Africa "lost approximately US$1.4 trillion in capital flight, vastly more than the total of the stock of debt owed as of 2015 (US$496.9bn) and the cumulative amount of foreign aid received in the same period (US$991.8bn)."[107]

The third element of progressive policy refers to the establishment of ***(C) public registers of country-by-country reporting (CBCR)***. This policy is key to bringing the practice of "profit shifting" to an end and ensuring a stronger level of accountability between multinational companies with economic activity in a particular jurisdiction and thus between citizens of that jurisdiction and the state. Ultimately this level of tax transparency shifts power away from corporate and elite interests and towards citizens/taxpayers.

Over time addressing tax abuse of this kind, along with indirect tax losses such as tax incentives, subsidies and credits, increases the proportion of corporate tax raised as a percentage of government revenue. In turn, opportunities to reform and design progressive policies and strengthen taxpayer representation and interests, can tackle intersecting inequalities and realise fundamental human rights. The "creation" of this additional revenue raises the possibility that States can provide, for example, free primary education, establish hospital and health centres including mobile health clinics, invest in digital infrastructure to address the digital divide, and address the "extraction" and long held distortions of the role of women, especially black and brown women, who subsidise economies by undertaking the vast majority of labour in the care economy.

Profit shifting

"Multinational corporations are currently not required to publicly report a country-level breakdown of their profits and costs. Instead, they sum up the profit they make in different countries they operate in and the costs they incur, and publish global sum figures, masking the size of their profits and costs at the country level. This lack of transparency allows multinational corporations to move their profits out of the countries where they do business (i.e. where they employ workers, run factories and offices, and sell goods and services) and into tax havens (where the company only exists as a rented mailbox) before they declare those profits. By moving profits out of the countries where they do business, multinational corporations can then underreport their profits in those countries and so pay less tax than they should or no tax at all, while the profits they moved into tax havens go untaxed or are taxed at an extremely low rate by the tax haven."[108]

A key characteristic of a comprehensive CBCR policy position is its incorporation of public scrutiny. Existing proposals afforded through the introduction of the OECD's so called BEPS (Basic Erosion and Profit Shifting project) Action 13 only offer partial transparency and are therefore flawed.[109]

A form of public CBCR has been operating in the EU as a standard for the banking sector since 2013, and in various places for the extractive sector since shortly after.

106 Moran Harari and others, *The State of Play of Beneficial Ownership Registration in 2020*. (2020). https://www.taxjustice.net/reports/the-state-of-play-of-beneficial-ownership-registration-in-2020/ [accessed 4 April 2020].
107 Rachel Etter-Phoya, Eva Danzi and R Jalipa, *Beneficial Ownership Transparency in Africa: The State of Play in 2020* (2021). https://taxjustice.net/2020/07/01/beneficial-ownership-transparency-in-africa-the-state-of-play-in-2020/#:~:text=Identifying%2C%20registering%20and%20disclosing%20the,money%20laundering%2C%20tax%20evasion%20and [accessed 4 April 2020].
108 Alex Cobham, 'Country by Country Reporting', *Tax Justice Network*, 2020. https://taxjustice.net/topics/country-by-country-reporting/ [accessed 13 February 2021].
109 'Submission-Letter-OECD-Consultation-on-CBCR.Pdf'. https://financialtransparency.org/wp-content/uploads/2020/03/Submission-letter-OECD-consultation-on-CBCR.pdf [accessed 19 April 2021].

Monitoring the impact of CBCR implementation has shown that it does "discourage large-scale corporate tax avoidance by multinational corporations".[110] The international adoption of the CBCR standard would, for instance, underpin meaningful commitment by states to the Guiding Principles on Business and Human Rights and the Second Revised Draft of the Legally Binding Instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.[111]

Since 2015, the OECD has followed a CBCR standard but requires multinational corporations to submit their data only privately to the tax authority in their headquarters country. The fact that these are not in the public domain transgresses the fundamental principle of the ABC policy approach. But "analysis of anonymised and aggregated CBCR collected by OECD countries shows billions worth of corporate tax abuse taking place via profit shifting every year"[112] and even this limited transparency has contributed to the growing momentum for full publication at the company level.

A growing number of major multinationals now report voluntarily under the technically superior standard of the Global Reporting Initiative, and the EU is on the verge of requiring at least some of the OECD reporting data to be made public at company level. The US Congress also passed an act to require full publication in June 2021, and now awaits Senate support. But while the failure to require publication continues, state parties are undeniably complicit in the failure to identify and secure tax revenue which could be available for expenditure on public services and social protection.

With respect to the international corporate tax rules themselves, there is increasingly a sense that the longstanding tax justice policy aims are the eventual endpoint for negotiations. There are two main elements. A ***global minimum effective tax rate*** would put a floor under the race to the bottom which would greatly reduce the *incentive* for profit shifting. To curb the *opportunity* for profit shifting, we also need a move away from the discredited arm's length principle which allows distorted transfer prices between entities within the multinational group to relocate profit among themselves into low- and no-tax jurisdictions. The alternative is to tax multinational companies as a single global unit, apportioning the globally assessed taxable profit between the countries of operation according to the location of real economic activity (employment and sales).

This combination of ***unitary taxation with formulary apportionment***, and a global minimum effective tax rate would largely end both the incentive and the opportunity for corporate tax abuse. For the first time, after years of campaigning, both elements were within the scope of the international tax negotiations that began at the OECD in January 2019. Those negotiations, now drawing to a close, look set to deliver much smaller progress; but the normalisation of this agenda is already a significant shift.

The G24 group of lower-income countries tabled an early proposal for an apportionment approach to apply to all of the profits of the largest multinationals. The African Tax Administrators Forum has recently presented another. The OECD, however, is pushing a proposal from the Biden administration that would apportion only a small share of the global profits of the largest and most profitable 100 or so multinationals, and only according to the location of sales (not employment – which would offer a much fairer share of this now very small pie to lower-income countries).

The more ambitious proposal for a global minimum tax rate is also moving ahead. In April 2021 the Biden Administration announced US support for a global minimum tax

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110 'Submission-Letter-OECD-Consultation-on-CBCR.Pdf'.
111 'OEIGWG_Chair-Rapporteur_second_revised_draft_LBI_on_TNCs_and_OBEs_with_respect_to_Human_Rights.Pdf'. https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG_Chair-Rapporteur_second_revised_draft_LBI_on_TNCs_and_OBEs_with_respect_to_Human_Rights.pdf [accessed 21 April 2021].
112 Alex Cobham, 'Country by Country Reporting', *Tax Justice Network*, 2020. https://taxjustice.net/topics/country-by-country-reporting/ [accessed 13 February 2021].

and with that, confirmed the idea had "shifted almost imperceptibly from the wild margins of tax justice, to becoming the settled will of the world's richest countries".[113] Speaking about the tax justice agenda the US Treasury Secretary seemed to be rejecting the ongoing "race to the bottom". The proposal suggested a re-kindling of globalisation, and of curbing inequalities and constraining the power of tax havens and those who use them. The envisaged change to the international tax rules would be unparalleled since the League of Nations set the basis a century ago. Even a global minimum tax rate as low as 15% could bring in $275 billion in additional revenues annually.

The OECD proposal would however privilege the headquarters countries of multinationals, at the expense of "host" countries – meaning, for example, that the G7 countries alone, with 10% of the world's population, could expect to receive over 60% of the additional revenues.

Under the alternative minimum effective tax rate (METR) approach developed by tax justice researchers, a 15% rate could raise as much as $460 billion each year, with substantially higher share and absolute revenues for lower-income countries.[114] This is achieved by apportioning undertaxed profits according to the location of multinationals' real activity, rather than discriminating in favour of headquarters countries (which are overwhelmingly G7 countries and other OECD members); and by allowing the undertaxed profits to be taxed at the prevailing national rate, rather than only being "topped up" to the agreed minimum (which leaves some incentive for profit shifting in place).

A further issue is that a rate of 15% risks simply moving the floor, rather than ending the race to the bottom – and the incentive to shift profits will remain strong for countries with statutory tax rates of 25% or 30%. But even this discussion was unthinkable in the mid-2000s when tax justice advocates brought forward the idea, so the debate is itself a marker of some progress.

The broader concern is that the OECD should ever have brought forward a proposal which would so badly exacerbate the existing inequalities in global taxing rights over multinational companies. Whether the G20 is corralled into supporting the proposal or not, the episode provides a stark illustration that the OECD as a rich country members' club is simply unfit for the purpose of hosting globally inclusive and representative negotiations on such fundamental issues.[115]

Intergovernmental policy responses

The power relations embedded in the OECD's dominance of rule-setting for tax and financial transparency is the third major element of the international tax justice campaign. In February this year the FACTI panel published its final and much anticipated report 'Financial Integrity for Sustainable Development' - and while the recommendations are wide-ranging and cover both the ABC and the corporate tax justice positions above, it is the implication for the global governance of these issues which are most ground-breaking.[116]

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113 Alex Cobham, 'US Treasury Secretary Yellen Confirms: It's Time to End the Race to the Bottom on Corporate Tax', *Tax Justice Network*, 2021. https://www.taxjustice.net/2021/04/07/us-treasury-secretary-yellen-confirms-its-time-to-end-the-race-to-the-bottom-on-corporate-tax/ [accessed 8 April 2021].
114 Sol Picciotto and others, For a Better GLOBE. METR: *A Minimum Effective Tax Rate for Multinationals* (Rochester, NY, 2 March 2021). https://papers.ssrn.com/abstract=3796030 [accessed 8 April 2021]. Results are from Cobham A, Faccio T, Garcia-Bernardo J, et al. (2021) A Practical Proposal to End Corporate Tax Abuse: METR, a Minimum Effective Tax Rate for Multinationals. IES Working Papers 8/2021
115 Jeffery M. Kadet and others, 'For a Better GLOBE: A Minimum Effective Tax Rate for Multinationals', *SSRN Electronic Journal*, 2021. https://www.ssrn.com/abstract=3798887 [accessed 8 April 2021].p.864
116 FACTI Panel, *Financial Integrity for Sustainable Development: Report of the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda* (2021). https://www.factipanel.org/ [accessed 1 March 2021].

The FACTI Panel confirms the agenda developed within the G77 group of lower-income countries which increasingly has given focus and voice underlining the need for progressive tax to support human development, the advancement of rights and greater equality, and providing a much-needed counter point to the dominant influence of rich nations of the global north.[117]

The work of the FACTI Panel also confirms and continues to draw upon the seminal findings of the African Union/Economic Commission for Africa High-Level Panel on illicit financial flows out of Africa (the "Mbeki panel"). Its recommendations were set in the "context of large corporations having the means to retain the best available professional legal, accountancy, banking and other expertise to help them perpetuate their aggressive and illegal activities and their damaging impact on rights".[118] The Mbeki panel report was significant in bringing both momentum and meaningfulness to the illicit financial flows agenda. It demonstrably set the basis for the work to recognise the need to measure and have a systemic response to illicit financial flows within the SDG targets.[119]

Building upon and articulating the systemic institutional, legal and political weaknesses of existing financial systems, the FACTI Panel proposes fourteen thematic and urgently needed remedies. These include international, intergovernmental and national action to reform and redesign an entire ecosystem that both builds towards a "fairer" society and requires a high level of accountability from governments and non-state actors.

The importance of the FACTI report amplifies the risks of tax abuse and financial corruption. It also echoes the interrelated downward effect of risky and opaque financial systems and weak governance and includes recommendations for a re-engagement of the social contract between citizens and their governments.

The FACTI panel may be seen as a watershed moment for meaningful global tax cooperation and harmonisation that hardwires the critical linkages between tax, human rights and the 2030 Agenda for Sustainable Development. The FACTI recommendations call for a process to initiate the establishment of a ***UN Tax Convention***. Using principles of equity and fairness the convention would provide for taxing multinationals and capital gains fairly. It would develop a mechanism for fair and impartial dispute resolution. Moreover, it would "provide the basis for legitimate action against any jurisdiction that is undermining global norms and damaging the legitimate tax base of any country".[120]

Perhaps most importantly, the convention would create an ***intergovernmental tax body*** under UN auspices to oversee the future negotiations of international rules. In addition, the convention could set the basis for global inclusion in the benefit of the ABC of transparency and establish the mechanism to ensure the accountability of jurisdictions for imposing revenue losses on others, through the proposed ***Centre for Monitoring Taxing Rights***.

Advocacy within the tax justice movement is focused on the establishment of such a convention. The convention, as framed, has the potential to tackle perennial obstacles for tax justice and human rights - political impotence, unilateralism and self-interest.[121] Ironically, then, concern for self-preservation for our citizenship,

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117 Kate Donald, '"The Global Partnership for Development": Tackling the Accountability Deficit', CESR, 2015. https://www.cesr.org/global-partnership-development-tackling-accountability-deficit [accessed 20 June 2021].
118 United Nations. Economic Commission for Africa, *Illicit Financial Flows: Report of the High Level Panel on Illicit Financial Flows from Africa*, 2015. P.3.
119 Alex Cobham, 'Targeting Illicit Financial Flows in the Sustainable Development Goals', *Targeting Illicit Financial Flows in the Sustainable Development Goals*, 2018. https://taxjustice.net/2018/06/27/targeting-iff/ [accessed 20 June 2021].
120 About. Financing for Sustainable Development Office Department of Economic and Social Affairs United Nations', *FACTI Panel*. https://www.factipanel.org/about [accessed 21 February 2021].
121 Tove Ryding, *An Intergovernmental UN Tax Convention – Why We Need It and How We Can Get It* (9 January 2020). https://www.eurodad.org/globaltaxbody [accessed 20 March 2021].

communities and our human rights should make human rights and tax justice advocates alike heed this dire warning:

“If we want to narrow the North-South divide that threatens our world, some limits on tax competition are inevitable…We can either continue retreating from globalization in favor of xenophobic nationalism, tariffs, immigration restrictions, and exchange controls. That road leads ultimately to war, as it did in the 1930s. Or we can revive globalization by investing in a robust social safety net, infrastructure, education, and job creation.” (Reuven S. Avi-Yonah, 2020).[122]

Human rights advocates have an important role to play in joining the call for the establishment of the UN Tax Convention. Given the demonstrable limitations of the current “rule makers” on global tax – the OECD and G20 mandated project to reform the way corporations are taxed, and the “conditionalities” of the International Monetary Fund (IMF) – these avenues should be given no more oxygen.

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122 Reuven S Avi-Yonah, ‘Taxation and Business: The Human Rights Dimension of Corporate Tax Practices (April 15, 2020). U of Michigan Public Law Research Paper No. 678, U of Michigan Law & Econ Research Paper No. 20-014, Available at SSRN:. https://Ssrn.Com/Abstract=3576538 or. http://Dx.Doi.Org/10.2139/Ssrn.3576538’, *U of Michigan Public Law Research Paper No. 678, U of Michigan Law & Econ Research Paper No. 20-014, No. 678; No.20-014*, 2020. https://ssrn.com/abstract=3576538 or. http://dx.doi.org/10.2139/ssrn.3576538 [accessed 4 February 2021].

International (regional & national) human rights instruments

This section sets out some of the opportunities to amplify and underscore tax justice policy and concepts within current human rights instruments, including within the UN's Guiding Principles on Business and Human Rights and opportunities to address tax injustice by constitutional means. Based on feminist principles and echoing the normative "blueprint" of the Beijing Declaration and Platform for Action (1995), it seeks to address intersectional and systemic inequalities, and structural assumptions about the role and social position of women, black and ethnic minority people including indigenous peoples, people with disabilities and other marginalised people.[123]

> The Bogota Declaration on Tax Justice for Women's Rights (2017) describes the values, objectives and policy interventions which are needed to support tax justice for women's rights. The Declaration draws upon feminist concepts of equality as central to achieving tax justice, gender justice and human rights.

Human rights law is unequivocal in its purpose to achieve equality and non-discrimination in policy, law and practice. As underpinning principles in national and international human rights instruments, including in Treaty law, in human rights jurisprudence and in Constitutions, these principles share a common purpose with "tax justice". It is through this connecting lens of equality and non-discrimination that tax justice policy reforms, and opportunities to address human rights failures and to hold governments to account are framed.

Attempts to define equality may differ and convey a difference of meaning, but as with progressive tax justice reforms - "the choice between different conceptions of equality is not one of logic but of values or policy".[124] This special alchemy which exists between tax justice principles - driving truly progressive, intersectional and gender-just policies - and human rights law is fundamental to our efforts to ensure duty bearers meet their human rights obligations.

International human rights law recognises the important relationship between the state and citizen, applying principles of acting "without discrimination" and "to do no harm". Regressive tax "rules" (law and policy), on the other hand, can and have over time in their design and application put at risk the realisation of human rights. Many different actors, including non-state actors such as international financial institutions (IFIs), multinational companies (MNCs) and professionals such as lawyers and accountants, are often complicit in the design of unjust and abusive tax regimes which are to the detriment of human rights.

Austerity and regressive fiscal policies (including tax policies) have shrunk the fiscal space in many jurisdictions, including Low Income Countries (LICs). Since the 2007/08 crisis there has been an accelerated focus by UN Treaty bodies, including the Committee for Economic, Social and Cultural Rights (CESCR), on the issue of just taxation. The CESCR has noted in state party "concluding observations" concern about tax and other fiscal policies, about inadequate social protection floors and about poverty and inequality deepening as a result of failure to assess the impact of fiscal policy and to maximise available resources. In its concluding observations the Committee has drawn attention to the failure and aggravating impact of regressive

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123 'BDPfA E.Pdf'. https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf [accessed 22 April 2021].
124 Sandra Fredman, 'Substantive Equality Revisited', *International Journal of Constitutional Law*, 14/3 (2016), 712–38. P.714

tax policy in Mexico in 2018 on Poverty and Inequality,[125] and the Canada - Concluding Observations on Canada in 2016.[126] The focus on economic injustices, discrimination and inequalities that is "hardwired" into economic and social policies and disproportionately impacts marginalised people has been increasingly raised in submissions to the CEDAW Committee.[127] The submissions explain and elaborate on the impact of market driven policies whose priority interest is consolidating wealth and stripping away regulatory oversight at the cost of rights and social protections for women. The submissions examine the impact on women's rights of laws and policies in jurisdictions notorious for financial secrecy and "conduit" services such as Switzerland, the Netherlands and the United Kingdom.[128] They also explore countries that express a blatant neo-liberal disregard for substantive equality and human rights such as Brazil.[129] Evidence of regressive tax regimes negatively impacting on rights is found both in the global north (Spain, UK, and USA) as well as in LICs in the global south (Sri Lanka).

Opportunities to raise human rights failures and violations also exist within other Treaty bodies. The Committee for the Convention on the Rights of the Child has, for example, received a submission in 2020 citing research of the human rights impact of tax revenue foregone in Ghana due to corporate tax abuse at US$340m; a figure that the research team equated to preventable child deaths.[130] As a result the committee asked Ireland to describe the measures taken to:

> *"Ensure that tax policies do not contribute to tax abuse by companies operating in other countries, leading to a negative impact on the availability of resources for the realization of children's rights in those countries"*.[131]

UN Special Rapporteurs and Independent Experts

Increasingly, UN Independent Experts and Special Rapporteurs have also drawn attention to tax policy programmes which endanger the rights of citizens. Civil society, especially women's rights focused organisations, have recognised and articulated the link between tax and the realisation of rights. The UN Expert on Debt articulated in detail in his report the profound influence tax (in)justice had in discriminating against women.[132] Moreover, he affirmed that "progressive tax regimes play a key role in the mobilization of the maximum of available resources to effectively tackle discrimination against women and provide free, high-quality gender-responsive public services to women".[133]

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125 Committee on Economic, Social and Cultural Rights, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Mexico* (17 April 2018). https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fMEX%2fCO%2f5-6&Lang=en [accessed 20 February 2021].Para. 45
126 *Committee on Economic, Social and Cultural Rights, Committee on Economic, Social and Cultural Rights: Concluding Observations on the Sixth Periodic Report of Canada* (23 March 2016). https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fCAN%2fCO%2f6&Lang=en [accessed 20 February 2021]. Para.9.
127 Tax Justice Network, 'Impact of Countries' Tax Policy on Women's Rights - UN CEDAW', *Tax Justice Network*, 2021. https://www.taxjustice.net/collections/impact-of-countries-tax-policy-on-womens-rights-submissions-to-un-committee-on-the-elimination-of-discrimination-against-women/ [accessed 22 April 2021].
128 Tax Justice Network, 'Impact of Countries' Tax Policy on Women's Rights - UN CEDAW'.
129 Tax Justice Network, 'Impact of Countries' Tax Policy on Women's Rights - UN CEDAW'.
130 Action Aid Ireland et al., "Ireland 's Responsibility for the Impacts of Cross - border Tax Abuse on the Realisation of Children's Economic , Social and Cultural Rights," 2020. https://c5e65ece-003b-4d73-aa76-854664da4e33.filesusr.com/ugd/14ee1a_21d5fea7778c408db4ba8901648f6052.pdf.
131 United Nations Committee on the Rights of the Child. 2020. "List of Issues Prior to Submission of the Combined Fifth and Sixth Reports of Ireland." See 10 (c) Childrens rights and the business sector. https://tbinternet.ohchr.org/Treaties/CRC/Shared Documents/IRL/CRC_C_IRL_QPR_5-6_43616_E.pdf.
132 JP Bohoslavsky, *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: Impact of Economic Reforms and Austerity Measures on Women's Human Rights* (2018). https://www.undocs.org/A/73/179 [accessed 20 March 2021].Para. 54.
133 Ibid. Para. 55.

The UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights[134] were unanimously adopted by the Human Rights Council in 2011 to provide an authoritative global standard on human rights issues in the context of business activity. The 31 Principles are categorised under three pillars: (i) the state obligation to protect human rights, (ii) the corporate responsibility to respect human rights, and (iii) the need to provide victims of human rights violations with access to effective remedies.

While states are the ultimate duty bearers for the fulfilment of human rights, the UNGPs marked a major shift in international discourse by clarifying that businesses are also subject to human rights responsibilities. Indeed, the UNGPs state clearly that businesses must:

> *I. Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;*
>
> *II. Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.*

There is little question that the abusive international tax practices employed by multinational companies have a severe negative impact on the realisation of human rights. It is for this reason that UN human rights experts have repeatedly stated that aggressive tax planning by the private sector, and states' continued facilitation thereof, is not compatible with fulfilment of human rights duties and obligations.[135] Moreover, the "duty to respect" considers not just human rights issues in companies' own operations but also those over which they might have influence through their relationships with other businesses. In this regard, such relationships should include financial and other services provided by accounting firms, law firms and banks.

In order to meet their human rights obligations in line with the UNGPs, national governments are meanwhile obliged not only to hold companies to account through effective legislation but also to provide them with actionable guidance on how to meet their human rights responsibilities. With regard to abusive international tax practices, and the concomitant human rights impacts, this would necessarily consider robust financial transparency legislation including a requirement of public country-by-country reporting.

National Action Plans on Business and Human Rights (NAPs) represent the main means through which the UNGPs are implemented. To date 24 countries, including the majority of OECD members, have launched NAPs, while 30 more are in the process of developing them. The significant global embrace of the UNGPs, along with the accelerating roll-out of NAPs, suggest that civic participation around the UNGPs may represent an important space for human rights-based advocacy on tax justice and financial transparency in years to come. During consultations over Ireland's national action plan, for example, an array of civil society organisations along with the country's Human Rights and Equality Commission called for the state's facilitation of international tax abuse to be explicitly recognised and addressed through the NAP.

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134 United Nations OHCHR, 'The United Nations Guiding Principles on Business and Human Rights' (2011). https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf [accessed 1 March 2021].
135 Magdalena Sepúlveda Carmona, *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona** (22 April 2014). https://undocs.org/A/HRC/26/28 [accessed 3 December 2019].

Constitutions for tax justice and human rights

Constitutional powers can be powerful tools to bring accountability to regressive policy decisions. Sometimes constitutional provisions allow for progressive economic and social rights that do not always have the coverage to establish substantive positive changes, especially for the poorest and most marginalised.[136] Other examples – in Colombia and in South Africa – show the importance of progressive tax provisions in the constitution. In the case of Colombia, reforms to VAT/consumption taxes were challenged as an infringement of human rights enshrined in the constitution.[137] Similarly, civil society campaigners in Kenya frame their advocacy around debt ridden infrastructure projects and the need for a "predictable" tax environment framed within the Constitutional provision of public accountability.[138]

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136 Nora Castaneda and Women's Development Bank of Venuezuela, *Creating a Caring Economy* (London, 2006).
137 Dejusticia, 'Demandamos Todo El Sistema Tributario Ante La Corte Constitucional', *Dejusticia*, 2020. https://www.dejusticia.org/demandamos-todo-el-sistema-tributario-ante-la-corte-constitucional/ [accessed 6 May 2021].
138 James Muraguri, 'Kenya: How a Shadow Budget Sheds Light on Spending', *Atlantic Fellows for Social and Economic Equity*, 2021. https://afsee.atlanticfellows.org/blog/2021/james-muraguri-kenya-shadow-budget-ipf-kenya [accessed 6 May 2021].

A global movement and key opportunities

In this final section the report looks briefly at the key opportunities which are emerging and need the support of both tax justice and human rights advocates and activists.

The convergence of movements – of tax justice and human rights – is evident in political discourse, governance of international tax and in technical analysis. Increasingly civil society advocates from both broad disciplines are reflecting one another's work and mission for progressive change and a fairer, more just world. This is reflected in recent and essential contributions to our work in the *Principles for Human Rights in Fiscal Policy* (2021).[139]

The growth of civil society organisations focusing on tax justice, equalities and human rights – emerging in Lebanon, Chile, USA, Ukraine, Italy, UK, across Europe – illustrate this determination and focus to address the impacts of tax injustice; to reprogramme tax rules for the benefit of all citizens, to curtail illicit financial flows, and to establish an "authority" that is accountable to all nations. These political opportunities should be grasped to ensure sustainable systemic and structural change and the realisation of human rights for all.

Underpinning this movement are foundational principles to guide their work. Such principles including substantive equality, non-discrimination and gender and intersectional non-discrimination, sustainability, and abstaining from "conduct that undermines another State's capacity to fulfil their own obligations" are well considered in the *Principles for Human Rights in Fiscal Policy.*[140] The publication of these "Principles" amidst the political and humanitarian crisis of Covid-19 and of environmental and ecological degradation is both timely and essential. Moreover, they are a key tool in helping us shift the policy to progressive positions, and establishing tax justice firmly within human rights analysis.

The fourteen recommendations published by the FACTI panel in February 2021 are, meanwhile, a key tool for both the tax justice and human rights movements.[141] They reflect the tax justice movement's agenda since the early 2000s, and establish it as the basis for necessary global changes to meet the UN Sustainable Development Goals and the 2030 Agenda. They present opportunities to curb elite and private interests and to reinvigorate and re-focus states' obligation to substantive equality. The recommendations address in-country inequalities and appeal to governments that pursue race to the bottom policies, in addition to upending systemic corruption and organised crime.

The key opportunities which will propel forward the FACTI Panel recommendations into established policy are largely in the hands of individual governments or "willing" coalitions of governments. Coalitions within the G7 and G20 nations can support a progressive path of shared interests on the global stage. More likely the radical reforms will happen within the G77 nations and these too are likely to press for a truly global tax convention that provides oversight and accountability on corporate minimum tax, tax treaties and other tax abuse.

The success, or otherwise, of progress towards the Sustainable Development Goals is measured in all sorts of different ways. A valuable contribution in galvanising commitment from state parties may require more granular understanding of how tax abuse both in scale and form impacts on the goals' level of achievement. An overarching narrative needs to incorporate the knowledge and perspective of those developing understanding and approaches to intersectional inequalities in tandem with tax and fiscal knowledge expertise.

139 Blanco and others, 'Principles for Human Rights in Fiscal Policy'.
140 Blanco and others, 'Principles for Human Rights in Fiscal Policy'. P.31.
141 FACTI, 'FACTI Panel Reports', *FACTI Panel Reports*, 2021. https://www.factipanel.org/reports [accessed 27 April 2021].

Conclusion

In September 2021 the United Nations Secretary General is expected to deliver his latest policy brief, this one addressing the issue of illicit financial flows. This could, and should, be a pivotal moment.

We can expect the Secretary General's comments to call out the devastation that the pandemic and the climate crisis has heaped on the lives of many; and to address the loss of rights and of opportunities for economic, social and cultural development, and the inequalities that blight and repress the lives of people in every country, driven by tax abuse and the seen and unseen activity of secrecy jurisdictions. And as this report and others testify, the complicity in the misery heaped on the most marginalised people, is led by the tax behaviour of rich nations.

An optimistic view, enshrined now in the FACTI panel recommendations, calls for our collective efforts to press national governments and to secure their political will, resource and coherence for a central and urgent step change in the global governance of tax. The UN Tax Convention, as recommended by the FACTI panel, and long advocated for by the tax justice movement, is the pivotal instrument that will reverse the international failures of the global tax system.

The Secretary General's *Initiative on Financing for Development in the Era of COVID-19 and Beyond* (FfDI), which by chance has run largely in parallel to the deliberations of the FACTI panel over 2020-2021, has also concluded that a UN Tax Convention is a necessary step. The Secretary General can announce the start of negotiations and signal the UN's commitment to globally inclusive rule-setting in this crucial area.

Global agreements are not a pre-requisite to policy reform and unilateral measures should also be pursued without delay, including adoption of economic and social framing to endorse and advocate for tax justice in the guise of the ABC financial transparency policy platform and many of the further recommendations of the FACTI Panel. Unilateral measures are possible, and identifying willing coalitions could side-step resistance and sabotage by countries that have been captured by the tax avoidance industry, and break the "vicious cycle of beggar-thy-neighbour tax competition".[142] Whether the space is focused on climate, debt, or the post pandemic recovery, the opportunity to draw in tax justice arguments can support systemic change and, over time, reinvigorate governance and accountability.

A change in public mood

As citizens, our appetite to pay tax, our "tax morale", is deeply bound to a sense of fairness. And, as inequalities have grown in all regions of the world,[143] this sense of unfairness has deepened. This public sense of unfairness has found focus in wealth tax policy reforms.

Millions of people have suffered unprecedented hardships and violations of economic and social rights during the Covid-19 pandemic. Meanwhile, some of the wealthiest individuals and companies have seen the pandemic "supercharge" their wealth.[144]

142 Sol Picciotto, 'The METR, a Minimum Effective Tax Rate for Multinationals', *Tax Justice Network*, 2021. https://www.taxjustice.net/2021/04/15/the-metr-a-minimum-effective-tax-rate-for-multinationals/ [accessed 6 May 2021].
143 Alvaredo Facundo and others, *World Inequality Report* (London, UK, 2018).
144 Matt Day, 'Amazon Expects the Pandemic-Fueled Shopping Frenzy to Continue', *Bloomberg.Com*, 2021. https://www.bloomberg.com/news/articles/2021-04-29/amazon-sales-beat-estimates-as-pandemic-shopping-habits-persist [accessed 7 May 2021].

Projected sales for Amazon, for instance, to the end of June 2021 are said to be "between $110 billion and $116 billion"[145] and it is well-documented that by using offshore havenry to book its income Amazon pays little tax on this economic activity; indeed, in some instances it enjoys tax credits.[146]

The sense of unfairness is shared in unexpected quarters. Wealthy individuals have invited higher taxes;[147] Jeff Bezos has welcomed President Biden's Tax Plan for multinational corporations, but the "tax devil" is in the detail and particularly the systemic detail. Increasing tax on inheritance, dividends and other investments has little impact if a substantially lower corporate income tax rate attracts the incorporation of personal wealth and thereby ensures paying significant less tax.

At the same time, new networks of wealthy individuals calling attention to their "untaxed" wealth, need also to be pushed to examine the corruption and loopholes, the trusts and foundations that continue. Our advocacy must challenge the distorted narratives of philanthropic wealth "doing good".[148] Instead, we must insist on tax justice being done – through robustly progressive tax systems; and being seen to be done – through full transparency of wealth and income distributions, and of the taxes paid across each.

What can you do?

#tax4humanrights

Tax justice and human rights advocates need to consistently examine policies for suboptimal positions and how they perpetuate the violation of rights. Together tax justice and human rights advocates and campaigners can do this in many ways. Here are three:

- The growth of public concern about tax *injustice* and the associated and visceral sense of unfairness about social and economic inequalities provides the framing for progressive change. We can continue to develop our understanding of the interplay between tax justice and human rights in a number of ways. An important starting point is supporting and building capacity around the regional and national roll out of *Principles for Human Rights in Fiscal Policy* (see above). This tool advocates standards which "could inspire transformative action" and strengthen the "interaction between citizens and fiscal issues".[149] This offers opportunities, founded on robust principles, for a sustainable and progressive means of change.

- Nationally and regionally the Global Alliance for Tax Justice (GATJ) provides an important focal point for tax justice and human rights. The GATJ hosts a global network of feminist activists, researchers and advocates who meet regularly – the Tax and Gender Working Group. Through this and the GATJ's growing regional membership and though national tax justice coalitions, tax is being reframed through a human rights lens. Lend your support and expertise to help grow the profile and understanding of the key issues. Contact: info@globaltaxjustice.org.

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145 Matt Day, 'Amazon Expects the Pandemic-Fueled Shopping Frenzy to Continue'.
146 Rupert Neate, 'Amazon Had Sales Income of €44bn in Europe in 2020 but Paid No Corporation Tax', *The Guardian*, 2021. http://www.theguardian.com/technology/2021/may/04/amazon-sales-income-europe-corporation-tax-luxembourg [accessed 7 May 2021].
147 Patriotic Millionaires, 'About Us', *Patriotic Millionaires* <https://patrioticmillionaires.org/about/> [accessed 7 May 2021].
148 Anand Giridharadas, *Winners Take All: The Elite Charade of Changing the World*, First edition (UK, 2019).
149 Dayana Blanco and others, 'Principles for Human Rights in Fiscal Policy', *CESR*, 2021. https://www.cesr.org/principles-human-rights-fiscal-policy [accessed 20 June 2021].

- Internationally, the crucial opportunity facing us all today lies in ensuring concrete progress from the growing international consensus for a UN Tax Convention. The 4 Rs of progressive tax are framed and understood as a feminist issue and as a human rights issue. The incorporation of that framing is critical as momentum gathers and the focus for an inclusive and fully accountable body turns to the UN. With support from the Norwegian government and partners at the Financial Transparency Coalition, we are now working to build a collaborative FACTI policy tracker that will capture the support of governments around the world for measures including the UN Tax Convention and a fair global minimum effective tax rate, and enable targeted advocacy on key states at key moments. Concerted engagement from both human rights and tax justice campaigners can be crucial to the prospects for success. The leadership of countries that have long supported this agenda, including the G77 group and the Africa group at the UN, will be vital. Progress at the UN is likely to require at least some high-income countries understanding the importance of a fairer global architecture, and giving up on their disproportionate access to power at the OECD.

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