PROMOTION OF INCLUSIVE AND EFFECTIVE TAX COOPERATION AT THE UNITED NATIONS

SUBMISSION TO THE UN SECRETARY GENERAL

78TH GENERAL ASSEMBLY SESSION, 5-19 SEPTEMBER 2023

AMNESTY INTERNATIONAL

Amnesty International is a movement of 10 million people which mobilizes the humanity in everyone and campaigns for change so we can all enjoy our human rights. Our vision is of a world where those in power keep their promises, respect international law and are held to account. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and individual donations. We believe that acting in solidarity and compassion with people everywhere can change our societies for the better.

First published in 2023
by Amnesty International Ltd
Peter Benenson House, 1 Easton Street
London WC1X 0DW, UK

Index: IOR 40/6565/2023
Original language: English

amnesty.org

AMNESTY INTERNATIONAL

KEYWORDS

Principles of equality, non-discrimination, meaningful participation, equitable development, realization of human rights, maximum available resources, extra-territorial obligations and international cooperation.

SUMMARY

States have clear obligations to cooperate effectively and fairly in order to reform global taxation with the aim of mobilizing sufficient resources to meet their respective human rights obligations, address inequality, achieve the SDGs and finance a just climate transition. A key way to achieve this goal is for states to support the development of a UN Tax Convention that would establish a UN Tax Body to promote domestic resource mobilization through the effective and equitable governance of taxing rights across the globe.

THE URGENT NEED TO MOBILIZE RESOURCES TO FULFIL HUMAN RIGHTS, MEET THE SUSTAINABLE DEVELOPMENT GOALS AND FUND A JUST CLIMATE TRANSITION

Progress towards meeting the Sustainable Development Goals (SDGs) has been halted and reversed due to multiple crises in recent years, with an additional 93 million people having been pushed into extreme poverty since 2020 as a result of the Covid-19 pandemic and the impact of Russia's invasion of Ukraine.[1] The World Food Programme (WFP) estimates 349 million people were acutely food insecure in 2022, an increase of 200 million since before the pandemic.[2] This has occurred in a context of extreme inequality, in which the poorest half of the global population possesses just 2% of all wealth, whereas, the richest 10% own 76%.[3]

Against this backdrop there are enormous global funding gaps that need to be filled. The Organisation for Economic Co-operation and Development (OECD) estimates that the SDG financing gap could increase by 70% as a result of the Covid-19 pandemic.[4]

In this context the UN Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment (UN Special Rapporteur on human rights and the environment), recommends seven key actions to close the Sustainable Development Goals financing gap. These include a global wealth tax, redirecting environmentally damaging subsidies, a global carbon tax, reducing tax evasion and avoidance, special drawing rights for climate action, debt relief and fulfiling official development assistance commitments.[5]

---

[1] United Nations, *The Sustainable Development Goals Report 2022,* unstats.un.org/sdgs/report/2022/The-Sustainable-Development-Goals-Report-2022.pdf, p. 3.
[2] World Food Programme (WFP), *WFP Global Operational Response Plan 2022*; Update 6, November 2022, docs.wfp.org/api/documents/WFP-0000144405/download/, p. 4.
[3] Lucas Chancel and others, *World Inequality Report 2022*, World Inequality Lab, wir2022.wid.world/www-site/uploads/2022/01/Summary_WorldInequalityReport2022_English.pdf
[4] Organisation for Economic Co-operation and Development (OECD), *OECD Global Outlook on Financing for Sustainable Development*, oecd.org/dev/OECD-UNDP-Scoping-Note-Closing-SDG-Financing-Gap-COVID-19-era.pdf, p. 2.
[5] UN Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, Report: *The Human Right to A Clean, Healthy and sustainable Environment: A Catalyst for Accelerated Action to Achieve the Sustainable Development Goals*, 10 August 2022, UN Doc. A/77284, paras 69-76.

Taxation has been recognized by the United Nations Department of Economic and Social Affairs (UNDESA) as the most sustainable form of revenue generation,[6] yet there continues to be an urgent need to effectively address the loss of potential tax revenue whether because of inefficiencies, harmful tax incentives or tax abuse including through harmful tax competition and illicit financial flows.[7] The potential gains of doing so are enormous - it is estimated that nearly US$500 billion is lost every year to tax abuse, at the expense of low-income countries who require it the most.[8] Upper-middle-income countries and high-income countries enable 98% of global tax abuses impacting Africa and Latin America the most, who as a result lose an annual US$26 Billion (7% of tax revenue) and US$43 Billion (4.2% of tax revenue) to tax abuse, respectively[9] or the equivalent of nearly half (48%) of their public health budgets.[10]

Critically, it is crucial that the mobilization of additional resources be done in a way that challenges, rather than perpetuates, the structural and historic roots of today's global inequality and the failure or inability of many states – particularly low-income countries – to adequately realize economic and social rights. The historic root of this inequality has been emphasized by the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance when they describe how "the distinction between "high-income" and "low-income" countries is directly related to the racist economic extraction and exploitation that occurred during the colonial era, for which colonial powers have not been held accountable"[11] and that limited attention has been given to "global structural inequality rooted in the histories and political economies of colonial and other forms of imperial subordination… [which is] at odds with the principles of equality and non-discrimination that must be at the core of the United Nations system."[12]

HUMAN RIGHTS OBLIGATIONS AND GLOBAL TAXATION REFORM

Equitably mobilizing resources through taxation is essential to ensuring that states are able to generate the maximum available resources possible to progressively realize human rights for all in line with their obligations under Article 2(1) of the UN International Covenant on Economic, Social and Cultural Rights (ICESCR).[13]

Furthermore, as part of their obligation to engage in international cooperation and assistance as outlined in Article 2(1) of the ICESCR, states also have an obligation to respect and protect the enjoyment of human rights everywhere, which involves avoiding conduct that would foreseeably risk impairing the enjoyment of human rights by persons beyond their borders, and conducting assessments of the extraterritorial impact of laws, policies and practices.[14]

Similarly, the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights codify existing obligations in this regard. They require states to take deliberate, concrete and targeted steps, separately, and jointly through international cooperation, to create an international

[6] UN Committee of Experts on International Cooperation and Tax Matters, Report: *The Role of Taxation and Domestic Resource Mobilization in the Implementation of the Sustainable Development Goals*, 3 October 2018, UN Doc. E/C.18/2018/CRP.19.
[7] OECD, *Harmful Tax Competition: An Emerging Global Issue*, 1998, doi.org/10.1787/9789264162945-en
[8] Tax Justice Network, *The State of Tax Justice 2021*, 16 November 2021, taxjustice.net/reports/the-state-of-tax-justice-2021/
[9] Tax Justice Network, *The State of Tax Justice 2020: Tax Justice in the time of COVID-19*, 20 November 2020, taxjustice.net/reports/the-state-of-tax-justice-2020/.
[10] Tax Justice Network, *The State of Tax Justice 2021* (previously cited).
[11] UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (UN Special Rapporteur on contemporary forms of racism), Report: Ecological Crisis, Climate Justice and Racial Justice, 25 October 2022, UN Doc. A/77/549, para 1.
[12] UN Special Rapporteur on contemporary forms of racism, Report: *Global Extractivism and Racial Equality*, 14 May 2019, UN Doc. A/HRC/41/54, para. 17.
[13] International Covenant on Economic, Social and Cultural Rights, Article 2(1). See also the Convention on the Rights of the Child, Article 4, and the Convention on the Rights of Persons with Disabilities, Article 4(2).
[14] UN Special Rapporteur on Extreme Poverty and Human Rights (UN Special Rapporteur on poverty), Report: *Final Draft of the Guiding Principles on Extreme Poverty and Human Rights,* 18 July 2012, UN Doc. A/HRC/21/39, para. 92.

enabling environment conducive to the universal fulfilment of economic, social and cultural rights (ESCR), including in matters relating to finance and taxation.[15]

These obligations require states to refrain from any actions, policies or measures that enable tax evasion (illegal) and tax avoidance (legal but still depriving others of resources) in another jurisdiction.[16] This could include the establishment or maintenance of offshore tax havens[17,] or engaging in harmful tax competition[18] that encourages a race to the bottom in terms of disproportionately low tax rates and incentives.[19] Some double taxation treaties (DTTs) also reflect global power imbalances in terms of the ability of states to negotiate treaty terms and can limit the ability of low-income countries to tax inward investment. This results in higher-income countries acquiring more taxing rights and therefore more revenues relative to the lower-income countries they have DTTs with.[20]

Similarly, states should also take measures to ensure that business enterprises incorporated under their laws, or that have their main seat or place of business under their jurisdiction, do not participate in or facilitate tax evasion and/or tax avoidance.[21]

The former UN Special Rapporteur on Extreme Poverty and Human Rights has made specific recommendations in relation to international tax cooperation including working towards a multilateral regime for tax transparency, the strengthening of frameworks for the automatic exchange of information, country-by-country adoption of reporting standards for transnational organizations, the establishment of national public registries to improve beneficial ownership transparency and the ensuring of the effective participation of developing countries in international forums.[22]

THE NEED FOR FAIR, INCLUSIVE AND REPRESENTATIVE RULEMAKING VIA A UN TAX CONVENTION AND A UN TAX BODY

"For all Governments, losses in taxable revenue through illicit financial flows reduce the available pool of resources essential for investing in social policies and public services. Governments cannot tackle those issues alone, making international cooperation and assistance a cornerstone of the present report. A multilateral, inclusive and democratic fiscal architecture is crucial to addressing global tax avoidance and evasion." Independent Expert on foreign debt[23]

Global tax rules have long disproportionately disadvantaged lower-income countries and perpetuated inequalities, as a result of having been designed and agreed in non-inclusive way that benefit wealthy

---

[15] ETO Consortium, *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, January 2013, available at: fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf, principle 29.
[16] The Human Rights Council, in its resolution 46/8, recognized that tax abuse, in particular in the form of tax evasion and avoidance by corporations, contributes to the build-up of unsustainable debt as governments are forced to obtain revenue through external borrowing. In 2022, low-income countries are expected to pay US$43 billion in debt servicing, an amount that exceeds spending on health care, education and social protection by 171%. UN 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 (UN Independent Expert on Foreign Debt), Report: *Towards a Global Fiscal Architecture Using a Human Rights Lens, 15 July 2022, UN Doc.* A/77/169, para.2.
[17] Tax havens are countries and/or territories offering minimal or no tax liability for foreign businesses and investors as well as those which in various ways facilitate tax avoidance and/or also provide services to bolster financial secrecy. Tax Justice Network, "Tax havens and secrecy jurisdictions", 14 November 2020, taxjustice.net/topics/tax-havens-and-secrecy-jurisdictions/
[18] See, for example, OECD, *Harmful Tax Competition: An Emerging Global Issue* (previously cited), p. 1.
[19] UN Special Rapporteur on poverty, Report: *Taxation and Human Rights,* 22 May 2014, UN Doc. A/HRC/26/28; UN Committee on Economic, Social and Cultural Rights, General Comment 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, UN Doc. E/C.12/GC/24, para. 37.
[20] Nick Shaxson, "More unfair tax treaties may be renegotiated", 22 June 2016, Tax Justice Network, taxjustice.net/2016/06/22/tax-treaties-overturned/
[21] UN Special Rapporteur on poverty, Report: *Taxation and Human Rights (previously cited), para.* 6.
[22] UN Special Rapporteur on poverty, Report: *Taxation and Human Rights (previously cited), paras* 20-22.
[23] UN Independent Expert on Foreign Debt), Report: *Towards a Global Fiscal Architecture Using a Human Rights Lens* (previously cited), para.2.

states. The most recent example is the 2021 OECD's Inclusive Framework on Base Erosion and Profit Shifting, which set a two-pillar solution for taxing rights and a global corporate minimum tax of the residual profit of the largest and most profitable multinational enterprises (MNEs) respectively. Whilst the proposed new global minimum corporate income tax rate of 15% may be seen as a significant step forward in seeking to address tax avoidance by multinationals, in reality it was achieved at the expense of the taxing rights of low-income countries. It is estimated that the G7 countries will take more than 60% of this additional tax generated.[24] Further, the minimum 15% tax rate is seen as too low given that a number of countries in Latin America and Africa have recently had average corporate tax rates of 26% and 27%.[25]

Instead, it is vital and urgent that the UN facilitates intergovernmental discussions over possible UN reforms to the global tax system, following the adoption of GA Resolution concerning "Promotion of inclusive and effective international tax cooperation at the United Nations" in November 2022.[26] This should include the establishment of new UN bodies and mechanisms to monitor, evaluate and decide global tax rules. A global UN-sponsored body established with the ability to ensure equal representation of all member states would contribute to equitable and sustainable development for all, through the implementation of fair, comprehensive and consistent global taxation rules, whilst adhering to the fundamental human rights principles of equality and non-discrimination, participation, transparency and accountability.

Doing so would also be in line with recommendations made in February 2021 by the High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel), which was mandated by the UN General Assembly to review current challenges and trends related to financial accountability, transparency and integrity. The panel recommended that the process for a UN Tax Convention be initiated to establish international tax norms, particularly tax-transparency standards (Recommendation 2).[27] Further, the Panel highlighted a number of other recommendations, including that a UN Tax Convention should ensure taxpayers - and especially multinational corporations - pay their fair share of taxation based on group global profit (Recommendation 4A), that an impartial and fair mechanism to resolve international tax disputes be set up (Recommendation 4C), and that an inclusive intergovernmental body on tax matters be created under the auspices of the United Nations (Recommendation 14C).

Therefore, we recommend that the UN support the development of a UN Tax Convention establishing a UN tax body which would provide for a framework to:

(i) **Comprehensively address the problem of both illicit financial flows (IFFs) and commercial practices such as aggressive tax avoidance with a view to enabling greater domestic resource mobilization to realize human-rights;**

(ii) **Progressively replace the current incoherent and highly complex network of bilateral and multilateral tax treaties and agreements and the failed transfer pricing system**;

(iii) **Create a global tax governance structure**:

  a. **where all countries can participate on an equal footing and international decision-making on tax is transparent, participatory and allows citizens to hold their governments to account,**

---

[24] Tax Justice Network, "Global minimum corporate tax: questions grow over OECD commitment to 'inclusive' reforms", 5 July 2021, taxjustice.net/2021/07/05/global-minimum-corporate-tax-questions-grow-over-oecd-commitment-to-inclusive-reforms/
[25] OECD, *Corporate Tax Statistics: Third Edition*, 2021, oecd.org/tax/tax-policy/corporate-tax-statistics-third-edition.pdf
[26] UN General Assembly Economic and Financial Committee (Second Committee), "Promotion of inclusive and effective international tax cooperation at the United Nations", Resolution adopted on 23 November 2022, UN Doc. A/C.2/77/L.11/Rev.1.
[27] High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda, Final Report: *Financial Integrity for Sustainable Development*, 25 February 2021,factipanel.org/docpdfs/FACTI_Panel_Report.pdf

b. **which promotes both fairness among countries, in particular, with respect to low-income countries in terms of existing tax standards and rules, and progressive national tax systems,**
c. **which improves monitoring and estimates of IFFs and combats them by increasing transparency and cooperation among governments including information about tax payments, tax rates and revenues among others, and by promoting government accountability and public participation including through knowledge sharing, technical cooperation, capacity building. In addition this would also seek to end the imposition of unilateral coercive measures including imposing mandatory and binding arbitration, which would, for example, limit the ability of lower-income countries to defend their taxing rights relative to multinational corporations,**
d. **which effectively monitors the implementation of global tax rules;**

(iv) **Link global tax governance with other relevant governmental commitments and obligations, including those relating to human rights, equality, the UN Sustainable Development Goals, debt restructuring and climate justice among others**.

CONCLUSION

Tax abuse has been enabled by a global financial system which continues to benefit those wealthy states with the power to set the global tax rules. As such they have hampered the ability of states, particularly low-income countries, to domestically raise sufficient revenues to meet their human rights obligations.

Fiscal policies, both national and international, including in relation to revenue collection, budget allocations and expenditure, tax and trade rules and agreements and debt governance must comply with human rights laws and standards and principles including, in particular, equality and non-discrimination, participation, transparency and accountability.

With respect to taxation this requires urgent reform of the global framework effectively addressing illicit financial flows. Establishing a global tax body to address and monitor implementation of fair and inclusive tax rules, developed under the auspices of the United Nations, would contribute to meeting its mandate to ensure universal respect for the promotion and protection of all human rights and fundamental freedoms for all.

CONTACT US

info@amnesty.org

+44 (0)20 7413 5500

JOIN THE CONVERSATION

www.facebook.com/AmnestyGlobal

@Amnesty