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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

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

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Attiya Waris, in accordance with Human Rights Council resolution 52/17.

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

The fiscal social contract and the human rights economy

Summary

The fiscal social contract and the foundations of fiscal legitimacy have been undermined by several factors and acts that include unsustainable and irresponsible borrowing and lending, odious and illegitimate debt, conditionality and harmful economic reforms. Unfair taxation and tax competition, mismanagement, illicit financial flows, the limits of the current international financial architecture and the inability to devise an international fiscal mechanism capable of protecting States' ability to realize human rights while repaying their debts have further compounded the challenges to adhering to the social contract, which is also characterized by fragile international cooperation and solidarity. Given the failure of the current economic system, a focus on a human rights-based economy is emerging. This pressure or demand to rethink global, regional and national economies is the result of an awareness of the challenges facing the general citizenry in basic daily survival. As a result, the present report revisits the human rights-based approach to the economy, as well as the interlinkages between financing the development of countries and societal expectations.

Contents

I. Introduction

1. The fiscal social contract refers to the implicit agreement between the State and its citizens on the distribution and use of fiscal resources. It encompasses expectations and obligations concerning taxation, public spending and accountability. The concept is rooted in the idea that the State, through fair and effective tax systems, should collect revenues in a manner perceived as legitimate by its citizens and, in turn, utilize those resources to provide public goods and services that enhance the welfare of the population.[1] Fiscal legitimacy was identified as a key priority area by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights in her thematic report entitled "Taking stock and identifying priority areas: a vision for the future work of the mandate holder" (A/HRC/49/47). Fiscal legitimacy rests on a social contract: the State, on one side, is entrusted with the authority to raise, allocate and use public resources; and society, on the other, accepts to contribute such resources, on the agreement that they will be used in the best interests of the people. Public money can come from debt, tax, aid, grants, government business or revenue sources associated with mining or other natural resources.[2]

2. The realization of all human rights hinges upon the provision of goods and services that improve the well-being of individuals and groups within society, without discrimination. However, States have not always used their fiscal authority in ways that improve the lives of their populations, including in terms of prioritization of expenditures, which, in turn, has led to negative perceptions that fiscal contributions are a "necessary burden" with no commensurate benefits or guarantees.[3]

3. The Independent Expert shares the call by the Secretary-General (A/75/982) for a renewed social contract, anchored in a comprehensive approach to human rights and founded, inter alia, on inclusion, protection and participation, as a basis for a renewed fiscal social contract and stronger fiscal legitimacy, which could include a human rights-based economy. The human rights economy has not yet been clearly defined; as a result, the present report will delineate what the Independent Expert has collated from the contributions received as well as the recent publications in the field. In the present report, a human rights-based methodology to assess the human rights economy, which is what the Independent Expert refers to as the "life cycle approach", is set out.

4. While the Independent Expert believes that it is important to emphasize the ultimate responsibility of States to ensure compliance with their international human rights obligations so that there is no "contracting out" of fundamental human rights guarantees, she also recognizes that effective implementation requires all levels and branches of government to be cognizant of, and fully committed to implementing, the State's obligations. The recognition and protection of human rights rely on local governments, community organizations and private actors, often acting in partnership and affirming such implementation as a joint commitment and a collaborative project. For several decades, there has been a call to explore the importance of the role that the United Nations can and should play as the institution to create an intergovernmental body on fiscal issues that deals with not only debt but also other

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[1] Office of the United Nations High Commissioner for Human Rights (OHCHR), "Call for input: 'the fiscal social contract and the human rights economy' thematic report to the United Nations General Assembly", 20 April 2024.

[2] Attiya Waris, *Financing Africa* (Bamenda, Cameroon, Langaa Research and Publishing Common Initiative Group, 2019).

[3] Attiya Waris, *Tax and Development: Solving the Fiscal Crisis through Human Rights* (Nairobi, Law Africa, 2013).

financial obligations, including taxation and illicit financial flows. The Independent Expert is grateful to all those who engaged with her directly, in focus groups and consultations, as well as to those who responded to her call for contributions.

II. The underpinning principles

A. The "do no harm" principle

5. Under international human rights law, States have an immediate obligation to (continuously) take steps, to the maximum of their available resources, towards the realization of all human rights.[4] The Committee on Economic, Social and Cultural Rights, among others, has repeatedly observed that "available resources" refer to both the resources existing within a State and those available from the international community through international cooperation and assistance, as stated in article 2.1 of the International Covenant on Economic, Social and Cultural Rights.[5] While States maintain considerable discretion in determining both what their available resources are and how to allocate and use them, such discretion is not unlimited, nor is State conduct in that respect completely immune from scrutiny. States are also under an obligation to ensure, at all times, at least the minimum essential levels of each of the economic, social and cultural rights[6] and to protect the most vulnerable and disadvantaged members and groups of society[7] even and especially in times of severe resource constraints (whether caused by a process of adjustment, economic recession or other factors).[8]

6. As a general principle of human rights law, States must not adopt any measures that would deteriorate the existing level of protection of economic, social and cultural rights in a country. Retrogressive measures can include the abrogation of legislation that favours economic, social and cultural rights without compelling justification or an unjustified reduction in public expenditures for social services. Only compelling justifications can permit retrogressive measures, which should be:

(a) Temporary (i.e. limited to the duration of the crisis);

(b) Legitimate (i.e. based on compelling justifications with the full disclosure of the information on which these justifications are based);

(c) Reasonable (i.e. the most suitable and capable of achieving the legitimate aim);

(d) Necessary (in that the adoption of any other policy alternatives or the failure to act would be more detrimental to the enjoyment of economic, social and cultural rights);

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[4] Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), para. 2. Such steps must be both qualitative and quantitative (i.e. improve the implementation of rights, as well as gradually expanding both the number and the range of people who can access those rights); see, for example, the International Covenant on Economic, Social and Cultural Rights, art. 12.

[5] Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), para. 13; E/C.12/2016/1, para. 5; and Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, principle 26.

[6] Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), para. 10; and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, guideline 9.

[7] Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), para. 12; general comment No. 5 (1994), para. 10; general comment No. 6 (1995), para. 17; general comment No. 12 (1999), para. 28; general comment No. 14 (2000), para. 18; general comment No. 17 (2005), para. 20; and general comment No. 18 (2005), para. 12.

[8] Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), para. 12; and 2007 statement on maximum available resources, para. 4.

(e) Proportionate (i.e. they do not unduly restrict human rights and their costs do not outweigh their benefits);

(f) Non-discriminatory (and do not disproportionally affect the rights of disadvantaged or marginalized individuals or groups);

(g) Protective of the minimum core obligations related to human rights;

(h) Based on transparency and participation of the affected groups;

(i) Subject to meaningful review and accountability procedures, including human rights impact assessments.[9]

7. Retrogressive measures are, otherwise, prima facie prohibited and amount to a violation of the Covenant.[10] Progressive measures can be described as a "do no harm" approach. A fiscal social contract through a human rights lens and, as a result, the legitimation of fiscal authority can be achieved through the fiscal and progressive realization of all human rights.[11]

B. International cooperation, assistance and fiscal legitimacy

8. International cooperation and assistance are crucial for enhancing fiscal legitimacy, in particular in developing countries. Under international human rights law, it is the State that is held responsible for its compliance with international human rights instruments to which it is bound. The focus of monitoring and constructive dialogue at the international level has been on national Governments. National Governments, however, cannot be viewed as the only relevant actors with respect to the implementation of international human rights responsibilities. Subnational governments, including state, provincial and municipal governments, often have significant authority with respect to housing and therefore share responsibility for implementing the international human rights responsibilities of the State. Involvement in the realization of human rights has become ever more diversified owing to recent complexities in the economy, such as debt swaps, climate change and the failure to clearly mark climate funds for places most affected by climate change, and growing concerns around access to fiscal information in the digital age and illicit financial flows. Increasing engagement with private actors gives more political space, but there is a need for a better understanding of the ability of such actors to follow laws in countries worldwide.

9. Moreover, global actors, such as transnational corporations, multilateral and bilateral financial institutions and United Nations agencies, play significant roles in the realization of rights. The activities of transnational extractive industries or development projects initiated and overseen by multiple partners, including international financial institutions, may have far-reaching effects on rights. The evolving nature and diversification of the State and the multiplicity of actors who may be involved in fulfilling its obligations under international human rights law make implementation even more complex. In this regard, the Independent Expert sees this playing out where financial institutions are increasingly unwilling to finance coal mines (even though it can be argued that recent coal-related technology could make

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[9] See www.ohchr.org/sites/default/files/GuidePrinciples_EN.pdf. See also Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), para. 9; and general comment No. 19 (2007), para. 42.

[10] Statements concerning the presumption of the impermissibility of retrogressive measures can be found, inter alia, in Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999), para. 45; general comment No. 14, para. 32; and Maastricht Guidelines, guideline 14 (e).

[11] See communication No. AL ISR 7/2024.

coal potentially greener than some forms of clean energy) and yet other companies are taken to court when they violate the rights of the next generation.[12]

10. In addition, Governments often engage in partnerships with private service providers or community-based organizations to administer programmes. Some advances have been made at the international level towards a better understanding of the responsibilities of businesses and private actors, but the obligation of States to regulate businesses to ensure that their actions are consistent with the realization of human rights is critical to the effective implementation of sustainable business practices.

11. The negotiation of a debt agreement and the passing of tax laws may take over a year.[13] Once the initial injection of finance received from increased tax collection or a debt agreement enters a country, there are several immediate effects: economy growth projects commence and people may get jobs, but social services may improve only gradually. However, some of these issues come into play more slowly depending on the purpose of the debt or the taxes.

C. The life cycles of humans, debt and elections

12. The intersections between human rights, debt, elections and the life cycle approach are complex and multifaceted. Each element influences and is influenced by the others, creating a dynamic interplay that affects governance, economic stability and social well-being. Women and families in work are more likely to be well fed, and States with income from taxes or from taking on debt are more likely to spend on health care and social services, all of which in turn contribute to the health of newborns and children. With better finances, the State, the public and private health-care systems may have better funding, and, as the children grow, their development may not be affected by disease, stunting, malnutrition or weak bones and teeth. The schooling system may be better capacitated and children, as a result, may be better educated to face life as (potentially taxpaying) adults.

13. However, the intended purpose may not be achieved if the funds are not well managed domestically. Such situations are often evidenced by stalled projects worldwide as a result of corruption, poor management and currency fluctuations that make the amount in the domestic currency inadequate. Changes in global and regional economies and violence in neighbouring countries, as well as globally, have a similar effect. Recent conflicts, such as the conflict in Ukraine, have affected fertilizer and food prices; sanctions on the Islamic Republic of Iran have affected fuel prices; and terrorism in Afghanistan and Pakistan has delayed the achievement of complete global vaccination against polio (A/78/179). In addition, if a State takes on debt before an election, there is a risk that the funds may be used for electoral campaign financing, which is crucial because the repayment responsibility will fall on the succeeding Government – not necessarily the one that committed to the loan. Since most, if not all, debt-related agreements are private, the absence of oversight by society in the participation in decision-making can result in the trust between the State and society being eroded and the fiscal social contract being undermined.

14. The effects of global, regional, national and subnational financial decisions on vulnerable populations can be seen:

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[12] For example, the company Shell has been taken to court for violating the rights of the next generation.

[13] As at the end of June 2024, the 2023 bill on tax justice of Honduras was still pending in the Senate.

(a) When taking on debt, creating a tax or engaging in illicit financial flows;

(b) When beginning the repayment of interest five years later;

(c) When attempting to prevent default on the debt agreement 5 to 10 years later;

(d) When defaulting from five years to the completion of the final debt payment;

(e) When trying to push for the mainstreaming of human rights or prioritizing social spending;

(f) When a regime changes;

(g) During crises, such as wars and conflict, and other health and climate crises.

15. The above cycles – debt and electoral – affect the life cycles of humans – from before conception to death and often beyond in settlements of estates and its linkages to the fiscal system are what the Independent Expert refers to as the life cycle approach.

16. In this report, it is understood that the focus of a human rights economy must be the life cycle of human beings, and that their lives, health, education and development must guide all State decisions regarding the collection and spending of resources. At the same time, human engagement in the economy aims specifically at achieving a standard of living that moves the world towards equality and a level playing field, while reducing the disproportionate benefits that some enjoy unnecessarily.

III. The social contract and the human rights economy

A. The social contract and fiscal social contract

17. In social contract theory, individual rights are yielded for the sake of the collective interest, with an expectation that, in return, the central governing authority will deliver protection and other public goods and services to society.[14] The concept of a social contract is widely used but rarely defined in concrete terms.[15] A traditional understanding of the social contract in relation to governance describes an implied or "soft" contractual arrangement whereby citizens agree to submit to the rule of law in exchange for the establishment of a society in which Governments have obligations to their citizens.[16] Under this arrangement, both citizens and Governments cede some powers or abilities for the greater good and accept duties and responsibilities to the other parties of the contract in order for the society they have created to function. Social contract theory has evolved over time to include not just Governments and citizens, but also collective actors[17] such as international organizations and even

[14] Osarugue C. Obayuwana, "The fiscal social contract – looking beyond the theory", Afronomics Law, 18 July 2020.

[15] Diane F. Frey and others, "Crises as catalyst: a new social contract grounded in worker rights", *Health and Human Rights*, vol. 23, No. 2 (December 2021).

[16] Trudo Lemmens and others, "Social contract theory: rights and responsibilities", in *The Social Contract and Human Rights Bases for Promoting Access to Effective, Novel, High-Priced Medicines* (Copenhagen, World Health Organization Regional Office for Europe, 2022).

[17] Frey and others, "Crises as catalyst".

corporations.[18] A social contract requires all parties to accept their duties and obligations and to be held accountable when they renege thereon.[19]

18. Social contract theory is supposedly an expression of the consciousness of a people, their underlying motivation for organizing themselves into society and from which Governments, in particular in democratic settings, derive legitimacy. Taxation has always been a prime example of the social contract at work, as it brings to life, with irrefutable clarity, an awareness of the monetary transaction between a State and its citizens. The periodic filing of tax returns lends a distinctive touch to each member of society, bringing the reality of the social contract even closer to home. Social contract theory, therefore, sits at the heart of tax discussion, as it is the perceived basis for political organization and the defining framework of citizens' fiscal relationship with Governments. In this context, taxation can be viewed as a contribution of personal assets to the common good, with the expectation that public goods and services will be delivered by the Government to the people as a collective.[20]

19. The tax system can be very effective at creating incentives for change by becoming more participatory and cooperative, and less mandatory or punitive. The tax system may create more cohesion to address the major problems of our times. Cohesive and participatory taxation reinforces civic engagement.[21] Thus, taxes collected from citizens and businesses are used to finance basic social infrastructure and services, particularly health care, education and social protection. In recent years, the tax regime of the United Kingdom of Great Britain and Northern Ireland has been seemingly moving away from the social contract, as evidenced by increases in taxes at a time when public services (including health care, public transport and public museums) and general living standards are declining.[22]

20. High interest rates and inflation, as well as high energy prices and a general cost-of-living crisis, highlight general unfairness, in particular when coupled with the low taxation of the wealthy, low taxes for fossil fuel companies and Governments seemingly more willing to tax households than wealthy individuals and large companies. High-profile individuals paying less tax than ordinary citizens can also be perceived as an unfair practice that undermines the principles of a social contract, leading to the erosion of public trust.[23]

B. Human rights economy

21. The human rights economy has been explained as the proper application of pre-existing legal obligations to economic activity, as was intended by the Universal Declaration of Human Rights and the treaties that followed it, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.[24] The Centre for Economic and Social Rights explains that the concept of the "economy" is often talked about as a monolithic force that cannot be controlled and that is separate from the day-to-day lives of humans. The economy is often depicted as numbers on a chart, or the rise and fall of the stock

[18] John Douglas Bishop, "For-profit corporations in a just society: a social contract argument concerning the rights and responsibilities of corporations", *Business Ethics Quarterly*, vol. 18, No. 2 (April 2008).

[19] Ibid.

[20] See https://www.afronomicslaw.org/2020/07/17/the-fiscal-social-contract-looking-beyond-the-theory.

[21] Contribution by the Center for Global Nonkilling.

[22] Torsten Bell and Conor D'Arcy, "The £1 trillion pie: how wealth is shared across Scotland", June 2018.

[23] Contribution by Henry McGhie, Curating Tomorrow.

[24] See https://libraryresources.unog.ch/c.php?g=714166&p=5167185.

market, but, in reality, people are the economy – and all people have a right to ask (and answer) the question of what the economy is for and whom it serves.[25] A human rights economy seeks to redress the root causes of, and structural barriers to, equality, justice and sustainability by prioritizing investment in economic, social and cultural rights.[26] It has been posited that the primary purpose of a human rights economy is to guarantee the material, social and environmental conditions necessary for all people to live with dignity on a flourishing planet. The measure of the success of such an economy is whether all people are able to enjoy their full rights – economic, social, civil, political, cultural and environmental – without discrimination and without reducing the ability of future generations to do so.[27]

22. The concept of a human rights economy has emerged in the context of the current economic system, which is failing people and the planet. Even in the Sustainable Development Goals, the fixation on "growth" is not working for a sustainable future. A human rights economy has been defined by the Office of the United Nations High Commissioner for Human Rights (OHCHR) as placing people and the planet at the heart of economic policies, investment decisions, consumer choices and business models, with the goal of measurably enhancing the enjoyment of human rights for all.[28] A human rights economy ensures, before profit and growth, that all human rights are fulfilled (or soon will be) and that all basic needs of all people are met and guaranteed, and, as a result, that all violations of all human rights are prevented (or addressed).[29]

23. The human rights economy is one of several alternative economic models that have emerged in response to the failures of the current dominant economic system. Discussion about alternative economic models became even more prevalent and urgent during the coronavirus disease (COVID-19) pandemic. In 2019, OHCHR established the surge initiative, a campaign to promote the realization of economic, social and cultural rights and to strengthen the link between human rights and economics.[30] The human rights economy has emerged as a central component of the initiative, with the United Nations High Commissioner for Human Rights, Volker Türk, calling for a human rights economy that "seeks to redress root causes and structural barriers to equality, justice and sustainability, by prioritizing investment in economic, social and cultural rights."[31]

24. The care economy, the human rights or rights-based economy and the "just transition" are all terms to describe different economic models that seek to be fair, just and centred around human rights. However, when seeking to establish a human rights-centred economy, it becomes impossible and unhelpful to attempt to differentiate between these concepts. The human rights economy brings together the idea of all these alternative models into one concept that places people's rights and well-being, as well as the health of the planet, at the heart of policymaking. Tax justice is crucial to the achievement of a human rights economy. Fiscal policy should reflect the fundamental core principles of transparency, accountability, social justice, equality and non-retrogression.[32] Tax justice underpins the fiscal social contract, and

[25] See www.cesr.org/rights-based-economy/.

[26] OHCHR, "Türk calls for a human rights economy", 6 February 2023.

[27] Christian Aid and Center for Economic and Social Rights, "A rights-based economy: putting people and planet first", October 2020.

[28] OHCHR, "Applying the human rights framework to address gendered poverty", observer paper prepared for the sixty-eight session of the Commission on the Status of Women, October 2023.

[29] Contribution by the Center for Global Nonkilling.

[30] Sylvain Aubry and others, "Human rights in the new eco-social contract: exploring a just transition through public services and social security", August 2023.

[31] OHCHR, "Türk calls for a human rights economy".

[32] Dayana Blanco and others, *Principles for Human Rights in Fiscal Policy* (Steering Committee of the Initiative for Human Rights Principles in Fiscal Policy, 2021).

a functioning fiscal social contract is necessary for a human rights economy to be possible.[33]

25. A human rights economy could be measured through the value that goods and services provide in (a) respecting human rights; (b) protecting human rights, notably from commercial interests and lobbyists whose activities are counter to human rights; and (c) fulfilling human rights, notably for those currently most disenfranchised in society worldwide. A human rights economy should be built around the sustainable development principles of mutual support and concern, through reinvigorated multilateralism, free from the marketization of support ("aid for trade" or neocolonialism).[34] Although external costs are included in the price of private industry goods and services, they are currently paid by taxpayers rather than by those who pollute. This practice is a major flaw in the economic model worldwide, as most externalities become a burden for the general citizenry, especially those in vulnerable societies.

26. Given that economics and human rights can be complementary and mutually reinforcing, the realization of all human rights cannot be interpreted exclusively as an economic cost but must also be seen as a social investment that can positively affect economic growth, equality, and social and political inclusion. There is a need for a new social contract in which contemporary societies find the adequate balance between the market and the State, which has been reversed by the current process of globalization.[35] The right question to ask is not whether modern States can afford human rights, but whether our societies can afford not to realize human rights.[36]

IV. The status of the fiscal social contract

27. At the national or domestic level, the constitution is the supreme law of a nation or State, and establishes the character and basic principles of the Government. Constitutionalism is the idea that the powers of Governments can and should be limited, and that their authority emanates from the enforcement of these limitations. In constitution-making and analysis, the right or power of the Government to tax seems almost superfluous. There has been no real analysis into the right or power of Governments to tax, the amount collectible, or the use to which it is put. Instead, there tends to be a presumption that a State can tax and that taxes cannot be tied to services at all. However, this presumption has proved to encourage a culture of tax evasion and avoidance, impunity, corruption, a lack of responsibility and accountability, and outright theft across Africa.[37]

28. According to a study by World Institute for Development Economic Research, citizens' positive perception of governance increases their willingness to pay taxes, citizens who trust in institutions are more likely to pay taxes and those who have had difficulty receiving Government services are less likely to pay taxes.[38] The State

[33] Contribution by the Tax Justice Network.

[34] Contribution by Henry McGhie, Curating Tomorrow.

[35] See https://gchumanrights.org/gc-preparedness/equality-and-non-discrimination/article-detail/a-post-pandemic-era-human-rights-challenges-for-a-new-normal.html.

[36] Felipe Gómez Isa, "Economic, social and political costs of the (non-)realization of human rights: towards a new social contract", in *Can We Still Afford Human Rights? Critical Reflections on Universality Costs and Proliferation*, Jan Wouters and others, eds. (Cheltenham, Edward Elgar Publishing, 2020).

[37] Attiya Waris, "Delineating a rights-based fiscal social contract using African fiscal constitutions", *East African Law Journal* (2015).

[38] Enrico Nichelatti and Heikki Hiilamo, "A fiscal approach to the social contract in Sub-Saharan African countries: looking for opportunities to strengthen trust in Government and tax compliance by analyzing citizens' perception of governance", WIDER Working Paper, No. 2022/144 (Helsinki, United Nations University – World Institute of Development Economics Research, 2022).

needs to demonstrate and deliver; otherwise, the State is usually perceived as a taker rather than a provider, leading to disapproval of taxation.[39] There should be clauses in constitutions that place responsibility on the State for moneys collected and that the ability, right or power to tax must not be free of checks and balances that are constitutionally enshrined and not amended, unless it is decided by the people through a national referendum.[40] In both developing and developed countries, 40 to 70 per cent of people believe less in democracy than 30 years ago.[41] One of the many causes is that public policy does not address the concerns and needs of younger generations; social media and the influence of foreign actors, for their own benefit, also play a role in democratic countries.

29. At the global level, the debt crisis is persisting, which is hampering growth opportunities in several small island developing States and low- and middle-income countries and weakening the ability of developing countries to foster conditions for fulfilling human rights, especially economic, social and cultural rights. Research shows that, in several developing nations, the repayment of debt frequently comes at the cost of fundamental human rights, such as access to food, health care, education, suitable housing and employment. Furthermore, servicing debts and the adverse terms tied to loans and debt relief frequently curtail investment and weaken the availability of essential public services.[42]

30. The challenges of adhering to the social contract also affect middle-income countries, albeit in different ways. As such countries move up the income ladder, they are faced with steep international challenges, in addition to the demand from their citizenry to provide better quality goods and services. At the global level, they are highly exposed to the ease with which multinational companies are able to avoid and even evade tax, with less developed countries being most exposed to profit shifting. In addition, they have to face illicit financial flows and deal with the consequences of digitalization.[43] The recognition of companies as holders of rights within the European Union, for example, causes global fiscal distortions through a human rights lens, creating concerns of the right to privacy, which may need to be revisited.

31. Moreover, States are viewed as having misplaced priorities that undermine the social contract. According to the world development indicators, Governments spent $2.2 trillion on military-related expenses in 2022. This spending reveals a priority of Governments, in particular in the global North, while basic human rights, such as access to food, clothing and shelter, are "jettisoned" (A/HRC/55/54, para. 13 (b)). As a result of militarization, revenues are spent on related endeavours even when issues such as food insecurity, climate disasters and other social inequalities abound.[44]

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[39] Contribution by the Center for Global Nonkilling.

[40] Waris, "Delineating a rights-based fiscal social contract using African fiscal constitutions".

[41] John Henley, "Younger people more likely to doubt merits of democracy – global poll", *The Guardian*, 11 September 2023.

[42] Cephas Lumina, "Sovereign debt and human rights", in *Realizing the Right to Development* (United Nations publication, 2013).

[43] Mario Pezzini, "Citizens' rising expectations: a call to rebuild the social contract?", in *Trapped in the Middle? Developmental Challenges for Middle-Income Countries*, Jose Antonio Alonso and Jose Antonio Ocampo, eds. (Oxford, Oxford University Press, 2020).

[44] Contribution by Conscience and Peace Tax International.

A. The role of the State in enhancing the social contract

32. A combination of economic, cultural, political and demographic factors shapes citizens' perceptions and expectations of their tax obligations and the role of the State in the provision of public goods and services. Such factors include the levels of trust in Government, transparency and accountability, citizen participation, education and civic-mindedness. To strengthen the fiscal social contract, Governments must increase the number of consultation forums, public budget policy debates, awareness-raising campaigns and citizen participation initiatives. By actively involving citizens in the budget process, Governments can better understand the needs and concerns of the population, strengthen trust in public institutions and ensure that fiscal policies truly reflect the interests of all members of society.[45] Current concerns include fiscal policy, green growth and participation.

33. Fiscal policy should be used to empower more people to enjoy their human rights, recalling that they are universal and inalienable, indivisible, interdependent and interrelated, and drawing on international human rights law and local laws. Governance of taxation can provide a guide in terms of ensuring that it is "good" (complies with responsibilities of agreements), "effective" (provides meaningful results) and "equitable" (builds a fairer society). Public taxes should be used to promote – and not undermine – human rights, both domestically and more widely.[46]

34. Just as endless (sustained) growth is impossible, so too is endless "green growth". Green growth can be greenwashed capitalism at its worst. Green growth often uses gross domestic product as a measure of activity, which is problematic and is not based on building natural or human capital. It is still based on flows, rather than stocks.[47] The economic system is starting to use environmental, social and governance criteria. The fiscal system could also use such criteria, but more needs to be done in understanding why this approach has taken precedence over the responsibilities under the polluter-pays principle.[48] To date, the Green Climate Fund and the loss and damage fund have not yet received the pledges made by numerous polluting countries.[49]

35. To strengthen citizen participation in the preparation, implementation and monitoring of budgets, Governments would benefit from institutionalizing consultation frameworks that serve as citizen participation bodies. Accordingly, there is a need to ensure that deadlines for the publication of budget documents are respected, and participatory budgeting should be introduced at both the national and regional levels. For example, Senegal has adhered to the Open Government Partnership and its principles of transparency of public management in the delivery of public services and citizen participation. In the 2021–2023 national action plan of Senegal, budget transparency mechanisms were strengthened, with increased civic participation by several civil society organizations.[50] Technology can be used to withhold taxes at the time of the transaction and to improve tax collection rates. There has been more attention on budget promises and realization at the local level. There is growing support for registers of ultimate beneficial owners. Compliance is made

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[45] Contribution by the Directorate-General for Planning and Economic Policies, Economic Policy Coordination and Monitoring Unit, Senegal.
[46] Contribution by Henry McGhie, Curating Tomorrow.
[47] Ibid.
[48] Contribution by the Center for Global Nonkilling.
[49] Jeannette Cwienk, "Loss and damage: who pays for climate change?", Deutsche Welle, 12 January 2023.
[50] Contribution by the Directorate-General for Planning and Economic Policies, Economic Policy Coordination and Monitoring Unit, Senegal.

easier with online tools. To ensure compliance with tax rules, there is growing interest in assisting taxpayers through tax clinics.

36. There is a strong correlation between tax compliance and a Government that provides public goods and services, such as education, health care and security. When citizens perceive that public goods and services are provided by the Government, they are more willing to pay their taxes and are even willing to accept higher rates for more extensive public services. When citizens must resort to paying non-State actors for public goods and services, however, tax compliance is weak. Citizens who refuse to pay or file their taxes cite issues such as poor socioeconomic living conditions, a Government that does not engage its citizens and a defective audit system.[51]

37. Governments must be transparent about tax revenue and where it is being spent. Governments must hold accountable those who renege on their responsibilities. Governments must ensure that robust social programmes truly benefit the general population, and that tax revenue is sufficient to appropriately fund the social programmes required to meet the population's needs. The combination of fairness and transparency with perceivable and recognizable benefits associated with the payment of taxes can strengthen the fiscal social contract. However, if tax abuse and evasion were effectively addressed, Governments could put almost $5 trillion towards important social services and programmes and achieving the Sustainable Development Goals. Such reinvestment in the fiscal social contract would go a long way in reinvigorating trust in Governments and enabling States to fulfil their human rights obligations.[52]

38. The State is required to ensure that public services are backed by the appropriate tax revenues; redistribute that revenue to reverse inequalities; reprice to adjust for public harms, such as fossil fuel extraction; and strengthen political representation by ensuring that States are accountable to the public for delivering on their obligations. In addition, States must honour their extraterritorial human rights obligations by working towards reparations. Just as tax served as the main vehicle for extracting wealth from former colonies, it should ultimately be the source of funds to compensate for some of the damage inflicted.[53]

B. Global reforms

39. While tax, fiscal and monetary policies are still generally considered and treated as being confined to national borders – a transaction between the State and its residents – globalization has complicated the relationship. Large multinational corporations operate in more than one country, with their influence surpassing national borders. Such companies and their professional enablers turn this situation into an unfair advantage by shopping around for the tax rates and incentives that will give them the lowest effective tax rate or even a zero rate. The wealth of high-net-worth individuals allows them to do much the same. Golden visa schemes even allow them to purchase citizenship or residency in a country where they can pay the least amount in tax. The very idea of tax as a cost that can be saved, as an undue burden, is antithetical to the fiscal social contract.

40. Multinational corporations use their resources and influence to ensure that the tax system does not catch up with them and put an end to their unjust advantages. This is an example of corporate capture, which is defined as "undue influence that

[51] Obayuwana, "The fiscal social contract".
[52] Contribution by the Tax Justice Network.
[53] Alex Cobham, "Tax, reparations and 'Plan B' for the UK's tax haven web", Tax Justice Network, 11 June 2020.

corporations exercise over national and international public institutions to manoeuvre in accordance with their interests and against the general public interest and the duty to respect, protect and guarantee human rights".[54] Any group, entity or individual that put their own interests above those of the general population acts outside the fiscal social contract, pursuing a parallel contract of purely personal gain. When the State not only allows this to happen, but also, in many cases, actively provides for and invites these kinds of activities, the fiscal social contract is torn to shreds.

41. Digital technologies have some potential to enable greater Government-to-resident consultation and participation when used in ways that bolster the fiscal social contract. Ultimately, it is up to States to safeguard the fiscal social contract by mainstreaming human rights and the interests of the general population when it comes to the effective regulation of digital technologies and their fair use to prevent private and corporate domination and, as with shaping tax policy, disproportionate influence. So far, regulators are running years behind fast-moving developments, such as the growth of "blockchain havens", which present a set of economically and societally destabilizing challenges in that they offer additional, complex ways to undermine the tax base, as well as facilitating other abuses,[55] and there are calls for such developments to be addressed urgently.[56]

42. The international financial architecture is also an avenue for global reforms. It is a framework of institutions, policies, rules and practices that govern the global financial system. Its aim is to promote international cooperation with a view to ensuring global monetary and financial stability, enabling international trade and investment, supporting the mobilization of the stable and long-term financing required for economic development, combating the climate crisis and achieving the Sustainable Development Goals.[57]

43. The international financial architecture revolves around the provision of two international public goods: finance for development and a financial safety net. The concept of public goods under the aegis of the international financial architecture has been broadened to include human rights, workers' rights and environmental standards.[58] This factor greatly underscores the place of the international financial architecture and the fiscal contract, by which finance is the means to procure public goods, and which is therefore important in the realization of the fiscal contract and the human rights economy. One of the most significant drains on public budgets today is the loss of tax revenue to cross-border tax abuse by corporations and individuals seeking to avoid or minimize their tax payments – a phenomenon that disproportionately affects developing countries.[59]

44. In December 2022, the United Nations marked a historic moment for financial and tax transparency, and the full enjoyment and protection of human rights for all. After years of advocacy, the world saw the unanimous adoption of General Assembly resolution 78/230 entitled "Promotion of inclusive and effective international tax

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[54] Ana Margarita González Vásquez, "Civil society answers to corporate capture", Dejusticia, 10 November 2014.

[55] Bob Michael, "EU ambition for DAC8 transparency on crypto is cut short by failure to think outside the OECD box", Tax Justice Network, 25 May 2023.

[56] Contribution by the Tax Justice Network.

[57] United Nations Conference on Trade and Development (UNCTAD), "Reforming the international financial architecture: the view from UNCTAD", in *Trade and Development Report 2023: Growth, Debt, and Climate – Realigning the Global Financial Architecture* (United Nations publication, 2023).

[58] Paola Subacchi, *China and the Global Financial Architecture: Keeping Two Tracks on One Path* (Friedrich Ebert Stiftung, 2022).

[59] Contribution by the Tax Justice Network.

cooperation at the United Nations".[60] This was followed by a report by the Secretary-General (A/78/235), in which he concluded that existing international tax rules are neither fair nor inclusive and that rules developed through mechanisms of the Organisation for Economic Co-operation and Development (OECD) "do not adequately address the needs and priorities of developing countries". An ad hoc committee has been tasked with drafting the terms of reference for a new United Nations framework convention on international tax cooperation, which represents a unique opportunity to reprogramme the international financial system to ensure that financial obligations and regulations are aligned with human rights and the Sustainable Development Goals. Although this measure has been seen as a duplication by some 140 States that were not part of the consultation process – including most, if not all, of the least developed countries – it is a critical step, and, under the principle of international cooperation and assistance, States supporting human rights principles should not find this process objectionable.[61]

45. Calls for reforms in the international financial architecture have always been there and will continue to be there in the light of the changing circumstances and dynamics of world economies. Noting that the international financial architecture already had structural deficiencies at the time of its conception, these deficiencies have become increasingly at odds with the reality and needs of the world today,[62] making the international financial architecture entirely unfit for purpose in a world characterized by unrelenting climate change; increasing systemic risks; extreme inequality; entrenched gender bias; highly integrated financial markets vulnerable to cross-border contagion; and dramatic demographic, technological, economic and geopolitical changes.[63] The COVID-19 pandemic contributed to the urgency to revitalize the institutional architecture to match the ambitions of the 2030 Agenda for Sustainable Development.[64]

46. The nexus of the international financial architecture and the fiscal social contract therefore lies in the role of the international financial architecture in the national domestic financial architecture, which at times has effects on domestic vulnerabilities. Discussions on reforms of the international architecture are ongoing throughout the international system, including in informal country groupings, such as the Group of 20, the Group of Seven and the Bridgetown Initiative. Such discussions are on the agenda of the World Bank and the International Monetary Fund (IMF), OECD-based bodies and other bodies. At the United Nations, they are part of the common agenda discussions.[65]

47. The Bridgetown Initiative, under the auspices of small island developing States represented by Barbados, seeks to break the deadlock presented in the issues affecting developing countries, including climate change, pandemics, economic shocks, the growing indebtedness of developing countries and resulting lack of fiscal space that puts developing countries in a difficult situation and undermines their efforts to focus

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[60] Mark Bou Mansour, "Live blog: UN vote on new tax leadership role", Tax Justice Network, 22 November 2022.

[61] Communication No. AL OTH 25/2022.

[62] Barbados, Prime Minister's Office, "Urgent and decisive action required for an unprecedented combination of crises: the 2022 Bridgetown initiative for the reform of the global financial architecture", 2022.

[63] United Nations, "Our common agenda policy brief 6: reforms to the international financial architecture", May 2023.

[64] *Financing for Sustainable Development Report 2023: Financing Sustainable Transformations* (United Nations publication, 2023).

[65] Ibid.

on sustainable development, eradicating poverty and addressing increasingly severe climate impacts.[66]

48. At the twenty-eighth session of the Conference of Parties to the United Nations Framework Convention on Climate Change, the limits of the current international architecture for development finance in a context of interconnected crises (climate change, cost of living and developing country debt crises) were highlighted. At the session, discussions continued towards setting a new collective quantified goal on climate finance in 2024, taking into account the needs and priorities of developing countries. The new goal, which will start from a baseline of $100 billion per year, will be a building block for the design and subsequent implementation of national climate plans that need to be delivered by 2025. In order to deliver such funding, it was underscored as part of the first global stock take that it is important to reform the multilateral financial architecture and accelerate the ongoing establishment of new and innovative sources of finance, noting the significant role of public funds (FCCC/PA/CMA/2023/L.17).

V. Conclusions and recommendations

49. The concept of the fiscal social contract forms the basis of a functioning society. It establishes a relationship of trust and responsibility between the Government and its citizens, ensuring the provision of essential public goods and services. Applying a human rights-based approach to recovery plans and policies would imply protecting the environment as a common good, while prioritizing the fulfilment of the basic human rights of the population in terms of health, food security, housing, social security and sustainable development overall.

50. The Our Common Agenda policy brief on reforms to the international financial architecture proposes reforms that are coherent, long term, resilient, sustainable, equitable, inclusive and coordinated.[67] The reforms would have a significant effect on the fiscal contract at both the international and national levels, especially with relation to a human rights-based economy as a focus of fiscal considerations.

51. The reforms would also foster an environment conducive to increased domestic investment and higher sustained growth. As the reforms are targeted at strengthening financial systems, financial markets would be stabilized, which would prevent crises in domestic financial systems and financial intermediation, helping to mobilize savings and channel them to productive investments, thus fostering economic growth.[68]

52. A financial architecture at its core encompasses how finances are raised, the taxation of those finances and how they are used to promote the fiscal contract to achieve a functional and effective State. Moreover, a well-functioning regional financial architecture could complement and strengthen the international financial architecture. The existence of regional corporations can strengthen and give appropriate backing to international financial reforms at the regional level for better implementation and effectiveness. Strengthening international financial integrity standards and their implementation would reduce corruption, boost trust and enhance the social contract. A reformed international financial architecture should also provide concessional financing for conflict-affected countries.

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[66] Barbados, Prime Minister’s Office, “Urgent and decisive action required”; and Eurodad, “Webinar: ‘Rebranding or reshaping the global financial architecture?”’, YouTube, 24 May 2023.

[67] United Nations, “Our common agenda policy brief 6”.

[68] Françoise Le Gall and Saleh M. Nsouli, “The new international financial architecture and Africa”, IMF Working Paper, No. WP/01/130 (International Monetary Fund, 2001).

53. IMF and the World Bank's understanding of debt sustainability must broaden, with a focus on advancing poverty reduction through debt relief for sustainable development. Assessing debt sustainability should aim to balance development financing needs with maintaining manageable debt levels. From a perspective focused on human rights and development, analyses of debt sustainability must consider safeguarding Government spending necessary for fulfilling basic human development requirements and fostering conditions for realizing human rights, especially economic, social and cultural rights. Essentially, such analyses should include determining the amount of debt a country can manage without compromising its ability to fulfil its human rights obligations, including the right to development, and to pursue its own developmental objectives.

54. It is essential for both lenders and borrowers to collaborate in finding solutions to the debt crisis, aligning with the principle emphasized in the Monterrey Consensus of the International Conference on Financing for Development. That principle stresses that both debtors and creditors must shoulder the responsibility for preventing and resolving unsustainable debt situations. Lenders and borrowers alike need to acknowledge their roles in causing debt crises and take necessary corrective measures. Creditors should cancel, without conditions, loans given to irresponsible debtors, while borrowers should establish a clear and accountable system for managing public debt.

55. The use of the life cycle approach in making fiscal assessments would allow Governments at their very core to ensure that human rights and the raising of living standards are the most important issues on a planet with limited resources.

56. More thorough investigation and openness regarding how past debt restructurings influence a country's future repayment capacity would provide countries with a clearer understanding of the consequences of restructuring. Furthermore, it is crucial for the official sector to collaborate with countries to facilitate swift access to capital markets following restructuring.

A. United Nations bodies

57. **The Independent Expert makes the following recommendations to United Nations bodies:**

(a) **Mainstream references to how debt is linked to children's well-being;**

(b) **Establish the correlation of data between debt and support services to children, as well as the trade-offs;**

(c) **Consider creating a special adviser to the Secretary-General on debt or finance and human rights matters or a scientific or advisory committee on fiscal legitimacy and human rights;**

(d) **Create a public debt registry for developing countries that could provide accessible debt data for both lenders and borrowers. This would assist in boosting debt transparency, strengthening debt management, reducing the risk of debt distress and improving access to financing.**[69]

[69] Rebeca Grynspan, "The world lacks an effective global system to deal with debt", UNCTAD, 2 February 2023.

B. International financial institutions

58. **The Independent Expert makes the following recommendations to financial institutions:**

(a) **Engage constructively with IMF and the World Bank, as well as bond holders, to encourage a human rights-based approach;**

(b) **Support the creation of a global fiscal body that is centred on human rights;**

(c) **Crucially, establish an independent sovereign regional debt authority that engages with both institutional and private creditor and debtor interests.**

C. National engagement strategy

59. **The Independent Expert makes the following recommendations to Governments regarding national engagement strategies:**

(a) **Ring-fence credit income aimed specifically at measures for children, such as debt swaps;**

(b) **Do not allow debt to compromise human rights, in particular in the areas of health and education, where this can be reversed if finance is available;**

(c) **Ensure a minimum level of core support given to all children globally, without restrictions based on nationality or legal status;**

(d) **Identify and reject any financial decisions and structures that reduce spending on the birth, growth and development of human beings;**

(e) **For countries that overconsume, reconsider the implementation of their responsibility as part of international cooperation and assistance, and consume less; reassess supply and demand as an economic paradigm.**