Tax justice: a human rights issue

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Recent developments

If you ask the question “Is tax justice a human rights issue?” you tend to get one of two responses. Some people say of course it is; others can't see the link at all.

But if you say there is a relationship between tax and poverty, people often see it more clearly. They understand that the more money a government can raise, the more funds it has at its disposal to help alleviate poverty.

There has been a lot of attention paid to the role of governments in raising revenue for poverty alleviation. But public discussion of the role that multinational corporations have to play in contributing to government coffers is only now gaining momentum.

UN Committee on Economic Social and Cultural rights

Much of the impetus has come from the United Nations. In terms of state duties, the United Nations committee on economic social and cultural rights has taken important steps in recent years.

The committee has welcomed initiatives like United Nations Global Compact – a club for companies committed to adhering to corporate responsibilities covering human rights, labour, the environment, and anticorruption.

There is a long way to go, though. Since setting up in 2000, the Global Compact has about 7,700 members. It has a goal of 20,000 members by 2020, but that is still only around a quarter of the companies worldwide that could join

The committee has also welcomed the development of the UN Protect Respect and Remedy framework for business and human rights – which was unanimously endorsed by the Human Rights

Council in June 2012.

Under this framework governments should ensure companies demonstrate due diligence, to ensure they do not impede the enjoyment of human rights. This means establishing appropriate laws, regulations and monitoring and investigating procedures, to set standards for corporate behaviour.

States must also ensure effective access to remedy for the victims of corporate abuse of human rights.

In May 2012 the committee addressed the effect of austerity programmes on human rights. It said that all states should avoid taking decisions that lead to the denial or infringement of human rights. This can lead to political instability and have a significant impact on disadvantaged and marginalised people.

It added that states should adopt laws and policies to improve universal access to basic goods and services such as health care, education, housing, social security and cultural life.

Any proposed policy change has to meet the following requirements:
First: policy must be temporary covering only the period of crisis
Second: it must be necessary and proportionate

Third: the policy must not be discriminatory and should comprise all possible measures **including tax measures** to support social transfers to mitigate inequalities that can grow in times of crisis

The committee acknowledges that international cooperation is fundamental to achieving human rights and mentioned financial institutions like the World Bank, IMF, regional financial institutions as key to this.

In September last year, the UN Human Rights Council adopted Guidelines on Extreme Poverty and Human Rights. These say that states must take action to create an environment conducive to poverty reduction including matters relating to trade, investment, taxation and finance. It calls for states to co-operate to mobilize the maximum available resources.

The Ruggie framework

The Human Rights Commission has stressed that companies as well as states must pay attention to the human rights agenda.

You will recall that in 2012 the Human Rights Council unanimously approved John Ruggie's Protect, Respect and Remedy framework. It is a set of voluntary guidelines to help businesses meet their human rights obligations.

Even though the guidelines are voluntary, they have already been incorporated in the OECD Guidelines for Multinational Enterprises, ISO 26000 Guidance Standard on Social Responsibility, International Finance Corporation frameworks, the EU's 2011 communication on corporate responsibility.

Many multinational corporations have already started to issue hefty corporate citzenship reports to publicise their implementation of the Ruggie agenda. But as long as the guidelines are voluntary, we need to be aware of "whitewash" from the corporate sector.

Transparency

Ruggie stressed that corporations need not just to know about the guidelines but also show what they were doing to put them into practice. This means they have to be transparent about the actions that they are taking.

One way is to conduct human rights impact assessments. This involves a detailed examination of their activities and the activities of everyone down their supply chain in order to make sure that their practices do not adversely affect human rights.

There is an interesting debate at the moment about how to align standards for auditing companies with the UNGPs. A two year project is underway to develop these standards. NGOs are urging full disclosure of corporate due diligence processes and policies, to ensure that assurance standards are fully transparent. I anticipate major corporations resisting this.

While the Ruggie framework is promoting greater transparency, the International Bar Association Human Rights Institute has spent the last two years investigating the link between tax, illicit financial flows and poverty. What's important about this report is that it's been produced by lawyers. It can help to redefine the role that lawyers play in advising corporations on the tax affairs.

I came across this task force last year, as part of my research for TJN and for my Lawyers for Better Business website, into how lawyers can take a different approach to the advice they give companies on tax.

Lawyers will tell you that they're taught in law school how to help corporations minimise their tax liability. But this is not in fact a legal obligation. The importance of the International Bar Association Human Rights Institute Report is that reflects a trend to examine the impact of 'tax abuse' – all tax practices that harm human rights, whether 'avoidance' (legal) or evasion (illegal).

The other important element of this report is reinforcing the link between tax abuse and poverty. It opens the way to asking what lawyers can do about it.

The first thing that can be done is to encourage lawyers and other advisers like accountants to alert corporations to the reputational harm that tax dodging can cause – think Starbucks.

This time last year, Starbucks was among multinationals asked to appear before the UK parliament's Public Accounts Committee, to explain why its UK tax payments bore so little relation to its UK earnings. Starbucks said it was paying what was legally required. The subsequent public outcry prompted the company to offer to "voluntarily" pay more tax.

As the concept of due diligence gains hold, there is no reason why companies should not include the impact of their tax policies in human rights impact assessments. This will provide a yardstick by which corporate performance on tax can be evaluated.

Levers

At the moment there are few mechanisms for redress when companies harm human rights. One limited avenue is through the National Contact Points run by the OECD, in several countries around the world.

NCPs mediate in disputes over human rights impacts, and make recommendations that have no legal clout. But this can result in huge reputational damage, for companies criticised under this procedure. There is another important lever that can be pulled. Recently institutional investors have been held to account through the NCP system, for the human rights abuses in the companies they invest in. For example earlier this year, Norwegian and Dutch pension funds were taken to their country's national contact points for investing in a South Korea steel giant Posco, accused of violating human rights.

This points to way to putting pressure on institutional investors to make sure that the corporations in which they invest pay their fair share of tax, to avoid human rights abuses.

Another interesting development is Sustainable Stock Exchanges initiative, launched three years ago. It has eight members including the US, Brazil, South Africa and India. Companies must meet economic, social and governance criteria in order to register with these country's stock exchanges.

Also, in 2012, the governments of Colombia, Brazil, Denmark, France, Norway and South Africa launched a corporate sustainability reporting initiative, stressing the importance of corporate transparency.

If corporate tax policies become one of the ESG criteria, this is another lever that can be pulled to encourage companies to pay their fair share of tax.

Further information

These are just some of the initiatives helping to raise the profile of tax justice as a human rights issue.

If you want to find out more, a good starting point is the Policy Brief published by Tax Justice Network Germany in February this year.

There is also information on my website about a conference I have helped to organize in Johannesburg on 21 November, Tax Justice: A Human Rights Issue.

There will be plenty to watch out for in 2014 – look out for a report from UN Human Rights Council mid year, for Tax Justice Network publications on this topic and the Spirit Level documentary that will paint the wider picture, explaining the trend towards increasing inequality in many countries around the world.

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