A mandate to tackle IFF and inequalities

Tax Justice Network submission to the Independent Expert on foreign debt, other international financial obligations and human rights, Prof. Attiya Waris' call for input for report: *Taking stock and looking forward - A vision for the work of the mandate*

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TAX JUSTICE NETWORK

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Tax justice is fundamental to the realisation of human rights. Tax injustice and unconstrained illicit financial flows (IFF) undermine the wellbeing of people across the world. While the reporting of leaks such as the Pandora Papers understandably focus on the impunity of major companies and members of the elite, the costs are disproportionately borne by those subject to intersectional inequalities – including the women and girls who represent over half of the world's poor.

The global structures that underpin IFF are largely an imperial legacy. Colonisation impoverished countries of the Global South by direct extraction and violence, and the removal of statehood. The end of formal empire saw the emergence of a system for offshore ownership that aimed to deny the attempts of newly independent states to recover expropriated assets and exert greater control over their economies and natural resource wealth. In the current, third imperial age of IFF, this system has evolved into a form of globalisation which puts at its core the ability of companies and wealthy individuals to hide and move their ownership and associated income streams. All countries suffer, but lower-income former colonies lose the greatest share of their tax revenues, and in this way the denial of effective statehood continues. For societies, that denial is a central obstacle to the prospects for the progressive realisation of human rights.

The mandate of the Independent Expert on foreign debt, other international financial obligations and human rights is uniquely well placed to lead analysis on these issues within the UN system, and to push for stronger and better coordinated responses both nationally and internationally, challenging both intersectional inequalities and the inequalities in taxing rights between countries. The Tax Justice Network is fully committed to supporting both aspects of this crucial work.

In response to this call for input, we focus on the second questionnaire ('Looking forward'). In respect of the first, 'Taking Stock', we note that the mandate has already been a valuable one in these areas, establishing a strong basis for work on the important interrelationships between IFF and inequalities. The influence of the Guiding Principles on foreign debt and human rights (A/HRC/20/23) provides a powerful demonstration of the potential of the mandate to shift discourse, even without hard law changes, as does the questionnaire and report on the international debt architecture (A/76/167).

Below, we briefly lay out the importance of the relationship between tax and human rights, as the basis for the mandate to focus here. We then survey the key tools and data available. Lastly, we identify three possible ideas that the mandate could explore.

Human rights and the 4 Rs of tax justice

The 4 Rs of tax justice – revenue, redistribution, repricing and representation – provide a normative conceptual model to rethink how economic and social rights are determined. Understood in this way, tax is pivotal to determining outcomes of human flourishing and equality.

Revenue

Foregone tax revenue threatens the realisation of the already 'fragile' Sustainable Development Goals (SDGs). Cross-border tax abuse by multinational companies and wealthy elites has a disproportionate impact on lower income countries. The *State of Tax Justice 2020*, co-published with the Global Alliance for Tax Justice, Public Services International and FES, provides a conservative estimate of the overall tax losses at US$427 billion annually. The worst offenders in enabling the tax abuse are shown to be OECD countries and their dependent jurisdictions. These impacts – loss of livelihood, threat to health and to education are especially felt at times of crisis such as in the Covid 19 pandemic. The revenue loss is equivalent to 34 million nurses' annual salaries every year – or one nurse's annual salary every second.

Tax Justice Network's 2021 report *Tax Justice and Human Rights: The 4 Rs and the Realisation of Rights* presents collaborative analysis with the Government Revenue and Development Estimations model (GRADE), hosted at the University of St Andrews. This finds that the revenues lost to cross-border tax abuse would translate into striking numbers of additional people accessing fundamental human rights, projected over a ten year period: sanitation for 34 million people, drinking water for 17 million people, an additional year at school for 3 million children, and a reduction in mortality of some 600,000 children and 73,000 mothers.

Redistribution

Tax is a powerful tool for redistribution – both progressive and regressive. In the context of debt-constrained states, revenue losses can directly curtail inclusive spending on public services and social protection. In addition, the extent of abuse in relation to taxes on income, profits, capital gains and assets, prevents governments ensuring a more effective redistribution from the higher end of the income and wealth distributions.

That in turn supports the case often made by international institutions, in line with the damaging 'tax consensus', for a focus on regressive indirect taxes instead – leading in many countries to a situation in which lower-income households pay a higher share of their incomes in tax than higher-income households. Structural inequalities mean that those lower-income households are also disproportionately likely to be headed by women, to include people living with disabilities, and to be concentrated among marginalised racial and ethnolinguistic groups. A tax system that exacerbates or fails to mitigate vertical inequalities will therefore also fail in respect of horizontal and intersectional inequalities – with inevitable damage to human rights.

Repricing

Repricing through taxes can limit the damage of public 'bads', ranging from the public health cost of tobacco consumption to the planetary and social costs of carbon emissions and other factors that underpin the climate crisis – most egregiously, through the tax subsidies that are commonly in place for fossil fuel extraction. Taxes alone cannot solve the climate crisis and the damage to rights that it has already imposed, but an ineffective tax system is a substantial obstacle to progress.

Representation

The 4th R of tax, too often overlooked, is political representation. Tax provides an important element, perhaps the 'glue', in the social contract between citizen and state. Research shows a positive relationship between tax reliance (the share of public spending that is funded by tax) and the strengthening over time of democracy and accountable governance.

The relationship appears strongest for direct taxation – most likely because these are more salient for people than indirect taxes such as VAT. The threat this poses is that a tax system failing to address economic inequalities may also fail in respect of political inequalities. If higher-income households typically pay a smaller share of their income in tax, but within that a higher share of direct taxes, then it may be these households which are most strongly empowered to hold government to account. Women and people facing intersectional inequalities, disproportionately represented among lower-income households, may face a tax system which worsens both the economic and the political injustice that they face.

Taking seriously these political empowerment or 'tax citizenship' elements, requires to look beyond the immediate financial impact of tax policies on households – and ultimately on the state itself. If unchecked, IFF that strip governments of revenue will also hinder direct taxation and ultimately weaken political representation. Governments will have less ability to spend, and also be less likely to spend well on inclusive provision.

International human rights instruments

The Tax Justice Network collaborates with international advocacy organisations including the Center for Economic and Social Rights, and national campaigning and research organisations to amplify key linkages between tax justice and human rights. Reports submitted to CEDAW including on Switzerland (2016), Luxembourg (2018), United Kingdom and Northern Island (2018), Brazil (2020) and Chile (2021) set out arguments calling for progressive tax regimes, multilateral cooperation between tax authorities, resourcing of tax authorities and political cooperation to design a financial transparency. Over time, the committee's Concluding Observations have drawn increasing attention to the impact of regressive tax regimes, financial secrecy and profit shifting on the rights of women and girls.

Data and tools for SDG progress on tax and IFF

Following the ground-breaking report published by the High-Level Panel on Illicit Financial Flows from Africa in 2015, the issue of illicit financial flows was firmly established on the global policy agenda. The report has recognized that the ability of tax systems to deliver the 4Rs of tax justice is significantly undermined when tax is evaded by the wealthy. The Tax Justice Network has worked on developing data sources and tools that policymakers can use to mitigate the negative effects of illicit financial flows and thereby enhance domestic revenue mobilization, making corporations and wealthy individuals pay their fair share, and thereby making our tax systems just.

As noted, the annual State of Tax Justice report summarizes the scale of the problem. It compiles the most comprehensive and sophisticated methodologies to estimate the scale of cross-border corporate tax abuse, and tax evasion related to offshore wealth.

This is complemented by two rankings of the most important jurisdictions that enable financial secrecy and corporate tax abuse: the Financial Secrecy Index, first published in 2009 and the Corporate Tax Haven Index, first published in 2019. The indices were created in response to the consistent failure of international organisations to use objectively verifiable criteria in creating 'tax haven' blacklists – with the consistent result that these lists do not identify the major jurisdictions responsible, and so are both unfair (to the smaller, lower-income jurisdictions that are listed) and ineffective (in failing to drive change through accountability).

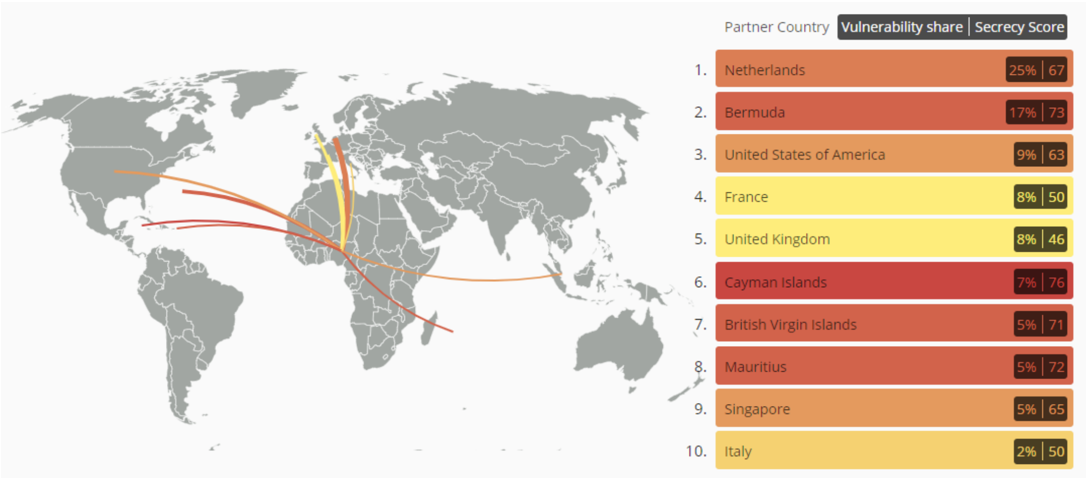
Both indices are composed of two parts: scores and global scale weights. Scores are designed to quantify, from multiple indicators reflecting the ABC of tax transparency and much more, the opportunities that individual jurisdictions provide in the areas of financial secrecy and of corporate tax abuse. These scores are combined with global scale weights which reflect the relative importance of each jurisdiction, to capture each jurisdiction's contribution to the global problems. The indexes provide policymakers with a roadmap of the most important jurisdictions to challenge – both for national defence against IFF, and for international countermeasures.

The High Level Panel report pioneered the proposition that although IFFs, by their very nature as hidden flows cannot be measured precisely, it is possible to be more exact in analysing a country's risk exposure to hidden elements in any given financial flow (through e.g. trade, investments or banking services). The more hidden, or secretive, the flows – the more secretive the partner jurisdiction – the greater the risk of IFF.

In 2019 and 2021 the Tax Justice Network published reports that estimated the IFF risk exposure, respectively, of African countries and of

[Latin American countries](). In 2020 we launched the [Illicit Financial Flows Vulnerability Tracker](), allowing users to explore IFF risk data for each country with interactive tools. The tracker aims at increasing the users' understanding of which countries are more vulnerable to IFFs, and more importantly, which partner countries and which channels are responsible for the vulnerability to IFFs in a country's economy. Figure 1 presents an illustrative example of the tools available in the tracker.

Figure 1: Vulnerability to illicit financial flows in Nigeria, direct inward investment channel, 2018.



Source: Tax Justice Network's Illicit Financial Flows Vulnerability Tracker

We are collaborating with a growing number of government agencies in countries across Africa and Europe, as they seek to implement the IFF vulnerability approach. In a pilot project in Nigeria, the Federal Inland Revenue Service is developing a scoring of multinational companies based on the vulnerability to IFFs in their intra-group transactions. The aim is to increase the efficiency of audits given limited resources, to maximize domestic revenue mobilization (SDG 17.1). The approach is now adaptable to almost any administrative-level data with geographic information on the source or destination of a flow, providing policymakers with a tool to efficiently mitigate the risk of IFFs (SDG 16.4).

In addition, [our proposals]() for SDG indicators for target 16.4 are currently part of the [country pilots]() being run in a range of world regions by UNCTAD and the UN regional commissions. These are scale estimates similar to those in the State of Tax Justice, but with the potential to use country-level data held by administrations to enhance accuracy. For now, our [country profile pages]() provide an overview of the index rankings, IFF vulnerabilities, and revenue losses both suffered and imposed.

Three proposed activities for the mandate

The Tax Justice Network is committed to supporting the Independent Expert's crucial mandate. Here we briefly identify three possible activities that could feature within a broader programme of work.

Guiding principles on tax and human rights

Building on the success of the Guiding Principles on Foreign Debt and Human Rights developed by a previous mandate, a natural opportunity would be for the new Independent Expert to draw out guiding principles on tax and human rights. This could draw on the vital collaborative work that has created the Principles for Human Rights in Fiscal Policy, and have two related aims. First, it could highlight and normalise progressive principles related to delivering the 4 Rs nationally. Second, it could build on the work done using CEDAW reviews and similar instruments, to target the extraterritorial damage caused by national decisions to promote financial secrecy, corporate tax abuse and other IFF.

International architecture

The Independent Expert who drafted the Guiding Principles, Prof Cephas Lumina, later cautioned that while the Principles had been successfully adopted in the UN, and were supporting the search for fair and durable solutions, the objections of the US and EU had slowed progress. Those objections reflected the fact that "the new principles on debt restructuring provide the basis for a fair, balanced and effective process for sovereign debt restructuring through a universal legal mechanism buttressed by the only organisation with sufficiently global legitimacy – the UN."

A similar dynamic dominates on the tax side too. Even while we prepare this submission, the G77 group is facing OECD opposition to its proposal A/C.2/76/L.28 for the IFF resolution of the UNGA Second Committee which would see the UN tax committee upgraded into an intergovernmental body, capable of providing a genuinely inclusive forum for tax policymaking. The mandate could provide a useful stepping stone in this direction by conducting a tax architecture survey – on the lines of the previous debt architecture survey – to canvass member states' views.

This could cover the inclusiveness or otherwise of the OECD Inclusive Framework and the desirability of upgrading the UN Tax Committee to intergovernmental status. In addition, it could cover a range of the recommendation of the important UN High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel): establishing a UN tax convention; a UN intergovernmental tax body; and a Centre for Monitoring Taxing Rights, to put data and related accountability within a UN setting.

Tax citizenship and political inequalities

Recognising the importance of the 4th R of tax, representation, we propose that the mandate could valuably highlight the question of political inequalities in the tax system. National visits that include a focus on the relative 'tax citizenship' of lower- and higher-income households, and of different groups facing intersectional inequalities, as well as the narrowly economic progressivity of the system.