Fiscal legitimacy through human rights

In response to call for input by the Independent Expert on the effects of foreign debt

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TAX JUSTICE NETWORK

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Background

Question 1:

To what extent do existing fiscal and tax systems at the subnational, national, regional and international levels ensure fiscal legitimacy?

The current international tax system consists mainly of global tax rules set by the OECD and networks of bilateral tax treaties between individual states.[1] However, this system is dominated by the powerful interests of the richest countries often at the expense of low income, Global South countries. Such a system does not instil a high degree of legitimacy in the institutions and actors at play.

Fiscal legitimacy rests on the belief that the tax system is fundamentally fair. It depends on the social contract between the state and society, where the state upholds its responsibilities to its citizens. In return, citizens cede resources so the state has the ability to take the measures necessary to fulfil its responsibilities.[2]

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 the UN resolution on the "promotion of inclusive and effective international tax cooperation" by all UN member states at the General Assembly.[3] This was followed by a report by the UN Secretary General which concluded that existing international tax rules developed through this system are neither fair nor inclusive and that rules developed through OECD mechanisms "do not adequately address the needs and priorities of developing countries".[4] The report underlined a lack of fiscal legitimacy within the international tax regime.

In this submission, we discuss two substantive issues that currently undermine fiscal legitimacy in the international sphere: corruption and inequality.

In terms of corruption, our focus is on "the abuse of public interest and the undermining of public confidence in the integrity of rules, systems and institutions that promote the public interest".[5] Fiscal legitimacy is

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[1] UN Secretary General, *Promotion of Inclusive and Effective International Tax Cooperation at the United Nations: Report of the Secretary-General* (26 July 2023) <https://digitallibrary.un.org/record/4019360> [accessed 24 October 2023].
[2] Attiya Waris, *OHCHR | A/HRC/49/47: Taking Stock and Identifying Priority Areas: A Vision for the Future Work of the Mandate Holder – Report of the Independent Expert on the Effects of Foreign Debt* (Geneva, 28 January 2022) <https://www.ohchr.org/en/documents/thematic-reports/ahrc4947-taking-stock-and-identifying-priority-areas-vision-future-work> [accessed 18 October 2023].
[3] Tax Justice Network, '⚫ Live Blog: UN Vote on New Tax Leadership Role', *Tax Justice Network*, 2022 <https://taxjustice.net/2022/11/22/🔴-live-blog-un-vote-on-new-tax-leadership-role/> [accessed 3 February 2023].
[4] UN Secretary General, *Promotion of Inclusive and Effective International Tax Cooperation at the United Nations.*
[5] 'Corruption', *Tax Justice Network* <https://taxjustice.net/topics/corruption/> [accessed 24 October 2023].

impossible when states allow corporate and elite interests to take priority over their human rights obligations, through corrupt practices.

In respect of inequality, we will focus mainly on the deep-rooted and overlapping inequalities between and among countries that stem from the legacies of colonialism. In terms of international structures, this is most often the power imbalance between Global North countries, generally former colonisers, and Global South countries, generally former colonies. Lower income countries lose the equivalent of 6.32 per cent of their direct tax revenue to corporate tax abuse every year, a much larger proportion of their total tax revenue than higher income countries who lose about 1.56 per cent of tax revenue annually. However, higher income countries are responsible for 99.3 per cent of all the tax lost worldwide to corporate tax abuse. [6]

Currently international tax measures are designed by the Global North countries for the interests of those countries Global North, while disregarding needs of the large majority of the world's population. In 2021, the Tax Justice Network's Corporate Tax Haven Index revealed that over two thirds of global corporate tax abuse risks are created and enabled by OECD members and their dependencies.[7] This is exacerbated by states in the Global South currently having no legitimate forum or mechanism in which to effectively advocate for their needs.

Fiscal legitimacy cannot be established in the current international climate. In order to establish legitimacy in the global financial architecture and tax system, deep-rooted and systemic issues that result in inequality and corruption need to be addressed.

Question 2:

What type of fiscal (e.g. taxation) measures/policies can hinder, or on the contrary strengthen fiscal legitimacy at the subnational, national, regional and international levels?

Bilateral tax treaties

Bilateral tax treaties form a core component of the international taxation system. In bilateral tax treaties, pairs of countries agree on certain rules to, in principle, avoid double taxation. This has the result of one of the countries having to yield their tax sovereignty. However, these treaties can serve other purposes as well, including incentivising foreign investment. This includes conceding certain tax privileges in order to attract multinational corporations to invest and operate within a country.

Issues of fiscal legitimacy arise if the decision as to which party yields tax sovereignty is not a sufficient reflection of the state upholding its

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[6] Tax Justice Network, *State of Tax Justice 2023* (2023), 24 <https://taxjustice.net/wp-content/uploads/2023/08/State-of-Tax-Justice-2023-Tax-Justice-Network-English.pdf> [accessed 2 August 2023].
[7] Tax Justice Network, *State of Tax Justice 2023, 25*.

obligations to its people and protecting their rights. This is often the result of a power imbalance between two countries.

Research shows that power imbalances between negotiating countries often stem from disparate levels of technical expertise or from higher dependence on foreign investment. These result in treaties that are more beneficial to the capital exporting country, usually the more developed or higher-income nation.[8] In terms of multinational corporations, for example, rights are almost exclusively given to the state of residence, which is often a tax haven or a Global North country.[9] Global South countries often feel pressured into these agreements, believing them a prerequisite for participation in the global economy and hoping that they will attract foreign direct investment. However, evidence does not support these results but rather paints a bleaker picture in which Global South countries lose a significant amount of revenue without any actual increase in investment.[10]

Bilateral tax treaties are usually negotiated and signed by the executive branch, within the Ministry of Finance or the Ministry of Foreign Affairs. Although new treaties must sometimes be ratified by the legislative branch, this is not always the case. Any agreement that can be mostly negotiated behind closed doors by technocrats within the executive branch lacks fiscal legitimacy, and yet such agreements constitute a significant piece of the international tax system.

This can be illustrated by a 2012 double taxation agreement between Kenya and the tax haven of Mauritius. The agreement required no input from parliament and was both negotiated and signed exclusively within the executive branch. The resulting treaty was a decidedly poor deal for Kenya, lacking adequate anti-abuse protection and restricting capital gains and withholding tax privileges. Tax Justice Network-Africa took the issue to court where the treaty was declared invalid.[11] This case clearly demonstrates how bilateral tax treaties can seriously lack fiscal legitimacy and can be harmful to the people. Yet these documents still make up a significant part of the international tax system in place today.

Establishing any sort of fiscal legitimacy in the international sphere requires at the very least a more equal playing field for all nations, regardless of economic power, if not advantages for Global South and low-income countries in order to correct decades of harmful negotiations and inequalities between states.

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[8] Martin Hearson, 'When Do Developing Countries Negotiate Away Their Corporate Tax Base?', *Journal of International Development*, 30/2 (2018), 233–55 <http://onlinelibrary.wiley.com/doi/10.1002/jid.3351/abstract> [accessed 7 March 2021].

[9] Tax Justice Network, *Haven Indicator 20: Double Tax Treaty Aggressiveness* (2019), 20 <http://cthi.taxjustice.net/cthi2021/HI-20.pdf> [accessed 6 June 2019].

[10] Sebastian Beer and Jan Loeprick, *The Cost and Benefits of Tax Treaties with Investment Hubs: Findings from Sub-Saharan Africa*, 24 October 2018 <https://www.imf.org/en/Publications/WP/Issues/2018/10/24/The-Cost-and-Benefits-of-Tax-Treaties-with-Investment-Hubs-Findings-from-Sub-Saharan-Africa-46264> [accessed 7 March 2021].

[11] 'Reflections on the Kenya-Mauritius Tax Treaty Ratification', *ICTD* <https://www.ictd.ac/blog/reflections-kenya-mauritius-tax-treaty-ratification/> [accessed 26 October 2023].

OECD two-pillar solution

Low-income countries, as well as small high-income countries, struggle to influence debates at the OECD. This is especially evident where it concerns the Two-Pillar solution and the BEPS Inclusive Framework. Due to the organisation and functionality of the OECD, low-income and small high-income countries are unable to mould the proposals for new rules along the lines of their national interests. As a result, they are often required to accept proposals in order to not lose opportunities to participate in the global economy and financial system. These sacrifices are often not actively supported by the country, but are rather accepted as a passive condition to financial inclusion.

These international rules, therefore, are not negotiated nor ratified with any sort of legitimately democratic process. This type of fiscal legitimacy deficit is systemic and cannot be resolved by an individual country. It is the community of states that has to agree to new structure for international tax cooperation where every state, no matter their income level nor size, has the opportunity to represent their interests. The adoption of a UN Tax Convention as the forum for international tax policy making has the potential to solve this issue.

Inclusive and effective international tax governance

Global governance of tax in the 21st century requires a genuinely inclusive and representative forum at the UN to replace the rich country members' club, the OECD. International tax rules are set by the OECD both by and for its member countries but – in the absence of another global policy making body – in practice also effectively for all non-member countries. OECD member states are dominated by Global North countries. The expression 'the rich countries' club' is often used as shorthand to describe the OECD and its role in establishing a global financial and tax architecture. It is neither representative, nor has a positive impact for low-income countries in general, or low- and middle-income countries in the Global South in particular.

This exclusivity and narrow representation of interests is detrimental to fiscal legitimacy. Northern colonial powers determine policy direction for their own interests, hard-wiring inequalities between Global North and South countries. An international system based on inequalities and power disparities erodes confidence that the international system will act in the interest of society and of human rights, and destroys any trust in the actors. This is absolutely detrimental for fiscal legitimacy, which requires trust in societal institutions and assurance that institutions work for people, not special interests.

ABC ($DEFG_3$) of Tax Justice[12]

The Tax Justice Network's ABCs of tax justice are the foundational policies for promoting tax justice and fundamental to the kinds of institutional measures that can cement fiscal legitimacy within the international tax system. They have since been expanded to the ABC ($DEFG_3$) of tax justice in order to include even more critical areas of tax justice policies, all of which have implications for fiscal legitimacy:

- **A**: Automatic exchange of information
- **B**: Beneficial ownership transparency
- **C**: public Country by country reporting
- **D**: Disclosure of sufficient public data to ensure tax transparency
- **E:** Enforcement by well-resourced and operationally independent tax authorities to guarantee crucial tax measures are implemented effectively
- **F**: Formulary apportionment with unitary taxation to end corporate tax abuse by ensuring that profits are taxed in the location of the real, underlying economic activity
- **G_1**: Governance reform centred on the establishment of a genuinely, globally inclusive process for the setting of tax rules and standards, under UN auspices
- **G_2**: Global asset register (GAR), to connect and broaden the range of beneficial ownership registers across all legal vehicles and high-value assets, across jurisdictions, to provide a critical tool against abuse of tax, regulations and sanctions
- **G_3**: Good taxes: a catch-all covering a progressive and effective overall tax system, and significant individual components of the tax justice agenda including wealth taxes, climate-related tax measures, excess profits taxes and minimum effective tax rates.[13]

For the purposes of this report, we will expand on the first three foundational principles of tax transparency.

The A, automatic exchange of information on financial accounts, has successfully given rise to a multilateral instrument, the OECD Common Reporting Standard. However, while more than 100 jurisdictions actively participate in the scheme, lower-income countries receive little or no information.[14] Bilateral information exchange requests can be slow, costly, and politically sensitive, especially when it comes to a nation from the Global South requesting information from a more powerful country in the Global North.

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[12] Tax Justice Network, *Beyond20* (5 December 2023) <https://taxjustice.net/wp-content/uploads/2023/05/Tax-Justice-Network-beyond20-Strategic-Framework-May-2023.pdf> [accessed 7 July 2023].

[13] 'Beyond20: A New Strategic Framework for the Tax Justice Network', *Tax Justice Network*, 2023 <https://taxjustice.net/2023/05/12/beyond20-a-new-strategic-framework-for-the-tax-justice-network/> [accessed 31 October 2023].

[14] St Andrew's University GRADE, Tax Justice Network and University of Leicester, 'Submission Human Rights Council Universal Periodic Review (Fourth Cycle) United Kingdom of Great Britain & Northern Ireland', 2022 <https://medicine.st-andrews.ac.uk/grade/wp-content/uploads/sites/39/2022/12/Submission-to-Human-Rights-Council-Universal-Periodic-Review-Fourth-Cycle-UK-NI.pdf> [accessed 6 February 2023].

The B of the ABCs, beneficial ownership transparency, is behind the adoption by states of a growing number of public registers of company ownership at all per capita income levels. Major data leaks - from Lux leaks[15] to the Panama Papers[16], Luanda leaks[17], the Malta Files[18],Paradise Papers[19], and most recently the Pandora Papers[20] - reveal how politicians, public officials, and high net worth individuals abuse complex financial structures to pay less tax and highlight the desperate need for better transparency measures. The public should not have to rely on data leaks, which risk criminalising journalists and other whistle blowers. Putting beneficial ownership data in the public domain, by making registers available to the public and to journalists, ensures better political accountability – and therefore bolsters fiscal legitimacy.[21]

The 'C' of the ABCs refers to the establishment of public country by country reporting. Currently this reporting sits within the auspices of the OECD. This suffers from the same issues of representation, equality, and effectiveness as other OECD initiatives. Public country by country reporting is crucial for curtailing the practice of profit shifting, where a multinational corporation can artificially declare their profits for tax purposes in the lowest tax regime, which is often a tax haven or Global North country. While the OECD now requires this data be provided to home country tax authorities, most lower income countries never get access to the data. The OECD lags in publishing the data and what they do publish is not fully public and is aggregated. This means it does little to eliminate profit shifting. The level of transparency that can be achieved through country by country data shifts power away from corporate and elite interests and towards the general population, creating an environment in which fiscal legitimacy can take root.

These policies must form a part of a new, more inclusive and representative forum for global taxation within the United Nations or we risk replicating the same issues that currently plague the legitimacy of the international tax architecture.

Question 3:

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[15] ICIJ. "Luxembourg Leaks: Global Companies' Secrets Exposed." ICIJ (blog), 2014. https://www.icij.org/investigations/luxembourg-leaks/.
[16] ICIJ. "The Panama Papers: Exposing the Rogue Offshore Finance Industry," 2018. https://www.icij.org/investigations/panama-papers/.
[17] ICIJ. "Luanda Leaks." International Consortium of Investigative Journalists (blog), 2020. https://www.icij.org/investigations/luanda-leaks/.
[18] "Malta Files | EIC." Accessed March 8, 2023. https://eic.network/projects/malta-files.
[19] ICIJ. "Paradise Papers: Secrets of the Global Elite," 2017. https://www.icij.org/investigations/paradise-papers/.
[20] ICIJ. "Pandora Papers: An Offshore Data Tsunami - ICIJ," October 3, 2021. https://www.icij.org/investigations/pandora-papers/about-pandora-papers-leak-dataset/.
[21] Tax Justice Network. "Pandora Papers Shows Transparency Failure Is an Accountability Failure," October 3, 2021. https://taxjustice.net/2021/10/03/pandora-papers-shows-transparency-failure-is-an-accountability-failure/.

What are the main - economic or other, including cultural - challenges to fiscal legitimacy systems at the subnational, national, regional and international levels?

Within global fiscal systems, a prominent concern is the pronounced power disparities prevalent in key institutions, such as those encompassed by the Organisation for Economic Co-operation and Development (OECD). These disparities arise from the historical marginalisation of Global South countries in the decision-making mechanisms of these organisations, leading to an inherently biased global economic framework.[22] The exclusion carries significant repercussions, frequently resulting in the absence of recognition and regard for emerging nations' distinct requirements and conditions. The lack of substantial engagement effectively suppresses these nations, silencing their perspectives and their requests. Consequently, this engenders a notable deficiency in fiscal legitimacy within the international arena.

The existing international fiscal framework has been weakened by the long-standing imbalances in influence and representation observed within OECD entities. Historically, Global North nations within the OECD have exerted significant influence in setting global fiscal policy[23], driven mainly by their economic interests. As a result, there has been a tendency to formulate tax legislation that prioritises the interests of a select few, often to the detriment of the majority. Using such approach not only sustains economic inequality but also contributes to the deterioration of trust and fairness among nations in the global community.

As a result, this system has contributed to perpetuating a global tax framework that leads to substantial yearly revenue losses of over $480 billion, primarily attributed to corporate tax abuse and private tax evasion by high wealth individuals[24]. Notably, a significant majority (78 per cent) of these losses are attributable to countries within the OECD.[25] Implementing substantive reforms by the OECD to address the deficiencies in the existing international tax regulations has faced obstacles, mainly attributed to opposition exerted by its own influential member states.

Furthermore, the absence of fiscal legitimacy can be attributed to another aspect, namely the discourse around corruption. Historically, the conventional conceptualisation of corruption has tended to adopt a limited scope, which can exhibit a one-sided perspective and frequently neglects the broader context of how Global North countries play an important role in the perpetuation of corruption worldwide. Prominent institutions such as the World Bank and Transparency International have

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[22] Snyckers, Telita and others, 'Why the World Needs UN Leadership on Global Tax Policy' <https://taxjustice.net/2023/07/25/why-the-world-needs-un-leadership-on-global-tax-policy/> [accessed 24 October 2023].

[23] Nikki J. Teo, *The United Nations in Global Tax Coordination: Hidden History and Politics*, 1st edn (2023) <https://www.cambridge.org/core/product/identifier/9781009180450/type/book> [accessed 25 October 2023].

[24] Tax Justice Network, *State of Tax Justice 2023*.

[25] Tax Justice Network, *State of Tax Justice 2023*.

developed indices that classify states and industries as "corrupt," with a notable tendency to disproportionately designate African nations as the 'most corrupt'.[26]

These institutions often fail to acknowledge the significant contribution of the offshore financial system in facilitating capital flight, bribery, tax evasion, and other illicit activities.[27] Corruption cannot exist in the absence of financial secrecy, and the core of this issue lies within the offshore system of tax havens and secretive jurisdictions[28]. This one-sided narrative undermines the credibility of nations in the Global South and fosters a perception that these countries may lack the capacity to establish optimal guidelines for tax reforms due to their pre-existing internal challenges. Furthermore, it also perpetuates the prevalence of imperialist norms established by former colonisers, which remain deeply ingrained in current tax systems. It is imperative to combat this discreditation and establish mechanisms that allow Global South nations, comparable to any other sovereign state, to equally influence global fiscal policies and resolve the fundamental factors that give rise to fiscal disparities.

To address these issues, it is necessary to underscore the significance of advocating for the UN Tax Convention. Establishing such a global forum on tax under the auspices of the United Nations could play a crucial role in creating a solid framework that compels nations to adhere to legally enforceable, just, and equitable regulations on corporate taxation, financial transparency, and the fundamental principles of tax justice.[29] The primary aim of the Convention should be to address the prevailing disparities in the worldwide fiscal system and guarantee the inclusion of all countries, irrespective of their economic standing, in formulating regulations on global taxation.

A UN Tax Convention has the potential to create more equality, fairness, and justice within the international arena. It could allow the establishment of a fair playing field, as countries could be afforded equal opportunities to actively engage in formulating international tax regulations, irrespective of their economic prowess. The effective implementation of such a convention could address the prevailing disparities in power within the global tax framework and pave the way for a progressive collaboration and fairness in fiscal matters. The nature of a Convention Framework as envisaged[30] would allow for inclusive and transparent intergovernmental dialogue on matters of international tax policy. This would establish a platform potentially guaranteeing that the pursuit of fiscal legitimacy and equity becomes a collective undertaking that benefits all nations, irrespective of their economic status.

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[26] World Bank, 'Worldwide Governance Indicators' <https://databank.worldbank.org/databases/control-of-corruption>.
[27] Tax Justice Network, 'Financial Secrecy Index 2022', *Tax Justice Network*, 2022 <https://fsi.taxjustice.net/> [accessed 21 September 2022].
[28] 'Corruption'.
[29] Snyckers, Telita and others, 'Why the World Needs UN Leadership on Global Tax Policy'.
[30] Tove Ryding, *Proposal for a United Nations Convention on Tax* (Brussels, Belgium, 3 January 2022) <https://www.globaltaxjustice.org/sites/default/files/un-tax-convention-mar09-final_0.pdf> [accessed 27 March 2022].

Question 4:

What types of existing taxation systems seem to hinder or strengthen fiscal legitimacy? How do they privilege some or disproportionally affect others?

From an international perspective, regimes that reserve special treatment for certain categories of non-resident taxpayers risk hindering fiscal legitimacy.

For example, residence-by-investment regimes and citizenship-by-investment regimes are known to facilitate common reporting standard arbitrage, meaning that countries sell residency or citizenship as a commodity, knowing that part of the appeal for buyers is the regimes' potential for tax avoidance.[31] Furthermore, these regimes are often associated with preferential tax regimes (like remittance-based taxation that is only accessible to residents with non-domiciled status). See EU Parliament report from 2018 for examples. Every state country should promote residency and living within its territory through tax but should not be able to use its legal system to undermine the tax systems of other states.

Tonnage tax regimes are another striking example of questionable tax regimes when it comes to fiscal legitimacy. Tonnage tax regimes are preferential tax regimes used by a few high-income countries with outsized shipowner industries.[32] Their purpose is to prevent the industry from setting up shop elsewhere. They are a defensive measure, leading to a race to the bottom of the worst kind: the effective tax rate of the shipping industry is much lower than other industries, and has been excluded from the Pillar Two minimum tax.[33] Ship-owning countries tend to justify these regimes by the particular situation of the industry (capital intensive, cyclical economics, geopolitical considerations). But from an international perspective, these regimes are problematic. Nearly all tax treaties prevent source states (port states in the Global South) from levying taxes on the shipping industry (mostly dominated by companies from the Global North). Ship owning countries refuse to properly use the exclusive taxing rights that were conceded to them by the source countries. Instead, tonnage tax systems result in profits in the international shipping industry being undertaxed. Tonnage tax regimes fail on many indicators of fiscal legitimacy: transparency (the regimes are granted on an individual basis), accountability (with a lack of data on the cost of the concession, which makes it difficult to create accountability), fairness and justice (the Global South is prevented from taxing shipping

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[31] Tax Justice Network, *Secrecy Indicator 12: Consistent Personal Income Tax*, Key Financial Secrecy Indicators (2022) <https://fsi.taxjustice.net/fsi2022/KFSI-12.pdf>.
[32] Tax Justice Network, *Haven Indicator 5: Sectoral Exemptions*, Corporate Tax Haven Index 2021, August 2021 <https://cthi.taxjustice.net/cthi2021/HI-5.pdf> [accessed 7 June 2019].
[33] Michael Everett, 'Pillar Two and the Prognosis for UK Tonnage Tax - KPMG United Kingdom', *KPMG*, 2022 <https://kpmg.com/uk/en/home/insights/2022/01/tmd-pillar-2-and-the-prognosis-for-uk-tonnage-tax.html> [accessed 14 August 2023].

profits, which are then subsequently also undertaxed in the Global North).

Fiscal legitimacy principles

Question 5:

To what extent do existing fiscal systems at the subnational, national, regional and international levels incorporate and realise any of the seven fiscal legitimacy principles outlined above (accountability, transparency, responsibility, efficiency, effectiveness, fairness, and justice)?

The current state of fiscal systems has exhibited a conspicuous lack of progress in incorporating the seven principles of fiscal legitimacy into their operations.[34] The delay in this matter can be ascribed to several factors, most significantly the existence of financial secrecy and the existing power disparities between countries, which lead to an unbalanced representation of countries in the development of tax systems. This discrepancy underscores the necessity for all-encompassing reforms to foster accountability and transparency in worldwide fiscal operations.

To tackle the matter of transparency, the previously mentioned "ABC (DEFG$_3$)s of tax justice"[35] are capable of addressing instances of malfeasance and corporate and individual tax evasion. Together they can a) prevent corporations and individuals from manipulating bank accounts maintained overseas; b) expose the true proprietors and profit-seekers of large corporations, despite the fact that legal ownership has been formally transferred to a third party and c) expose the involvement of multinational corporations in profit shifting to tax havens, with the goal of reducing their tax liabilities.

In addition, the effective resolution of accountability and responsibility concerns pertaining to corruption necessitates the adoption of a more inclusive discourse. As previously mentioned, it is imperative to acknowledge that traditional conceptions of corruption are excessively limited in scope, failing to consider the involvement of the Global North in the perpetuation of corruption in other countries.

To advance equity, efficacy, and justice in the global fiscal system, it is crucial to advocate for a more inclusive environment in which all nations can engage in the process of shaping the system. The establishment of a UN Tax Convention could contribute significantly to upholding the principles of justice and fairness. A Convention has the potential to open space for an impartial forum wherein nations, regardless of their

[34] Schoueri, Luis Eduardo and Codorniz Leite Pereira, Roberto, 'Global tax governance: between fragmentation and lack of legitimacy' <https://portalrevistas.ucb.br/index.php/rdiet/article/view/12207>.
[35] 'What Are the ABCs of Tax Justice?', *Tax Justice Network* <https://taxjustice.net/faq/what-are-the-abcs-of-tax-justice/> [accessed 13 April 2022].

economic status, could actively participate in the formulation of global tax regulations. By embracing a UN Tax Convention, the prevailing power differentials in the worldwide fiscal sphere have the potential to be resolved, thereby promoting a paradigm shift towards fiscal cooperation and fairness. Fundamentally, this could enable every nation to redefine the regulations that regulate international fiscal systems in concert, ensuring that the pursuit of fiscal legitimacy and equity is a unified effort that is advantageous to all nations irrespective of their economic standing.

Question 6:

Can you provide any examples of how states, international organizations or other relevant stakeholders have already implemented (any of) these principles? (For instance, measures/policies to ensure the accountability, or transparency, or justice of their fiscal systems).

A considerable number of countries, international organisations, and stakeholders have undertaken substantial measures to incorporate principles that bolster justice, transparency, and accountability in their fiscal systems. The subsequent cases demonstrate the commitment to these principles and the different implementations in various sectors and regions:

European Union and Australia country by country reporting

A number of European Union member states and other countries, including Australia[36], have taken the initiative to enforce country by country reporting obligations[37]. The implementation of such commitments has faced challenges that still requires attention, such as delays[38] or requiring only partial publication of data[39]. However, these measures promote more transparency by requiring that multinational corporations divulge comprehensive financial information about their activities in every country where they conduct business. Country by country reporting establishes a paradigm for accountability and transparency by equipping tax authorities and the general public with vital information to ensure that corporations pay their fair share of taxes and to prevent the shifting of profits.

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[36] *Treasury Laws Amendment (Measures 3 for Future Bills) Bill 2023: Multinational 4 Tax Transparency - Tax Changes* <https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Transfer-pricing/Country-by-Country-reporting/>.
[37] Kohonen, Matti, 'Five Key Trends in 2023: Financial Transparency, Tax Justice and Inequality' <https://taxjustice.net/2023/01/16/five-key-trends-in-2023-financial-transparency-tax-justice-and-inequality/> [accessed 24 October 2023].
[38] White, Josh, 'Australia Delays Plan to Implement Public CbCR' <https://www.internationaltaxreview.com/article/2bu1poz5zl0hgg25xi58g/australia-delays-plan-to-impose-public-cbcr> [accessed 23 October 2023].
[39] 'Tax Justice Network Hails a Major Breakthrough in Corporate Tax Transparency' <https://taxjustice.net/press/tax-justice-network-hails-a-major-breakthrough-in-corporate-tax-transparency/> [accessed 23 October 2023].

Platform for Taxation in the Caribbean and Latin America (PTLAC)[40]

The establishment of the Platform for Taxation in Latin America and the Caribbean represents a significant stride in promoting dialogue and collaboration among nations in the Global South concerning their tax systems. This platform functions as a discussion area where best practices, challenges, and demands about the enhancement of tax systems in the region and globally are exchanged. Through the facilitation of dialogue, PTLAC empowers these nations to develop fiscal policies following their specific requirements and conditions collaboratively. In doing so, it advances fiscal justice and equity principles at both the regional and global scales.

Beneficial Ownership Intergovernmental Measures in Africa Disclosure

Prominent African intergovernmental organisations, such as the African Union and the United Nations Economic Commission for Africa have implemented measures that require corporations to reveal their beneficial owners, who operate clandestinely beneath the guise of shell corporations, trusts, and other legal entities[41]. This methodology plays a crucial role in mitigating the utilisation of anonymous entities as conduits for illicit operations, promoting transparency, and guaranteeing that financial resources are allocated to lawful and equitable objectives.

The above examples represent significant advancements in improving fiscal accountability, transparency, and justice. Much remains to be done, however, to bring about progressive reforms The continuous development of the global environment requires constant endeavours to strengthen fiscal systems. Cooperation among states, international organisations, and stakeholders is imperative to attain comprehensive fiscal legitimacy. This collaboration should be focused on improving established policies, formulating novel approaches, and tackling emergent fiscal challenges.

Question 8:

More generally, how can these fiscal legitimacy principles be further useful for all relevant stakeholders?

Understanding the relationship between taxpayers and their governments requires an appreciation of fiscal legitimacy. Fiscal legitimacy is predicated on the idea that individuals must perceive a concrete return on their investments in the form of public services and benefits to voluntarily contribute their taxes.[42] Nevertheless, safeguarding fiscal

[40] ‘Authorities from 16 Countries Approve the Creation of the Regional Tax Cooperation Platform for Latin America and the Caribbean’ <https://www.cepal.org/en/pressreleases/authorities-16-countries-approve-creation-regional-tax-cooperation-platform-latin> [accessed 24 October 2023].

[41] Rachel Etter-Phoya and others, *Beneficial Ownership Transparency in Africa in 2022* (13 March 2023) <https://taxjustice.net/wp-content/uploads/2023/03/State-of-Play-in-Africa.pdf> [accessed 21 October 2023].

[42] Attiya Waris, ‘Developing Fiscal Legitimacy By Building State-Societal Trust in African Countries’ <http://jota.website/index.php/JoTA/article/view/199/142>.

legitimacy encompasses more than the simple reciprocation of tax revenue for services. A more comprehensive outlook is required, which incorporates human rights, justice, and equitable tax policies—all of which are fundamental components of the Tax Justice Network's 5R's framework that aims to tackle this complex matter.

The 5R's framework, representing Revenue, Redistribution, Repricing, Representation[43], and Reparations, provides stakeholders with a strategic guide for optimising the effectiveness of taxes in the pursuit of human rights and justice.[44] Fundamentally, tax justice underscores the criticality of establishing fair and impartial tax policies and legislation, which empowers governments to satisfy their human rights responsibilities. Beyond the realm of financial transactions, this framework underscores the critical significance of equity and impartiality in bolstering democratic institutions, which are essential constituents of fiscal legitimacy and not only the state's accountability to its population.

The initial letter 'R' in the framework, revenue, represents the capacity of taxes to produce funds to finance public services, infrastructure advancement, and efficient administrative systems that have the potential to strengthen fiscal legitimacy.

The second 'R,' redistribution, is an essential component in mitigating inequalities among various groups and within the population. Stakeholders can nurture a sense of fiscal legitimacy and promote a society in which the burdens and benefits of taxation are more equitably distributed by advocating for fair and just tax policies that effectively redistribute wealth.

The third 'R,' repricing, exemplified by taxes on items like sugar, tobacco, and alcohol, demonstrates how adjusting economic incentives can positively influence societal choices. By imposing higher taxes on affluent individuals and corporations, who often are the biggest contributors to carbon emissions, it can incentivize them to alter their behaviour and reduce their environmental impact. Ultimately, such a progressive tax system not only fosters environmental responsibility but also contributes significantly to justice and human rights by ensuring a fair distribution of the burdens associated with social and environmental challenges.

The fourth letter 'R,' representation, emphasises the significance of democratic procedures and political representation. An increased dependence on tax revenues to finance government spending has been associated with enhanced political representation and governance. As a result, promoting a tax structure that enhances the calibre of governance and representation is an essential component in the pursuit of fiscal legitimacy.

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[43] Liz Nelson, *Tax Justice & Human Rights: The 4 Rs and the Realisation of Rights* (6 July 2021) <https://taxjustice.net/reports/tax-justice-human-rights-the-4-rs-and-the-realisation-of-rights/> [accessed 8 September 2021].

[44] Tax Justice Network, *Beyond20*.

Lastly, reparation is the fifth R of taxation. Similar to how taxation financed a significant portion of the extraction from former colonies, it must ultimately provide the means to repair a portion of the harm caused. By assisting minor financial centres in developing alternative economic models, the burden of ending the era of cross-border tax abuse will be alleviated, and substantial funds will be generated through the recovery of foregone revenues.[45]

By emphasising fair tax policies, redistribution of wealth, and strengthening democratic mechanisms, stakeholders can not only optimise the advantages derived from taxation but also safeguard against the potential subversion of governments by influential corporate interests and wealth. By doing so, they can contribute to justice and human rights by ensuring that the fiscal system is legitimate and fair.

Other

Question 9:

Please provide any other information, documents or background materials that may be relevant for the report.

Some suggestions:

The State of Tax Justice 2023: The State of Tax Justice reports give the clearest picture possible of cross-border tax abuse by employing rigorously reviewed methodologies and the highest quality data available.

The Financial Secrecy Index: The jurisdictions most complicit in assisting individuals to conceal their finances from the rule of law are ranked in the Financial Secrecy Index. The index identifies the largest providers of financial secrecy on a global scale and draws attention to the legislation that governments may amend in order to mitigate their role in maintaining such secrecy.

Corporate Tax Haven Index: The Corporate Tax Haven Index is a ranking of jurisdictions most complicit in helping multinational corporations underpay corporate income tax. The index thoroughly evaluates each jurisdiction's tax and financial systems to create a clear picture of the world's greatest enablers of global corporate tax abuse and to highlight the laws and policies that policymakers can amend to reduce their jurisdiction's enabling of corporate tax abuse.

The Tax Justice Network's Data Portal: An all-encompassing repository of information regarding the tax and financial transparency regulations of nations. The Data Portal contains both Tax Justice Network-generated

[45] Tax Justice Network, *Beyond20* (12 May 2023), 17 <https://taxjustice.net/wp-content/uploads/2023/05/Tax-Justice-Network-beyond20-Strategic-Framework-May-2023.pdf> [accessed 24 October 2023].

original data and curated, essential data from academic institutions and international organisations.

Tax Justice & Human Rights: The 4 Rs and the realisation of rights. This report was written with four primary objectives in mind: illustrating the profound and influential connections that exist between tax justice and human rights; providing an overview of the tax justice policy framework and its potential to promote human rights; an exhaustive inventory of the various human rights instruments at our disposal and how they can be used to promote tax justice; and outlining the predicament that the nascent international movement for tax justice and human rights finds itself in and proposing a hierarchy of the most significant prospects.