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Date: 25 May 2022

2022 GLOBAL ASSEMBLY MEETING PAPER

TAXATION AND HUMAN RIGHTS: A SET OF HIGH-LEVEL PRINCIPLES

AI Index: ORG 50/5516/2022

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Aim:

The aim of this paper is to elaborate a set of principles underpinning a future policy on taxation, inequality and human rights as mandated by GA resolution 2021/05. The intended outcome of the discussion concerning this paper is to agree these principles as an initial but significant step in developing a full policy for consideration at the 2023 Global Assembly. In turn, this policy and accompanying research outputs will enable us to strengthen our work with particular respect to the duty of states to obtain sufficient resources to progressively realise human rights. As such it is strongly linked to the delivery of Priority 2 of AI's Strategic Framework, including emerging areas of work such as the climate crisis and social protection.

How to use this paper:

This paper should be consulted widely within sections including members, board and relevant staff such as policy advisors. In particular, it would be useful to know (a) what might be some of the key challenges involved in working on taxation and how might they be overcome and (b) how could work on taxation be effectively integrated into other areas of planned work.

Please see the Executive Summary for recommended actions

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EXECUTIVE SUMMARY

Historically, with some notable exceptions, Amnesty International has had relatively little to say on taxation¹ and its link to human rights enjoyment.² When we have commented we have often focused on process – i.e. how taxation policy should be designed and implemented – rather than outcomes in terms of specific measures. In so doing we have drawn on the work of UN experts.³

However, there has been an increasing realisation that we must be able to have credible, public-facing positions on taxation, together with accompanying research. This will help us answer key questions such as how states can maximise available resources for enhanced rights enjoyment⁴ and what type of taxation models are the most rights-compliant in terms of equality and non-discrimination, participation and accountability. As such, it is strongly linked to the delivery of Priority 2 of AI's Strategic Framework, including emerging areas of work such as the climate crisis and social protection.

Beyond the immediate resource question, there has been an increasing recognition during the last two decades, including by human rights bodies and experts, of the critical link between taxation and human rights more widely.⁵ Mirroring this increasing recognition, Amnesty's internal discussion culminated in the 2021 Global Assembly passing resolution 2021/05 mandating the Board to begin developing a policy on taxation, inequality and human rights (see Background section of paper).

This paper sets out what potential content should be included in the initial form of a set of high-level principles as part of a motion for discussion and decision at the 2022 Global Assembly.

Summary recommendations

Readers are recommended to consider both the content and approach of the high-level principles, whether they are appropriate as a framework for the development of a full policy on the subject and how they might be strengthened based on concrete recommendations.

Human rights impact

This paper and accompanying discussion will enable us to strengthen our work with particular respect to the duty of states to obtain sufficient resources to progressively realise human rights. As such it is strongly linked to the delivery of Priority 2 of AI's Strategic Framework, including emerging areas of work such as the climate crisis and social protection.

Conclusion

As indicated above this framework document is the first in a two-stage process leading to the development of a full policy. As such it does not seek to cover in depth some of the areas which will be in the final policy. However, it does seek to establish some common positions that will form the core of our research, campaigning and advocacy work.

TAXATION AND HUMAN RIGHTS: A SET OF HIGH-LEVEL PRINCIPLES

Tax policy is, at base, a social tool. Thus it cannot be divorced from principles regarding social priorities and entitlements, which are human rights. Indeed human rights law is, at core, a framework to guide social policy and resource distribution... What is needed is greater recognition that the fields of tax and human rights are inherently intertwined and face a common challenge today: the reconceptualization of what constitutes a just society and the social good [Phillip Alston and Nikki Reisch] ⁶

BACKGROUND – THE LINK BETWEEN TAX AND HUMAN RIGHTS

Historically, with some notable exceptions, Amnesty International has had relatively little to say on taxation⁷ and its link to human rights enjoyment.⁸ When we have commented we have often focused on process – i.e. how taxation policy should be designed and implemented – rather than outcomes in terms of specific measures. In so doing we have drawn on the work of UN experts.⁹

However, there has been an increasing realisation that we must be able to have credible, public-facing positions on taxation, together with accompanying research. This will help us answer key questions such as how states can maximise available resources for enhanced rights enjoyment¹⁰ (for instance, invest in schools, hospitals, social welfare and the justice system and in the case of wealthier countries the provision of international cooperation and assistance including climate finance) and what type of taxation models are the most rights-compliant in terms of equality and non-discrimination, including gender equality and intersectionality, participation and accountability. As such, it is strongly linked to the delivery of Priority 2 of AI's Strategic Framework, including emerging areas of work such as the climate crisis and social protection.

As one leading human rights expert has said: *Taxes are not the only source of government revenue, but they are arguably the most important, because they combine three critical functions....: (a) the generation of revenue for the realization of rights; (b) achieving equality and tackling discrimination; and (c) strengthening governance and accountability.*¹¹

It is clear that taxation should play a key role in delivering more resources that in turn could be utilised for better rights protection and enjoyment. This is an issue for all countries, but it is particularly significant for developing countries where it is crucial that they can mobilise as much resources as possible domestically as well as from international cooperation and assistance. It has been calculated that if all developing countries were able to raise 15 per cent of their national income in tax (the OECD average is 37%) they could realise an additional \$198 billion per year, much more than the total of all international development aid combined.¹² At the same time, it is estimated that nearly \$500 billion is lost every year to tax abuse.¹³ One of the key problems is harmful tax competition which, as defined by the OECD, consists of tax practices which can distort trade and investment patterns, erode national tax bases and shift part of the tax burden onto less mobile tax bases, such as labour and consumption thereby adversely affecting employment and undermining the fairness of tax structures.¹⁴ However, it is also important to address how tax revenue is raised and the risk that it (a) impacts on the incomes of the poorest, the majority of them women and girls, in regressive ways and (b) the additional resources are not allocated to benefit those who need it most.

In respect of the latter, taxation policy is clearly inseparable from wider fiscal policy which encompasses both how governments collect revenue and spend it. Specifically, fiscal policy refers to the use of government spending and tax policies to redistribute wealth and income and influence economic conditions, especially macroeconomic conditions, including aggregate demand for goods and services, employment, inflation, and economic growth.¹⁵

In line with the Global Assembly motion (see below), whilst this document and current policy process focuses solely on the design of tax systems, i.e. how revenues are raised and key outcomes for advancing human rights including reducing economic inequality, it is important to connect taxation to public spending and its impact on human rights. **In that respect it will be important that any research into and evaluation of tax systems from a human rights perspective should be done together with an evaluation of broader fiscal policy with respect to budgeting and expenditure.** This would include assessing both the decision-making process and outcomes with respect to prioritising and allocating resources both between and within those sectors of government that are responsible for human rights enjoyment – not just health, education, housing and social services but also the justice system. In so doing, it is also important to ensure that resources are invested in ways that promote substantive equality for specific groups that may have faced discrimination and unequal access to services (see further below). Again, this demonstrates the need to make the link between taxation and wider fiscal policy.

Beyond the immediate resource question, there has been an increasing recognition during the last two decades, including by human rights bodies and experts, of the critical link between taxation and human rights more widely.¹⁶ Most notably this included a report dedicated to the issue the former Special Rapporteur on Extreme Poverty in 2014 in which she stated that: *Fiscal policies are a critical tool that States can employ to comply with their international human rights obligations.*¹⁷ *They can play a major role in achieving equality, tackling discrimination, and strengthening governance and accountability, as well as combating poverty and funding development.*¹⁸ Some have categorised these connections as the Four Rs – resource mobilisation; redistribution; regulation and representation.¹⁹

Mirroring this increasing recognition, Amnesty's internal discussion culminated in the 2021 Global Assembly passing the following resolution 2021/05:

Developing a policy on taxation, inequality and human rights The Global Assembly instructs the International Board to

- start developing a policy on taxation, inequality and human rights.
- The policy should be developed incrementally with high-level principles being made available for discussion and decision at the 2022 Global Assembly meeting, as well as a plan and timeline for the further development of the policy.
- The policy should be grounded in existing and developing human rights standards. The policy should address, at the minimum, regressive tax regimes, loopholes, harmful international tax competition and lack of transparency of tax systems, and link to other human rights policies.
- With the focus being on tackling rising economic inequality, we also need a position to talk about tax revenue nationally and globally.

This paper sets out what potential content should be included in the initial form of a set of

high-level principles as part of a motion for discussion and decision at the 2022 Global Assembly. In so doing it acknowledges that there will be a need to include further detail in the final policy document on areas such as (a) the wide range of taxation measures that exist and their differential impact on rights and (b) the links to and impacts on tax of other economic processes such as international trade and investment and the role of international financial institutions.

The policy work is being developed in parallel with other related activities such as a resource guide²⁰ and webinars to strengthen internal capacity and the scoping of potential areas of research both within and across jurisdictions.

A SET OF PROPOSED HIGH-LEVEL PRINCIPLES

A human rights compliant taxation system requires a number of fundamental elements to ensure it can contribute to the progressive enjoyment of human rights. In this respect it is proposed that the high-level principles which should begin to guide our policy approach be closely aligned with and based on the existing normative framework of state obligations and corporate responsibilities whilst incorporating fundamental cross-cutting human rights principles such as equality and non-discrimination, participation and accountability. To ensure a rights compliant taxation system, these principles should be implemented throughout the policy cycle, from the design of budgets and tax codes to collection of revenue allocation of expenditure, to monitoring and evaluation of impact.

The standard human rights obligations framework – respect, protect and fulfil – applies to the development and implementation of tax and other fiscal policies as it does to all other government acts. However, it should be noted that such obligations do not require states to develop particular taxation policies. Instead, they have discretion to develop and enact policies most appropriate to their particular context as long as these are still guided by the relevant international obligations with the aim of ensuring that no policies or measures result in violations of human rights.²¹

1. STATES MUST ENSURE DOMESTIC TAXATION POLICIES AND MEASURES ARE DESIGNED TO DELIVER SUFFICIENT RESOURCES IN ORDER TO INVEST IN THE PROGRESSIVE REALIZATION OF HUMAN RIGHTS

Article 2(1) of the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) makes clear that states must devote the “maximum available resources” to ensure the progressive realization of all economic, social and cultural rights as expeditiously and effectively as possible.²² The Committee on Economic, Social and Cultural Rights has gone on to confirm that this obligation applies even during times of severe resource constraints, whether caused by a process of adjustment, economic recession or other factors.²³ It should be noted that whilst progressive realization is not explicitly mentioned in the sister treaty to the ICESCR, the International Covenant on Civil and Political Rights, in reality a similar approach needs to be applied to the realization of certain civil and political rights, e.g. ensuring a well-resourced criminal justice system.

It is clear that taxation plays a key role in ensuring that states have the potential resources they need to devote to the realization of rights.²⁴ In so doing it is critical that the wealthier parts of the population pay fair and reasonable amounts of tax through a progressive tax system and that tax avoidance²⁵, tax evasion²⁶ and other illicit financial flows are effectively tackled, in an effort to satisfy, as a matter of priority, minimum essential levels of rights.²⁷ In this context it is important to note that if tax systems are regressive and include legal loopholes, solely focusing on tax evasion will not effectively address resource gaps. Rather, it is critical to assess the overall design of the tax system as well as legal tax avoidance to ensure that the wealthy are paying their fair share.

Naturally, the obligation to progressively realize economic, social and cultural rights entails a prohibition of deliberate retrogression. There is a strong presumption that such retrogressive measures amount to human rights violations with states only being permitted to adopt such measures if they can demonstrate that they have carefully considered all alternatives, including revenue-raising ones.²⁸ This is particularly relevant in the context of austerity measures, where it is necessary to ask whether the government considered and implemented revenue-raising alternatives before making cuts in areas such as public services or social protection.²⁹

In any assessment of the extent of available resources and its ability to deliver progressive realization it will be important to adopt a contextual country by country approach reflecting that of the CESCR including other significant factors such as debt repayments.

2. STATES MUST ENSURE THAT THE FUNDAMENTAL PRINCIPLES OF PARTICIPATION AND TRANSPARENCY ARE ADHERED TO THROUGHOUT THE TAXATION PROCESS

Although the right to participation is guaranteed in a number of treaties, the most significant provision, particularly for the purposes of the formulation of taxation policies, is Article 25 of the International Covenant on Civil and Political Rights. This guarantees the right of all people to take part in the conduct of public affairs, a right that covers all aspects of public administration and the formulation and implementation of policy at international, national, regional and local levels.³⁰ Effective and meaningful participation is in turn dependent on the right to seek, receive and impart information.³¹ The UN Committee on Economic, Social and Cultural Rights has stressed that the right to participation must be an integral part of government policies, programmes and strategies.³²

Decision-making processes regarding tax and public revenues must be based on full transparency and the broadest possible national dialogue, with effective and meaningful participation of civil society and those who will be directly affected by such policies, including people living in poverty.³³ To promote transparency it is important that as much tax information as possible is available in the public domain including with respect to corporate actors based on country-by country reporting on accessible open source websites.

Ideally taxation and wider fiscal policies should be subjected to the scrutiny of the population during design, implementation and evaluation stages, with the various interests transparently identified. This will require capacity-building and fostering fiscal literacy in the population. The population should have access to all relevant information in an accessible and understandable format,³⁴ and inclusive mechanisms should be put in place to ensure that they are actively engaged in devising the most appropriate policy options.³⁵ Owing to the asymmetries of power, expertise and interests in this debate, there will be a need to analyse

and address barriers to participation for marginalised groups or people who are generally less represented in decision-making, particularly those living in poverty and implement specific measures accordingly to ensure equal access and opportunities to participate..³⁶ In this context, examining best practice from around the world will be helpful such as gender-responsive participatory budgets. This should include the creation of dedicated bodies that research and advocate on tax justice as well as capacity building more generally within civil society. In so doing it would be important to ensure that that civil society actors do not reinforce existing asymmetries of power. This should include recognising the impact of the digitisation of tax administration, such as e-filing systems, which can lead to digital access issues. Those without internet devices or reliable and secure internet access may be excluded from government tax services by design. In countries where the digital divide is particularly acute, this would only exacerbate an already growing exclusion from essential government services for unconnected and marginalised communities.

3. ALL STATES' DECISIONS AND MEASURES ON TAXATION MUST BE SUBJECT TO EFFECTIVE MEANS OF ACCOUNTABILITY

As has already been stated, taxation can play a role in strengthening governance, the role of citizenship and democratic accountability.³⁷ This is because taxes are a strong means of ensuring that governments are accountable to and responsive to the needs of their populations. This relationship is further enhanced the more the state is able to mobilise its own resources through taxation measures. By contrast a state that facilitates tax abuse erodes trust and accountability.

To ensure effective accountability, tax laws and policies should be open to different forms of scrutiny – parliamentary committees; national human rights institutions, administrative bodies and, where appropriate, judicial oversight ensuring that public officials should be accountable for decisions that endanger the enjoyment of human rights.³⁸ Accessible mechanisms for complaints and redress should also be available.³⁹ To ensure effective accountability throughout the entire policy cycle it will be important to elaborate rights consistent indicators for monitoring impact based on disaggregated data. Complementing national mechanisms should be regional and international human rights bodies which need to engage more on the issue of taxation as it pertains to rights enjoyment. Amnesty can play a role in this through both the reporting and complaints processes as it has done with other human rights issues.

This will be in addition to the standard forms of accountability as recommended by the OECD such as an effective tax administration and auditing function.⁴⁰ Underpinning their activities will be a legal framework granting revenue bodies sufficient powers and sanctions including for obtaining information.

Accountability will be facilitated by maximum transparency including country-by-country tax reporting, open registers for beneficial owners combined with eliminating structures that hide ownership such as nominee registered stocks, publishing annual income tax details (including tax free income) of all citizens and companies etc.

4. STATES MUST ENSURE TAXATION IS COLLECTED IN A WAY THAT RESPECTS AND ADVANCES EQUALITY AND NON-DISCRIMINATION ⁴¹

*Revenue collection is a critical tool for States in tackling and redressing systemic discrimination and ensuring equal access to economic, social and cultural rights.*⁴²

The rights to equality and to non-discrimination must be respected in all revenue-raising policies by the State requiring that any action or omission must not discriminate, either directly or indirectly,⁴³ against any individual or group on any recognised grounds, including economic and social status, or perpetuate discrimination and inequality.⁴⁴ In some circumstances, and in line with the concept of substantive equality⁴⁵ these rights require States to take affirmative action or special measures to prevent, diminish and eliminate the conditions and attitudes that cause or perpetuate systemic or de facto discrimination.⁴⁶

In revenue collection, this means implementing a progressive tax system that does not unfairly impact the income of poorer households. This could include affirmative action measures aimed at assisting the most disadvantaged individuals and groups that have suffered from historical or persistent discrimination, such as well-designed subsidies or tax exemptions. Such measures will not be discriminatory. By contrast, flat taxes where everybody pays an equal proportion of their income can be.⁴⁷

To ensure tax policies do not discriminate, States should evaluate the differential impact of existing and proposed policies on different groups, in particular on those who suffer from structural discrimination including gender and intersectional impact.⁴⁸ So, for example, women can be affected by tax in different ways such as employment models; a disproportionate share of care and unpaid labour; types of consumption and property and asset ownership.⁴⁹ Accordingly a progressive taxation system can play a significant role providing resources for appropriate services such as health care, day care and education. By contrast flat taxes on goods such as medicines and food can disproportionately unfairly impact women. Both CEDAW and the Beijing Platform for Action have explicitly made taxation issues matters of substantive gender equality.⁵⁰ This includes the obligation of states with financial secrecy laws such as Switzerland to assess their extraterritorial impact on women's substantive equality.⁵¹

Similarly, taxation measures that unfairly discriminate against certain minorities due in part to their socio-economic status would also be unacceptable.⁵² In this respect it would be important to conduct an intersectional analysis examining multiple and intersecting grounds of discrimination to assess the cumulative impact. For example, CEDAW has acknowledged that Canada has fiscal obligations to indigenous women after decades of failure to improve their living conditions and opportunities.⁵³

In developing a policy and positions on different taxation measures it will be important to identify those that are seen as generally more progressive, such as personal income and corporation tax, compared to others such as consumption taxes which can disproportionately impact the poorest households. This is because taxes on the goods and services that people buy tend to hit the poorest hardest as they will have to spend a greater proportion of their income on such purchases. By contrast a progressive tax system can ensure wealthier individuals pay a greater proportion of their income in taxation as well as businesses paying their fair share. From a gender perspective, consumption taxes in Europe have been found to place a greater burden on women, because women's consumption patterns differ from those of men as they purchase more goods and services with the aim of promoting health, education and nutrition. This, combined with women's lower income, leads to women bearing a larger VAT burden. It should also be noted that income tax can also have negative consequences on women when, for example, they fail to incentivise women's employment.⁵⁴

However, it is also important to contextualise discussions around progressive vs. regressive taxes. Whilst consumption taxes do tend to be regressive, less developed states may lack the

capacity to implement more progressive but complicated taxes such as those on income or wealth. In these cases it may make more sense to retain consumption taxes whilst ensuring their impacts on the poorest are mitigated through social protection measures. Fundamentally it is how a taxation system is designed which will determine how progressive it is, e.g. corporate tax can increase progressivity of the tax system but this depends on both the nominal tax rate as well as which type of income, such as that from dividends, is tax exempt or not.

It is also important to emphasise that a progressive tax system should have an impact on the reduction of inequalities. However, this can only happen if the revenue from the taxes collected is redistributed through social policies that benefit the poor, and those discriminated against, rather than entrenching and actually increasing inequality by favouring wealthier communities and otherwise more privileged groups. For example, CEDAW has established that denying a maternity allowance to self-employed women workers is a violation of the Netherlands' obligation to provide a maternity allowance to women workers.⁵⁵

From a gender perspective, underfunded public services and access to social services disproportionately affect low-income groups, and especially women, as they often fill the gaps in caregiving, education and other kinds of family support, typically without remuneration, perpetuating women's disproportionate responsibility for care. It is the poorest and most vulnerable women who face the double burden of informal care work and low paid precarious work.

5. STATES MUST RESPECT THEIR INTERNATIONAL COOPERATION AND ASSISTANCE AND EXTRA-TERRITORIAL OBLIGATIONS TO PROMOTE TAX COOPERATION, ELIMINATE HARMFUL TAX COMPETITION, COMBAT TAX EVASION AND TAX AVOIDANCE AND AVOID POLICIES THAT PREVENT OTHER STATES' FROM MAXIMISING THEIR OWN TAX REVENUE

"A contemporary interpretation of existing obligations of international cooperation and assistance should recast or redefine the outdated emphasis on tax sovereignty to a more modern conception of international tax cooperation in a globalized and interdependent world economy".⁵⁶

As part of their obligation to engage in international cooperation and assistance (ICA), states have an obligation to respect and protect the enjoyment of human rights everywhere, which involves avoiding conduct that would foreseeably risk impairing the enjoyment of human rights by persons beyond their borders, and conducting assessments of the extraterritorial impact of laws, policies and practices.⁵⁷ This requires refraining from any conduct that impairs the ability of another State to comply with its own human rights commitments including with respect to revenue raising.⁵⁸ Clearly this would include any actions, policies or measures that enable tax evasion (illegal) and tax avoidance (legal but still has a significant impact on depriving states of resources) in another jurisdiction for example by high-net worth individuals or multinational corporations, which deprives states of much needed revenue for delivering rights with consequential serious socio-economic impacts including on the most marginalised. This could include the establishment or maintenance of offshore tax havens (countries and/or territories offering minimal or no tax liability for foreign businesses and investors as well as those which in various ways facilitate tax avoidance and/or also provide services to bolster financial secrecy⁵⁹), or encouraging harmful tax competition⁶⁰ including a race to the bottom in terms of disproportionately low tax rates and incentives.⁶¹

By contrast, international and regional cooperation for the realization of rights includes measures relating to taxation, combating harmful tax competition and tax evasion, in a similar way that states should ensure that indebted countries can manage their debt that still enables them to deliver on their human rights obligations.⁶² It is important that Amnesty both recognises that such cooperation already exists and advocates for it to be strengthened where appropriate.

Complementing their ICA obligations as part of their extra territorial obligations (ETOs)⁶³ states should take steps to prevent violations of human rights outside of their territories as a result of the activities of business enterprises that are incorporated under their laws or that have their main seat or place of business under their jurisdiction.⁶⁴ In this context states should take measures to ensure that business enterprises do not participate in or facilitate tax evasion and/or tax avoidance, given that they have a detrimental impact on the realization of economic, social and cultural rights.⁶⁵

The Maastricht Principles on Extra Territorial Obligations of States in the Area of ESCRs, which codify existing obligations, require states to take deliberate, concrete and targeted steps, separately, and jointly through international cooperation, to create an international enabling environment conducive to the universal fulfilment of ESCRs, including in matters relating to finance and taxation⁶⁶ Moreover, the obligation to international cooperation and assistance implies that states must cooperate with—and not undermine—efforts to mobilize the maximum of available resources for the universal fulfilment of economic, social and cultural rights.⁶⁷

In this respect it is important to note both the work in this area of the OECD⁶⁸ and the UN Tax Committee⁶⁹ as well as recent developments such as the 2021 global tax deal whilst being able to critique its limitations and press for progressive strengthening.⁷⁰

Ultimately, it is important that Amnesty supports policies and measures that seek to eliminate harmful tax competition including current structures of the international tax regime that facilitate it.

6. CORPORATE ACTORS SHOULD ENSURE THAT THEY RESPECT THEIR HUMAN RIGHTS RESPONSIBILITIES WITH RESPECT TO ALL OF THEIR BUSINESS PRACTICES CONCERNING TAXATION

Beyond state obligations to regulate businesses, both within their own jurisdictions and extra territorially, corporate actors⁷¹ themselves have a responsibility to respect human rights under the UN Guiding Principles on Business and Human Rights.⁷² Business practices that avoid taxation may breach their responsibility to respect insofar as such actions have a negative human rights impact (principle 13). In addition, business enterprises that knowingly avoid paying tax are purposefully depriving countries of the resources they need to fulfil their human rights obligations.⁷³ In that respect tax evasion and tax avoidance should be seen as a breach of corporate actors' human rights due diligence obligations.

Whilst it is important to distinguish definitionally between tax evasion which is illegal and avoidance which is not, the latter also clearly has a significant impact on the ability of states to raise sufficient revenue and therefore deliver on their human rights obligations. In particular, aggressive tax avoidance⁷⁴, often by large multinationals, which technically remains within the law but is deliberately designed to avoid paying a fair share of taxation by being overwhelmingly opaque and complex is also a clear violation of human rights.⁷⁵

Drawing on the work of others such as the OECD⁷⁶ it will be important to be clear on both defining the different types of tax abuse and on what grounds respectively we can criticise them. In reality in many developing jurisdictions for under-resourced tax officials there may be little distinction between tax evasion and tax avoidance due to the inability to seriously address either.⁷⁷ The rise of digital business models brings further challenges for tax administration and enforcement given that production chains can be multi-jurisdictional and value generation often takes place in a different location to where a good is produced.⁷⁸ It will be important that Amnesty recognises the significance of this phenomenon which impacts all business sectors and researches and advocates on it further as part of our broader work on technology and human rights.

The proposed new global minimum corporate income tax rate of 15% is a significant step in seeking to address tax avoidance given that the majority of profit shifting cases (tax planning strategies that exploit gaps and mismatches in tax rules to avoid paying tax) is based on taking advantage of zero corporate income tax rates in some countries. However, some have argued that it could still risk perpetuating global inequality between north and south. It has been calculated that it could raise an additional \$275 billion of global revenue. However, it is estimated that the G7 countries alone, with just 10% of the world's population, would take more than 60% reflecting that the majority of the world's businesses are resident in these countries. Moreover, most countries in Latin America and Africa, have average corporate tax rates of 26 per cent and 27 per cent, respectively, in 2020.⁷⁹

7. STATES MUST ENSURE THAT THEIR TAXATION POLICIES AND MEASURES CONTRIBUTE TO ADDRESSING THE CLIMATE CRISIS IN A HUMAN RIGHTS CONSISTENT MANNER

States have clear obligations to reduce carbon emissions with consequences for human rights protection and enjoyment. Appropriate tax policies and measures can be one means of achieving this.

In this respect as in other areas taxation, as a social tool, can be used to change behaviour. For example, governments have progressively increased taxes on tobacco and alcohol on public health grounds as well as raising significant amounts of extra revenue. In many countries, governments have introduced or are considering introducing carbon taxes as an incentive to reduce the use of fossil fuels. However, as emphasised above, such taxes, especially where they are focused on consumption, can disproportionately impact poorer households.

Whilst in principle carbon taxes - taxes designed to reduce carbon emissions - may appear to be a necessary measure to mitigate environmental harm, their imposition, if not designed properly, may disproportionately impact poorer segments of society whilst also including too many exemptions for businesses.⁸⁰ Carbon taxes must reduce inequalities rather than deepen them, thus putting the burden primarily on fossil fuel corporations and wealthier consumers while protecting low-income groups from regressive impacts through subsidies, grants and tax reforms and ensuring their access to affordable energy.⁸¹ To that end it is important to scrutinise how states are using taxes to meet their human rights obligations to address the climate crisis including with respect to expenditure. It will be important both to scrutinise the content of any climate taxes and the process by which they are designed and implemented including the extent to which affected rights holders have been able to participate. This will include incentives for businesses to transition away from the extraction and use of fossil fuels whilst ensuring that the rights of workers and communities are not ignored.

One way by which states could achieve their obligations is to implement a tax on profits of energy companies that are derived from fossil fuels (additional to general corporate taxes), designed to ensure that fossil fuels are less profitable than renewable energy. A tax on profits derived from fossil fuels rather than on turnover is less likely to be passed on to consumers. In addition, targeting profits directly creates a clear incentive for investors and managers of corporations to switch to renewable energy. This is logical and just because it is energy producers, rather than energy users, who are in a stronger position to influence the shape of energy production and use. Measures should be taken to ensure that the tax does not result in an excessive burden for lower-income households. These could for example include prohibiting companies from passing on the cost to consumers, or accompanying the tax with measures such as rebates, tax reductions or subsidies in renewable energy and public transport.⁸² Taxes in wealthy countries should also be used to mobilize additional resources for international cooperation and assistance, including climate finance.

CONCLUSIONS

As indicated above this framework document is the first in a two-stage process leading to the development of a full policy. As such it does not seek to cover in depth some of the areas which will be in the final policy. However, it does seek to establish some common positions that will form the core of our research, campaigning and advocacy work. In particular:

- basing our approach to taxation on the established human rights normative framework
- ensuring that tax systems are designed in such a way that advances human rights enjoyment and reduces socio-economic inequality
- recognising that taxation systems and measures can be very contextual and that our policies and positions need to take this into account instead of “one size fits all”
- recognising that taxation is part of wider fiscal policy on budgeting and expenditure
- opposing harmful tax competition and advocating for strengthening of international cooperation in this area
- recognising that taxation can play a significant role in advancing other strategic areas of work including climate change

ANNEX: PROPOSED WORK PLAN AND TIMELINE

The table below sets out the necessary actions and outputs against a timeline as required by the Global Assembly 2021 taxation policy development motion. The process has two distinct phases. Initially the development of a high-level principles document for consideration and approval at the 2022 Global Assembly to be followed by development of the full policy for consideration and approval at the 2023 Global Assembly accompanied by respective motions. The principles should provide an overarching framework identifying some of the key policy issues for subsequent elaboration in the full policy.

ACTION	BY WHEN	ACTION
Proposal for GA motion to be considered by CLT and International Board	6 Feb	DONE
First draft of high-level principles is produced	28 Feb	DONE
ROs, sections and national entities are initially consulted on the high-level principles	21 March	DONE
Motion proposals discussed in regional forums	3 April	DONE
Finalise · draft of high-level principles · Motion on the approval of the high-level principles and work plan	14 April to the Board for approval 26 April for final papers with all approvals to GA Coordinator 1 May - Motions deadline	DONE
GA motions discussion groups are held including second round of consultations on the high-level principles and work plan	10 – 19 June	
The motion text, work plan and high-level principles are edited as a result of the motion discussions.	20-24 June	
GA votes on the motion to approve the high-level principles and the work plan	19-24 July 30 and 31 July GA meeting itself (where results of voting are shared)	
Present proposal for a motion on the full policy and draft full policy to the Board.	December	
Submit the proposal for a motion on the full policy. Circulate the draft full policy with the	January 2023	

Movement.		
Draft full policy is discussed as part of policy consultation process and regional forum meetings.	Feb-April	
Update draft full policy following consultation process. Develop the motion text.	Mid-April 2023	
Share updated draft full policy and motion text with Board for approval. Finalise both and submit to GA Coordinator	End April	
Motion text and updated draft full policy shared with the Movement as part of GA meeting process.	May 2023	
Motion and policy discussed and finalised as part of the GA meeting.	End July / early August 2023	

¹ Taxation is defined as a term for when a taxing authority, usually a central or local government, levies or imposes a financial obligation on its citizens or residents applying to all forms of involuntary levies including on income; capital gains; estate and consumption.

² Notable exceptions include references to transfer mispricing in Central African Republic <https://www.amnesty.org/en/documents/afr19/2494/2015/en/>; *Paradise Papers: Time for action on grand-scale tax abuse* - Amnesty International; and some references in our austerity research work [WRONG PRESCRIPTION THE IMPACT OF AUSTERITY MEASURES ON THE RIGHT TO HEALTH IN SPAIN \(amnesty.org\)](#). In the context of our climate work Amnesty has discussed the need for carbon taxes - see *Stop burning our rights*, page 95, 125 <https://www.amnesty.org/en/documents/pol30/3476/2021/en/>. See also recently on the 2021 global tax deal [The new global tax deal: a true watershed moment for human rights? | Human Rights centre blog \(wordpress.com\)](#)

³ An internal resource guide on austerity produced in 2017 made some reference to the 2014 report of the UN Special Rapporteur on Extreme Poverty and Human Rights *Taxation and Human Rights* 2014 [A/HRC/26/28 - E - A/HRC/26/28 -Desktop \(undocs.org\)](#)

⁴ For example, the compatibility of austerity measures (such as those that many States implemented in the wake of the 2008/09 financial crisis) with the Covenant would therefore depend partly on whether the State has sought revenue-raising alternatives before making cuts in areas that are important for ensuring the enjoyment of economic, social and cultural rights, such as cuts in public sector employment, public services or social protection [UN SR Extreme Poverty and Human Rights *Taxation and Human Rights* 2014 [A/HRC/26/28 - E - A/HRC/26/28 -Desktop \(undocs.org\)](#) para 28]

⁵ For a more detailed history see Alston and Reisch in [Tax, Inequality, and Human Rights - Institute for International Law and Justice \(iilj.org\)](#)

⁶ Alston and Reisch in [Tax, Inequality, and Human Rights - Institute for International Law and Justice \(iilj.org\)](#) pp 1 and 19

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¹⁰ For example, the compatibility of austerity measures (such as those that many States implemented in the wake of the 2008/09 financial crisis) with the Covenant would therefore depend partly on whether the State has sought revenue-raising alternatives before making cuts in areas that are important for ensuring the enjoyment of economic, social and cultural rights, such as cuts in public sector employment, public services or social protection [UN SR Extreme Poverty and Human Rights *Taxation and Human Rights* 2014 [A/HRC/26/28 - E - A/HRC/26/28 -Desktop \(undocs.org\)](#) para 28]

¹¹ Ibid. para 36

¹² Ibid. para 56

¹³ [The State of Tax Justice 2021 - Tax Justice Network](#)

¹⁴ [Harmful Tax Competition : An Emerging Global Issue | OECD iLibrary \(oecd-ilibrary.org\)](#)

¹⁵ Fiscal policy is largely based on the theories of British economist John Maynard Keynes. Also known as Keynesian economics, this theory basically states that governments can influence macroeconomic productivity levels by increasing or decreasing tax levels and public spending.

¹⁶ For a more detailed history see Alston and Reisch in [Tax, Inequality, and Human Rights - Institute for International Law and Justice \(iilj.org\)](#)

¹⁷ Noting that fiscal policy includes both taxation and public expenditure and that Amnesty's work in this area will need to examine both the distinct aspects of each as well as the interconnections.

¹⁸ UN SR Extreme Poverty and Human Rights *Taxation and Human Rights* 2014 [A/HRC/26/28 - E - A/HRC/26/28 -Desktop \(undocs.org\)](#) para 1

¹⁹ From Alston and Reisch in [Tax, Inequality, and Human Rights - Institute for International Law and Justice \(iilj.org\)](#) p 4

²⁰ The resource guide which is due to be finalised by mid-2022 will include a glossary of key terms

²¹ UN SR Extreme Poverty and Human Rights *Taxation and Human Rights* 2014 [A/HRC/26/28 - E - A/HRC/26/28 -Desktop \(undocs.org\)](#) para 4

²² International Covenant on Economic, Social and Cultural Rights, art. 2, para. 1. See also the Convention on the Rights of the **Accordingly a progressive taxation system that**, art. 4, and the Convention on the Rights of Persons with Disabilities, art. 4, para. 2.

²³ *Official Records of the Economic and Social Council, 1991, Supplement No. 3 (E/1991/23), annex III, Committee on*

Economic, Social and Cultural Rights, general comment No. 3.

²⁴ UN SR Extreme Poverty and Human Rights *Taxation and Human Rights* 2014 [A/HRC/26/28 - E - A/HRC/26/28 -Desktop \(undocs.org\)](#) para 25

²⁵ Tax avoidance is defined as the arrangement of one's financial affairs to minimize tax liability within the law.

²⁶ Tax evasion is defined as the illegal non-payment or underpayment of tax

²⁷ E/C.12/2007/1, paras.4-6. See also Committee on Economic, Social and Cultural Rights general comments No. 3 (E/1991/23, annex III), para. 12, No. 12 (E/C.12/1999/5), para. 28, and No. 14 (E/C.12/2000/4), para. 18.

²⁸ Committee on Economic, Social and Cultural Rights general comment No. 3 (E/1991/23, annex III) para. 9. See also general comments No. 13 (E/C.12/1999/10), para. 45, No. 14 (E/C.12/2000/4), para. 32, No. 15 (E/C.12/2002/11), para. 19, No. 17 (E/C.12/GC/17), para. 27, No. 18 (E/C.12/GC/18), para. 34, No. 19 (E/C.12/GC/19), para. 42 and No. 21 (E/C.12/GC/21), para. 65.

²⁹ See UN SR Extreme Poverty and Human Rights *Taxation and Human Rights* 2014 [A/HRC/26/28 - E - A/HRC/26/28 -Desktop \(undocs.org\)](#) paras 26-28

³⁰ See Human Rights Committee general comment No. 25 (CCPR/C/21/Rev.1/Add.7).

³¹ Universal Declaration of Human Rights, art. 19; International Covenant on Civil and Political Rights, art. 19.

³² See CESCR, General Comment No. 14, para. 54 and General Comment No. 15, para. 48.

³³ See UN SR Extreme Poverty and Human Rights, *Mission to Ireland*, [Microsoft Word - A HRC 17 34 Add.2 FOR PROCESSING.doc \(ohchr.org\)](#), paras. 36-38.

³⁴ Human Rights Committee general comment No. 34 (CCPR/C/GC/34), para. 19.

³⁵ See UN SR Extreme Poverty and Human Rights, *Mission to Namibia*, A/HRC/23/36 [United Nations \(ohchr.org\)](#)

³⁶ Idem.

³⁷ See OECD, *Governance, Taxation and Accountability: Issues and Practices*, 2008, p.13.

³⁸ On human rights accountability more widely see [WhoWillBeAccountable.pdf \(ohchr.org\)](#)

³⁹ UN SR Extreme Poverty and Human Rights *Taxation and Human Rights* 2014 [A/HRC/26/28 - E - A/HRC/26/28 -Desktop \(undocs.org\)](#) paras 20-23

⁴⁰ See for example <https://www.oecd.org/tax/administration/37589900.pdf>

⁴¹ In revenue collection, compliance with these rights may require States to set up a progressive tax system with real redistributive capacity that preserves, and progressively increases, the income of poorer households. It also implies that affirmative action measures aimed at assisting the most disadvantaged individuals and groups that have suffered from historical or persistent discrimination, such as well-designed subsidies or tax exemptions, would not be discriminatory (Ibid para 16)

⁴² UN SR Extreme Poverty and Human Rights *Taxation and Human Rights* 2014 [A/HRC/26/28 - E - A/HRC/26/28 -Desktop \(undocs.org\)](#) para 17

⁴³ CESCR General Comment 20, E/C.12/GC/20, para. 10.

⁴⁴ Ibid., para. 35.

⁴⁵ The right to substantive equality (that is, equality of results) requires that laws, policies and programs be designed in ways that take into account existing disadvantages (inherent as well as historical) of specific groups so as to secure equal benefits, in real terms. (see Amnesty Policy Summary on Discrimination AI Index: POL 30/2992/2012)

⁴⁶ See for example Convention on the Elimination of All Forms of Discrimination against Women, art. 4, para. 1; International [Convention on the Elimination of All Forms of Racial Discrimination](#), art. 2, para. 2; Human Rights Committee general comment

No. 18, para.10; and E/C.12/GC/20, para. 39.

⁴⁷ Ibid para 16

⁴⁸ Ibid para 17

⁴⁹ See [en_tax_and_gender_christianaid_chiaracapraro_may2015.pdf \(world-psi.org\)](#)

⁵⁰ See particularly CEDAW, arts. 3-5, 11, 13, and 15; Platform for Action, paras. 58(a)-(d), 150, 155, 165(f), (l), (p), 179(f), 205(c), 245-349. Also see [Geder-Tax-Report-Fin-WEB.pdf \(globaltaxjustice.org\)](#)

⁵¹ Concluding observations, Switzerland, U.N. Doc. CEDAW/C/CHE/CO/4-5 (2016), paras. 40-41; “Blok v. Netherlands”, Communication No. 36/2012, U.N. Doc. CEDAW/C/57/D/36/2012 (Mar. 24, 2014); Report of the Inquiry Concerning Canada, U.N. Doc. CEDAW/C/OP.8/CAN/1 (Mar. 30, 2015); Concluding observations, Switzerland, U.N. Doc. CEDAW/C/CHE/CO/4-5 (2016), paras. 40-41

⁵² [Racial Disparities and the Income Tax System \(urban.org\)](#)

⁵³ Report of the Inquiry Concerning Canada, U.N. Doc. CEDAW/C/OP.8/CAN/1 (Mar. 30, 2015)

⁵⁴ Resolution of 15 January 2019 on gender equality and taxation policies in the EU.

⁵⁵ “Blok v. Netherlands”, Communication No. 36/2012, U.N. Doc. CEDAW/C/57/D/36/2012 (Mar. 24, 2014).

⁵⁶ Ibid. paras 29-35

⁵⁷ UN SR Extreme Poverty and Human Rights *Guiding principles on extreme poverty and human rights* [A/HRC/21/39 - E - A/HRC/21/39 -Desktop \(undocs.org\)](#), para. 92.

⁵⁸ See Maastricht Principles https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUId%5D=23 art. 21.

⁵⁹ See <https://taxjustice.net/topics/tax-havens-and-secrecy-jurisdictions/>

⁶⁰ See [231998041COV.XPR \(Page 1\) \(oecd.org\)](#) for further elaboration of the concept

⁶¹ UN SR Extreme Poverty and Human Rights *Taxation and Human Rights* 2014 [A/HRC/26/28 - E - A/HRC/26/28 -Desktop \(undocs.org\)](#) para 61; see also CESCR General Comment 24 para 37

⁶² CRC General Comment 16 para 75

⁶³ United Nations treaty bodies have repeatedly reiterated their view that States should take steps to prevent violations of human rights outside of their territories as a result of the activities of business enterprises that are incorporated under their laws or that have their main seat or place of business under their jurisdiction (see e.g., CRC/C/KOR/CO/3-4, E/C.12/DEU/CO/5 and CCPR/C/DEU/CO/6). However, one commentator has noted that *the Maastricht Principles and UN Guidelines on Extreme Poverty and HR put forward strong claims but it remains unclear how these principles might be translated into concrete changes to tax structures and policies at the domestic and international level. Nor is it clear what mechanisms exist to identify and assign liability for extraterritorial harm attributable to tax policies in the absence of regulation in one jurisdiction* [Alston in [Tax, Inequality, and Human Rights - Institute for International Law and Justice \(iilj.org\)](#) p23]

⁶⁴ See CRC/C/KOR/CO/3-4, E/C.12/DEU/CO/5 and CCPR/C/DEU/CO/6.

⁶⁵ UN SR Extreme Poverty and Human Rights *Taxation and Human Rights* 2014 [A/HRC/26/28 - E - A/HRC/26/28 -Desktop \(undocs.org\)](#) para 6

⁶⁶ See Maastricht Principles https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUId%5D=23 Principle 29

⁶⁷ Ibid Principle 31

⁶⁸ For over a decade the OECD's Inclusive Framework on Base Erosion and Profit Shifting has sought to come up with a package of 15 measures to tackle tax avoidance and improve the coherence of international tax rules – see [About - OECD BEPS](#)

⁶⁹ The Committee of Experts on International Cooperation in Tax Matters is a subsidiary body of the UN Economic and Social Council, The Committee generates practical guidance for governments, tax administrators and taxpayers to help strengthen tax

systems, with a view to mobilizing financing for sustainable development. Through its work, the Committee aims to prevent “double (or multiple) taxation” and “non-taxation” and assists countries to broaden their tax base, strengthen their tax administrations and to curb international tax evasion and avoidance. See [About | Financing for Sustainable Development Office \(un.org\)](#).

⁷⁰ [The new global tax deal: a true watershed moment for human rights? – Human Rights Centre Blog \(wordpress.com\)](#)

⁷¹ Corporate actors include multinational enterprises; private financial institutions and small and medium sized enterprises

⁷² The Principles cover the full range of rights listed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the eight core conventions of the International Labour Organization (ILO) (principle 12). A/HRC/17/31.

⁷³ UN SR Extreme Poverty and Human Rights *Taxation and Human Rights* 2014 [A/HRC/26/28 - E - A/HRC/26/28 -Desktop \(undocs.org\)](#) para 7

⁷⁴ Aggressive tax avoidance has been defined as the arrangement of financial transactions designed to defeat a liability to a tax charge which appear to have no commercial rationale or purpose other than to avoid tax. See [What is Aggressive Tax Avoidance? - Contractor & Business Weekly \(contractorweekly.com\)](#)

⁷⁵ [New study deems Amazon worst for 'aggressive' tax avoidance | Tax avoidance | The Guardian](#)

⁷⁶ <https://www.oecd.org/tax/beps/>

⁷⁷ See [taxabusespovertyandhumanrights.pdf \(business-humanrights.org\)](#)

⁷⁸ See OECD, Addressing the Tax Challenges of the Digital Economy, 2015, <https://www.oecd-ilibrary.org/docserver/9789264241046-en.pdf?expires=1649427216&id=id&accname=guest&checksum=E3A8ACE02AE6A1BB1848D4CFF64016DE>, p.98

⁷⁹ [Corporate Tax Statistics: Third Edition - OECD](#)

⁸⁰ [Carbon taxes 1.pdf \(actionaid.org\)](#)

⁸¹ See *Burning our Rights* page 79

⁸² See *Burning our Rights*, page 125