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Shadow report and recommendations concerning the:

United Kingdom of Great Britain and Northern Ireland

to be considered in connection with the sixth periodic report (E/C.12/GBR/6)

UK Responsibility for the Impacts of Cross- border Tax Abuse on Economic, Social and Cultural Rights

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I. EXECUTIVE SUMMARY

This submission summarizes how cross-border tax abuses jeopardize economic, social and cultural rights and entrench inequalities, and illustrates the contribution of the United Kingdom to these abuses through its financial secrecy laws and lax rules on corporate tax and reporting. The present review provides the Committee on Economic, Social and Cultural Rights (CESCR, or the Committee) an opportunity to ask the United Kingdom, including its Overseas Territories (OTs) and Crown Dependencies (CDs), to assess and address the impacts of its tax and financial secrecy policies on the realization of human rights abroad.

The Committee has long recognized that effective, non-discriminatory taxation is necessary to enable State parties to mobilize the maximum available resources to fulfill their obligations to ensure equal enjoyment¹ of the rights guaranteed under the International Covenant on Economic, Social and Cultural Rights (ICESCR),² especially in times of economic downturn.³ The loss of revenue to cross-border tax abuses—the use, by individuals and corporations, of transboundary transactions to unjustifiably reduce or avoid their tax payments, for example through controversial profit-shifting, fraudulent under-reporting of the value of taxable transactions, and offshoring of wealth to hide taxable income and assets in protected accounts—costs governments hundreds of billions of dollars in lost revenues every year. Developing countries are hit hardest by those losses, given their already-strained public budgets and greater reliance on corporate taxes as a share of national revenue. According to International Monetary Fund economists, developing countries lose more than \$212 billion annually to just one form of tax abuse—base erosion and profit-shifting.⁴ Trade mis-invoicing, a form of corporate tax evasion based on fraud,⁵ is estimated to cost developing countries another \$217 billion each year,⁶ while the offshoring of private wealth leads to annual revenue losses of approximately \$190–\$280 billion worldwide.⁷

These cross-border tax abuses are enabled by States that facilitate financial secrecy through lax rules on corporate taxes and disclosure of corporate ownership, and financial instruments that insulate beneficiaries from public scrutiny. The United Kingdom, which includes the City of London and extends to three CDs and fourteen OTs, is considered the single largest “financial secrecy jurisdiction” in today’s global market.⁸ The policies of the United Kingdom and its OTs and CDs permit, and in some cases actively encourage, corporations and wealthy individuals in other countries to reassign their assets and incomes to the United Kingdom in ways that frustrate tax collection overseas. The exploitation of legal loopholes and arbitrage between national tax authorities results in an international “reverse Robin Hood” effect, whereby largely wealthy financial secrecy jurisdictions, such as the United Kingdom, siphon money from poorer countries to enrich already wealthy individuals and corporations.⁹ At the same time, it increases the tax burden on lower-income taxpayers unable to use sophisticated tax avoidance schemes, entrenching inequalities.¹⁰ By facilitating this type of tax abuse, the United Kingdom is interfering with the ability of other States to mobilize the maximum available resources in support of equal enjoyment of economic, social, and cultural rights.

The United Kingdom, including its CDs and OTs, has an obligation under the ICESCR to respect and protect the rights enshrined in the Covenant, both within its own territories and extraterritorially.¹¹ Furthermore, the Covenant obliges State parties to promote international cooperation and to create an international enabling environment for the fulfillment of economic, social and cultural rights. The United Kingdom’s facilitation of cross-border tax abuse is inconsistent with those duties.

The submitting organizations respectfully request that the Committee’s concluding observations recommend that the United Kingdom, including its OTs and CDs:

- **Ensure that its financial secrecy policies and rules on corporate reporting and taxation, and those of its OTs and CDs, are consistent with its extraterritorial obligations under Article 2 of the Covenant and do not contribute to large-scale tax avoidance and evasion;**

- **Ensure that its corporations respect economic, social and cultural rights,**¹² including by refraining from engaging in tax abuse throughout their operations;
- **Conduct comprehensive and periodic assessments of the extraterritorial impacts of its financial secrecy policies on human rights and inequality,** particularly in developing countries, and **include the results of these assessments in its next periodic report to CESCR;**
- **Establish and disclose public registries of beneficial ownership of all UK-registered companies, trusts, and foundations, open to the public, media and regulatory authorities;**
- **Undertake to require the above measures, as an absolute minimum standard, throughout its territories, including in its Overseas Territories and Crown Dependencies.**

II. ADEQUATE TAX REVENUES ARE ESSENTIAL TO THE REALIZATION AND EQUAL ENJOYMENT OF ESC RIGHTS

Tax policies are among the most significant, predictable, and accountable instruments governments have to resource human rights, reduce inequalities and meet the Sustainable Development Goals.¹³ Under ICESCR Article 2, States must mobilize the maximum of their available resources to achieve progressively, and without discrimination, the full realization of the rights recognized in the Covenant. As the Special Rapporteur on extreme poverty and human rights has observed, revenue collection through taxation is a “critical tool for States in tackling and redressing systemic discrimination and ensuring equal access to economic, social and cultural rights ... [A] State with a very narrow tax base or that fails to tackle tax evasion may [be unable] to fund social protection or adequate and accessible public services, a situation that is likely to create or entrench inequalities.”¹⁴

When tax revenues fall short, cuts in public spending, increases in public debt, and reliance on regressive revenue sources to make up for budget shortfalls all take a toll on human rights, in particular economic, social and cultural rights. Experience demonstrates that social services like health care and education are often the first to be cut in times of austerity, putting economic, social and cultural rights further at risk, especially for already disadvantaged groups.¹⁵ Inadequate spending on social services often takes a heavier toll on women, who typically bear the burden of care-giving and performing unpaid work when public institutions fall short.¹⁶ Moreover, increased reliance on easily administered but regressive forms of taxation, such as consumption taxes, exacerbates inequalities. Regressive taxes disproportionately affect women in several ways, due to their over-representation among poorer households and entrenched gender roles in many societies that lead women to spend a greater share of their incomes on consumer goods.¹⁷ As detailed in various reports by UN, academic, and civil society experts, the cumulative effects of limited public spending on essential services, together with the disproportionate tax and care burden women often bear, conspire to frustrate the structural possibilities for full and equal enjoyment of economic, social and cultural rights.

Tax abuses prevent States from mobilizing the maximum available resources for Covenant rights, because they undercut government efforts to raise public revenues and shift the tax burden away from wealthier individuals and corporations that have sophisticated means to skirt taxation.¹⁸ What’s more, these abusive tax practices do not occur in a vacuum; they are the foreseeable result of enabling conditions for which particular countries are disproportionately responsible.¹⁹

III. A U.K.–LED NETWORK FACILITATES CROSS-BORDER TAX ABUSE AND UNDERMINES ESC RIGHTS

The United Kingdom, including its Overseas Territories and Crown Dependencies, plays an outsized role in facilitating cross-border tax abuse through its financial secrecy laws, the use of

opaque financial vehicles, and lax rules on corporate reporting and taxation. Taken together, the United Kingdom and its satellite jurisdictions rank as the most important financial secrecy network in the world.²⁰ Through regulations and standards designed “for the primary benefit and use of those not resident in their geographical domain,” financial secrecy jurisdictions “enable people or entities to escape (and frequently undermine) the laws, rules and regulations of other jurisdictions elsewhere, using secrecy as a prime tool.”²¹ Although the United Kingdom was itself ranked 15th in the world in the 2015 Financial Secrecy Index (based on the depth of its financial opacity and the scale of its offshore financial activities), this ranking is artificially low because it analyzes UK laws separately from the network of secrecy jurisdictions over which it exercises political control.²²

The United Kingdom not only maintains policies that facilitate registration of offshore companies and the use of financial vehicles that obscure ownership and accountability; it also **allows financial secrecy practices to flourish in its OTs and CDs—ten of which have consistently ranked as top financial secrecy jurisdictions.**²³ For instance, the United Kingdom exercises sovereignty over six of the top 20 jurisdictions that the World Bank found were used to establish corporate vehicles involved in “grand corruption”: the British Virgin Islands, the Cayman Islands, Bermuda, Jersey, and the Isle of Man, as well as the United Kingdom itself. Three of those jurisdictions—the British Virgin Islands, the United Kingdom, and the Cayman Islands—rank among the top ten.²⁴ The European Union also has “blacklisted” the same territories as “tax havens,” along with a number of others under UK control, including, *inter alia*, Anguilla, Bermuda, Montserrat, and Turks and Caicos.²⁵ Together with the United Kingdom’s own policies, this network of UK-led financial secrecy jurisdictions administers a variety of financial secrecy laws and policies, as well as low tax rates and preferential tax regimes, which compete to attract high-net worth individuals and corporations from around the world, seeking to avoid paying taxes in the countries where they derive economic value. The inevitable result is lower tax revenues in affected countries.²⁶

A. *The UK itself facilitates cross-border tax abuse through lax corporate regulation and provision of legal structures that obscure taxpayer accountability.*

- 1. The United Kingdom has repeatedly weakened laws that could reduce tax abuse, and introduced laws that encourage tax abuse by creating an attractive environment for foreign individuals and corporations to register offshore companies in the United Kingdom.*

Corporations and wealthy individuals from other countries are encouraged to register a presence in the United Kingdom, even if only nominal, by three categories of UK policies that facilitate tax abuse and evasion. First, the United Kingdom takes a comparatively lax approach to corporate taxation. This approach has led to **drastic tax cuts for corporations** in recent years,²⁷ **coupled with significant corporate subsidies**²⁸ and **reduced funding for enforcement of regulations** governing large-scale corporate tax avoidance and evasion.²⁹ Furthermore, the government has effectively **hollowed out existing enforcement laws** intended to protect against the use and abuse of foreign tax havens by controlled foreign companies (CFC), which are UK-based multinationals that UK law already exempts from taxation on profits made elsewhere.³⁰ When this raft of legislation passed in 2012, ActionAid estimated that it would cost developing countries around \$6 billion annually due to increased tax abuse.³¹ The United Kingdom has also implemented a so-called “**patent box**” regime, a controversial regulatory tool that cuts tax rates on profits arising from qualifying patents, which can be applied even when none of the research and development for patented inventions occurred inside the United Kingdom.³² Tax analysts across the political spectrum have criticized the patent box as contributing to the problem of “rampant,” “aggressive profit-shifting” in the international tax arena.³³

The Panama Papers Highlight the Role of the UK’s Financial Secrecy Network in Global Tax Avoidance³⁴

The “Panama Papers,” a data leak of 11.5 million documents from Panamanian law firm Mossack Fonseca, revealed evidence of a massive system facilitating international tax avoidance and evasion. The documents provide information relating to over 200,000 companies for which the firm performed legal services, and which are registered in various financial secrecy jurisdictions worldwide. More than half are registered in the United Kingdom or its Overseas Territories—with more than 100,000 registered in the British Virgin Isles (BVI) alone. Intermediaries for the companies, including accountants, lawyers, banks, and trust companies, are heavily concentrated in Jersey and in the United Kingdom itself.



*Jurisdictions where Mossack Fonseca’s corporate clients are registered, sized by popularity*³⁵

The scandal that has embroiled the Ukrainian government in the wake of the data leak illustrates this financial secrecy network’s instrumental role in undermining the tax base in other countries. The President of Ukraine Petro Poroshenko was revealed to have overseen a complex web of shell companies, many of which are nominally located in BVI.³⁶ These companies are estimated to have cost Ukraine millions of dollars in lost tax revenue.³⁷ Despite the Ukrainian government’s active fight against corruption and the use of offshore companies,³⁸ Poroshenko is not alone in using the UK financial secrecy network to avoid Ukrainian taxes. For example, the son of Ukraine’s former prime minister set up 26 BVI-based offshore firms in 2012.³⁹ **Ukraine loses an estimated \$11.6 billion annually to tax avoidance and evasion by offshore companies.**⁴⁰

In its **concluding observations on Ukraine in June 2014**, CESCR expressed concern about the **impact of the country’s resource constraints and State corruption on economic, social and cultural rights.**⁴¹ The Committee highlighted the adverse effects of austerity measures on the enjoyment of human rights and called upon the government to enhance the allocation of resources to poverty alleviation measures.⁴²

- The City of London Corporation acts as a hub for promoting financial secrecy policies and servicing the offshore financial industry based in the OTs and CDs.*

The United Kingdom’s approach to international corporate taxation centers on **the City of London Corporation** (“the City”)—the 1.22 square miles at the center of London that contains its financial district—which is widely known as the **hub of the UK financial secrecy network**. Two of the City’s most important roles in fostering financial secrecy are first, as a powerful lobbyist for expansive financial freedoms and so-called “light touch” financial regulation;⁴³ and second, as the **creator and developer of the “Euromarkets,”** which offer an effectively unregulated space for non-resident international

finance institutions, hosted in the City.⁴⁴ Successive Lord Mayors of London (the political head of the City, elected by business representatives⁴⁵) have expressly praised various offshore financial havens as extensions of the City’s economy.⁴⁶ The Panama Papers (see box, *supra*) provide further evidence of the density of accountants, lawyers, banks, trust companies, and other providers located in the United Kingdom that service, and profit from, the offshore financial industries of the OTs and CDs.⁴⁷ Despite claims that Euromarket loopholes have been closed, a 2015 Reuters investigation found substantial evidence that the City continues to be a jurisdiction used by many multinational finance institutions to avoid regulation.⁴⁸

3. *The United Kingdom continues to rely on legal structures that obscure taxpayer responsibility and undermine enforcement of tax laws, both within the United Kingdom and abroad.*

Finally, on top of these lenient regulatory and tax policies, the United Kingdom offers at least two legal avenues for people and corporations to obscure their true location or identity. UK law recognizes and provides for legal vehicles known as “**trusts**,” which operate by separating legal and beneficial ownership of an asset: a “settlor” delegates control of an asset to a “trustee,” who manages that asset for the third party “beneficiary,” who receives any proceeds.⁴⁹ By spreading trust structures over multiple jurisdictions and combining them with other financial secrecy techniques, trusts are often used to obscure ownership and control of corporations and private wealth.⁵⁰ **Trusts are rarely registered or publicly recorded, and requirements to disclose financial statements are the exception rather than the rule. Even if tax authorities are aware of a specific trust, it is often impossible to find out more than the bare identity of the trustee, who typically has no reporting requirements or other legal responsibility to make sure that tax on the trust is paid.**⁵¹ This has repercussions not only for UK tax authorities—who may be unable to identify the true owners or beneficiaries of the trust—but also for other countries that may be similarly unable to locate taxable income hidden in these nested UK trusts.

B. *The UK has failed to bring its OTs and CDs into compliance with the ICESCR.*

Despite some steps by the United Kingdom to improve corporate transparency in the area of beneficial ownership in compliance with OECD standards,⁵² its OTs and CDs continue to “operate a legal system that creates a veil of secrecy to obscure the identity of those establishing companies, usually for the benefit and use of people or companies that are not resident there[,]... [effectively] disguis[ing] the identity and source of funds of the owners of those companies, and constitut[ing] a serious obstacle to investigating money laundering.”⁵³ The preservation of secrecy laws in these jurisdictions undermines the overall credibility of UK financial reform efforts,⁵⁴ especially given the United Kingdom’s own acknowledgment that the operation of financial secrecy jurisdictions in the OTs and CDs results in significant economic benefit for its own financial sector.⁵⁵

The United Kingdom is not only obligated under international human rights law to take steps to limit tax abuse and evasion in its OTs and CDs; ⁵⁶ it is also both constitutionally authorized and demonstrably able to do so.⁵⁷ A number of leading British politicians have publicly recognized the United Kingdom’s obligations and powers to take such steps.⁵⁸ To date, however, when it comes to financial secrecy, the government has settled for public chastisement of its OTs and CDs.⁵⁹ Most recently, at its anti-corruption summit,⁶⁰ the United Kingdom took no steps to compel leaders of its OTs and CDs to end their hidden ownership vehicles.⁶¹ This inaction constitutes a failure on the part of the United Kingdom to ensure that its conduct, including that of its political satellites, complies with international human rights obligations.

Focus on Financial Secrecy in the British Virgin Islands

Although each OT and CD is governed by different laws,⁶² all financial secrecy jurisdictions depend on, and benefit from, similar rules that obscure the identity of taxpayers and frustrate tax enforcement. The laws of the British Virgin Islands (BVI) illustrate how financial secrecy jurisdictions can be structured to invite the creation of shell companies and other vehicles for cross-border tax abuse and evasion:

- **Corporate law:** According to the Financial Secrecy Index, BVI is now the world's leading center for company incorporation, with a thriving industry selling corporate secrecy and over a million shell companies incorporated since landmark legislation was introduced in 1984.⁶³ This lax and secretive incorporation environment has been created and maintained through legislation, beginning with the 1984 International Business Companies Act, through the current BVI Business Companies Act.⁶⁴
- **Financial secrecy:** The BVI incorporation model does not require companies to publicize their incorporation or obtain any regulatory pre-approval. To its credit, BVI is one of only 14 jurisdictions to have signed the agreement committing to the OECD's Common Reporting Standard.⁶⁵ But BVI's registry of company directors and members is not publicly available, and there is no requirement to file public accounts.⁶⁶ In absence of public disclosure of such information, many are concerned that BVI's commitments to support automatic exchange of taxpayer information will ring hollow, due to loopholes.⁶⁷
- **Trusts and beneficial ownership:** When a trust is designated as the owner of a company, it can provide additional layers of secrecy over the company's structure, and thereby facilitate tax abuse. BVI laws accommodate many forms of trusts, including so-called "VISTA trusts," which give wide powers to the settlor (the initial contributor of assets). Settlers can separate themselves legally from the assets (thereby protecting themselves from taxes or scrutiny by authorities) while continuing to "exert a significant measure of control and power to enjoy the trust's assets."⁶⁸

IV. THE U.K.'S ROLE IN CROSS-BORDER TAX ABUSE CONTRAVENES ITS EXTRA-TERRITORIAL OBLIGATIONS UNDER THE ICESCR

The United Kingdom's active facilitation of cross-border tax abuse interferes with the ability of other States to meet their own international obligations to mobilize, through taxation, the maximum of available resources in support of economic, social, and cultural rights. In so doing, the United Kingdom is failing to fulfill its duty under the ICESCR to **respect** and **protect** the realization of ESC rights extraterritorially. The United Kingdom is also failing to fulfill its positive obligation to undertake "steps, individually and through **international assistance and cooperation**, especially economic and technical, to the maximum of its available resources"⁶⁹ to progressively achieve the rights set out in the Covenant and to create an international enabling environment in which other States may do so.

A. Under the ICESCR, the United Kingdom is obligated to respect and protect ESC rights extraterritorially.

Article 2 of the Covenant, which outlines the general legal obligations of all State parties,⁷⁰ affirms that these obligations extend extraterritorially, including through international cooperation (found in Articles 11, 15, 22, and 23).⁷¹ This Committee has consistently recognized the extraterritorial obligations of States to **respect**, or refrain from interfering with, ESC rights outside their borders,⁷² expressing concern about the systemic, extraterritorial impacts of various forms of States' conduct (including trade, financial, and foreign aid policies), and recommending that States assess the impact of their policies in light of their

obligations under the ICESCR.⁷³ These extraterritorial obligations require States to recognize the “primacy of...international human rights obligations” over economic interests.⁷⁴

State parties to the Covenant have a further duty to **protect** ESC rights extraterritorially by preventing their own citizens, companies, and national entities, as well as third parties subject to their jurisdiction, from violating those rights in other countries.⁷⁵ This includes the wealthy individuals and corporations that use the services of financial secrecy jurisdictions to escape their tax obligations in other countries. The United Kingdom is thus duty-bound, under the ICESCR, to prevent tax-related infringements of human rights violations by natural and juridical persons under its jurisdiction, and in particular to ensure that corporations “demonstrate due diligence to make certain that they do not impede the enjoyment of the Covenant rights by those who depend on or are negatively affected by their activities.”⁷⁶

The United Kingdom, including its OTs and CDs, therefore has an obligation to prevent individuals and corporations within its jurisdiction from using its financial services and corporate structures to dodge their tax obligations in other countries, as such abuse foreseeably undermines the fulfillment of Covenant rights in those countries. The extraterritorial obligations of State parties under the Covenant apply to the United Kingdom as well as to its OTs and CDs. Under international law, the responsibility for the role of OTs and CDs in cross-border tax abuse falls upon the UK government—as is already reflected in the Committee’s repeated demands that the United Kingdom account for human rights protection and fulfillment “throughout its territories, including its overseas territories and Crown Dependencies.”⁷⁷

B. Under the ICESCR, the United Kingdom must promote the fulfillment of ESC rights through international cooperation

State parties to the Covenant are also obligated to cooperate internationally to mobilize the maximum available resources to fulfill economic, social, and cultural rights⁷⁸—including in matters of taxation, which are critical to the creation of an enabling environment for the realization of these rights.⁷⁹ As this Committee has concluded, “in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States.”⁸⁰ Such cooperation is essential in “facilitating the full realization of the relevant rights.”⁸¹ State parties must also take “deliberate, concrete and targeted steps, separately, and jointly through international cooperation, to create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights.”⁸²

Taxation remains one of the most significant means by which governments generate revenue to support economic, social and cultural rights.⁸³ Accordingly, State policies “that encourage or facilitate tax abuses, or that deliberately frustrate the efforts of other States to counter tax abuses,”⁸⁴ are contrary to the duties to respect and protect ESC rights, as well as the duty of international cooperation under the Covenant. Such conduct therefore may “constitute a violation of [the State’s] international human rights obligations, particularly with respect to economic, social and cultural rights.”⁸⁵

Recent Developments in Human Rights Norms Related to Cross-border Tax Abuse

A number of UN Special Rapporteurs, UN treaty bodies and the Human Rights Council itself have begun highlighting the deleterious human rights impacts of cross-border tax abuse, and have called upon States to take actions to end such practices. The Special Rapporteur on Extreme Poverty and Human Rights, for example, has emphasized that “[t]he actions of States to facilitate and/or actively promote tax abuse ... through their tax secrecy laws and policies could jeopardize their compliance with international human rights obligations, particularly with regard to international cooperation and economic, social and cultural rights,” because such conduct “can directly undermine the ability of

another State to mobilize the maximum available resources for the progressive realization” of those rights.⁸⁶ This SR recommended that States “take **concerted and coordinated measures against tax evasion globally as part of their domestic and extraterritorial human rights obligations** and their duty to protect people from human rights violations by third parties.”⁸⁷ The UN Independent Expert on Foreign Debt and Human Rights has likewise underscored the obligations of States to “refrain from [tax] conduct that harms the enjoyment of human rights outside their own territory,” and, to that end, has called upon States to “**conduct human rights impact assessments of their tax policies**, to ensure that they do not have negative impacts abroad.”⁸⁸

A recent draft Human Rights Council Resolution, meanwhile, directs States to “consider enacting legislation to address offences by business enterprises, including multinational corporations, that deprive Governments of legitimate domestic sources of revenue for the implementation of their development agendas, in compliance with their international obligations, including international human rights law.” It further recommends that States “reduce opportunities for tax avoidance, to consider inserting anti-abuse clauses in all tax treaties and to enhance disclosure practices and transparency in both source and destination countries, including by seeking to ensure transparency in all financial transactions between Governments and companies to relevant tax authorities.”⁸⁹

UN treaty bodies have also begun to engage. The Committee on the Rights of the Child noted the adverse effects of tax evasion on the implementation of treaty obligations,⁹⁰ and is in the process of developing a General Comment on public budgeting which will consider tax avoidance and evasion.

In advance of its 65th Session in November 2016, the Committee on the Elimination of Discrimination against Women has also asked Switzerland to “*provide information on the measures taken to ensure that the State party’s tax and financial secrecy policy does not contribute to large-scale tax abuse in foreign countries, thereby negatively impacting on resources available to realize women’s rights in those countries.*” This marks the first time that a treaty body has called on a State party to assess and publicly report on the extraterritorial human rights impacts of its tax and financial secrecy policies.

V. CONCLUSION AND PROPOSED RECOMMENDATIONS

Taken as a whole, the policies of the United Kingdom and its OTs and CDs permit, and in some cases actively encourage, corporations and wealthy individuals, including political elites, in other countries to reassign their assets and incomes to the United Kingdom in ways that do not reflect where income is earned or assets located, thereby making it more difficult for tax authorities in other countries to determine what taxes are actually owed and who is responsible for paying them. Tax avoidance and evasion are the foreseeable consequence of these policies, undercutting public budgets in countries around the world—with the largest impacts occurring in developing countries that can least afford it. The United Kingdom’s facilitation of this type of tax abuse interferes with the ability of other States to mobilize the maximum available resources in support of economic, social, and cultural rights, as they are required to do under the ICESCR. Moreover, the conduct of the United Kingdom—both through its action in enforcing financial secrecy policies and its inaction in failing to adequately combat third parties’ use of its jurisdiction to avoid and evade taxes—contravenes its positive obligation to cooperate internationally to create an enabling environment for the progressive realization of ESC rights globally.

Proposed Recommendations

The submitting organizations respectfully request that the Committee’s concluding observations recommend that the United Kingdom:

- (1) **Ensure that its financial secrecy policies and rules on corporate reporting and taxation are consistent with its extraterritorial obligations under Article 2(1) of the Covenant and do not contribute to large-scale tax avoidance and evasion**, which deprive many States, developing countries in particular, of resources needed to realize economic, social and cultural rights.
- (2) **Ensure that its corporations respect economic, social and cultural rights**,⁹¹ including by refraining from engaging in tax abuse throughout their operations;
- (3) **Conduct comprehensive and periodic “spillover” assessments of the extraterritorial impacts of its financial secrecy policies and rules on corporate reporting and taxation on human rights and inequality**, particularly in developing countries, and **include the results of these assessments in its next periodic report** to the Committee.
- (4) **Establish and disclose public registries of beneficial ownership** of all UK-registered companies, trusts and foundations, open to the public, media and regulatory authorities; and
- (5) **Undertake to require the above measures**, as an absolute minimum standard, **throughout its territories, including in its Overseas Territories and Crown Dependencies**.

¹ See, e.g., Comm. on Economic, Social and Cultural Rights (CESCR), *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Colombia*, ¶ 14, U.N. Doc. E/C.12/GC/19 (Feb. 4, 2008) (“The Committee ... is particularly concerned that the taxation system is regressive and more favourable to persons from the highest income groups (art. 9). The Committee recommends that the State party review its taxation system, so as to reduce inequalities between different groups of the population with a view to poverty eradication. The Committee also recommends that the State party adopt a fiscal system based on progressive income-related taxes.”); CESCR, *General Comment 19 on the Right to Social Security*, ¶¶ 42, 51, U.N. Doc. E/C.12/GC/19 (Feb. 4, 2008) (noting that, in the event that the right to social security is restricted, State parties will be evaluated in part on whether all alternative means of funding were explored, including taxation, with a particular view to the coverage of disadvantaged and marginalized groups).

² See, e.g., CESCR, *Concluding observations on the fourth periodic report of Paraguay*, ¶ 10, U.N. Doc. E/C.12/PRY/CO/4 (Mar. 20, 2015) (expressing concern about the insufficiency of tax collection and impacts on ESC rights); CESCR, *Concluding observations on the third periodic report of Guatemala*, ¶ 8, U.N. Doc. E/C.12/GTM/CO/3 (Dec. 9, 2014) (same); CESCR, *Concluding observations on the combined third, fourth and fifth periodic reports of El Salvador*, ¶ 8, U.N. Doc. E/C.12/SLV/CO/3-5 (June 19, 2014) (same); CESCR, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Hong Kong*, ¶ 14, U.N. Doc. E/C.12/1/Add.58 (May 21, 2001) (same).

³ See Letter from Ariranga G. Pillary, Chairperson, Committee on Economic, Social and Cultural Rights to State Parties to the ICESCR, at 2, U.N. Doc. CESCR/48th/SP/MAB/SW (May 16, 2012), <http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>.

⁴ Ernesto Crivelli et al., *IMF Working Paper: Base Erosion, Profit Shifting, and Developing Countries*, Oxford University Center for Business Taxation, WP/15/09, at 19 (June 2015), http://www.sbs.ox.ac.uk/sites/default/files/Business_Taxation/Docs/Publications/Working_Papers/Series_15/WP1509.pdf. Base erosion and profit-shifting refers primarily to the efforts of multinational companies and their tax advisors to shift profits across their global affiliates in order to lower their tax bills, especially in countries that impose high corporate tax rates.

⁵ This submission uses the following definition of trade mis-invoicing: “a method for moving money illicitly across borders which involves deliberately misreporting the value of a commercial transaction on an invoice submitted to customs.” *Trade Mis-invoicing*, Global Financial Integrity, <http://www.gfintegrity.org/issue/trade-misinvoicing/> (last accessed Feb. 20, 2016).

⁶ Developing country losses to trade mis-invoicing were estimated at just over \$210 billion in 2012. See Valpy FitzGerald, Queen Elizabeth House Working Paper Series, Oxford U., Working Paper No. 196, *International Tax Cooperation and Innovative Development Finance* 7–8 (2012), <http://www3.qeh.ox.ac.uk/pdf/qehwp/qehwps196.pdf>.

⁷ See James S. Henry, Tax Justice Network, *The Price of Offshore Revisited: New Estimates for ‘Missing’ Global Private Wealth, Income, Inequality, and Lost Taxes*, 36, 42 (2012), http://www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_120722.pdf (estimating that offshore wealth may amount to as much as \$32 trillion). “Offshoring” refers to the practice whereby high-net worth individuals and households, as well as companies, place their income and assets in protected accounts in other countries, in order to shield themselves from tax liabilities in their own countries.

⁸ *Financial Secrecy Index: Narrative Report on the United Kingdom* 1, Tax Justice Network (2015) [hereinafter *FSI Narrative Report on the UK*], <http://www.financialsecrecyindex.com/PDF/UnitedKingdom.pdf>.

⁹ See, e.g., Oxfam, *G20 among biggest losers in large-scale tax abuse – but poor countries relatively hardest hit* (Nov. 10, 2015), <https://www.oxfam.org/en/pressroom/pressreleases/2015-11-10/g20-among-biggest-losers-large-scale-tax-abuse-poor-countries>.

¹⁰ See Special Rapporteur on Extreme Poverty and Human Rights, *Report of the Special Rapporteur on extreme poverty and human rights*, U.N. Doc. A/HRC/26/28, ¶¶ 58–60 (May 22, 2014) (by Magdalena Sepúlveda Carmona) [hereinafter *SR Report on Fiscal Policy*, U.N. Doc. A/HRC/26/28].

¹¹ See generally *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* (2012).

¹² See CESCR, *List of issues in relation to the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland*, ¶ 2, U.N. Doc. E/C.12/GBR/Q/6 (Nov. 13, 2015) (“Please provide information on measures taken, including legislative and regulatory measures, as well as policies and guidance, to ensure that corporations respect economic, social and cultural rights throughout their operations, including when operating abroad.”).

¹³ See *SR Report on Fiscal Policy*, U.N. Doc. A/HRC/26/28, *supra* note 10, ¶¶ 36–53; Christian Aid and the Center for Economic and Social Rights, *A Post-2015 Fiscal Revolution | Human Rights Policy Brief* (May 2014), <http://www.cesr.org/downloads/fiscal.revolution.pdf>; United Nations Development Program (UNDP), *Issues Brief, Gender Equality and Poverty Reduction: Taxation* (Apr. 2010), <http://www.undp.org/content/dam/undp/library/gender/Gender%20and%20Poverty%20Reduction/Taxation%20Engl ish.pdf>.

¹⁴ See *SR Report on Fiscal Policy*, U.N. Doc. A/HRC/26/28, *supra* note 10, ¶ 17; see also *id.* ¶ 74.

¹⁵ See, e.g., Women’s Budget Group, *A cumulative gender impact assessment of ten years of austerity policies* (March 2016), http://wbg.org.uk/wp-content/uploads/2016/03/De_HenauReed_WBG_GIAtaxben_briefing_2016_03_06.pdf; see also Office of the High Comm’r for Human Rights, *Report on Austerity Measures and Economic and Social Rights*, ¶¶ 13–14, 35–36, 49–68 (2014), http://www.ohchr.org/Documents/Issues/Development/RightsCrisis/E-2013-82_en.pdf.

¹⁶ See generally Kate Donald & Rachel Moussié, Institute for Development Studies, *Policy Brief 109: Redistributing Unpaid Care Work – Why Tax Matters for Women’s Rights* (Jan. 2016), <http://www.cesr.org/article.php?id=1804>.

¹⁷ See *id.*; see also The Women’s Working Group on Financing for Development, *Submission To the Report of the Secretary-General to the Economic and Social Council on options for further strengthening the work and operational capacity of the Committee of Experts on International Cooperation in Tax Matters 2* (March 2015), http://www.un.org/esa/ffd/wp-content/uploads/2015/03/ICTM2015_wwg.pdf.

¹⁸ See Nicholas Lusiani, ‘Only the Little People Pay Taxes: Tax Evasion and Switzerland’s Extraterritorial Obligations to Economic, Social and Cultural Rights’ in *Litigating Transnational Human Rights Obligations: Alternative Judgments* 116–134 (Mark Gibney and Wouten Vandenhole, eds., 2014).

¹⁹ See *SR Report on Fiscal Policy*, U.N. Doc. A/HRC/26/28, *supra* note 10, ¶ 61.

²⁰ *Financial Secrecy Index – 2015 Results*, Tax Justice Network, <http://www.financialsecrecyindex.com/introduction/fsi-2015-results> (last accessed Apr. 24, 2016) (“If the Global Scale Weights of just the OTs and CDs were added together (5.70% of global total and 23.10% with the United Kingdom included), and then combined either with their average secrecy score of 65.90 (63.62 with the UK) or their lowest common denominator score of 71.27 (Turks and Caicos Islands), the United Kingdom with its satellite secrecy jurisdictions would be ranked first in the FSI by a large margin with a FSI score of 1580 or 2221, respectively (compared to 1466 for Switzerland). Even a weighted average, which emphasizes the relative transparency of the UK over its secrecy network, would put the combined group in 9th place on the FSI.”).

²¹ *What is a secrecy jurisdiction?*, Financial Secrecy Index, Tax Justice Network, <http://www.financialsecrecyindex.com/faq/what-is-a-secrecy-jurisdiction> (last accessed Feb. 20, 2016); *see also* Alex Cobham, Petr Janský, Markus Meinzer, *The Financial Secrecy Index: Shedding New Light on the Geography of Secrecy*, in: *Economic Geography* 91: 3, 281–303 (2015), <http://www.cgdev.org/publication/financial-secrecy-index-shedding-new-light-geography-secrecy-working-paper-404>.

²² *FSI Narrative Report on the UK*, *supra* note 8, at 1; *see also* *Financial Secrecy Index – 2015 Results*, Tax Justice Network, <http://www.financialsecrecyindex.com/introduction/fsi-2015-results> (last accessed Apr. 24, 2016).

²³ *FSI Narrative Report on the UK*, *supra* note 8, at 4–5 (finding that the OTs of greatest concern are Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat and the Turks & Caicos, and that all three CDs—Jersey, Guernsey, and the Isle of Man—are powerful financial secrecy hubs).

²⁴ *See* Christian Aid & Global Witness, *Overseas Territories and Crown Dependencies Beneficial Ownership Scorecard* (2014), <http://www.christianaid.org.uk/Images/beneficial-ownership-scorecard-november-2014.pdf> (citing Emile van der Does de Willebois et al., World Bank, *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* 121 (2011), <https://issuu.com/world.bank.publications/docs/9780821388945/1?e=1107022/2698080>).

²⁵ *EU Releases World Tax Havens Blacklist*, EU Business (June 18, 2015), <http://www.eubusiness.com/news-eu/economy-politics.120n>.

²⁶ *See, e.g.*, Gabriel Zucman, *The Missing Wealth of Nations: Are Europe and the U.S. Net Debtors or Net Creditors?*, *Q. J. of Economics* Vol. 128, No. 3, 1321–64 (2013); Dev Kar & Joseph Spanjers, *Global Fin. Integrity, Illicit Financial Flows from Developing Countries: 2003-2012*, at 21 (2014), <http://www.gfintegrity.org/wp-content/uploads/2014/12/Illicit-Financial-Flows-from-Developing-Countries-2003-2012.pdf> (“Illicit financial flows from developing countries are facilitated and perpetuated primarily by opacity in the global financial system.”); Lusiani, *supra* note 18 at n.4 and accompanying text (citing NOU, *Official Norwegian Reports, Tax Havens and Development: Status, Analyses and Measures* 67 (2009), www2.ids.ac.uk/gdr/cfs/TaxNews/NorwegianTaxPolicy.pdf).

²⁷ *See e.g.*, Jon Stone, *Budget 2015: Corporation Tax Just Got Cut Again Even Though the UK Already Has the Lowest Rate in the G20*, *The Independent* (Jul. 8, 2015), <http://www.independent.co.uk/news/uk/politics/budget-2015-corporation-tax-just-got-cut-again-even-though-the-uk-already-has-the-lowest-rate-in-the-10375238.html>; Stephanie Baker, *U.K. Cuts Corporation Tax Rate Again in a Boon to Britain Plc*, *Bloomberg News* (Mar. 16, 2016), <http://www.bloomberg.com/news/articles/2016-03-16/u-k-cuts-corporation-tax-rate-again-in-a-boon-to-britain-inc>; *see also* *FSI Narrative Report on the UK*, *supra* note 8, at 11.

²⁸ Aditya Chakraborty, *The £93bn Handshake: Businesses Pocket Huge Subsidies and Tax Breaks*, *The Guardian* (July 7, 2015), <http://www.theguardian.com/politics/2015/jul/07/corporate-welfare-a-93bn-handshake>.

²⁹ *Compare* Marion Dakers, *HMRC Under Fire for Poor Record on Tax Fraud*, *The Telegraph* (Apr. 15, 2016), <http://www.telegraph.co.uk/business/2016/04/14/hmrc-under-fire-for-poor-record-on-tax-fraud/> (noting that the budget allocated to Her Majesty’s Revenue and Customs, or HMRC, was reduced by almost £1bn over the past four years, and its staff cut by almost half in the past decade), *with* *A Radical Approach to Raising Revenue and Defeating the Deficit*, Association of Revenues and Customs at HRMC (2010), <http://www.fda.org.uk/nmsruntime/saveasdialog.aspx?IID=3410&sID=4096> (noting that the HMRC, the department responsible for all tax collection in the UK, had reduced costs by over £500m and reduced its staff by over 15,000, or nearly 20%, in the two years preceding 2010, which disproportionately affected compliance work, where the total spent was nearly halved since FY 2006/7, during which time taxes collected by HMRC fell by £25bn and the tax

compliance gap grew by £2.3bn; and concluding that “HMRC does not have the resources to do the job effectively”).

³⁰ ActionAid, *Collateral Damage: How Government Plans to Water Down UK Anti-Tax Haven Rules Could Cost Developing Countries—and the UK—Billions* (2012), https://www.actionaid.org.uk/sites/default/files/doc_lib/collateral_damage.pdf.

³¹ *Id.* at 1 & n.1 (estimating losses to developing countries due to UK tax loopholes of £4 billion per year).

³² See U.S. Joint Comm. on Taxation, JCX-51-15, *Present Law and Selected Policy Issues in the US Taxation of Cross-Border Income* at 44 (2015), <https://www.jct.gov/publications.html?func=startdown&id=4742> (describing the features of the UK patent box framework, including a requirement that the UK company make a “significant contribution” to developing the patent on qualifying intellectual property in order for a flat 10 percent tax rate to obtain); see generally Lisa Evers, Helen Miller & Christoph Spengel, *Intellectual Property Box Regimes: Effective Tax Rates and Tax Policy Considerations*, Ctr. for Euro. Econ. Research Discussion Paper No. 13-070 (2013), <http://econstor.eu/bitstream/10419/83475/1/769012868.pdf> (describing the characteristics of the UK’s patent box policies, in comparison with those of other EU countries); *The Patent Box – One Country’s Generous Tax Incentive is Another’s ‘Unfair Competition’?*, Wealth & Fin. Int’l, Corporate Tax, <http://www.wealthandfinance-intl.com/the-patent-box-generous-tax-unfair-competition> (last accessed May 19, 2016).

³³ Martin Sullivan, *Patent Box Tax Break: Good Intentions Gone Bad*, Forbes (June 9, 2015), <http://www.forbes.com/sites/taxanalysts/2015/06/09/patent-box-tax-break-good-intentions-gone-bad/#29d8edda3365>; see also, e.g., U.S. Joint Comm. on Taxation, *supra* note 32; Evers et al., *supra* note 32 at 39 (finding that patent boxes are likely to fuel harmful tax competition between countries, are discouraged by the OECD, and have been seen as sanctioning tax avoidance); Kyle Pomerleau, *It Was Not A Good Week For The Patent Box*, Tax Foundation (Mar. 14, 2016), <http://taxfoundation.org/blog/it-was-not-good-week-patent-box> (describing criticism of the use of patent boxes from the Chairman of the Council of Economic Advisers, and from the head of the OECD as unfairly eroding other countries’ tax bases while contributing to a regulatory “race to the bottom”).

³⁴ Unless otherwise noted, all information in this section, including the visualization, is drawn from Luke Harding, *What Are the Panama Papers? A Guide to History’s Biggest Data Leak*, The Guardian (Apr. 5, 2016), http://www.theguardian.com/news/2016/apr/03/what-you-need-to-know-about-the-panama-papers?CMP=share_btn_tw. See also Adam Ramsay, *Britain’s Empire of Tax Evasion*, Foreign Policy (Apr. 4, 2016), <http://foreignpolicy.com/2016/04/04/britains-empire-of-tax-evasion-panama-papers-mossack-fonseca/>.

³⁵ Harding, *supra* note 34.

³⁶ Luke Harding, *Ukraine’s Leader Set Up Secret Offshore Firm as Battle Raged with Russia*, The Guardian (Apr. 4, 2016), <http://www.theguardian.com/news/2016/apr/04/panama-papers-ukraine-petro-poroshenko-secret-offshore-firm-russia>.

³⁷ *Id.* (citing The Kyiv Post).

³⁸ See, e.g., Alen Luhn, *Economic Minister’s Resignation Plunges Ukraine into New Crisis*, The Guardian (Feb. 4, 2016), <http://www.theguardian.com/world/2016/feb/04/economic-minister-resignation-ukraine-crisis-aivaras-abromavicius> (noting the resignation of the economic minister, who was “one of a group of reform-minded foreign officials hired for their international experience and lack of local corruption networks,” in the face of entrenched government connections to “big business”).

³⁹ Harding, *supra* note 36.

⁴⁰ *Id.* (citing The Kyiv Post).

⁴¹ See CESCR, *Concluding Observations on the sixth periodic report of Ukraine*, ¶¶ 5–6, U.N. Doc. E/C.12/UKR/CO/6 (June 13, 2014).

⁴² *Id.* ¶¶ 5, 17.

⁴³ Alex Cobham & Luke Gibson, *Ending the Era of Tax Havens: Why the UK government must lead the way*, Oxfam GB (Mar. 2016), <http://policy-practice.oxfam.org.uk/publications/ending-the-era-of-tax-havens-why-the-uk->

government-must-lead-the-way-601121 (noting the City’s history of persistent, and often successful, lobbying to create an environment conducive to tax abuse and evasion); *see also FSI Narrative Report on the UK*, *supra* note 8, at 2.

⁴⁴ *See* Nicholas Shaxson, *Treasure Islands: Tax Havens and the Men Who Stole the World* 190 (2010); *FSI Narrative Report on the UK*, *supra* note 8, at 2–4.

⁴⁵ City of London Corporation, Lord Mayor – Job Description, <http://www.cityoflondon.gov.uk/about-the-city/how-we-make-decisions/Documents/Lord-Mayor-Job-Description.pdf> (last accessed Apr. 24, 2016).

⁴⁶ *See, e.g.*, Vanessa Houlder, *Tax: Trouble Abroad for the City?*, *Financial Times* (Sept. 9, 2013), <http://www.ft.com/intl/cms/s/2/dbc8af56-0fc5-11e3-a258-00144feabdc0.html#ax> (noting that Jersey alone is responsible for funneling over £500 bn into UK assets, which support 112,000 jobs in the City, and offering additional praise for the Isle of Man and Guernsey).

⁴⁷ *See* Harding, *supra* note 34; Ramsay, *supra* note 34; *see generally Issue Guide: Britain and the Global Financial Crisis*, Analysis Brief, Council on Foreign Affairs (May 2009), <http://www.cfr.org/world/issue-guide-britain-global-financial-crisis/p19516>. As various human rights bodies, including the UN Office of the High Commissioner for Human Rights, have noted, the financial crisis—in which many of these UK-based finance intermediaries played a role—led to widespread austerity measures that directly undercut economic and social rights in many countries, and also led to a disproportionate impact on vulnerable groups. *See* Office of the High Comm’r for Human Rights, *Report on Austerity Measures and Economic and Social Rights*, ¶¶ 69–70 (2014), http://www.ohchr.org/Documents/Issues/Development/RightsCrisis/E-2013-82_en.pdf (“States have a positive obligation to ensure adequate financial regulation, as necessary to safeguard human rights. . . . [In response to the global financial crisis,] [p]ublic investment in essential services has declined. Cuts in public sector employment and in funding for social safety nets have resulted in the denial or infringement of economic, social and cultural rights, especially for populations that are already marginalized or at risk of marginalization and in some cases may violate the prohibition on discrimination in the enjoyment of human rights.”).

⁴⁸ The investigation found ongoing regulatory arbitrage by U.S. banks engaged in derivatives trading, including giants such as Goldman Sachs, JP Morgan Chase, Citigroup, Bank of America, and Morgan Stanley, who moved billions of dollars out of U.S. regulators’ reach by changing the wording of some contracts and shifting trade deals to London, where they would not be strictly regulated. *See* Charles Levinson, *U.S. Banks Moved Billions of Dollars in Trades Beyond Washington’s Reach*, *Reuters* (Aug. 21, 2015), <http://www.reuters.com/investigates/special-report/usa-swaps/> (observing that “certain U.S. swaps markets had seen 95 percent of their trading volume disappear in less than two years” after stricter regulations passed).

⁴⁹ *FSI Narrative Report on the UK*, *supra* note 8, at 2–4; *see also* In Trusts We Trust, *Tax Justice Blogspot*, (July 22, 2009), <http://taxjustice.blogspot.de/2009/07/in-trusts-we-trust.html>.

⁵⁰ *In Trusts We Trust*, *Tax Justice Network* (July 22, 2009), <http://taxjustice.blogspot.de/2009/07/in-trusts-we-trust.html>; François Valérien, *Trusts, Stolen Assets and the Financial System*, *Transparency International* (Nov. 5, 2010), <http://taxjustice.blogspot.com/2010/11/trusts-stolen-assets-and-financial.html>.

⁵¹ *In Trusts We Trust*, *supra* note 50.

⁵² *See, e.g.*, UK Implementation of the G20 High Level Principles on Beneficial Ownership Transparency, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476748/UK_implementation_of_the_G20_High_Level_Principles_on_Beneficial_Ownership_Transparency_.pdf (last accessed Apr. 24, 2016).

⁵³ Maira Martini & Maggie Murphy, *Just for Show? Reviewing G20 Promises on Beneficial Ownership*, *Transparency International*, at 11 (2015), http://www.transparency.org/whatwedo/publication/just_for_show_g20_promises.

⁵⁴ *Id.* at 9 (“The weaker performance in many of the British Overseas Territories and Crown Dependencies on key beneficial ownership issues threatens to undermine the UK’s implementation to the G20 principles as a whole.”); *id.* at 11 (“The UK needs to do more to ensure that the Overseas Territories are not used as a safe haven for laundering illicit and corrupt wealth.”).

⁵⁵ Jamie Collier, *Turn Down the Heat, Switch on the Light: A Rational Analysis of Tax Havens, Tax Policy and Tax Politics*, IEA Current Controversies Paper No. 44, at 25–26 (2013), <http://www.iea.org.uk/sites/default/files/publications/files/Turn%20down%20the%20heat,%20switch%20on%20the%20light.pdf>. Collier cites a 2009 UK government-commissioned study of nine tax havens (three Crown Dependencies, the Isle of Man, Jersey and Guernsey, and six Overseas Territories), which found that these jurisdictions’ tax, corporate, and secrecy policies contributed positively to the liquidity of the UK market, provided upwards of US \$300 billion in net financing to UK banks in just one financial quarter, and that significant financial flows that benefitted the UK markets were generated by insurance business conducted on behalf of residents outside the UK. The study further found that “tax havens are necessary to ensure that such individuals can benefit from the UK specialization in financial services whilst not being subject to [various] taxes.” *Id.*

⁵⁶ The UK government has in fact exercised its governing powers to compel human rights reforms in its territories on multiple occasions. It has effectively brought several OTs into compliance with various tenets of their international human rights obligations. The UK acted, for instance, to combat corruption in Turks and Caicos; to abolish the death penalty in Anguilla, the British Virgin Islands, the Cayman Islands, Montserrat and the Turks and Caicos Islands; and to decriminalize homosexuality in the Caribbean Overseas Territories. Press Release, Global Witness, *How the UK Government Has the Power to Make its Tax Havens Stop Enabling Crime and Corruption* (April 5, 2016), <https://www.globalwitness.org/en/press-releases/how-uk-government-has-power-make-its-tax-havens-stop-enabling-crime-and-corruption/>.

⁵⁷ See *The Overseas Territories: Security, Success, and Sustainability*, Foreign & Commonwealth Office (2012), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32952/ot-wp-0612.pdf (“The UK, the Overseas Territories and the Crown Dependencies form one undivided Realm, which is distinct from the other States of which Her Majesty The Queen is monarch. ...As a matter of constitutional law the UK Parliament has unlimited power to legislate for the Territories.”); *FSI Narrative Report on the UK*, *supra* note 8, at 5–6 (“The vague nature of political relations between Britain and its OTs and CDs is extremely convenient for the City of London and for the tax havens: each claimed their dependence on Britain or independence from it, as it suits them, and Britain often claims ‘there is nothing we can do’ when scandal hits – though this is untrue. The bare truth is that Britain controls these places: all their secrecy-related (and other) legislation has to be approved in London, and Britain can step in and impose direct rule when it wants to, as it did in the Turks & Caicos in 2009. As a top BVI legal expert told us in a telephone interview, London has ‘complete power of disallowance’ of legislation. What has generally held Britain back from intervening is political will.”).

⁵⁸ See, e.g., Peter Walker & Rowena Mason, *UK Could Impose Direct Rule on Tax Havens, Says Jeremy Corbyn*, *The Guardian* (Apr. 5, 2016), <http://www.theguardian.com/news/2016/apr/05/uk-could-impose-direct-rule-on-tax-havens-says-jeremy-corbyn-panama-papers> (quoting Labour party leader Jeremy Corbyn, as citing precedent for imposing direct rule on OTs and CDs, asserting that action could be taken “almost immediately,” and concluding: “The point is that they are not independent territories. They are self-governing, yes, but they are British crown dependent territories. Therefore, surely, there has to be an observance of UK tax law in those places”); Press Release, Global Witness, *supra* note 56 (“David Cameron has himself stated that the UK’s overseas territories should do more to become transparent, while anti-corruption champion Sir Eric Pickles has said that the government could legislate to make this happen.” (citing to David Pegg, *UK Could Legislate to Force Tax Havens to Reveal Offshore Ownership, Says Pickles*, *The Guardian* (Oct. 3, 2015), <http://www.theguardian.com/business/2015/oct/03/uk-could-legislate-to-force-tax-havens-to-reveal-offshore-ownership>)).

⁵⁹ See, e.g., Rowena Mason, *David Cameron Says Not Enough Is Being Done to Tackle Tax Evasion*, *The Guardian* (Sept. 30, 2015), <http://www.theguardian.com/business/2015/sep/30/david-cameron-tax-evasion-british-overseas-territories>.

⁶⁰ See *Anti-Corruption Summit: London 2016*, Gov.UK, <https://www.gov.uk/government/topical-events/anti-corruption-summit-london-2016> (last accessed May 19, 2016).

⁶¹ *Anti-corruption summit: UK climbdown, but momentum grows*, Tax Justice Network (May 12, 2016), <http://www.taxjustice.net/2016/05/12/anti-corruption-summit-uk-climbdown-but-momentum-grows/>

⁶² *Id.* (noting that the exact nature of the relationships between the UK and its OTs and CDs differ between jurisdictions).

⁶³ Tax Justice Network, *Financial Secrecy Index: Narrative Report on British Virgin Islands* (2015) [hereinafter *FSI Narrative Report on the BVI*], <http://www.financialsecrecyindex.com/PDF/BritishVirginIslands.pdf>. The BVI was the fourth largest recipient of Foreign Direct Investment (FDI) in 2013, *id.* at 6, and the world's sixth largest source of outbound FDI, *id.* at 1.

⁶⁴ See BVI Business Companies (Amendment Act), 2016, [http://www.bvifsc.vg/Portals/2/BVI%20Business%20Companies%20\(Amendment\)%20Act,%202016.pdf](http://www.bvifsc.vg/Portals/2/BVI%20Business%20Companies%20(Amendment)%20Act,%202016.pdf).

⁶⁵ See *FSI Narrative Report on the BVI*, *supra* note 63, at 9.

⁶⁶ See *id.* at 7.

⁶⁷ See Tax Justice Network, *The CRS and automatic information exchange: why we also need corporate and trust registries too* (n.d.), <http://www.taxjustice.net/wp-content/uploads/2013/04/CRS-vs-registries.pdf>; Global Witness, *Tax Haven Transparency: Why company ownership information needs to be public*, Briefing for MPs (April 2016).

⁶⁸ See *FSI Narrative Report on the BVI*, *supra* note 63, at 7.

⁶⁹ International Covenant on Economic, Social, and Cultural Rights, art. 2, para. 1, Jan. 3, 1976.

⁷⁰ CESCR, *General Comment No. 3: The Nature of State Parties' Obligations (Art. 2, Para. 1 of the Covenant)*, ¶ 1, U.N. Doc. E/1991/23 (Dec. 14, 1990).

⁷¹ *Id.* ¶ 13.

⁷² See, e.g., CESCR, *General Comment No. 23: Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 69, U.N. Doc. E/C.12/GC/23 (Mar. 8, 2016) (“States parties must refrain from acts or omissions that interfere, either directly or indirectly, with the realisation of the right to just and favourable conditions of work in other countries.”).

⁷³ The Committee has noted the extraterritorial dimensions of the Covenant's obligations (under, *inter alia*, articles 2, 11, 22, and 23), including the need to evaluate the systemic extraterritorial impacts of trade and other policies, in concluding observations for numerous countries. See, e.g., CESCR, *Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China*, ¶ 12, U.N. Doc. E/C.12/CHN/CO/2 (June 13, 2014) (calling upon the State party “to adopt a human rights-based approach to its policies of international cooperation”); CESCR, *Concluding observations concerning the fourth periodic report of Belgium*, ¶ 22, U.N. Doc. E/C.12/BEL/CO/4 (Dec. 23, 2013) (“The Committee is concerned by reports that the State party's policy for promoting agrofuels, in particular its new Agrofuels Act of 17 July 2013, is likely to encourage large-scale cultivation of these products in third countries where Belgian firms operate and could lead to negative consequences for local farmers (art. 11). The Committee recommends that the State party systematically conduct human rights impact assessments in order to ensure that projects promoting agrofuels do not have a negative impact on the economic, social and cultural rights of local communities in third countries where Belgian firms working in this field operate.”); CESCR, *Concluding observations on the fifth periodic report of Norway*, ¶ 6, U.N. Doc. E/C.12/NOR/CO/5 (Dec. 13, 2013) (“The Committee recommends that the State party ensure that investments by the Norges Bank Investment Management in foreign companies operating in third countries are subject to a comprehensive human rights impact assessment (prior to and during the investment).”); CESCR, *Concluding observations on the fourth periodic report of Austria*, ¶ 11, U.N. Doc. E/C.12/AUT/CO/4 (Nov. 29, 2013) (“[The Committee is] concerned that the State party's agriculture and trade policies, which promote the export of subsidized agricultural products to developing countries, undermine the enjoyment of the right to an adequate standard of living and the right to food in the receiving countries (arts.2 and 11). The Committee calls upon the State party to adopt a human rights-based approach to its policies on official development assistance and on agriculture and trade, by: (a) undertaking a systematic and independent human rights impact assessment prior to making funding decisions.”); CESCR, *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant*, ¶ 9, U.N. Doc. E/C.12/DEU/CO/5 (July 12, 2011); CESCR, *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant*, ¶ 24, U.N. Doc. E/C.12/CHE/CO/2-3 (Nov. 26, 2010) (“The Committee also recommends that the State party undertake an impact assessment to determine the possible consequences of its foreign trade policies and agreements on the enjoyment by the population of the State party's partner countries of their economic, social and cultural rights.”).

⁷⁴ CESCR, *Concluding Observations on the sixth periodic report of Canada*, ¶ 16, U.N. Doc. E/C.12/CAN/CO/6 (Mar. 4, 2016); see also CESCR, *General Comment No. 23: Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 72, U.N. Doc. E/C.12/GC/23 (Mar. 8, 2016); CESCR, *General Comment No. 22: Right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 51, U.N. Doc. E/C.12/GC/22 (Mar. 4, 2016).

⁷⁵ CESCR, *General Comment No. 23: Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 70, U.N. Doc. E/C.12/GC/23 (Mar. 8, 2016) (“States parties should take measures, including legislative measures, to clarify that their nationals as well as enterprises domiciled in their territory and/or jurisdiction are required to respect the right throughout their operations extra-territorially . . . [and] ensure that non-State actors domiciled in the State party are accountable for violations of the right to just and favourable conditions of work extra-territorially and that victims have access to a remedy.”); CESCR, *General Comment No. 19: The right to social security (art. 9)*, ¶ 54, U.N. Doc. E/C.12/GC/19 (Feb. 4, 2008) (“States parties should extraterritorially protect the right to social security by preventing their own citizens and national entities from violating this right in other countries. Where States parties can take steps to influence third parties (non-State actors) within their jurisdiction to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.”); CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, ¶ 39, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) (“To comply with their international obligations in relation to article 12, States parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law”); CESCR, *General Comment No. 15: The Right to Water (Arts. 11 and 12)*, ¶ 33, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) (“Steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries. Where States parties can take steps to influence other third parties to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.”); CESCR, *General Comment No. 12: The Right to Adequate Food (Article 11 of the Covenant)*, ¶ 36, U.N. Doc. E/C.12/1999/5 (May 12, 1999) (“State parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to adequate food.”).

⁷⁶ CESCR, *Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights*, ¶ 4, 5 U.N. Doc. E/C.12/2011/1 (May 20, 2011).

⁷⁷ See, e.g., CESCR, *List of issues in relation to the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland*, ¶¶ 1–6, 8, 9, 12, 14, 19, 21, 27, U.N. Doc. No. E/C.12/GBR/Q/6 (Nov. 3, 2015) (repeatedly reiterating that the “State party” includes all OTs and CDs). In addition, the Committee has pointed out that United Kingdom’s refusal to acknowledge its international legal responsibility for its overseas territory of Anguilla contravenes its obligations, and has called upon the United Kingdom to “explain why the applicability of the Covenant has not been extended to Anguilla and why essential information on the implementation of the rights contained in the Covenant in this territory is not available.” *Id.* ¶ 3. See also CESCR, *Concluding observations of the Committee on Economic, Social and Cultural Rights: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories*, ¶ 12, U.N. Doc. No. E/C.12/GBR/CO/5 (June 12, 2009) (recommending that “the State party adopt a national strategy for the implementation of the Covenant throughout the State party’s territories”).

⁷⁸ See *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, princ. 29 (2012).

⁷⁹ See SR Report on Fiscal Policy, U.N. Doc. A/HRC/26/28, *supra* note 10, ¶¶ 29–32 (discussing why “providing an avenue for high-net-worth individuals and transnational corporations to evade tax liabilities (such as through the establishment of tax havens) could be contrary to obligations of international assistance and cooperation” under the ICESCR and other international human rights treaties); see also Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, *Advance Edited Version: Final Study on Illicit Financial Flows, Human Rights and the 2030 Agenda for Sustainable Development*, ¶ 43, U.N. Doc. No. A/HRC/31/61 (2016) (by Juan Pablo Bohoslavsky).

⁸⁰ CESCR, *General Comment No. 3: The Nature of State Parties' Obligations (Art. 2, Para. 1 of the Covenant)*, ¶ 14, U.N. Doc. E/1991/23 (Dec. 14, 1990).

⁸¹ CESCR, *General Comment No. 3: The Nature of State Parties' Obligations (Art. 2, Para. 1 of the Covenant)*, ¶¶ 13–14, U.N. Doc. E/1991/23 (Dec. 14, 1990) (stating that such cooperation is essential in “facilitating the full realization of the relevant rights”).

⁸² *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, princ. 29 (2012).

⁸³ See Christian Aid, *Briefing: Tax and the Post-2015 Agenda 4* (Mar. 2013), <http://www.christianaid.org.uk/images/tax-and-the-post-2015-agenda.pdf>.

⁸⁴ Int'l Bar Ass'n, *Tax Abuses, Poverty and Human Rights 2* (Oct. 2013), http://www.ibanet.org/Tax_Abuses_Poverty_and_Human_Rights_Report.aspx

⁸⁵ *Id.*

⁸⁶ SR Report on Fiscal Policy, U.N. Doc. A/HRC/26/28, *supra* note 10, ¶¶ 62, 32; see also Special Rapporteur on Extreme Poverty and Human Rights, *Mission to Ireland*, ¶ 81, U.N. Doc. No. A/HRC/17/34 (by Magdalena Sepúlveda Carmona) (“A human rights approach ... requires States to take steps to eliminate the prevalence of tax evasion, a problem that reduces the resources available for measures to realize human rights.”).

⁸⁷ SR Report on Fiscal Policy, U.N. Doc. A/HRC/26/28, ¶¶ 30, 62.

⁸⁸ Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, *Advance Edited Version: Final Study on Illicit Financial Flows, Human Rights and the 2030 Agenda for Sustainable Development*, ¶¶ 43, 83, U.N. Doc. No. A/HRC/31/61 (2016) (by Juan Pablo Bohoslavsky).

⁸⁹ Human Rights Council Resolution No. 31, *The negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, and the importance of improving international cooperation*, UN Doc. A/HRC/31/L.24/Rev.1 (Mar. 23, 2016), at ¶¶ 5–6.

⁹⁰ Comm. on the Rights of the Child, *Concluding observations: Georgia*, ¶¶ 18–19, U.N. Doc. No. CRC/C/15/Add.124 (2000).

⁹¹ CESCR, *List of issues in relation to the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland*, ¶ 2, U.N. Doc. E/C.12/GBR/Q/6 (Nov. 13, 2015) (“Please provide information on measures taken, including legislative and regulatory measures, as well as policies and guidance, to ensure that corporations respect economic, social and cultural rights throughout their operations, including when operating abroad”).