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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

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

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the 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, Attiya Waris, in accordance with Human Rights Council resolution [43/10](#).

* [A/77/150](#).



Report of the 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, Attiya Waris

Towards a global fiscal architecture using a human rights lens

Summary

In the present report, the Independent Expert focuses on exploring more effective and fair mechanisms to use public resources to guarantee human rights for all by tackling the uncontrolled growth of the wealth of a few, which is deepening inequalities. For all Governments, losses in taxable revenue through illicit financial flows reduce the available pool of resources essential for investing in social policies and public services. Governments cannot tackle those issues alone, making international cooperation and assistance a cornerstone of the present report. A multilateral, inclusive and democratic fiscal architecture is crucial to addressing global tax avoidance and evasion.

In the present report, the Independent Expert will address the issue of international tax governance through the creation and development of a global United Nations-led tax convention and a global tax body using a human rights lens.

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I. Introduction

1. The development and enforcement of sound fiscal law and policy are essential for the realization of human rights.¹ As one submission for the present report points out, “[o]ne of the most important yet often understated roles of fiscal policy is to deliver on the human rights obligations of States towards their populations”.² Fair, just and principled use, management and distribution of public resources is the core of a human rights-centred response.³

2. The Human Rights Council, in its resolution 49/15, on which the work of the mandate is based, recalls that every State has the primary responsibility to promote the economic, social and cultural development of its people, while acknowledging that inequality continues to increase worldwide, which often contributes to social exclusion and the marginalization of certain groups and individuals. Unequal revenue collection within and between countries is a partial cause of uneven wealth distribution and the pervasive increase in poverty and exclusion around the world. States continue to face serious difficulties in properly assessing and collecting revenue effectively and efficiently. One key area in discussions of fiscal issues is taxation of cross-border transactions. As wealthier individuals and business institutions that transact across borders are able to use the international fiscal system to their advantage, fewer resources may be available for public services and human rights. Inequality can be exacerbated by the existing international financial architecture and its weaknesses and loopholes.

3. The movement of money across borders where either the method of movement, its earning or its use is not legal is referred to as an illicit financial flow.⁴ Illicit financial flows reduce the resources that countries could use to finance the protection, promotion and progressive realization of all human rights. The Human Rights Council, in its resolution 46/11, noted with concern that illicit financial flows “deprive countries of resources required to progressively realize human rights, including economic, social and cultural rights, and in particular the right to development, in such a way that it threatens the stability and sustainable development of States, undermines the values of democracy, the rule of law and morality, and jeopardizes social, economic and political development”. The Council also acknowledged that illicit financial flows have particular detrimental effects on developing countries, by overextending those countries’ limited resources and jeopardizing their ability to finance the Sustainable Development Goals. In the view of the Independent Expert, illicit financial flows, which are often enhanced by some technological advances in the methods involved in money transactions, remains an area of serious concern. International cooperation and assistance remain crucial to combating illicit financial flows between States and to developing multilateral responses and equitable solutions.

4. While there are many different forms and definitions of illicit financial flows, tax- and commercial-related illicit financial flows, particularly those resulting from tax avoidance and evasion and the planning activities of transnational corporations, such as trade misinvoicing, transfer pricing and shifting of profits into or through low-tax offshore jurisdictions, are the most significant components of such flows on

¹ Matti Kohonen and others, “Pathways Towards Tax Justice”, in *Global Civil Society*, Helmut Anheier and others, eds. (London, Palgrave Macmillan, 2011), p. 78.

² Submission by the Center for Economic and Social Rights and others, p. 1. Available at <https://owncloud.unog.ch/s/gGIS53g4e3T6y3n?path=%2FCivil%20society#pdfviewer>.

³ Attiya Waris, *Tax and Development: Solving the Fiscal Crisis through Human Rights* (Nairobi, Law Africa, 2013), p. 21.

⁴ United Nations, Economic Commission for Africa, *Illicit Financial Flows: Report of the High-level Panel on Illicit Financial Flows from Africa* (Addis Ababa, 2015), p. 9.

a global scale, resulting in significant tax revenue losses for Governments around the world. According to *The State of Tax Justice 2021*, countries lose \$483 billion in revenues a year, which includes \$312 billion owing to cross-border corporate tax abuse and \$171 billion owing to offshore tax abuse by wealthy individuals.⁵ Tax-related illicit financial flows are therefore crucial, as they represent lost State revenue that could have been used to finance State activity. As a previous mandate holder noted in 2016, “when individuals and corporations hide unreported assets abroad to escape taxes or launder money, they are effectively stealing from the public. The proceeds from these illicit activities could and should be devoted to funding public services, such as health care, housing, schools, transportation infrastructure, social security, law enforcement and courts”.⁶

5. Addressing corporate tax-related illicit financial flows by multinationals and offshoring of wealth by high net-worth individuals and corporations is a shared global concern.⁷ Given that corporations and legitimate high net-worth individuals operating within the global financial system engage partly, if not completely, through the formal economy, the present report addresses that particular form of illicit financial flows and sets out, from a human rights perspective, the global concerns and their potential solutions.

6. In the view of the Independent Expert, the pervasiveness of tax-related illicit financial flows is indicative of fundamental deficiencies in the international, continental, regional and national tax governance architecture. Many concerns could be resolved through international cooperation and assistance regarding the development and enforcement of fiscal law and policy using democratic systems. The proliferation of tax havens or secrecy jurisdictions and the industrial scale of untaxed offshore wealth sends a sign. It signals the potential direction of political will of some Governments, multilateral organizations and economic blocs. Adapting existing fiscal governance structures, including law and policy, to the changing nature of economic activity is being further complicated in an increasingly digitalized world.

7. As a result, the attempt to gear systems towards equitable tax collection;⁸ domestically focused and/or inwardly directed tax action; and tax competition between and within countries (and groups of countries) has created fertile ground for multinational corporations and high net-worth individuals to obfuscate their tax obligations.⁹ Often, lobbying by stakeholders to ensure that systems are reviewed or reformed in their favour by increasing fiscal competition is pushing political will in that direction. As a result, numerous compromises being made by States around the world – domestically or internationally – are leading to reduced resources for the funding of public services or the Sustainable Development Goals and for the implementation of the human rights obligations of States.

8. In the present report, the Independent Expert will first contextualize the discussion by setting out the global processes for countering illicit financial flows. Second, she will reflect on what a human rights-focused approach to tax reform might include and will refer to calls for the creation of a global tax body and a United

⁵ Tax Justice Network, *The State of Tax Justice 2021*, p. 10. Available at https://taxjustice.net/wp-content/uploads/2021/11/State_of_Tax_Justice_Report_2021_ENGLISH.pdf.

⁶ United Nations, “Bahamas leaks: What else do we need to know to take action? UN rights experts ask”, press release, 6 October 2016.

⁷ Submission by Spain for the present report.

⁸ Attiya Waris and Leonard Seabrooke, “Arrested development in Africa’s global wealth chains: Accountability and hierarchy among ‘tax havens’”, in *Routledge Companion to Tax Avoidance Research* (Routledge, 2018), pp. 267–286.

⁹ International Monetary Fund (IMF), “Fiscal Monitor: Fiscal Policy from Pandemic to War” (Washington, D.C., April 2022), p. 2.

Nations-led global tax convention. She will offer conclusions and recommendations for States and other stakeholders.

9. In the preparation of the present report, the Independent Expert took into consideration substantive responses to her call for contributions. She is grateful to the States for their contributions and to the civil society organizations and networks, academics and private actors from across the world.¹⁰ She also convened online consultations with civil society organizations from various regions. She is grateful for the valuable input, discussions and insights provided, which have benefited the present report immensely.

II. International commitments to tackle tax-related illicit financial flows

10. Under international human rights law, States have obligations to ensure equality and non-discrimination and to take measures to the maximum of their available resources to ensure the progressive realization of economic, social and cultural rights. Among those measures, the design and implementation of fiscal and tax law and policy measures towards the realization of human rights have been underlined by various treaty body monitoring mechanisms and other instruments.¹¹ The guiding principles on human rights impact assessments of economic reforms ([A/HRC/40/57](#)), developed by a former Independent Expert, reaffirm that States ought to design and implement fiscal policy to ensure that they use the maximum available resources for the progressive realization of human rights, with a view to promoting substantive equality and non-discrimination. In addition, they stipulate that fiscal policy should be anchored in the core democratic principles of transparency, participation and accountability in the governance of public resources.¹² The Independent Expert underscores that fiscal policy is not enough: fiscal law, policy, regulations and guidelines need to reflect those principles at national, regional, continental and global levels.

11. As early as 1979, the preamble to the Convention on the Elimination of All Forms of Discrimination against Women stated that “the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women”. Research shows that many countries fail to allocate their maximum available resources and that they have often taken retrogressive steps such as lowering funding for social services without justification or privatizing some of them, health care in particular. That key impediment to financing the realization of human rights worldwide tends to have a higher impact on women and low-income earners and adds to deepening inequalities between and within countries and regions. A radical reassessment of the international tax architecture is indispensable for countries to ensure that they are exhausting their domestic resources and committing themselves to fulfilling their financial obligations in line with human rights principles.

¹⁰ All contributions and submissions to the preparation of the present report, unless submitted confidentially, are available at <https://owncloud.unog.ch/s/g1S53g4e3T6y3n>.

¹¹ Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), para. 12; general comment No. 12 (1999), para. 28; general comment No. 14 (2002), para. 18 and general comment No. 24 (2017). See also [A/HRC/26/28](#).

¹² Attiya Waris, *Financing Africa* (Cameroon, Langaa Research and Publishing Common Initiative Group, 2019), pp. 12–13 and Radhika Balakrishnan and others, “Maximum Available Resources and Human Rights”, in Aoife Nolan and others, eds., *Human Rights and Public Finance: Budgets and the Promotion of Economic and Social Rights* (Oxford, Hart Publishing, 2014), p. 4.

12. In 2000, a step forward was taken with the Millennium Development Goals, which allowed for the fiscal assessment of the most pressing human rights goals to be achieved by 2015. In 2002, the Monterrey Consensus of the International Conference on Financing for Development ([A/CONF.198/11](#)) underscored global agreement on increasing international financial and technical cooperation for development (para. 4); recognizing the special role of equitable and efficient tax systems and administration (para. 15) to mobilize public resources for development policies; and the need for broader, effective and equitable participation of developing countries in decision-making and norm-setting regarding international economic and financial standards and codes (paras. 57 and 62). The document also contains a recognition of the role of international cooperation to reduce capital flight and fight corruption, to repatriate illicit funds to source countries and to eliminate money-laundering to suppress transnational organized crime (para. 65), including the financing of terrorism (para. 66). It also contained a recognition of the importance of mobilizing domestic financial resources for development (para. 10) and the role of good governance, including respect for human rights (para. 11).

13. In 2008, the Doha Declaration on Financing for Development: outcome document of the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus ([A/CONF.212/L.1/Rev.1](#)) reaffirmed the commitments of the Monterrey Consensus to strengthening international tax cooperation (para. 16), giving special recognition to the draining of resources resulting from tax evasion (para. 16) and illicit financial flows more broadly (para. 20). The Declaration also reiterated international commitments to fight corruption through the Stolen Asset Recovery Initiative (para. 20). Crucially, stress is placed in the Declaration on the need for reform of the international financial architecture in a manner that prioritizes “providing greater transparency and strengthening the voice and participation of developing countries and countries with economies in transition in international decision-making and norm-setting”, with the involvement of the United Nations central to that undertaking (para. 68).

14. Reaffirming and building upon those instruments, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development ([A/RES/69/313](#)) called for a global framework to address the new global challenges, needs and aspirations for financing for development in the post-2015 period. On matters related to illicit financial flows and taxation, Heads of State and Government and High Representatives committed to substantially reducing illicit financial flows by 2030, with a view to eventually eliminating them, including by combating tax evasion and corruption through strengthened national regulation and increased international cooperation (para. 23). The Agenda also laid the normative groundwork for the reform of the taxation of multinational corporations, in recognition of the need to distribute tax benefits between source and destination jurisdictions and of the essential roles of country-by-country reporting and the sharing of beneficial ownership information (para. 27). Critically, the Heads of State and Government and High Representatives redoubled efforts to ensure that developing countries are not disadvantaged or excluded from international taxation norm-setting, stressing that “efforts in international tax cooperation should be universal in approach and scope” (para. 28).

15. In 2015, those international commitments to tackle illicit financial flows in general were solidified in the 2030 Agenda for Sustainable Development, which incorporated the Addis Ababa Action Agenda. The 2030 Agenda was aimed at anchoring a broader, human rights-based, understanding of development and contained 17 large, mutually reinforcing goals, 169 targets and 231 unique indicators. Goal 16 (peace, justice and strong institutions) and Goal 17 (partnerships for the goals) are especially pertinent. Target 16.4 calls for countries to significantly reduce

illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime. Relatedly, target 17.1 mandates countries to cooperate to ensure that developing countries have the requisite capacity to mobilize domestic resources for the achievement of the 2030 Agenda. To the extent that a reform of the international tax system is needed to correct inequalities in the allocation of taxing rights between developed and developing countries, Goal 10 (reduce inequalities within and among countries), and, in particular, target 10.6 (ensure enhanced representation and voice for developing countries in decision-making in global international economic and financial institutions in order to deliver more effective, credible, accountable and legitimate institutions) is also a relevant part of the framework on international tax cooperation.

16. However, there are now eight years remaining until 2030, the deadline for the Sustainable Development Goals, and there have been huge setbacks and little forward movement. The Millennium Development Goals were not achieved in many parts of the world.¹³ There have been global calls to embark on a fourth-round global conference on financing for development, a discussion which, based on the multiple global crises, notably the coronavirus disease (COVID-19) pandemic and the changed context, is urgently needed. Financing for the progressive realization of human rights seems not to be moving forward, global inequalities are deepening and the fiscal solutions that were being pushed, predominantly through the Addis Ababa Action Agenda and which resulted in the Addis Tax Initiative (although not all countries signed up to that initiative), seem not to have borne as much revenue as had been expected. While conversations in the regions and in the large economic blocs have progressed, the majority of least developed countries, as well as many low- and middle-income countries, are losing ground. During various consultations, events, contributions and discussions in the preparation of the present report, a number of representatives of States, human rights experts and civil society organizations have indicated that there is a perception that there has been a regression with respect to the priority given to financing for human rights.

17. In 2015, at the Financing for Development Forum in Addis Ababa, the outcome of the deadlock in the debates to create a global tax body resulted in compromised support for the tax discussions that had at that time commenced at the Organisation for Economic Co-operation and Development (OECD). However, the process remains incomplete and seems to have gone forward without the much-touted inclusivity and consensus principles that were at its origin. Contributions to the present report mentioned that reasons for the lack of broad consensus included harmful neoliberal macroeconomic policies, regressive taxation, privatization and fiscal consolidation in response to economic crises. It has often been argued that some of those previously mentioned measures were allegedly needed in order to improve investment or growth. However, none of those fiscal measures have led to positive results.¹⁴

18. While many approaches have been explored, one remains siloed from fiscal spaces, and that is the human rights approach. Human rights principles should be integrated into the design, development and application of international tax rules. A human rights lens has largely been absent from international tax rule-making under the governance of OECD and from its Base Erosion and Profit Shifting Project and has been only partially reflected at the Committee of Experts on International Cooperation in Tax Matters. Looking to alternative proposals for international tax governance will require a deeper understanding and adherence to principles of transparency, accountability, participation and social justice.¹⁵ Fiscal legitimacy

¹³ <https://ourworldindata.org/millennium-development-goals>.

¹⁴ Submission by the Tax and Gender Working Group, Global Alliance for Tax Justice, for the present report.

¹⁵ Submission by the TaxEd Alliance for the present report.

principles of transparency, accountability, responsibility, effectiveness and efficiency, as well as fairness and justice, ought be linked to human rights principles in approaching the global fiscal system and its framework.¹⁶ In addition, discussions on revenue generation from the digital economy remain fragmented. There are numerous ongoing actions in this field, as set out below.

III. International tax reform and human rights

19. In order to ensure that there are adequate State resources to fulfil human rights obligations and to achieve the 2030 Agenda, countries need to mobilize financing from all sources. Resources lost to tax abuse caused by deliberately, negligently or erroneously crafted fiscal law and policy could – and ought to – be reformed, reassessed and enforced with a view to protecting countries’ fiscal space and shared global fiscal space so that State revenue can be collected and spent with the goal of raising living standards. Addressing tax abuse would increase the progressivity of the tax system as a whole, ensuring that all individuals and institutions pay their fair share and, in turn, ensuring that those funds are employed to finance public services and goods. International cooperation and assistance in moving towards a more equitable treatment of taxpayers therefore comes to the fore as an important point for reflection. Using the tax principle of ability to pay and equity, all taxpayers, including multinational corporations and high net-worth individuals, should have the same tax obligations and provide the same level of transparency. That would allow for the creation of a level playing field for all countries and their respective taxpayers. The current asymmetry of access to information and agenda-setting prevents the equitable treatment of multinational corporations, wealthy individuals and countries.

20. The Human Rights Council, in its resolution [46/8](#), recognized that tax abuse, in particular in the form of tax evasion and avoidance by corporations, contributes to the build-up of unsustainable debt. Governments facing challenges in raising domestic resources through taxation will resort to other forms of revenue collection, including external borrowing, to finance their obligations. Combating illicit financial flows in order to strengthen the capacity of States to mobilize tax resources can therefore be a necessary complement to the various efforts required to address debt unsustainability, including much-needed structural reforms.¹⁷ In 2022, low-income countries are expected to pay \$43 billion in debt servicing, an amount that exceeds spending on health care, education and social protection by 171 per cent.¹⁸

21. According to the guiding principles on human rights impact assessments of economic reforms ([A/HRC/40/57](#)), tax policy, in fulfilment of States human rights obligations, should play a progressive and redistributive role, ensuring adequate funding for public services and contributing to an improvement of the conditions of the most disadvantaged social groups. Accordingly, States should prioritize direct and progressive tax measures, tackle tax avoidance and evasion and avoid international tax competition.

22. In reforming the international tax system, there are already elements in both human rights and fiscal spaces that could be examined in conjunction with each other and pulled together with the aim of ensuring adequate funding for the realization of human rights. One relevant source would be the work done over the years by the Office of the United Nations High Commissioner for Human Rights on indicators, including the need to look into taxation, budgets and resources. Those were compiled after extensive research, consultation and validation. Treaty bodies, notably the

¹⁶ Waris, *Tax and Development*, p. 18.

¹⁷ See [A/76/167](#).

¹⁸ Oxfam International, “Profiting from Pain”, Oxfam Media Briefing, 30 June 2022, p. 6.

Committee on Economic, Social and Cultural Rights and the Human Rights Committee, have revised their guidelines for State party reporting and have required States to collect disaggregated statistics and indicators, and, in some cases, have included taxation and budget analysis in their concluding observations to State party reports.

23. Civil society contributions to this debate, such as the principles of human rights in fiscal policy, developed by leading organizations in Latin America and the United States of America, build upon and clarify those obligations.¹⁹ The principles reiterate what is set out in the guiding principles on human rights impact assessments of economic reforms by setting out the proactive role of States in relation to fiscal policy, ensuring that that role is directed towards the respect, protection and fulfilment of rights. Insufficient resources impede the ability of States to realize rights, which signals a potential failure to respect, protect and fulfil rights through fiscal law and policy development and enforcement.

24. Those instruments and guidelines are unambiguous in containing a recognition that the human rights obligations of States in relation to fiscal law and policy in general, and taxation more specifically, go beyond unilateral efforts at the domestic level. States have an extraterritorial obligation to ensure that fiscal law and policy respect and protect the human rights of people beyond their borders and to contribute to the creation of an enabling international environment and refrain from exerting undue influence on other States in ways that undermine their ability to fulfil their human rights obligations (see [A/HRC/40/57](#)). In addition, in female-dominated areas, such as the informal economy and unpaid care work, efforts by women remain an “invisible hand” in the global, continental, regional and national economic and tax system. That should not only be recognized,²⁰ but also resolved, in fiscal laws and policies.

25. Multilateral measures are in place to provide specific guidelines on international tax cooperation. Some of those guidelines include, but are not limited to, combating tax-related illicit financial flows, refraining from facilitating tax abuse, promoting international tax competition and supporting reforms to promote more equitable international tax governance norms and institutions. There are also other initiatives, including the creation of a global tax body that “would allow all countries to have an equal say in the setting of standards and decision-making on issues related to tax matters”.²¹ Accordingly, tax revenue is one of several important tools that States can use to fiscally support the realization of human rights, reduce inequality, stimulate development and increase living standards domestically and across borders through cooperation and assistance. States have taken and continue to take several different directions in trying to grapple with the taxation of corporations in the digital sphere.

26. Within the Asia-Pacific region, there is the absence of a pan-regional tax forum focusing on the region’s development needs. The region also has a high proportion of under-regulated traditional tax havens, special economic zones and international financial services centres, which limits the ability of the States in the region to effectively tackle tax-motivated illicit financial flows. Over the years, several proposals have been made by the secretariat of the Economic and Social Commission for Asia and the Pacific for the creation of a region-wide space on strengthening regional tax cooperation with a view to addressing issues of tax abuse, the risks of

¹⁹ Initiative for Human Rights Principles in Fiscal Policy, *Principles for Human Rights in Fiscal Policy*, p. 58. Available at https://derechosy politicafiscal.org/images/ASSETS/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf.

²⁰ Submission by the Tax and Gender Working Group, Global Alliance for Tax Justice, for the present report.

²¹ *Principles for Human Rights in Fiscal Policy*, pp. 54–57.

tax competition and the need for an updated international tax regime (see [ESCAP/CMPF/2019/2](#)). The secretariat recognized the lack of an intermediary forum where the concerns of lower-income and least developed countries could be represented and addressed at the global level.

27. In 2014, the High-level Panel on Illicit Financial Flows from Africa noted that “initiatives that are emerging at the global level, particularly in OECD, G8 and G20 and economically powerful States ... do not have Africa or indeed other developing country regions in mind” ([E/ECA/CM/47/6](#), para. 37). At the time, the Panel noted that countries in Africa were being required to bear the cost of compliance without being afforded the opportunity to participate on an equal footing in decision-making. Similar concerns have been echoed by developing countries groupings and civil society organizations alike in the process laid out by the Inclusive Framework on Base Erosion and Profit Shifting.

28. A 2015 study published by the Economic Commission for Latin America and the Caribbean (ECLAC) warned that the inadequate representation of developing countries in international standard-setting processes pertaining to financial tax may be counterproductive for the global agenda to curb tax abuse and could have deleterious effects for the countries of the global South, particularly small island States. After the launch in 2015 of the Addis Tax Initiative, which had been initiated on the margins of the Third International Conference on Financing for Development, OECD initiated the development of an inclusive framework that is intended to move forward by consensus. It is commonly referred to as the Base Erosion and Profit Shifting Project of the OECD. The debate in that regard has focused on the sharing of tax revenue generated from companies operating in, among other areas, the digitized economy. The members of the Inclusive Framework set a workplan for the OECD secretariat to evaluate three alternatives, including a comprehensive shift to unitary taxation instead of an arm’s-length approach. However, following bilateral negotiations between France and the United States of America, the workplan was abandoned, with Group of Seven support.²²

29. In November 2021, in the context of the OECD initiative on taxation of the digital economy, 137 members of the Inclusive Framework joined the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy.²³ Many countries continue not to be part of the Inclusive Framework under which that agreement was conceived. In an analysis,²⁴ the South Centre Tax Initiative pointed out that, while the decision-making process on tax purposes under the Inclusive Framework has a two-layer structure, there is a lack of transparency regarding how various country interests are balanced, owing to the “overrepresentation” of certain jurisdictions.

30. The proposal is divided into two pillars. Pillar One provides a blueprint for a formulary-based reapportionment of taxing rights between market and residence jurisdictions. Pillar Two is an agreement on minimum global corporate tax, set at 15 per cent, on all multinational enterprises with global revenues of more than \$750 million. According to the International Monetary Fund (IMF), Pillar One will result in the reallocation of \$125 billion in profits from the largest and most profitable multinational enterprises to the market jurisdictions where those companies operate.²⁵

²² Submission by the Tax Justice Network for the present report.

²³ OECD, “Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy” (OECD/G20 Inclusive Framework on BEPS, Paris, 30 January 2020).

²⁴ South Centre, “Statement by the South Centre on the Two Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of Economy”. Available at <https://www.southcentre.int/wp-content/uploads/2021/10/SC-Statement-on-IF-Two-Pillar-Solution-13-Oct-2021.pdf>.

²⁵ IMF, “Fiscal Monitor”.

However, only \$10 billion is expected to be reallocated to developing countries.²⁶ Pillar Two raises additional challenges. A global minimum tax rate of 15 per cent is below the effective tax rate in many developing countries. For example, as statutory corporate income tax rates in Africa vary between 25 per cent and 35 per cent, the implementation of Pillar Two would mean that countries would lose significant taxing rights.²⁷ Developing countries and civil society organizations have called for a global effective minimum tax rate of 21 to 25 per cent, which would raise an additional €200 billion in tax revenues, compared with only \$150 million according to the Pillar Two proposal.²⁸

31. On 30 March 2022, a series of joint allegations letters was sent by the Independent Expert, the Special Rapporteur on extreme poverty and human rights, the Special Rapporteur on the right to development and the Independent Expert on the promotion of a democratic and equitable international order to OECD, the Presidency of the Group of 20, the executive secretariat of the Group of 77, the intergovernmental Group of 24 and the delegation of the European Union to the United Nations in Geneva. In those letters, the authors referred to information received about the two-pillar solution to address tax challenges arising from the digitalization of the economy, agreed on 8 October 2021 under the Inclusive Framework. In the letters, the authors recognized that the two-pillar solution “marks a positive shift on the recognition that multinational enterprises ... are unitary entities and should be taxed accordingly; that a minimum tax should be paid; and that profit should be shared across jurisdictions”.²⁹ Concerns were raised about the scope and content of the announced agreement. Among those concerns, several low- and middle-income countries consider that the agreement does not respond to their needs and would diminish their fiscal space, especially at a time when countries are seeking to recover from the crisis resulting from the COVID-19 pandemic. The two-pillar solution would negatively affect their ability to meet the needs of their populations and therefore to realize human rights, particularly economic, social and cultural rights and the right to development. The letter posed a number of questions and suggested that more clarity on some human rights principles be provided, specifically on issues related to participation and equality. As of the submission of the present report, a response had been received from OECD only. In that response,³⁰ questions regarding transparency regarding the rejection of alternative proposals by the Group of 24, compensation for lost revenues and safeguards to ensure the realization of economic, social and cultural rights were unanswered.

32. Although individual measures and policies have recently been adopted by many countries around the world in order to enhance transparency in commercial transactions and to prevent illegal financial activities, they do not meet the level of financial transparency needed. That would require the establishment of an international beneficial ownership registry that takes into account the human rights principles of transparency and access to information and that registers the ultimate beneficial owners of assets around the world. That could be done through the signing of an international agreement, within the framework of the United Nations, between

²⁶ South Centre, “Statement by the South Centre”.

²⁷ African Tax Administration Forum, “A new era of international taxation rules – What does this mean for Africa?”, African Tax Administration Forum Communication, 8 October 2021.

²⁸ Independent Commission for the Reform of International Corporate Taxation, “ICRICT open letter to G20 leaders: A global tax deal for the rich”, 12 October 2021 and “Taxing multinationals: ICRICT calls for an ambitious global minimum tax to stop the harmful race to the bottom”, 9 December 2019.

²⁹ Communication OTH 21/2022 and related communications OTH 22/2022, OTH 23/2022, OTH 24/2022 and OTH 25/2022.

³⁰ The response from OECD is available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36914>.

the various States and the different arms of the United Nations and to be housed in one particular institution. It could take the form of a contractual obligation whereby its parties are obligated to provide sufficient information about the beneficial owners of companies operating on their territory in order to establish a global beneficial ownership registry that tracks illegal financial activities such as tax evasion, corruption, money-laundering and terrorist financing and brings the perpetrators to justice.³¹

33. Currently, while various draft instruments guide international and regional fiscal policies, (a) none have yet been concluded, (b) the scope and function to enforce a fair and inclusive international fiscal framework remain elusive and (c) no bodies are currently actively working to align the protection of human rights with taxation, apart from the Committee of Experts on International Cooperation in Tax Matters, and that only to a limited extent.

IV. International tax governance

34. In 2014, the Special Rapporteur on extreme poverty and human rights produced an extensive analysis on the human rights implications of taxation policies. She underscored the obligations of States in relation to tax policy emanating from international human rights instruments and made recommendations for policy and legal framework reforms to address tax matters at the domestic and international levels (A/HRC/26/28). Specific recommendations in relation to international tax cooperation included work towards a multilateral regime for tax transparency, the strengthening of frameworks for the automatic exchange of information, country-by-country adoption of reporting standards for transnational organizations, the establishment of national public registries to improve beneficial ownership transparency and the ensuring of the effective participation of developing countries in international forums.

35. High net-worth individuals, informal sector actors and cross-border criminals all tend to use the same processes, procedures and systems that corporations have been using, often through enabling lawyers, banks, accountants and other mid-level service providers. In addition, the individuals who are responsible for administering traceable and trackable systems and for lobbying are predominantly engaged in the formal economy. As the contribution from Spain notes, the active, real and effective fight against the concealment of funds and the transformation or laundering of funds or laundering of money from criminal activities is a necessity and one of the most effective firewalls in the prosecution and elimination of illicit financial flows. At the same time, the absence of such a fight is a failure that impedes any effort and perpetuates the existence of illicit activities. Mauritius, in its contribution, noted that current international tax laws and related principles are not up-to-date and do not address the rapid and constant changes in global business practices.

36. States have also made commitments pertaining to the combating of illicit financial flows and the promotion of more progressive, transparent and efficient global tax governance. In the Monterrey Consensus, countries agreed to “strengthen international tax cooperation, through enhanced dialogue among tax authorities and greater coordination of the work of the concerned multilateral bodies and relevant regional organizations, giving special attention to the needs of developing countries and countries with economies in transition” (para. 64).

37. An international fiscal authority (which would include a global tax body) should promote expansion of the fiscal space by assessing the possible adverse impact on

³¹ Submission by Maat to the present report.

inequality, poverty and social inclusion of fiscal consolidation and spending cuts. It should also emphasize the need for careful design of fiscal policy, in particular tax and transfers systems, to achieve equity, taking into consideration potentially harmful indirect effects, so that people living in poverty, the working poor and the near poor do not end up as net payers (see [E/RES/2019/6](#)). Some contributions to the present report stated that illicit financial flows and climate finance are enough reason to support the setting up of a fiscal authority,³² while others focused on the need for transparency and equity in discussion spaces.³³

38. Various organizations continue to advocate for instruments that establish inclusive and legitimate global coordination³⁴ with a view to financial health and economic development, such as a United Nations convention to set global standards and establish an inclusive intergovernmental body on tax matters in the United Nations. International development cooperation can help to strengthen country capacities to mobilize and manage resources to promote development aims, such as the provision of quality social services, debt servicing and the promotion of economic and social rights.³⁵ The report issued in 2021 of the High-level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda provided a blueprint for a more inclusive financial system that is able to secure resources for the financing of the Sustainable Development Goals. The report calls on the international community to commit to a global pact for financial integrity for sustainable development.³⁶ The creation of a globally inclusive intergovernmental forum to set international tax norms is critical to resolving the shortcomings of the international tax system and upholding the legitimacy of international financial structures. Specifically, the Panel recommended that the international community make progress towards a United Nations-led global tax convention. Countries could benefit from an additional step of a set of fiscal principles and an institution with a focus placed on the promotion of human rights as a tool to establish fiscal legitimacy at the State, regional, continental and international levels.

39. This recommendation was echoed in the 2021 report of the Secretary-General, *Our Common Agenda* ([A/75/982](#)), which called for a “stronger, more networked and inclusive multilateral system, anchored within the United Nations”. Reducing illicit financial flows and tax avoidance and, more specifically, reforming international tax systems, are among the critical actions that the Secretary-General argues are necessary for ushering in a sustainable recovery from the pandemic and building a renewed social contract anchored in human rights.

40. United Nations regional bodies have made similar proposals. In the groundbreaking 2015 report of the High-level Panel on Illicit Financial Flows from Africa, the African Union and the Economic Commission for Africa (ECA) recommended that combating illicit financial flows “should be incorporated and better coordinated across United Nations processes and frameworks”.³⁷ More recently, in May 2022, in the light of global crises, African Ministers of Finance adopted a resolution (see [E/ECA/CM/54/4/Rev.1](#)) at the fifty-fourth session of the ECA Conference of African Ministers of Finance, Planning and Economic Development calling upon the international community to undertake appropriate actions at the national, regional and global levels to ensure that illicit financial flows

³² Ibid.

³³ Submission by Algeria to the present report.

³⁴ See [E/2021/68](#).

³⁵ See [E/2020/10](#).

³⁶ United Nations, High-level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda, *Financial Integrity for Sustainable Development* (February 2021).

³⁷ Economic Commission for Africa, *Illicit Financial Flows*.

are treated as a system-wide challenge at the global level and that the international community adopts a mechanism for global coordination to systematically monitor illicit financial flows. The Conference of Ministers urged the United Nations “to begin negotiations ... aimed at eliminating base erosion, profit shifting, tax evasion, including capital gains tax, and other tax abuses”.

41. In 2021, the Executive Secretary of ECLAC noted that “for a reform of the global tax system to incorporate the needs of developing nations and emerging economies – especially small island developing States, for example – the United Nations should be the main space for that discussion.³⁸ The shifting of global tax norm-setting to the United Nations or an international body has also received support from States³⁹ and intergovernmental groups and bodies.

42. The Group of 77 and China has called for the Committee of Experts on International Cooperation in Tax Matters to be accorded the status of a United Nations intergovernmental body with experts representing their respective Governments. That body could then invite the Committee to consider proposals to further international tax cooperation at the United Nations.⁴⁰ Within that global body there are already areas being developed, on a piecemeal basis, that could be consolidated. That includes the development of a global beneficial ownership registry, which already exists under the Extractive Industries Transparency Initiative for the mining sector that could be extended to other industries.

A. Beneficial ownership registry

43. The non-profit organization Open Ownership has developed a global registry that currently contains over 16 million beneficial ownership records from jurisdictions that publish data in their central registries.⁴¹ It regularly imports data from the beneficial ownership registries of Denmark, Slovakia and the United Kingdom of Great Britain and Northern Ireland. A global registry can help track illicit financial flows by enabling the analysis of complex ownership structures across different jurisdictions. However, a necessary condition for a global registry is the development of robust data at the national level that is housed in a place where all taxpayers feel their information is safe and protected. The complexity of the reforms necessary to achieve this means that universal beneficial ownership data is a concept that is still in its infancy.⁴²

44. There have been calls for a globally regulated registry, and the organization that will host the global beneficial ownership registry should be internationally recognized and credible beyond reasonable doubt under the auspices of a global data protection act.⁴³ Contributions from civil society support the recommendation for a United Nations-led tax convention that is aligned with human rights and that strengthens global norms and standards on tax policy and practices that enable Governments to

³⁸ ECLAC, “Reform on the Multilateral Tax Debate is Needed in the Framework of the United Nations”, press release, 1 June 2021.

³⁹ Submission by Mauritius for the present report.

⁴⁰ [A/C.2/76/L.28](#), para. 19.

⁴¹ Open Ownership is a non-profit organization working around the world to deliver transparency with respect to who owns and controls companies. As of March 2022, the members of its Beneficial Ownership Leadership Group were Armenia, Kenya, Latvia, Mexico, Nigeria, Norway, Slovakia and the United Kingdom of Great Britain and Northern Ireland (see <https://www.openownership.org/en/about/the-beneficial-ownership-leadership-group/>).

⁴² Submission by the International Secretariat of the Extractive Industries Transparency Institute.

⁴³ Submission by Mauritius for the present report.

fulfil their human rights obligations.⁴⁴ In order to curb illicit financial flows and massive transfers of untaxed wealth of corporations and individuals, a public global asset registry is a key component of global tax reform and an important tool in the fight against inequality.⁴⁵

B. Regulation of enablers

45. The discussion around “enablers” includes the consideration that a number of professionals and enterprises are set up to assist high net-worth individuals and companies in evading taxation. The list of enablers can be long and may often include legal firms, accounting firms, financial advisers and services and information technology specialists. The discussion remains fraught because self-regulation at the national, regional, continental and global levels, and the lack of State monitoring and regulation in some cases, in this digital era seems to be undermining the fiscal space required to ensure adequate resources for human rights. Global scandals, such as the Luxembourg leaks, the Swiss leaks and, most recently, the Pandora papers, show that the enablers are the key to solving illicit financial flow facilitations. The contribution from Spain noted that the Spanish notary corps keeps an electronic record with essential data so that it is possible to know the real owner of legal entities, the number of times that a property has been transferred in the short term or the different prices declared for the same property in a certain period of time, with scope for additional expansion in the collection of additional data.⁴⁶

46. All contributions received were supportive of the setting up of a tax body and many went further to delineate principles to guide its formation and to set out details on the mandate that they felt such an institution should hold with respect to both existing and future tasks, as well as principles to guide it. Some contributions underlined that various principles, such as universality, democracy, transparency and accountability, should underpin the body.

V. International tax treaties in a human rights context

47. In recent years, there have been a number of discussions and proposals to address the limitations and challenges of the global tax system in a more comprehensive and multilateral way. In 2019, the Group of African States supported the call for a United Nations tax convention,⁴⁷ a policy position that was also supported by the Conference of African Ministers of Finance, Planning and Economic Development in 2022.⁴⁸ In 2021, the South Centre proposed the creation of a United Nations framework convention on tax cooperation, which would take the form of a conference of the parties, granting mandates to existing international tax governance forums such as the Committee of Experts on International Cooperation in Tax Matters, the Inclusive Forum and the Global Forum on Transparency and Exchange of Information for Tax Purposes.⁴⁹ In addition to creating a global tax governance structure in which all countries can participate on an equal footing, thereby protecting

⁴⁴ Tove Maria Ryding, *Proposal for a United Nations Convention on Tax*, European Network on Debt and Development (10 March 2022), p. 6.

⁴⁵ Submission from the Asian Peoples' Movement on Debt and Democracy for the present report.

⁴⁶ Submission from Spain for the present report.

⁴⁷ High-level meeting on international cooperation to combat illicit financial flows and strengthen good practices on assets return, held on 16 May 2019.

⁴⁸ Rachel Etter-Phoya, “African Ministers call for UN tax convention to protect against financial secrecy supplied by the richest nations”, Tax Justice Network, 27 May 2022.

⁴⁹ Abdul Muheet Chowdhary and Sol Picciotto, “Streamlining the Architecture of International Tax through a UN Framework Convention on Tax Cooperation”, South Centre, Tax Cooperation Policy Brief, November 2021, p. 2.

their national sovereignty, the framework convention would expand the scope of the OECD/G20 forums by recognizing mandates from all countries that are parties to the United Nations system.⁵⁰ State contributions referred to the need for a comprehensive, globally inclusive transparency standard covering the so-called ABC (automatic information exchange, beneficial ownership transparency and public country-by-country reporting), thereby providing the basis for a global asset registry; consistent aggregate statistics and analysis through a centre for monitoring taxing rights, as proposed by the High-level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda; and a basis for shifting to unitary taxation with a genuine and fair minimum effective corporate tax rate.⁵¹

48. Civil society organizations have also made important contributions in that regard. The European Network on Debt and Development and the Global Alliance for Tax Justice produced recommendations for a United Nations tax convention that would be underpinned by government commitments and obligations with respect to human rights, the Sustainable Development Goals and the key principles of substantive equality, transparency, participation and public accountability.⁵² Accordingly, the convention would differ from the United Nations framework convention on tax cooperation in that it links human rights with taxation, the need to promote policy coherence and the need to ensure that global tax standards promote progressive tax systems. In both proposals, incorporating linkages to the human rights obligations of States, such as maximum available resources, non-discrimination and extraterritorial obligations, could guide decision-making on tax matters. A convention would be designed to gradually replace the incoherent and highly complex network of bilateral and multilateral tax treaties and agreements, with a view to introducing one coherent overall global framework. That would increase the effectiveness of the global tax system, remove opportunities for international tax dodging and ensure the suitability of certain provisions within international tax agreements for each State⁵³ impacted by the agreement. Critically, under that model, countries would not be forced to accept controversial dispute resolution mechanisms. Instead, the convention would have a strong focus on dispute prevention, which would reduce the need for dispute resolution. In addition, States must exercise due diligence to minimize the risk of human rights violations through the adoption and operation of bilateral investment treaties and free trade agreements and to foreclose the danger of having to compensate foreign investors as a consequence of adopting necessary fiscal, financial and debt resolution measures or policies designed to respond to changing circumstances such as financial crises, new scientific findings or public demand for laws of general application. Individuals and groups should reclaim their democratic right to participate in decision-making in the determination of governmental budgetary, fiscal, economic, trade and social policies. They should demand the primacy of human rights over investment privileges and vindicate the social contract, as reflected in an index of public satisfaction composed of both material and non-material indicators.⁵⁴

49. Emerging issues in digital taxation highlight the need for a global approach that prioritizes the needs and sustainable development of all countries over the economic interests of a small number of nations. The objective of a global minimum tax rate is to discourage multinationals from shifting profits and tax revenues to low-tax countries and/or tax havens based on where their goods or services are sold, regardless

⁵⁰ Ibid., p 1.

⁵¹ Submission from Mauritius for the present report.

⁵² Ryding, *Proposal for a United Nations Convention on Tax*, p. 7.

⁵³ Attiya Waris and Elvis Oyare, "Taxation Systems and Public Policy in Kenya: Unpacking the Unwritten Tax Treaty Policy" in Gedion Onyango, Goran Hyden, eds., *Governing Kenya: Public Policy in Theory and Practice* (Palgrave Macmillan, 2021).

⁵⁴ Ibid.

of whether they have a physical presence in that nation. In addition, the employment of a global minimum tax allows countries to harness revenue from intellectual property and digital services that are otherwise lost in cases of profit shifting, tax avoidance and evasion.⁵⁵

VI. Conclusions and recommendations

50. Many countries are facing the cumulative impacts of multiple crises, including high debt-related distress, illicit financial flows, the severe socioeconomic effects of the pandemic, increased climate-related emergencies, higher cost of living, famine and food insecurity. The ramifications are wide and deep, particularly for the populations of low- and middle-income countries. Many of the gains in poverty reduction of the previous decades have been lost. The average household has lost 1.5 per cent in real income owing to price increases in corn and wheat alone.⁵⁶ Recent estimates point to a need for \$1.2 trillion per year to reduce the social protection gap in developing countries and \$4.3 trillion annually to fund the Sustainable Development Goals.⁵⁷ A worrying 60 per cent of least developed and other low-income countries are already at high risk of, or in, debt distress;⁵⁸ “a domino effect where solvency problems create a systemic developing country debt crisis must be avoided at all costs”.⁵⁹ As a result, the fiscal space and capacity of States to respond to their populations, recover from the pandemic and honour their human rights obligations has shrunk dangerously. Warnings by the Global Crisis Response Group on Food, Energy and Finance about growing inflation and tightening financial conditions have called to the fore, yet again, the urgent need to ensure structural, fit-for-purpose reforms in the international financial system.

51. In the present report, the Independent Expert discussed some aspects of the global tax system, its pitfalls and main characteristics and presented arguments for combating illicit financial flows. She offered some thoughts about the human rights aspects that can underpin an international tax overhaul, with references to calls for the creation of a global tax body and a United Nations-led tax convention. Such reforms are part of a larger set of reforms at the international level that should promote a rights-based economy. They must be designed and implemented with the aim of enhancing the well-being and dignity of people, particularly the most marginalized, and of ensuring that human rights obligations are at the centre of financial and fiscal decision-making. At the international level, a structural reform of the taxation system should also aim at reducing inequalities within countries and promoting a multilateral response that considers all countries on an equal footing. The reform of the global taxation system should be anchored in positive practices of international cooperation and assistance, as well as in international human rights standards and norms.

52. The Independent Expert makes the following recommendations to States, both individually and as members of various multilateral and international financial institutions and regional blocs:

⁵⁵ Frank Tang, “What is the G7’s Global Minimum Tax, and How Could it Affect China?” *South China Morning Post* (Hong Kong), 20 June 2021.

⁵⁶ United Nations, Global Crisis Response Group on Food, Energy and Finance, “Global impact of the war in Ukraine on food, energy and finance systems”, Brief No. 2, 13 April 2022, p. 2.

⁵⁷ See also Global Crisis Response Group, “Global impact of the war in Ukraine”.

⁵⁸ *Financing for Sustainable Development Report 2022* (United Nations publication, 2022, Sales No. E.22.I.6).

⁵⁹ Global Crisis Response Group, “Global impact of the war in Ukraine”, p. 4.

(a) Reform the global taxation system as part of genuine efforts to combat illicit financial flows, in line with human rights law and standards, including extraterritorial obligations. At a time of multiple crises and weakened fiscal capacities at the domestic level, better international cooperation and assistance in the regulation, repatriation and taxation of flows from developing countries can assist in rebalancing the fiscal space. International cooperation and assistance are essential;

(b) Ensure that the promotion and realization of human rights, without discrimination, is at the core of the reform. Fiscal systems need to ensure the well-being and dignity of all people. They should assist in the creation of strong links between development, human rights and environmental protection. States must work together to create global fiscal coherence and reduce complexity while keeping equality as a central component;

(c) Combat illicit financial flows, especially those that are commercially and tax-related, and in particular those resulting from the tax planning activities of transnational corporations, such as trade misinvoicing, transfer pricing and shifting of profits into or through low-tax offshore jurisdictions. All States need to cooperate in strengthening the global fight against illicit financial flows and actively promote the principle of fairness in engagement with developing countries;

(d) Convene, without delay, a fourth International Conference on Financing for Development. The global situation requires a comprehensive approach and wide-ranging reforms that should be addressed together in an inclusive forum. That Conference could be an opportunity to undertake initial discussions on a United Nations tax convention and global tax body and to tackle a number of current issues such as the benefits of a global asset registry. It could also serve as an opportunity to consider the need for a debt workout mechanism, reforms to IMF governance and alternatives that respond to the shortages in funding for the Goals;

(e) Create an international authority, global tax body or world tax organization. In curbing the illicit financial flows that continually erode global economic stability, the Independent Expert supports the call for a first step towards the creation of an international tax authority with the purpose of moving gradually towards expanding its mandate to that of an international fiscal authority (which would include the global tax body) intended to harmonize effective fiscal practices and policies with a human rights-centred approach. Geographic regions should also create similar bodies to deal with their areas and specific concerns;

(f) Launch the negotiation of a United Nations-led global tax convention. There should be active discussion and debate around the negotiating of a global United Nations convention on tax issues. Such negotiations on the reform of international tax rules should take place under the auspices of the United Nations, where countries have an equal say and where processes of negotiation and consensus-reaching are clear. The United Nations-led tax convention should recognize that the realization of human rights must be a fundamental objective of fiscal policy and that the obligations of States to respect, protect and fulfil human rights demand a proactive role for the State and must guide tax decision-making. The negotiation must be based on a commitment from all States to start afresh for the creation of a new entity that will be focused on the fiscal realization of human rights as its core, ultimately supporting recommendations made in line with peace, security and the realization of rights. That body should not be housed within existing United Nations structures. The Independent Expert posits that

there is a need for new international fiscal norms on a clear, equitable and transparent basis;

(g) Ensure a high standard of transparency, while incorporating the interests, concerns and needs of developing countries. That should include provisions on the “ABC of tax transparency”, namely, automatic information exchange, beneficial ownership transparency and public country-by-country reporting. While a number of such systems already exist in some form, the convention would ensure one coherent global system designed to work for all countries, including developing countries.
