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2023

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# COMPENDIUM

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ON  
TAX & HUMAN  
RIGHTS

COMMITTEE ON FISCAL STUDIES

## INTRODUCTION TO THE COMPENDIUM ON TAX AND HUMAN RIGHTS

The Compendium on Tax and Human Rights serves as a comprehensive exploration of the existing knowledge and understanding regarding the intricate relationship between tax policies and human rights. It is essential to clarify that the compendium does not introduce new laws, policies, regulations, or legal advice. Instead, it draws upon well-established international legal instruments, institutional frameworks, scholarly works, case laws, and secondary material to present a holistic view of the subject matter.

The information and insights provided in this compendium are based on the state of knowledge up to its publication date. While efforts have been made to ensure accuracy and reliability, readers should be aware that the field of tax and human rights is continually evolving, and new developments may have occurred since the compilation of this work. Therefore, users are encouraged to verify and complement the information presented here with the latest resources and updates from relevant authorities and experts.

The compendium is intended to serve as an educational and informative resource, fostering a deeper understanding of the complex issues surrounding tax policies and human rights. It does not constitute legal advice, and readers should seek professional counsel for specific legal matters or policy decisions.

Furthermore, the opinions expressed in this compendium are those of the respective author and do not necessarily reflect the views of the publishers or any affiliated institutions. Readers are encouraged to engage critically with the content, conduct further research, and consult relevant experts and authorities in the field to inform their understanding and decision-making on tax and human rights matters.

This compendium is a compilation of existing knowledge and perspectives on tax and human rights, aiming to contribute to a broader and well-informed discourse in this important area of study. It seeks to promote dialogue, deepen awareness, and inspire meaningful actions toward a more just and equitable society.

20 September 2023  
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## Table of Contents

Introduction to the Compendium on Tax and Human Rights.....	2
Acronyms.....	4
1. Tax and Human Rights.....	5
1.1. Legal Foundations of Human Rights.....	6
1.1.1. The Sustainable Development Goals (SDGs), Agenda 2063 and Social Economic Rights.....	11
1.2. Legal Foundations of Taxation.....	17
1.2.1. A summary of the types of taxes and their defining characteristics.....	19
2. Sources and Institutions of Tax and Human Rights.....	20
2.1. Sources of taxation.....	20
2.2. Institutions of taxation.....	22
2.2.1. Revenue Authorities (RAs).....	23
2.2.2. The Ministry of Finance.....	24
2.2.3. Tax tribunals and the Courts of Law.....	24
2.3. Sources and Institutions of Human Rights.....	24
2.3.1. The Universal Declaration of Human Rights (UDHR).....	25
2.3.2. The International Convention on Economic, Social, and Cultural Rights (ICESCR).....	25
2.3.3. The UN Charter.....	27
2.3.4. UN Guiding Principles on Business and Human Rights.....	31
2.3.5. Taxation and Human Rights: A set of High-level Principles.....	32
2.4. Institutions of human rights.....	33
2.4.1. The Committee on Economic, Social and Cultural Rights (CESCR).....	33
2.4.2. The International Court of Justice.....	35
2.5. The African Human Rights System.....	35
2.5.1. The African Charter on Human and People's (ACHPR)- Banjul Charter.....	35
2.5.2. Additional Sources.....	37
2.5.3. African Institutional Framework.....	37
3. Case law (African Cases).....	39
4. Secondary material on the nexus between Tax policy and Human Rights.....	43
4.1. Tax, Human Rights and Public Debt.....	47
4.2. Challenges faced in resource mobilisation that affect Human Rights.....	53
4.3. New Insights on Tax and Human Rights.....	54
5. Conclusion.....	57
References.....	59

## Acronyms

ATAF	African Tax Administration Forum
AU	African Union
ACHPR	The African Charter on Human and People's (The Banjul Charter)
CESCR	The UN Committee on Economic, Social, and Cultural Rights
CFA	Committee on Fiscal Affairs
CFS	Committee on Fiscal Studies
EAC	East African Community
ECOSOC	Economic and Social Council (of the UN)
IMF	International Monetary Fund
ICCPR	the International Convention on Civil and Political Rights
ICESCR	The International Covenant on Economic, Social and Cultural Rights
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
SADC	Southern African Development Community
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNECA	United Nations Economic Commission for Africa
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
WHO	World Health Organisation
WB	World Bank

## 1. Tax and Human Rights

Tax and human rights are two critical aspects that profoundly influence the well-being and dignity of individuals and societies as a whole. On the one hand, taxation is the primary means through which governments generate revenue to finance public goods and services, such as education, healthcare, infrastructure, and social welfare programs. On the other hand, human rights encompass the inalienable rights and freedoms that every individual is entitled to, irrespective of race, gender, nationality, or any other characteristic. The relationship between tax and human rights is multifaceted and interconnected. When taxation systems are fair, transparent, and effectively implemented, they can play a pivotal role in advancing human rights by ensuring adequate resources for social and economic development. Properly funded public services and infrastructure can promote access to education, healthcare, clean water, and sanitation, contributing to the realisation of human rights such as the right to education, the right to health, and the right to an adequate standard of living.

However, the impact of taxation on human rights can be complex and diverse. If tax policies are regressive or discriminatory, they can exacerbate existing inequalities, leading to a disproportionate burden on marginalised and vulnerable populations. High levels of tax evasion and avoidance can also limit the available resources for essential public services, hindering the realisation of human rights for those in need. Moreover, the way tax revenues are utilised and allocated can significantly influence human rights outcomes. Transparent and accountable governance is essential to ensure that tax revenues are effectively channelled towards addressing social injustices, reducing poverty, and promoting equality.

The international human rights framework provides crucial guidance in assessing the impact of tax policies on human rights. International human rights instruments, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), emphasize the responsibility of governments to use available resources effectively to achieve social and economic rights for their citizens. In recent years, there has been growing recognition of the importance of aligning tax policies with human rights obligations. This involves analysing the impact of tax laws and fiscal measures on different groups and considering the potential human rights implications during the design and implementation of tax policies. Additionally, the fight against tax evasion and illicit financial flows has gained prominence as part of broader efforts to promote social justice and human rights at the global level.

As I progress in this compendium, the next section will delve into the specific intersection of human rights and taxation within the framework of the International Covenants. I start by exploring what are human rights, human rights principles, and their sources, followed by what are taxation and tax principles. Thereafter, the section will describe how the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) articulate the relevance of tax policies in the context of human rights. By examining these international legal instruments, I seek to deepen our understanding of the rights and obligations of states in formulating fair and equitable taxation systems. By juxtaposing human rights principles with specific tax-related provisions, the aim is to highlight the significance of harmonising fiscal policies with human rights obligations.

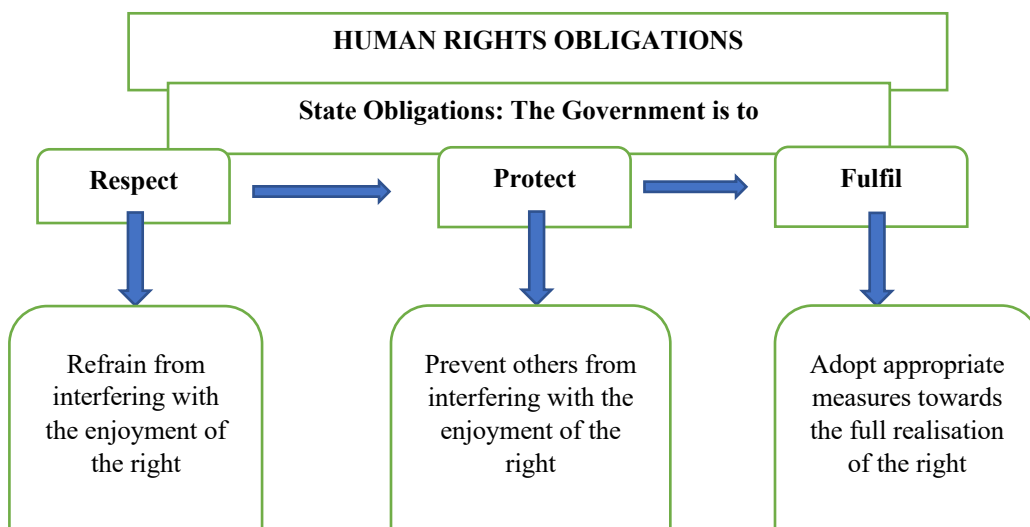
## 1.1. Legal Foundations of Human Rights

The focus of human rights is on life, dignity, and the integrity of the individual. While there are several approaches advanced to define human rights i.e., descriptive, legal, and philosophical etc., human rights can be defined as rights inherent to human beings which accrue to the individual as a consequence of being human independent of acts of law. The characteristics of human rights include and are not limited to their universal nature<sup>1</sup>, inherency, dignity, and equality. International human rights law sets obligations for states to *respect*, *protect*, and *fulfil* human rights in every way possible.

Human rights are enshrined in numerous international treaties: The Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Covenant on Civil and Political Rights (ICCPR), and the African Charter on Human and People's (ACHPR)- the Banjul Charter (African context) amongst others. Human rights are categorised into civil and political rights (first generation), socio-economic rights (second generation)- which is the focus of this compendium, and collective rights of peoples i.e., the right to self-determination and development. The different stakeholders developed principles for the realisation of these rights under the theme of Promotion- which includes standard setting, advisory services, and human rights education; Protection- which includes the enforcement of these rights (individual complaints, interstate complaints, state reporting, inquiry and investigations, fact-finding, human rights field monitoring and humanitarian intervention) and Prevention (early warning and early action, conflict resolution, preventive visits to places of detention, preventive deployment of civilian/military field personnel). As earlier stated, governments are to respect, protect, and fulfil all human rights, including socio-economic rights.

The figure below shows the meaning of government obligations.

Figure 1. Human Rights and State Obligations



(Source: Author)

<sup>1</sup> A remarkable event in the development of the concept of universality was the adoption of the Declaration of Bangkok, adopted by the ministers.

To further build and advance human rights, there are key principles that were developed and underpin human rights. The compendium shall however only discuss in detail the principles as enshrined in Article 2 of the ICESCR and Article 1 of the UDHR.

Table 1: Key principles of Human rights, their meaning and the implications for states

Principle (s)	Meaning	Obligation(s)
Article 2, ICESCR provides for the use of maximum available resources (MAR) and progressive realisation of socio-economic rights.	<p>Governments must do all that they can to mobilise resources within their countries to have funds available to progressively realise socio-economic rights.</p> <p>The MAR obligation means that full realisation of socio-economic rights requires that more government resources be devoted to it and the government must make all possible efforts to raise as much revenue domestically as it can, without of course undermining the long-term viability of the economy. This implies that the government must make every effort to collect all taxes and other revenue due to it, all the while complying with the obligations of progressive realisation and non-discrimination, and ensuring that people have access to the relevant information.</p>	<p>Governments must give due priority to socio-economic rights i.e., allocations and expenditures should be directed to socio-economic rights-related areas as a matter of priority</p> <p>Expenditures must be efficient. Governments must minimise the wastage of funds</p> <p>Expenditures must be effective. Funds allocated for socio-economic rights must be fully spent and not diverted to other areas-moving funds between socio-economic rights areas may also raise issues related to the obligation of progressive realisation.</p> <p>If, for example, funds are moved from education to health, this may result in retrogression concerning the realisation of the right to education.</p>
<p>Article 1. UDHR: The principle of equality and non-discrimination</p> <p>It stems from Article 1 of the Universal Declaration on Human Rights that, all human beings are born free and equal in dignity and rights.</p>	<p>The principle of equality is central to the concept of human rights and applies across human rights law. At its heart is the idea that all individuals are of equal worth and deserve equal treatment.</p> <p>Over the years, it has been evident that inequalities among people appear to be sustained by the historical patterns of discrimination on the grounds of ethnicity, gender, and political affiliation amongst others.</p>	<p>Governments must ensure that there is availability, accessibility, and, acceptability of all socio-economic rights, especially to vulnerable groups, in law and fact, without discrimination (physical and economic accessibility- costs).</p> <p>Further, Governments must ensure adaptability. In that, the socio-economic rights are flexible to adapt to the needs of the changing times i.e., the present digital age.</p>

The UN Committee on Economic, Social, and Cultural Rights (CESCR) provides the most authoritative interpretation of the meaning of Article 2 of the ICESCR. The CESCR has referred to the government's obligation to use the maximum available resources to realise socio-economic rights, explaining where and how they believe a government has complied or failed to comply with the obligation. When it comes to equality and nondiscrimination, a human rights-based approach in this regard demands that we pay special attention to those who face the most discrimination in accessing economic, social, and political resources. In essence, not just paying attention to the poor but to the most vulnerable among the poor. Additionally and essential to clarifying the nature and scope of socio-economic rights under the ICESCR are the general comments of the CESCR.

The next table highlights a few of the general comments of the CESCR and gives an understanding of where it all began, as countries pushed for the advancement of human rights, especially socio-economic rights.

Table 2: Key developments in the advancement of Human Rights i.e., General Comments and Scholarships

General Comment	Source	Key features and obligations
<p>General Comment No. 3 Minimum Core Content and progressive realisation. (See table 1)</p>	<p>Office of the High Commissioner for Human Rights, CESCR General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant) <i>Adopted at the Fifth Session of the Committee on Economic, Social and Cultural Rights, on 14 December 1990 (Contained in Document E/1991/23).</i></p>	<p>The concept of the “minimum core” seeks to establish a minimum legal content for the notoriously indeterminate claims of socio-economic rights. The intangible baseline level must be guaranteed for all persons in all contexts. It indicates a level below which no government should perform, even in unfavourable conditions.</p> <p>By recognising the “minimum essential levels” of the rights to food, health, housing, and education and the emerging right to water, it reflects a “minimalist” rights strategy, which implies that maximum gains are made by minimising goals.</p> <p>The concepts thus are the core content of a right<sup>2</sup>, state obligation,<sup>3</sup> obligation of conduct,<sup>4</sup> and obligation of results.<sup>5</sup></p> <p>ECOSOC has variously equated the minimum core with a presumptive legal entitlement, a non-delegable obligation, and an obligation of strict liability. The minimum core thus initiates a common legal standard, disassembling the inherent relativism of the programmatic standard of “<i>progressive realisation</i>” set out in the text of the covenant. The “<i>progressive realisation</i>” of the covenant rights requires the taking of “deliberate, concrete and targeted” steps.</p> <p>The principle of progressive realisation<sup>6</sup> also describes a central aspect of states’ obligations in connection with socio-economic rights under international human rights treaties. At its core is the obligation to take appropriate measures towards the full realisation of these rights to the maximum of their available resources.</p> <p>The essential role of cooperation for development for the ultimate full realisation of these rights is highlighted. All state parties are to take steps, individually and through international assistance and cooperation, especially economic and technical, towards the full realisation of the rights recognised in the covenant, such as the right to health.</p>

<sup>2</sup> The specific individual entitlements that make up a right. For instance in the area of health, the right to immunisation against preventable epidemic or endemic diseases.

<sup>3</sup> The responsibilities of the state to respect, protect, promote and fulfil the entitlements under the right. For instance by developing policies and programs to meet obligations. In the case of the right to health, policies and programs of promotion, prevention, treatment and rehabilitation.

<sup>4</sup> Undertaking specific steps towards realisation of the right. In health developing immunisation campaigns.

<sup>5</sup> Obtaining a particular outcome. For instance decrease in child mortality rate.

<sup>6</sup> This constitutes a recognition of the full realisation that economic, social and cultural rights will generally not be achieved in a short period of time.



		Thus, while this is not without controversy, several authors and commentators maintain that there is a need to define the “minimum core content” of each right as a way to identify what it is that the right confers upon those who enjoy the entitlement and help identify the specific obligations that a state assumes by recognising those contents.
Asbjorn Eide on 3 levels of state obligations to Human rights realisation: duty to respect, protect, and fulfil human rights	Cf. Asbjorn Eide, “Realisation of Social and Economic Rights and the Minimum Threshold Approach” in Human Rights Law Journal, 1989 Vol. 10, No. 1-2, pp. 36-51.	Asbjorn Eide is known as the originator of the tripartite typology as we know it today in the slightly different version of obligations to <i>respect</i> , <i>protect</i> , and <i>fulfil</i> , which was originally introduced in 1987 when functioning as Special Rapporteur to the UN Sub-Commission. Asbjorn Eide argued that we cannot “make a neat distinction around the axis ‘negative/positive’ between civil and political rights on the one hand and economic, social and cultural rights on the other.” Instead, he suggested that state responsibility be examined at three levels going from the predominantly cost-free and passive obligation to <i>respect</i> to the gradually more active and costly obligations to <i>protect</i> and to <i>fulfil</i> . This is also in line with the general comments 3 and 14.
General comment No. 14	Office of the High Commissioner for Human Rights, CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) <i>Adopted at the Twenty-Second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4).</i>	The human rights debate gained further momentum after CESCR general comment no. 14 on the right to the highest attainable standard of health. It takes into account both the individual’s biological, and socio-economic preconditions and a state’s available resources. The right to health as defined in article 12.1, is an exclusive right extending not only to timely and appropriate healthcare but also to the underlying determinants of health like access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition, and housing amongst others. Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life of dignity. The essential elements are availability, accessibility, acceptability, and quality healthcare. Article 12.1 provides a definition of the right to health (which contains both freedoms <sup>7</sup> and entitlements <sup>8</sup> ), while article 12.2 enumerates illustrative, non-exhaustive examples of states parties’ obligations; <sup>9</sup> including the core obligations: to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, to ensure access to the minimum essential food which is nutritionally adequate and safe; to ensure freedom from hunger to everyone; to ensure access to basic shelter, housing, and sanitation amongst others. It was agreed that the realisation of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, the

<sup>7</sup> The freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from torture, non-consensual medical treatment and experiments.

<sup>8</sup> This is the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

<sup>9</sup> Between articles 30 to 37 of the Covenant and international obligations from articles 38

		<p>implementation of health programmes developed by the World Health Organisation (WHO), and the adoption of specific legal instruments. Academics in the field of law and public health, and national governments in their domestic laws and judicial interpretations have clarified this right- to encompass a wide range of social, political, and economic determinants of health.<sup>10</sup></p> <p>The normative content of the right to health now provides a foundation for state obligations to <i>respect, protect and fulfil</i> the right to health. With limitations on other rights for public health goals; the right's essential attributes of availability, accessibility, acceptability, and quality and the minimum core obligations of the right to health; and the progressive realisation of health-related human rights<sup>11</sup> are critical.</p>
<p>General comment No. 15, The right to water</p>	<p>(Arts. 11 and 12), UN Doc. E/C.12/2002/11, 20 January 2003 37. In General Comment No. 3 (1990)</p>	<p>This relates to the right to water. The committee confirms that state parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the covenant.<sup>12</sup> At least several core obligations about the right to water can be identified, which are of immediate effect:</p> <ul style="list-style-type: none"> <li>• to ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease;</li> <li>• to ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalised groups;</li> <li>• to ensure physical access to water facilities or services that provide sufficient, safe and regular water; that have a sufficient number of water outlets to avoid prohibitive waiting times; and that is at a reasonable distance from the household; [...]; and</li> <li>• to ensure equitable distribution of all available water facilities, and services; [...] (h) To adopt relatively low-cost targeted water programmes to protect vulnerable and marginalised groups.</li> </ul>

As discussed above, general comments became a key driver in the discussions around socio-economic rights as states were put to the task of implementing these rights. All obligations in terms of socio-economic have both “progressive” and “immediate” components. While progressive obligations may be fulfilled over time, immediate obligations must be fulfilled immediately. These “immediate” obligations include broadly: (1). Taking steps: take steps towards the realisation of all socio-economic in full; (2) Non-retrogression: Avoid any retrogressive steps decreasing existing access to socio-economic rights; (3). Non-discrimination: Ensure that socio-economic-related services, facilities and goods are available to all without discrimination; and (4)

<sup>10</sup> Tobin J, Barrett D (2020). Available at <https://doi.org/10.1093/oso/9780197528297.003.0004>

<sup>11</sup> *ibid*

<sup>12</sup> Because water is so important for survival and other aspects of human life, the committee emphasises that water should be available, accessible (economic and physical) and of sufficient quality.

the minimum core obligations: Ensure immediate access to at the very least the “minimum essential level” of socio-economic-related services, facilities, and goods.<sup>13</sup> While many commitments and actions have been made by nations over the years in the area of human rights, the critical point is the financing of human rights. This among others can be achieved through domestic resource mobilisation (of which tax is part). The linkages between tax and human rights have further been enhanced by the commitments made by states through Agenda 2030 and others as discussed below.

### 1.1.1. The Sustainable Development Goals (SDGs), Agenda 2063 and Social Economic Rights

The SDGs and Africa’s Agenda 2063 place a high premium on inclusive growth and sustainable development because they are explicitly grounded in international human rights. The 17 SDGs seek to realise human rights for all. The pledge to “leave no one behind” mirrors the fundamental human rights principles of non-discrimination and equality.<sup>14</sup> Agenda 2063 is Africa’s blueprint and master plan for transforming Africa into the global powerhouse of the future. It’s the continent’s strategic framework that aims to deliver its goals for inclusive and sustainable development and is a concrete manifestation of the pan-African drive for unity, self-determination, freedom, progress, and collective prosperity pursued under Pan-Africanism.<sup>15</sup> Thus, the strong links between human rights, sustainable development and Agenda 63 offer enormous potential to make their follow-up better aligned and thus more effective, efficient, and accountable, and the mobilisation of resources to finance these rights. The table below sets out the SDGs, the targets for states to meet the SDGs and the related human rights each SDG addresses.

Table 3: The SDGs and related human rights particularly those related to social and economic rights.

SDGs	Target(s)	Related Human Rights
1. No poverty	Eradicating extreme poverty; implementing social protection measures and ensuring access of men and women to economic resources.	<ul style="list-style-type: none"> <li>• Right to an adequate standard of living [UDHR art 25; ICESCR art 11]</li> <li>• Right to social security [UDHR art. 22; ICESCR art. 9]</li> <li>• Equal rights of women in economic life [Refer CEDAW arts 11,13 amongst others]</li> </ul>
2. Zero hunger	Ending hunger and malnutrition; improving agricultural production, sustainable and resilient food production; correcting trade distortions, and ensuring functioning commodity markets.	<ul style="list-style-type: none"> <li>• Right to adequate food [UDHR art. 25 and ICESCR art.11]</li> <li>• International cooperation [UDHR art. 28; ICESCR arts. 2(1), 11 (2)]</li> </ul>
3. Good health and well-being	Reducing maternal mortality; ending preventable child deaths; ending or reducing AIDS and other diseases; universal health coverage, affordable essential medicines, sexual and reproductive health care; vaccine research, and access to medicines.	<ul style="list-style-type: none"> <li>• Right to life</li> <li>• Right to health [UDHR art. 25; ICESCR art. 12]</li> <li>• Right to enjoy the benefits of scientific progress and its application [UDHR art 27; ICESCR art.15 (1) (b)]</li> </ul>

<sup>13</sup> International Commission of Jurists (2014-2020)

<sup>14</sup> Thornberry (2019)

<sup>15</sup> See <https://au.int/en/agenda2063/overview>

		<ul style="list-style-type: none"> <li>• International cooperation, particularly about the right to health [ICESCR art. 2(1)]</li> </ul>
4. Quality Education	Universal access to free, quality pre-primary and secondary education; improving vocational skills; equal access to education; expanding education facilities, scholarships, and training of teachers.	<ul style="list-style-type: none"> <li>• Right to education [UDHR art. 26; ICESCR art. 13]</li> <li>• Equal rights of women and girls in the field of education [Ref. CEDAW art. 10]</li> <li>• Right to work [ICESCR art. 6]</li> <li>• International Cooperation</li> </ul>
5. Clean water and sanitation	Ensuring universal and equitable access to safe, affordable drinking water, sanitation, and hygiene for all; reducing pollution; increasing water-use efficiency; and promoting participatory management of water and sanitation services.	<ul style="list-style-type: none"> <li>• Right to safe drinking water. and sanitation [ICESCR art. 12]</li> <li>• Right to health</li> <li>• Equal access to water and sanitation for all; including rural women</li> </ul>
7. Affordable clean energy	Ensuring universal access to affordable, reliable and modern energy services.	<ul style="list-style-type: none"> <li>• Right to an adequate standard of living [UDHR art. 25; ICESCR art. 11].</li> <li>• Right to enjoy the benefits of scientific progress and its application [UDHR art. 27; ICESCR art 15(1) (b)]</li> </ul>
8. Decent Work and Economic Growth	Promoting sustained economic growth; improving resource efficiency in production and consumption; full and productive employment and decent work for all; eradicating forced and child labour and trafficking; protecting labour rights including those of migrant workers and increasing access to financial services.	<ul style="list-style-type: none"> <li>• Right to work and to just favourable conditions of work [UDHR art. 23; ICESCR arts. 6, 7, ILO Core Labour Conventions and ILO Declaration on Fundamental Principles and Rights at Work]</li> <li>• Prohibition of slavery, forced labour and trafficking of persons, prohibition of child labour</li> <li>• Equal rights of women in employment</li> </ul>
9. Industry, Innovation, and Infrastructure	Affordable and equitable access to quality infrastructure; employment generating industrialisation; access to financial services, and markets; innovation and technology transfer, and increasing access to ICT.	<ul style="list-style-type: none"> <li>• Right to enjoy the benefits of scientific progress and its application [UDHR art. 27; ICESCR art. 15 (1) (b)]</li> <li>• Right to access information</li> <li>• Right to adequate housing, including land, and resources</li> </ul>
11. Sustainable Cities and Communities	Ensuring access to housing, basic services, and public transport for all; participatory planning of human settlements; safeguarding cultural and natural heritage, and strengthening resilience to disasters.	<ul style="list-style-type: none"> <li>• Right to adequate housing</li> <li>• Accessibility of transportation, facilities, and services</li> <li>• Protection from natural disasters</li> </ul>
12. Responsible Consumption and Production	Achieving sustainable management and efficient use of natural resources; improving waste management; promoting sustainable public procurement; ensuring access to information; and building capacity for sustainable development.	<ul style="list-style-type: none"> <li>• Right to health, including the right to a safe, clean, healthy, and sustainable environment</li> <li>• Right to adequate food and the right to safe drinking water</li> <li>• Right of all peoples to freely dispose of their natural resources [ICESCR art.1 (2)]</li> </ul>
13. Climate Action	Strengthening resilience and adaptation to climate change and natural disasters, including in marginalised communities; implementation of the green climate fund.	<ul style="list-style-type: none"> <li>• Right to health</li> <li>• Right to adequate food, and the right to safe drinking water</li> <li>• Right of all peoples to freely dispose of their natural resources [ICESCR art.1 (2)]</li> </ul>

14. Life below water	Reducing marine pollution; conserving coastal ecosystems, coastal marine areas, and fish stock; securing market access for small-scale fishers; protecting marine biodiversity.	<ul style="list-style-type: none"> <li>• Right to health</li> <li>• Right to adequate food and the right to safe drinking water</li> <li>• Right of all peoples to freely dispose of their natural resources [ICESCR art.1 (2)]</li> </ul>
15. Life on land	The sustainable management of freshwater, mountain ecosystems, and forests; combatting desertification; halting biodiversity loss; combating poaching and trafficking of protected species.	<ul style="list-style-type: none"> <li>• Right to health</li> <li>• Right to adequate food &amp; right to safe drinking water</li> <li>• Right of all peoples to freely dispose of their natural resources [ICESCR art.1 (2)]</li> </ul>
17. Partnerships for the goals	Strengthening domestic and international resources, debt sustainability; technology transfer and capacity building; promoting trade; enhancing policy and institutional coherence; respecting countries' policy space; promoting multi-stakeholder partnerships; measurements for progress, and disaggregated data.	<ul style="list-style-type: none"> <li>• Right of all peoples to development and international cooperation [UDHR art. 28, ICESCR art. 2 (1)]</li> <li>• Right of everyone to enjoy the benefits of scientific progress and its application, including cooperation in the scientific field</li> </ul>

The above table is illustrative and not exhaustive on the rights that are related to each SDG. The 17 SDGs seek to realise the human rights of all, and more than 90% of the targets directly reflect elements of international human rights and labour standards. Both human rights and SDGs have specific mechanisms for review and monitoring which are designed to track progress and identify challenges, lessons learned, and good practices, and guide on improving their implementation.<sup>16</sup> To further demonstrate the above, the table below discusses SDG target 3.8 in the context of the right to health in Kenya.

Table 4: SDG target 3.8 and Kenya's progress

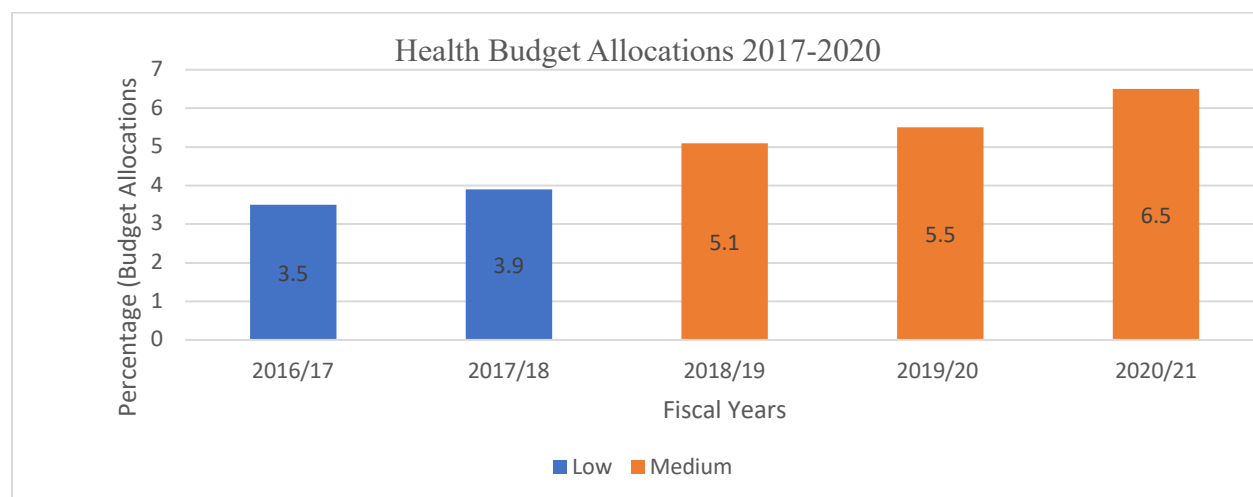
<b>SDG Target</b>	<b>Indicators</b>	<b>Kenya's progress (positive and negative)</b>
3.8: Good health and well-being - Achievable health coverage, including financial risk protection, access to quality essential healthcare services, and access to safe, effective. Quality and affordable essential medicines and vaccines for all.	3.8.1- Coverage of essential health services <sup>17</sup> Indicator 3.8.2- the proportion of the population with large household expenditures on health as a share of total household expenditure or income	The Kenyan health system defines six levels of the hierarchy, as follows: level 1, community services; level 2, dispensaries and clinics; level 3, health centres and maternity and nursing homes; level 4, sub-county hospitals and medium-sized private hospitals; level 5, county referral hospitals and large private hospitals; and level 6, national referral hospitals and large private teaching hospitals. Average budget allocations every financial year are way below the agreed 15% of the budget (see Figure 2). Kenya's health budget remains hugely financed by donors and out of pocket by the population. This is under threat with donors threatening to withdraw funding. Universal Health Coverage (UHC) is also under threat as the government has withdrawn the same in some counties in the country.

<sup>16</sup> Thornberry et al (2019).

<sup>17</sup> Generally defined as the average coverage of essential services based on tracer interventions that include reproductive, maternal, new-born and child health, infectious diseases, and service capacity and access, amongst others (with special attention to the most disadvantaged population).

The budget allocations to health are further demonstrated below.

Figure 2. Budget Allocations for Health between 2017-2020



(Source: Latif, 2020)

According to Latif, the data demonstrates that domestic health financing remains dependent on the budget allocations which are skewed towards funding recurrent expenditure largely focused on remuneration of healthcare workers and personal costs. In the fiscal years 2014/15 and 2015/16, 4% of the budget was allocated to health. This reduced to 3.5% in 2016/17. But increments followed with an increase to 3.9% in 2017/18 and 5.1% in the 2018/19 fiscal budget. Such a budget approach to financing health has resulted in apportioning an average of 4.1% for health and this is well below both the Abuja and World Health Organisation (WHO) targets. The 2020/21 fiscal year can be termed an ‘abnormal year’ due to the COVID-19 pandemic (health became a priority). Donor funding for health is continuously under threat as a result of corruption. UHC is also under threat and this may leave the population very vulnerable. As a result, access to quality healthcare will be heavily undermined as the burden of payments will be heavy on the population. Despite this, Kenya has acted to give effect to the SDGs through social protection strategies, policies, and other measures however, a lot is still left to be desired.

The Constitution of Kenya contains a comprehensive Bill of Rights, Article 43 guarantees all Kenyans their economic, social, and cultural rights<sup>18</sup> and Article 21 establishes the progressive realisation of social and economic rights and obligates the state to “observe, respect, protect, promote, and to fulfil the rights and fundamental freedoms in the Bill of Rights.” Further under Article 2 (1), Kenya has also ratified several international instruments and as such has obligations thereunder. While Africa has indeed recorded notable gains toward some social development outcomes since 2000, the aggregate progress has not been inclusive enough. For example, public expenditure on say social outcomes such as education and health has generally been on the

<sup>18</sup> It asserts the “the right for every person...to social security and binds the state to provide appropriate social security to persons who are unable to support themselves and their dependents.” This right is closely linked to other social protection rights, including the right to healthcare, human dignity, reasonable working conditions, and access to justice.

increase, however aggregate outcome figures show that the progress has not been inclusive.<sup>19</sup> African countries will thus need to make the most of public borrowing as a source of development finance while balancing this against the need to minimise the risk of the debt crisis. Additionally, all gains in social outcomes could be expanded and sustained if African countries innovatively mobilise fiscal revenues and effectively deploy them to finance sustainable development. 2030 is less than 7 years away. Are states on the right path regarding the realisation of socio-economic rights? The extension by the African Union to Agenda 2063 speaks volumes. The goals, priority areas, and related human rights are discussed below.

Table 5: The Agenda 2063 goals and related human rights particularly those related to socio-economic rights.

<b>Agenda 2063 goals</b>	<b>Priority Areas</b>	<b>Related Human Rights and the principles and state obligation</b>
(1) A high standard of living, quality of life, and well-being for all citizens	<ul style="list-style-type: none"> <li>Incomes, jobs, and decent work.</li> <li>Poverty, inequality, and hunger.</li> <li>Social security including persons with disabilities.</li> <li>Modern and livable habitats.</li> </ul>	<ul style="list-style-type: none"> <li>Right to work and to just favourable conditions of work [UDHR art. 23; ICESCR Arts. 6, 7, ILO Core Labour Conventions and ILO Declaration on Fundamental Principles and Rights at Work].</li> <li>Prohibition of slavery, forced labour, and trafficking of persons, prohibition of child labour.</li> </ul> <p>Equal rights of women in employment. Principle: Equality and non-discrimination.</p>
(2) A well-educated citizens and skills revolution underpinned by science, technology, and innovation (STI)	<ul style="list-style-type: none"> <li>Education and STI skills-driven revolution.</li> </ul>	<ul style="list-style-type: none"> <li>Right to education.</li> <li>Skilled workforce enhancing the right to work.</li> </ul>
(3) Healthy nourished citizens	<ul style="list-style-type: none"> <li>Health and nutrition</li> </ul>	<p>Right to health (the highest attainable health) Principle: MAP and progressive realisation of social economic rights.</p>
(4) Transformed economies	<ul style="list-style-type: none"> <li>Sustainable and inclusive economic growth</li> <li>STI-driven manufacturing, industrialisation, and value addition</li> <li>Economic diversification and resilience</li> <li>Hospitality/tourism</li> </ul>	<ul style="list-style-type: none"> <li>Right of all people to development</li> <li>Right to work</li> <li>Economic independence</li> <li>Right to health (better living standards equals longevity as such a preservation of life )</li> </ul> <p>Principle: MAP and progressive realisation of social economic rights.</p>
(5) Modern Agriculture for increased productivity and production	<ul style="list-style-type: none"> <li>Agricultural productivity and production</li> </ul>	<ul style="list-style-type: none"> <li>Right to food</li> <li>Right to health</li> </ul>
(6) Blue/ ocean economy for accelerated economic growth	<ul style="list-style-type: none"> <li>Marine resources and energy</li> <li>Ports operation and marine transport</li> <li>Sustainable natural resource management and Biodiversity conservation</li> </ul>	<ul style="list-style-type: none"> <li>Right to health</li> <li>Right to adequate food &amp; right to safe drinking water</li> </ul>

<sup>19</sup> Waris (2019) p. 60

(7) Environmentally sustainable and climate-resilient economies and communities	<ul style="list-style-type: none"> <li>• Sustainable consumption and production patterns</li> <li>• Water Security</li> <li>• Climate resilience and natural disaster preparedness and prevention</li> <li>• Renewable energy</li> </ul>	<ul style="list-style-type: none"> <li>• Right to health</li> <li>• Right to adequate food &amp; right to safe drinking water</li> <li>• Right of all peoples to freely dispose of their natural resources</li> </ul> <p>Principle: MAP and progressive realisation of social economic rights including climate finance.</p>
(8) United Africa (Federal or confederate)	<ul style="list-style-type: none"> <li>• Framework and institutions for a United Africa</li> </ul>	<ul style="list-style-type: none"> <li>• Right to self-determination</li> <li>• Right to development</li> </ul>
(9) Continental financial and monetary institutions-established and functional	<ul style="list-style-type: none"> <li>• Financial and monetary institutions</li> </ul>	<ul style="list-style-type: none"> <li>• Right to development</li> <li>• Right to self-determination</li> <li>• Financial independence.</li> </ul> <p>Principle: MAP and progressive realisation of social economic rights.</p>
(10) World-class infrastructure crisscrossing Africa	<ul style="list-style-type: none"> <li>• Communications and infrastructure connectivity</li> </ul>	<ul style="list-style-type: none"> <li>• Right to health</li> <li>• Right to work</li> <li>• Right to development</li> </ul> <p>In terms of accessibility</p> <p>Principle: MAP and progressive realisation of social economic rights.</p>
(11) Democratic values, practices, universal principles of human rights, justice, and the rule of law are entrenched.	<ul style="list-style-type: none"> <li>• Democracy and good governance</li> <li>• Human Rights, justice, and the rules of law.</li> </ul>	<ul style="list-style-type: none"> <li>• State obligations: Promotion, protection, and fulfilment of human rights</li> </ul>
(12) Capable Institutions and transformative leadership place	<ul style="list-style-type: none"> <li>• Institutions and leadership</li> <li>• Participatory Development Local Governance</li> </ul>	<ul style="list-style-type: none"> <li>• Right to development and international/regional cooperation</li> </ul> <p>State obligations: Promotion, protection, and fulfilment of human rights.</p>
(13) Peace Security and Stability are preserved & (14) A stable and peaceful Africa	<ul style="list-style-type: none"> <li>• Maintenance and preservation of Peace and Security</li> <li>• Institutional structure for AU instruments on peace and security</li> </ul>	<ul style="list-style-type: none"> <li>• Right to life</li> <li>• Right to health</li> <li>• Right to work et al</li> </ul> <p>State obligations to promote, protect and fulfil human.</p>
(17) Full gender equality in all spheres of life (18) Engaged and empowered youth and children	<ul style="list-style-type: none"> <li>• Women and girls empowerment</li> <li>• Violence and discrimination against women and girls</li> <li>• Youth empowerment and protection of children</li> </ul>	<ul style="list-style-type: none"> <li>• Right to health (maternal health)</li> <li>• Right to life</li> <li>• Right to work and to just favourable conditions of work [UDHR art. 23; ICESCR arts. 6, 7, ILO Core Labour Conventions and ILO Declaration on Fundamental Principles and Rights at work]</li> <li>• Prohibition of slavery, forced labour and trafficking of persons, prohibition of child labour</li> </ul> <p>Adhering to the principles of equality and non-discrimination (even for the most vulnerable of society).</p>
(19) Africa as a major partner in global affairs	<ul style="list-style-type: none"> <li>• Africa's place in global affairs</li> <li>• partnership</li> </ul>	<ul style="list-style-type: none"> <li>• Furthering the above rights by international cooperation</li> </ul>



and peaceful co-existence		
(20) Africa takes full responsibility for her financing development	<ul style="list-style-type: none"> <li>• African capital market</li> <li>• Fiscal system and public sector revenues</li> <li>• Development assistance</li> </ul>	<ul style="list-style-type: none"> <li>• Financial Independence</li> <li>• Mobilisation of resources to fund social economic rights</li> </ul> <p>Principle: MAP and progressive realisation of social economic rights including climate finance.</p>

The key transformational outcomes of Agenda 2063. Agenda 2063 identifies several key benefits to Africans if the programmes identified in the strategic development framework are initiated and implemented.<sup>20</sup> Africa is expected to show improved standards of living; transformed, inclusive and sustained economies; increased levels of regional integration; a population of empowered women and youth and a society in which children are cared for and protected; peaceful societies, demonstrate good democratic values and practice good governance principles amongst others. The outcomes include improvements in living standards; transformed, inclusive, and sustainable economies; integrated Africa; empowered women, youth, and children; and a well-governed, peaceful, and cultural-centric Africa in a global context.

A major milestone for Africa was the signing of the African Continental Free Trade Agreement (AfCFTA) which has now moved into the operational phase. Intra-African trade is approximately 5% of the total African trade, and some scholars say this treaty and its implementation will change the landscape, boosting intra-African trade by 60%.<sup>21</sup> Noting that several initiatives already preceded AfCFTA like the global UN-led Financing for Development (FfD) processes, the Millennium Development Goals<sup>22</sup> (MDGs), the SDGs,<sup>23</sup> and the Addis Tax Initiative<sup>24</sup> (ATI). Additionally, data and debates on issues related to illicit financial flows, unpaid care, the informal economy, the impact of digitalisation, the future of work, and state revenues have led to the realisation that African countries are not as poor as is sometimes presumed.<sup>25</sup> From the foregoing robust discussions on the general comments, action by states, and several initiatives by nations and their commitment to the realisation of human rights and ultimately the fostering of development is demonstrated. While the element of financing social and economic rights (which is the focus of this compendium) becomes paramount, resource mobilisation is part of is key.

The next section discusses tax. What tax is, the principles of tax, fiscal legitimacy, and the social contract including identifying the legal documents (both domestic and international) that touch on tax with the ultimate goal of drawing the linkages to tax.

## 1.2. Legal Foundations of Taxation

Taxes are ubiquitous in the lives of people around the globe, whether they are hailed or hated, paid or evaded; they are an unavoidable part of contemporary statecraft and everyday economic

<sup>20</sup> See, <https://au.int/agenda2063/outcomes>

<sup>21</sup> Waris (2019)

<sup>22</sup> United Nations (2000)

<sup>23</sup> United Nations (2015a)

<sup>24</sup> See [www.addistaxinitiative.net](http://www.addistaxinitiative.net)

<sup>25</sup> Waris (2019)

exchanges.<sup>26</sup> There are many diverse understandings and definitions of tax.<sup>27</sup> The paramount question is, *what do people expect in return for their taxes paid, and how do they justify their evasion of tax?* In simple terms, and theory, taxes are a legally legitimated means by which to transfer wealth from individuals and businesses to governments, and then on to targeted areas of public provision such as education and health, or to service the national debt (in terms of revenue allocation and expenditure). Thus, tax is a critical aspect of government.

The principles of taxation are as set out by Adam Smith in 1776 in the *Wealth of Nations* although some tax scholars argue that the four major principles of tax pre-date Adam Smith to philosophers like Ibn Khaldun.<sup>28</sup> Regardless, the first four principles as articulated by Adam Smith are as in the table below.

Table 6: The first four principles of tax per Adam Smith

<b>Principle/Canon</b>	<b>Meaning</b>
Canon of equality and equity	This speaks to the economic justice of tax. It has three limbs, horizontal equity: People in equal circumstances should pay equal amounts of tax. Vertical equity: People with different scales of income must be treated differently. Benefits equity: Those who obtain more benefits from the government should pay more tax.
Canon of certainty	This is to the effect that the tax each individual is to pay ought to be certain, and not arbitrary. The times of payments, the manner of payments and the quantity to be paid ought all to be clear and plain to the contributor and to every other person
Canon of Economy	This canon implies that the cost of collecting a tax should be as minimal as possible. Any tax that involves high administrative costs, unusual delays in assessment, and high collection of taxes should be avoided altogether.
Canon of Convenience	According to this canon, the mode and timings of tax payment should be, as far as possible, convenient to the taxpayer and also to the government.
Other canons	Additionally, as modern writers on public finance cropped up, other canons of taxation were added like the canon of productivity or fiscal adequacy, the canon of flexibility, and the canon of simplicity in that the tax system should not be too complicated.

Further to the canons of taxation is the concept of fiscal legitimacy. It consists of the trust that the society has in the state and is expressed by a continuing willingness to pay taxes.<sup>29</sup> Fiscal legitimacy has seven characteristics: transparency, accountability, responsibility, effectiveness and efficiency, and fairness and justice of a tax system. The IMF Fiscal Transparency Code and GIFT Principles<sup>30</sup> which have undergone modifications over the years establish a set of principles built around four “pillars” regarding fiscal legitimacy as shown in the table below.

<sup>26</sup> Shield Johansson, Miranda (2020)

<sup>27</sup> Waris (2019) p.46

<sup>28</sup> Waris (2019) p. 108-111

<sup>29</sup> Waris (2018)

<sup>30</sup> See <https://www.imf.org/external/np/fad/trans/Code2019.pdf>

Table 7: Summarises the IMF Fiscal Transparency Code and GIFT Principles

Pillar (s)	Principles & Requirements
Pillar I: Fiscal reporting	<ul style="list-style-type: none"> <li>• Contains 12 principles and they are grouped under four dimensions of fiscal reports: coverage, frequency and timelines, quality, and integrity.</li> <li>• Requires the availability of relevant, comprehensive, timely, and reliable information on the government's fiscal operations and performance.</li> </ul>
Pillar II: Fiscal forecasting and budgeting	<ul style="list-style-type: none"> <li>• Contains 12 principles grouped under four dimensions of fiscal forecasts and budgets: comprehensiveness, orderliness, policy orientation, and credibility.</li> <li>• Requires the provision of a clear statement of the government's budgetary objectives and policy intentions, together with comprehensive, timely, and credible projections of the evolution of public finances.</li> </ul>
Pillar III: Fiscal Risk Analysis and Management	<ul style="list-style-type: none"> <li>• Contains 12 principles grouped under three dimensions of fiscal risk management, risk management, and fiscal coordination.</li> <li>• Requires that risks to public finances are disclosed, analysed, and managed and that fiscal decision-making across the public sector is effectively coordinated.</li> </ul>
Pillar IV: Resource Revenue Management	<ul style="list-style-type: none"> <li>• Contains 12 principles grouped under four dimensions: legal and fiscal regimes, allocation of resource rights and collection of revenue, company reporting, and resource revenue management.</li> </ul>

Undermining any of these concepts potentially results in some form of taxpayer non-compliance which, in turn, leads to an unfair distribution of the tax burden and a reduction in the resources available for distribution. The two sides to fiscal legitimacy are resource mobilisation and resource utilisation. Fiscal legitimacy is a goal every state should seek no matter what the size of the budget, and this can only be achieved by ensuring that the fiscal system adheres to the characteristics mentioned above. Fiscal legitimacy should be at the core of domestic resource mobilisation by the state. Fiscal social contract however is the relationship between taxation, redistribution, and society. This can be in the form of explicit contracts (for example, constitutional rights) and implicit contracts (for example, bargained fiscal policy with organised bodies).

While fiscal systems can play a key role in both furthering democratic representation and ensuring higher standards of living and well-being through wealth and employment creation in the country, they can also lead to crisis. For instance, Schumpeter's analysis of the collapse of the Austrian tax state asserts that failure had not merely been about budgetary crisis but was a superficial sign of the link between fiscal affairs, the social structure, and the understanding of its historical structure. It is in this light that scholars argue that we must talk of fiscal systems, not just in the technical sense of simply raising revenues, but rather in terms of social contract and ultimately development.

### 1.2.1. A summary of the types of taxes and their defining characteristics

Taxes are commonly levied on labour (income tax), profit (corporation tax), wealth and property (inheritance, wealth tax, property tax), and consumption tax (VAT). Further, taxes are divided into direct, from a person and business, and indirect VAT, which is collected on transactions and by

intermediaries. They are generally progressive (higher rates for higher incomes), or flat/regressive (the same rate for all, meaning those on lower incomes end up paying a larger share of their income if the tax is indirect). Paying tax or avoiding tax is part of everyday life across the globe. Thus taxes are often conceived of as a nexus of state-citizen relations and an intrinsic part of a social contract where they are exchanged for political representation and a level of state protection. Beyond these defining characteristics, taxes exist in political and cultural contexts where they shape social relationships and take on diverse meanings.

In the words of Waris, “If we were to try to come to an understanding of a definition of what tax is, *what would that look like, and is there an African understanding that makes sense for African societies? Would the definition be the same between developed and developing countries or even between different states at different levels of development?*”<sup>31</sup> This, therefore, demands that in the era of the modernised conception of international tax cooperation in a globalised and interdependent world economy, some of these glaring questions have to be addressed and common principles and irreducible minimums set when it comes to matters of taxation. Irrespective of the different definitions of tax, the purpose of this compendium is to link or find a nexus between tax, and human rights. Having presented detailed insights on human rights and taxation, the next section extensively addresses the legal and institutional framework in the area of socio-economic rights.

## 2. Sources and Institutions of Tax and Human Rights

### 2.1.Sources of taxation

Tax law is a creation of statutes (statutes that impose the tax). Its primary source lies in legislation. These sources can be divided between legislative, administrative and judicial sources. Generally, the basic legal framework calls for taxation according to the rule of law. This principle is written into the Constitution. In addition to these general principles, the power to make tax laws is subject to several types of legal limitations. The sources include (1) Constitutional or other basic legal principles underlying an organised society, (2) international agreements, (3) interpretation of the tax laws by the courts, (4) the general framework of civil law and public law, and (5) the political structure of the country as a centralised or a federal state.<sup>32</sup> Tax laws must be drafted in the context of this legal framework, as it applies in the particular country in question. The fundamentals are that (1) a tax can be levied only if a statute lawfully enacted so provides, (2) a tax must be applied impartially, and (3) revenue raised by a tax can be used only for lawful public purposes, not for the ‘prince’s’ private end. The rule of law contemplates that these principles will be enforced by independent courts. The law is interpreted by the courts and it's evident that the rules of change go hand in hand with the rules of adjudication.<sup>33</sup> See the table below.

Table 8: Constitutional, legislative, and other sources of tax law

Source	Provision/Meaning
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<sup>31</sup> Waris (2019) p. 46

<sup>32</sup> Vanistendael (1996) p.15

<sup>33</sup> Atim (2020) at p.8

The Constitution	<p>Payment of tax has a constitutional basis. The Constitution provides that the Congress (parliament) has “the power to lay and collect taxes, duties, imports and excises” through acts of Congress.<sup>34</sup> The procedure for enactment sets forth a special requirement of tax legislation. Constitutional provisions regarding fiscality and taxation are multiple.<sup>35</sup> Several state constitutions contain tax and expenditure limits. Some of these limitations are substantive.</p> <p>In Kenya, articles 209, 210, and 211 of the Constitution<sup>36</sup> provide for the basis for revenue raising and borrowing by the Government. Article 39 of the Moroccan constitution creates a duty to pay taxes in proportion to capacity. Most of these constitutions give parliament the authority to create laws regarding the fiscal regime, the tax basis, and the modalities of collection. Most countries use the principle of annularity, according to which a tax law can only have effect for one budgetary year.</p> <p>However, some countries like the United Kingdom do not have a ‘written’ or ‘codified’ constitution. Instead, its constitution is spread across several places. British law respects the principle of legality based on the prescription of “no taxation without representation” that was introduced in the Magna Carta in 1215.<sup>37</sup></p> <p>The principle was reiterated in 1628 in the Petition of Rights, which states that “no man be compelled to make or yield one gift, loan, benevolence, tax or such charge, without common consent by an act of parliament.” This principle is one of the cornerstones of Western democracies, in that consent to be given by the representatives of the taxpayers in parliament is considered to be a democratic guarantee against arbitrary taxation by the government.</p>
Legislation	<p>With the constitutional authority given to parliament to make laws, tax laws such as the Tax Procedures Act, Income Tax Act, Value Added Tax, Excise Duty Act, Capital Gains Tax Act, and the Finance Act which every year amends most tax laws for countries like Kenya have been enacted. In Uganda, there is the Customs Tariff Act, Cap. 337; Excise Tariff Act, Cap. 338; Income Tax Act, Cap. 340;<sup>38</sup> Stamps Act, Cap. 342; Value Added Tax Act, Cap. 349; and Gaming and Pool Betting (Control and Taxation) Act, Cap.292 amongst others.</p>
Conventions and Multilateral Conventions	<p>Multilateral treaties imply plurality. For the past half-century, international tax scholars and policymakers have been actively debating whether states need to change their approach to international tax policy in the face of an increasingly integrated world. The literature on multilateralism more generally has proliferated.<sup>39</sup> There are several multilateral instruments with the most recent being the BEPS Action Plans Pillar 1.</p> <p>The Kenya Revenue Authority (KRA) has been seen on several occasions since the advent of Pillar 1 and 2 to be at the forefront of discussions and while analysing the cost-benefit analysis of Pillar 1 to Kenya- listed pros and cons; giving estimates with no concrete lead on what decisions Kenya will make. Pillar 1 will give more than Digital Service Tax (DST) unless they change the DST design. What are the revenue prospects? Kenya is weighing her options and waiting to see who else gets on board with Pillar 1. Countries must watch and wait to see if the United States and Europe will get on board. There is thus a need for a cost-benefit analysis of Pillar 1 because it is a convention and it won’t have a legal effect until it’s ratified by a country and that’s the design.</p>

<sup>34</sup> Vanistendael (1996) p.17

<sup>35</sup> Waris (2019) p.70

<sup>36</sup> The Constitution of Kenya, 2010

<sup>37</sup> Thuronyi (ed) (1996)

<sup>38</sup> Like in many countries, it applies generally to all types of persons who derive income, whether an individual, bodies of individuals, or corporate entities. Resident persons are taxed on worldwide income, while non-resident persons are taxed only on income derived from sources in Uganda. Imposed under three broad categories of income- Business income, Employment income and property income.

<sup>39</sup> IBFD (1990)

Tax treaties	<p>Tax treaties are another important legislative source of tax law. There is a global network of over three thousand bilateral tax treaties (hard law) and the foundation of international tax regimes.</p> <p>On the one hand, tax treaties are explicitly political, each one the outcome of a bilateral negotiation between two countries that carves up the right to tax the cross-border economic activity between them.<sup>40</sup> The formal function of tax treaties (Double Taxation Agreement-DTA) is to promote trade and investment by reducing the potential that companies operating in two countries will be taxed twice for the same income. However, some scholars argue that this is not always the case.</p> <p>Model tax treaties like the UN Model Tax Treaty and the OECD Model Tax Convention on Income and Capital have a main purpose to clarify, standardise, and confirm fiscal situations of taxpayers who are engaged in commercial, industrial, financial, or any other activities in other countries through the application by all countries of common solutions to identical cases of double taxation.</p>
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While we acknowledge that these are some of the sources of tax law, states have failed to develop and update fiscal treaties, constitutions, laws, regulations, and policies. Many developing countries still have very old legal documents. Kenya is among the few African countries with a newer constitution (2010); however, the laws surrounding the area of finance tend to be outdated. For instance, Kenya’s Income Tax Act in force is the 1920 colonial model ordinance adopted at independence. While it has been amended several times, the text substantially remains that of 1920 colonial law.<sup>41</sup> Further, finance-related regulations and policies, if existent, are often not implemented or enforced, and this is problematic as it affects resource mobilisation that ultimately affects the financial agenda for human rights and development.

## 2.2. Institutions of taxation

Tax administration is the administrative machinery of the government tax agency.<sup>42</sup> The administrative dimension of taxation has long been recognised by tax administrators and practitioners. A ‘tax administration’ exists to ensure compliance with the tax laws. It is helpful to view the tax administration process somewhat more broadly, as a production function in which ‘inputs’ like personnel, materials, information, laws, and procedures are used to produce several ‘outputs,’ the most important is government revenue and includes taxpayer satisfaction, equity, and social welfare. From the traditional enforcement input mechanisms to introducing policies that emphasize the provision of taxpayer services via such things as promoting taxpayer education and developing taxpayer services to assist taxpayers at every step in filing returns and paying taxes, broadcasting advertisements that link taxes with government services, simplifying taxes and the payment of taxes, promoting voluntary compliance by lowering the costs for taxpayers associated with filing their taxes, ensuring relative stability of the tax system, and adopting the general principle of self-assessment amongst others. The institutions of taxation are discussed in the next subsection.

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<sup>40</sup> Hearson (2021) at p.8

<sup>41</sup> Waris (2019)

<sup>42</sup> Martinez-Vazquez, J and Alm James (2003)

### 2.2.1. Revenue Authorities (RAs)

Revenue Authorities (RAs) are the institutions mandated with tax collection and administration. In Kenya, there is the Kenya Revenue Authority (KRA). The KRA administers tax laws using principles of administrative law:<sup>43</sup> legality, reasonableness, procedural fairness, and fulfilling legitimate expectations. The overall concern of administrative justice is to ensure fairness in administrative judicial-making as it entails adhering to the principles of administrative law. It is widely accepted by tax scholars that there should be administrative justice in tax administration; which is a daunting task for many jurisdictions. RAs also need autonomy for revenue administration due to the nature of laws they deal with which are extensive in their range and involve many persons and businesses. The revenue administration must be efficient and effective, fair and impartial. The autonomy of RAs is reflected in: Provisions in the revenue laws(including tax procedures codes and references to institutional or governance issues), its reporting relationships(to the minister of finance, to the financial secretary, etc.), its ability to design, and implement operational policy, and its organisational structure and operational responsibilities.<sup>44</sup> To give a perspective, the Uganda Revenue Authority's (URA)experience with autonomy is discussed in the box below.

Box 1: Experience with autonomy in Revenue Administration; the case of Uganda Revenue Authority (URA)

In the early 1990s, the administration of national taxes and duties was the responsibility of four departments in the Ministry of Finance. These departments were underperforming and the reasons for the poor performance of these departments included: (1) low staff morale and productivity—partly due to low pay and shortage of resources; (2) corruption; (3) ineffective collection of tax; (4) weak management of revenue administration; and (5) lack of a tax-paying culture—partly because taxpayers viewed the tax system to be unfair.

The argument for the Revenue Authority was that, by moving away from civil service terms and conditions of service and management practices, many of these problems would be overcome. With higher salaries, staff would not need to seek alternate sources of income, and coupled with stricter discipline, corruption would be reduced, morale, and productivity would increase as would revenue collections.<sup>45</sup> Hence, URA was established as a body corporate.

It has human resources and budget autonomy. The URA can recruit and pay salaries and the rate of retention has improved. On funding, it receives a budget appropriation like any department of government but the minister of finance may authorise the retention of a percentage of the revenue collected. The URA has autonomy in setting all financial policies, except procurement.

The URA was one of the first African RAs. Results were impressive in the early years, reflected by strong revenue growth in real terms that levelled off by the late 1990s. However, many of the previous administration and taxpayer compliance problems gradually returned, including serious problems of corruption and inefficiency. The URA had become a fragmented organisation with unclear accountabilities when a major modernisation initiative was launched in late 2004.

The latest reform strategy has exploited the flexibility afforded by the RA model to competitively appoint an entirely new management team and workforce, structurally reorganise by integrating tax administration with a focus on segmentation, and begin streamlining and automating operations.<sup>46</sup>

Thus, the RA model has been the URA's vehicle to both success and failure over the past years.

RAs also have an adjudication function through tax assessments. However, regard has to be given to the fact that several countries follow self-assessment. For instance, KRA operates a self-

<sup>43</sup> Atim (2019)- argued the role of KRA in relation to double tax treaties (a branch of law- international)

<sup>44</sup> OECD (2008)

<sup>45</sup> Ackerman (ed) 2006

<sup>46</sup> See, <https://www.wcoesarocb.org/uganda-revenue-authority-ura-celebrates-25-years-existence/>

assessment system. The question would thus be; what administrative actions can the commissioner take once he or she receives the taxpayer's return or where the taxpayer fails to submit a return? The Commissioner either accepts or uses the best judgment and determines the amount of income due as he/she has wide discretionary powers that are bound to impact the taxpayers adversely. KRA may doubt the truthfulness of the returns however, it has many options: first, carry out compliance checks, carry out audits, and third, carry out investigations.

### 2.2.2. The Ministry of Finance

The Ministry of Finance is headed by Cabinet secretaries or ministers who make rules and regulations necessary for realising the purpose of all the tax laws in many countries. In Kenya, the Cabinet Secretary (CS), formerly the minister is solely responsible for making the rules or regulations necessary for realising the purpose of all the tax laws, and yet the directors of KRA have a limited rule-making role, in so far as they have the power to make regulations for implementing the provisions of the KRA Act. The CS has sole discretion to make these laws and the applicable laws do not require public participation in these rule-making processes. This is against the constitution which provides that "there shall be transparency and accountability, including public participation in financial matters." The CS is responsible for the budget process as well, including allocations and supplementary budgets.

### 2.2.3. Tax tribunals and the Courts of Law

Whether we are considering judicial or merits reviews, a significant part of the judicial function is statutory interpretation. Tax disputes may arise from disagreements with the tax commissioner on taxable amounts, allowable deductions, imposition of penalties and interests as may be provided for by the law, and the refusal by the commissioner or the CS to waive such penalties or interests where the taxpayer has made an application, tax overpayment, and where there is a need for interpretation of tax laws and dissatisfaction with administrative actions. In Kenya before 2015, most tax disputes ended up in litigation. Then KRA established an Alternative Dispute Resolution (ADR) framework that is relatively affordable, confidential, and expeditious. The commissioner has constitutional backing in this regard.<sup>47</sup>

Where the taxpayer is dissatisfied with the process and the decision is appealable, then an appeal is lodged with the Tax Tribunal (TAT) by the Act. Where the party is dissatisfied with the decision of the Tribunal, they are at liberty to appeal to the TAT decision within 30 days to the High Court and subsequently the Court of Appeal. The above briefly discussed the sources of taxation and institutions that administer the same. In the next section, we address the sources and institutions of human rights.

## 2.3. Sources and Institutions of Human Rights

This section analyses the legal and institutional framework starting with the core internationally recognised human rights instrument contained in the Bill of Rights (consisting of the UDHR and

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<sup>47</sup> See <https://www.lexology.com/library/detail.aspx?g=3373ad6a-3c4e-4d83-bda4-719065151986>



the main instruments through which it has been codified: the ICCPR and the ICESCR, coupled with the principles concerning fundamental rights in the eight ILO Conventions as set out in the Declaration on Fundamental Principles and Rights at Work). These are the benchmarks against which social actors assess human rights. This will be restricted to those instruments and institutions that directly address socio-economic rights (UDHR and ICESCR). It is thus a substantive highlight of these instruments and institutions as regards socio-economic rights.

### 2.3.1. The Universal Declaration of Human Rights (UDHR)

The declaration came in the wake of the disastrous effects of World War II. It primarily reflects the human rights concept of the Age of Enlightenment and is the most fundamental human rights document. Although not binding, some of its articles constitute customary international law like the prohibition of slavery or servitude.<sup>48</sup> It lays out 30 rights that belong to human beings including civil and political rights like the right to life, free speech, and economic, social, and cultural rights like the right to health, and education amongst others. The preamble itself is loaded. It states among other provisions that it is essential to promote the development of friendly relations between nations. Highlighting the affirmations and faith of the United Nations in fundamental human rights, in the dignity and worth of the human person, and the equal rights of men and women in the promotion of social progress and better standards of life in larger freedom.

Articles 1<sup>49</sup>, 2,<sup>50</sup> to 7, of the UDHR uphold the dignity and equality of the human being. The right to seek effective remedies in case of breach is granted under articles 8 and 10. Economic and social rights and related rights are provided for under, Article 21 on participation in government,<sup>51</sup> equal access to public service,<sup>52</sup> and right to elections. Article 22 grants every person a right to social security and through national effort and international cooperation, realise economic, social, and cultural rights. Article 23 speaks to employment rights which enhances economic independence for the individual and revenue for the government. Article 25.1 affirms that: “Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary services.” Article 26 is on people's right to education (free education in the elementary and fundamental stages). Article 27 on cultural rights and Article 28 on the social order will lead to the realisation of these rights. These Articles are underscored further by the principles of human rights: equality and non-discrimination, resource mobilisation, and progressive realisation of social economic rights including international state cooperation.

### 2.3.2. The International Convention on Economic, Social, and Cultural Rights (ICESCR)

The ICESCR is one of the core international human rights treaties that, along with the ICCPR form the International Bill of Human Rights. Adopted by the United Nations General Assembly in 1966, the ICESCR entered into force in 1976 and has been ratified by a significant number of countries

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<sup>48</sup> Article. 4

<sup>49</sup> Every human being born free and equal.

<sup>50</sup> No discrimination of whatever kind

<sup>51</sup> Article 21 (1)

<sup>52</sup> Article 21 (2)

worldwide. The ICESCR recognises that all individuals have inherent dignity and are entitled to certain inalienable rights, including economic, social, and cultural rights. Unlike civil and political rights, which focus on civil liberties and political participation, the ICESCR emphasizes the importance of ensuring basic needs, such as food, housing, education, and healthcare, as well as the opportunity for cultural development and participation.

One of the fundamental principles of the ICESCR is the principle of "progressive realisation" and the crucial aspect of "maximum available resources " already discussed in section 1. This principle acknowledges the critical connection between taxation and the ability of states to fulfil their obligations in providing essential services and ensuring social protection for their populations.

Taxation serves as the primary means through which governments generate revenue to finance public goods and services. Adequate and equitable taxation enables states to mobilise resources necessary to implement social policies, invest in infrastructure, and address socio-economic disparities. When tax systems are fair and efficient, they contribute to funding education, healthcare, social security, housing, and other vital services that directly impact people's well-being and quality of life.

In the context of the ICESCR, the principle of "maximum available resources" underscores the importance of a robust tax framework that enables governments to allocate sufficient funds to advance economic, social, and cultural rights for all citizens. It implies that states must strengthen their tax systems, combat tax evasion and illicit financial flows, and ensure that tax revenues are utilised effectively to address socio-economic challenges and promote human rights.

The table below provides a summary of the key features of the ICESCR. The full text of the ICESCR contains more comprehensive details and elaborations on each article and related obligations.

Table 9: ICESCR nexus with finance/tax

Article	Human Rights	Principles	State Obligations	Financing
1	Right to self-determination	Non-discrimination	Respect, protect, and fulfil economic, social, and cultural rights	Mobilise maximum available resources; International assistance and cooperation to achieve ICESCR rights
2	Right to work	Progressive realisation	Take steps to achieve full employment; Respect labour rights	Encourage investment in job-creating sectors; Ensure decent working conditions
3	Right to just and favourable remuneration	Equality	Protect workers from exploitation; Ensure fair wages	Promote policies for equitable income distribution; Ensure fair remuneration for labour
4	Right to join trade unions	Full development	Respect the right to form and join trade unions	Support labour unions and workers' organizations; Promote collective bargaining
5	Right to Social Security	Non-discrimination	Establish social security systems for all without discrimination	Allocate resources for social protection systems; Ensure access to social security
6	Right to an adequate standard of living	Progressive realisation	Ensure adequate food, clothing, and housing	Allocate resources for poverty eradication programs; Ensure access to affordable housing

7	Right to health	Maximum available resources	Take steps to prevent, treat, and control diseases	Allocate resources for healthcare facilities and services; Promote disease prevention
8	Right to education	Free education	Ensure free primary education for all	Allocate resources for educational infrastructure; Eliminate barriers to education
9	Right to culture and science	Progressive realisation	Foster cultural, scientific, and artistic freedom	Promote cultural and scientific development; Allocate resources for cultural preservation
10	Right to family and child protection	Best interests of the child	Protect families and children from exploitation and abuse	Allocate resources for child protection programs; Ensure family support systems
11	Right to an adequate standard of living	Non-discrimination	Take steps to improve living conditions for vulnerable groups	Allocate resources for vulnerable populations; Combat poverty and inequality
12	Right to physical and mental health	Non-discrimination	Provide access to healthcare services for all	Allocate resources for mental health services; Eliminate barriers to healthcare access
13	Right to education	Primary education	Ensure free and compulsory primary education	Allocate resources for universal primary education; Ensure equal access to quality education
14	Right to higher education	Progressive realisation	Promote access to higher education for all	Allocate resources for higher education institutions; Ensure affordability
15	Right to cultural life and participation	Non-discrimination	Respect the right to participate in cultural life	Allocate resources for cultural preservation and promotion; Facilitate cultural participation

While the ICESCR provides a framework that not only recognises the importance of economic, social, and cultural rights, it underscores the significance of leveraging available resources, including tax revenue, to create a more just and equitable world.

### 2.3.3. The UN Charter

The purposes and principles of the Charter are clearly outlined in Article 1. From the onset and as a matter of principle, the charter acknowledges the importance of achieving international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.<sup>53</sup> The Charter also sets out under Article 55 the standard and tasks the UN is to promote amongst others: higher standards of living, full employment, and conditions of economic and social progress and development; solutions to international economic, social, health, and related problems; and international cultural and education cooperation; and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. Additionally, member states are to take joint and separate action in cooperation with the UN for the achievement of the purposes outlined in the above article.<sup>54</sup> Under Article 57, there are various specialised agencies, established by intergovernmental agreements and have wide international responsibilities, as

<sup>53</sup> Article 1, sub article 3

<sup>54</sup> Article 56

defined in their basic instruments, in economic, social, cultural, educational, health, and related fields. These were brought into a relationship with the UN by provisions of Article 63.<sup>55</sup> One such specialised agency is the Economic and Social Council<sup>56</sup> (ECOSOC). For purposes of this compendium, the UN work is analysed through the work of ECOSOC and CESCR.

### 2.3.3.1. ECOSOC of the United Nations

It is clear mandate is provided for under Article 62, to include making or initiating studies and reports concerning international economic, social, cultural, educational, health, and related matters and may make recommendations to promote respect for, and observance of, human rights and fundamental freedoms for all amongst others.<sup>57</sup> The minimum core obligations as highlighted by the Committee on Economic, Social and Cultural Rights in its general comments require states to undertake the following actions:<sup>58</sup> Ensure the right to access employment, especially for disadvantaged and marginalised individuals and groups, enabling them to live a life of dignity, ensure access to basic shelter, housing, and sanitation and adequately supply of safe drinking water, provide essential drugs as defined under the World Health Organisation’s (WHO) Action Programme on Essential Drugs, ensure free and compulsory primary education for all and Ensure access to a social security scheme that provides a minimum essential level of benefits that cover at least essential health care, basic shelter and housing, water and sanitation, food and the most basic forms of education. The table below provides a summary of selected work by the ECOSOC on human rights; especially, socio-economic.

Table 9: ECOSOC Work on socio-economic rights

Select Press Release	Action and Commitments	Relevance to Tax and Human Rights nexus
ECOSOC/5680 <sup>59</sup>	<p>A request to establish a programme unit in the Centre for Human Rights for the promotion of economic, social, and cultural rights, particularly those related to the debt burden of developing countries and the implementation of the right to development.</p> <p>Strengthening the capacity of the Centre for Human Rights and further approval of the Commission’s recommendation to the Centre for Human Rights to convene expert seminars on specific economic, social, and cultural rights to clarify the particular content of those human rights.</p> <p>Decisions on how best to promote system-wide action to promote and protect the right to development and deepen the review of issues relevant to the implementation of that right including the promotion of a favourable international economic environment amongst others.</p>	<p>Promotion of social and economic rights.</p> <p>Domestic mobilisation of resources towards the attainment of these rights.</p> <p>Training and capacity building in the areas of human rights and tax to deepen the understanding of experts who in turn train and educate their countries on these rights and how they can be funded.</p>

<sup>55</sup> See also Articles 58, 59, 60 & 61.

<sup>56</sup> Article 61- establishes and composes the Ecosoc

<sup>57</sup> See also Articles 63, 64, 65 & 66. Further provisions of Ecosoc are provided for in Articles 67 to 72.

<sup>58</sup> Office of the United Nations High Commissioner for Human Rights, Fact sheet no.33

<sup>59</sup> Released 23<sup>rd</sup> July 1996- Economic and Sociol Council takes action on drafts recommended by the Human Rights Commission.

ECOSOC/568 9 <sup>60</sup>	Member countries pledged to deny by the fundamental principles of their legal systems, the tax deductibility of bribes paid by any private or public corporation. Members pledged to develop and maintain accounting standards and practices that ensure the openness of international commercial transactions, and that encourage private and public corporations and individuals engaged in international commercial transactions to avoid and combat corruption, bribery, and related illicit practices.	Employing best accounting practices to ensure that financial statements are complete, consistent, and comparable. Avoiding revenue leakages by fighting corruption, bribery, and related illicit practices which countries have been working on for some years now.
ECOSOC/578 6 <sup>61</sup>	Members (China delegation) cautioned members on ‘the arrogant, biased’ approach to Human Rights. Based on the 1993 Vienna Declaration and action history which has shown that due to different social systems, ideologies, cultural traditions, and levels of development, countries naturally differed in their emphasis on the promotion and protection of human rights. However, the biased approach politicised human rights and did not promote or protect them.	Call for state cooperation and commitment to promoting, protecting, and fulfilling human rights. Discussions around the developments and push for a human rights approach to UN activities started
ECOSOC/578 2. <sup>62</sup>	On 30 <sup>th</sup> July 1998, the Council adopted 52 texts on Human rights, Economics and Environment, and Coordination as submitted by the Commission of Human Rights <sup>63</sup> Additionally in the 2000s, the Council held a ‘policy exchange’ with heads of UNDP, WFP, UNICEF, and UNFPA <sup>64</sup> in a bid to coordinate development programmes. The summation of values amongst others were: development and poverty eradication; the environment; human rights, democracy, and good governance; protection of the vulnerable; the special needs for Africa; financing of investments in Africa, the role of human resources development, with attention to the areas of health and education, as an essential factor in the overall development process. <sup>65</sup> The evidence of the quantitative impact of globalisation on public revenues was still limited, there were indications that it may reduce tax revenues due to increased tax competition among jurisdictions to attract foreign direct investment, the exponential growth of electronic commerce, the increased mobility of factors of production	Cooperation for the realisation of human rights through coordinated approaches with specialised bodies. Mobilisation of resources to meet development goals. Inter-agency cooperation became key for the campaign and push for human rights. There was also a push for the link between hunger, health, and education, <sup>67</sup> with wide-ranging discussions on issues critical to sustainable development, including science and technology for development, global tax cooperation, and gender mainstreaming. <sup>68</sup> Comparative studies were undertaken to meet innovative challenges to scale up development.

<sup>60</sup> ECOSOC/5689 Released 13<sup>th</sup> November 1996; available at <https://press.un.org/en/1996/19961113.eco5689.html> accessed on 28th June 2023

<sup>61</sup> ECOSOC/5786 released on 21 July 1998; available at <https://press.un.org/en/1998/19980721.eco5786.html> and accessed on 28th June 2023

<sup>62</sup> ECOSOC/5782 released 17<sup>th</sup> July 1998; available at <https://press.un.org/en/1998/19980717.eco5782.html> and accessed on 28 July 2023- the council heard calls for Human rights dimension to be a central factor in UN activities.

<sup>63</sup> ECOSOC/5795 released 30<sup>th</sup> July 1998; <https://press.un.org/en/1998/19980730.eco5795.html> accessed on 28 July 2023

<sup>64</sup> ECOSOC/5956 released 9 July 2001; available at <https://press.un.org/en/2001/ecosoc5956.doc.htm> accessed on 28 July 2023

<sup>65</sup> ECOSOC/6006 released 27<sup>th</sup> June 2002, available at <https://press.un.org/en/2002/ecosoc6006.doc.htm> and accessed on 29 June 2023.

<sup>67</sup> ECOSOC/6009 released 1<sup>st</sup> July 2002, available at <https://press.un.org/en/2002/ecosoc6009.doc.htm> and accessed on 29 June 2023.

<sup>68</sup> ECOSOC/6025 released on 23 July 2002, available at <https://press.un.org/en/2002/ecosoc6025.doc.htm> and accessed on 29 June 2023.

	and the growing importance of off-shore and non-cooperative tax jurisdictions. <sup>66</sup>	
ECOSOC/6088 <sup>69</sup>	Amongst other recommendations by the Commission on Human Rights adopted in a vote of 51 in favour and 2 against, a decision on the question of the realisation in all countries of the economic, social, and cultural rights contained in the UDHR and the ICESCR, in which it endorsed the establishment of an open-ended Working Group of the Commission to consider options regarding the elaboration of an optional protocol to the International Covenant.	Collaborative efforts towards the realisation of socio-economic rights.
ECOSOC (2019-2023)	Between 2019 to 2023, the discussions of the ECOSOC centred around the impact of the global pandemic; COVID-19 fiscal measures employed to cushion economies, and the realisation of the SDGs and challenges being faced. The impact of COVID-19 stretched beyond the sphere of healthcare globally. The Global economy went on a downward spiral.	This was an abnormal time. States abandoned everything for a common goal and implemented containment measures (i.e., social distancing, and lockdowns in a bid to save lives) promoting the right health and life preservation. <sup>70</sup> Employed fiscal stimulus globally in terms of aid and loans, <sup>71</sup> lowering central bank rates, <sup>72</sup> lowering the cash reserve ratio <sup>73</sup> amongst others within the banking sector, reduced tax rates <sup>74</sup> credit policies <sup>75</sup> and other policies were employed to cushion economies from the harsh economic times then. There was also coordinated international cooperation between all states in the implementation of several guidelines including vaccine sharing. However, grand corruption was exhibited around this time, and the same offered temporary cushioning for many economies as they were employed worldwide. Economies are taking stock and still rebuilding two years later.

<sup>66</sup> Ibid- the committee highlighted the effects of significant growth of international trade and investment which results into challenges for tax authorities in developing countries and economies in transition in collecting the taxes due to them from international transactions.

<sup>69</sup> ECOSOC/6088 released on 23<sup>rd</sup> July 2003, available at <https://press.un.org/en/2003/ecosoc6088.doc.htm> and accessed on 31 July 2023.

<sup>70</sup> Atim (2020)

<sup>71</sup> In the wake of Covid-19 pandemic, the International Monetary fund (IMF) declared its intentions to mobilise USD 1 Trillion in lending capacity in order to help countries wage a formidable war against the pandemic.

<sup>72</sup> Kenya for instance lowered its central bank rate from 8.25% to 7.25%,

<sup>73</sup> Kenya lowered the same from 5.25% to 4.25%.

<sup>74</sup> In Kenya, there was 100% tax relief for amongst others persons earning a monthly income of sh. 24,000, reduction on income tax rate (pay as you earn- PAYE) from 30% to 25%, reduction of the turnover tax from 3% to 1% for all micro, small and medium enterprises (MSMEs), and reduction of VAT from 14 to 6%.

<sup>75</sup> There was a temporary suspension of the listing with the Credit Reference Bureaus (CRB) in Kenya of any persons, MSMEs and corporate entities whose loan account fell overdue or was in arrears from 2020.

### 2.3.3.2. The International Trusteeship System

The UN Charter also establishes the International Trusteeship system. While the same will not be discussed in detail, its basic objective is to advance Article 1 of the Charter. (See Article 76 of the Charter). It encourages respect for human rights and fundamental freedoms and equal treatment in social economic and commercial matters for all member states amongst others.<sup>76</sup>

### 2.3.4. UN Guiding Principles on Business and Human Rights

They are a set of guidelines for States and companies to prevent, address, and remedy human rights abuses committed in business operations.<sup>77</sup> Under this, the UN Human Rights Council established the UN Working Group on business and human rights. These Guiding Principles are grounded in recognition of: the states' existing obligations to *respect*, *protect*, and *fulfil* human rights and fundamental freedoms. The role of business enterprises as specialised organs of society performing specialised functions requires compliance with all applicable laws and respect for human rights; and the need for rights and obligations to be matched to appropriate and effective remedies when breached. The application of the Guiding Principles is wide- to all States and all business enterprises, both transnational and others, regardless of their size, sector, location, ownership, and structure. The standard of difference is clear, that they should not be read as creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law about human rights.

The foundational Principles are in 1 and 2 with the former addressing the States duty to protect human rights abuse within their territory by third parties, including business enterprises, and the latter, Principle 2 urging states to set out their expectations on the duty of business enterprises domiciled in their jurisdictions when it comes to human rights. Under Operational Principles, Principle 3- is on general State regulatory, and policy functions.<sup>78</sup> States are to act amongst others by ensuring that the laws for the creation and operation of business enable businesses to respect human rights and have periodic reviews to conform with emerging trends. Thus, businesses should consider a smart mix of measures- national, international, mandatory, and voluntary- to foster business respect for human rights- do human rights due diligence and consider effectively issues of gender, vulnerability, and marginalisation of special groups.

Oversight obligations of the State under Principle 5 and Principle 11 (that business enterprises should avoid infringing on the human rights of others amongst others. Key to note is Principle 13 which addresses business practices and taxation. Corporate actors should ensure that they respect their human rights responsibilities concerning all of their business practices concerning taxation.

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<sup>76</sup> See Article 76

<sup>77</sup> The Principles cover the full range of rights listed in the UDHR, the ICCPR, the ICESCR, the ICESCR and the eight core conventions on the ILO (principle 12), A/HRC/17/31

<sup>78</sup> Such laws might range from non-discrimination, corporate law, and labour laws, to environmental, property, privacy and anti-bribery laws.

### 2.3.5. Taxation and Human Rights: A set of High-level Principles

Amnesty International stresses the key role taxation plays in delivering more resources that in turn could be utilised for better rights protection and enjoyment. The assumption is that if all developing countries were able to raise 15 per cent of their national income in tax, they could realise an additional \$198 billion per year much more than the total of all international development aid combined. At the same time, it is estimated that nearly \$500 billion is lost every year to tax abuse. Beyond the immediate resource question, there has been an increasing recognition during the last two decades, including by human rights bodies and experts, of the critical link between taxation and human rights.

Mirroring the increasing recognition, Amnesty's discussion culminated in the 2021 Global Assembly passing the following resolution 2021/05. Developing a policy on taxation, inequality, and human rights which the board agreed should: be developed incrementally with high-level principles being made available for discussion and decision at the 2022 Global Assembly meeting, as well as a plan and timeline for further development of the policy, which policy should be grounded in existing and developing human rights standards. The Policy was to address at the minimum, regressive tax regimes, loopholes, harmful international tax competition, and lack of transparency of tax systems, and link to other human rights policies with a focus on tackling rising economic inequality.

Historically, Amnesty International has focused on process over outcomes, drawing on the work of UN experts, but it has increasingly recognised the critical link between taxation and the enjoyment of human rights. In response to this recognition, Amnesty International's 2021 Global Assembly passed a resolution (2021/05) to develop a policy on taxation, inequality, and human rights. According to Amnesty, a human rights compliant taxation system requires several fundamental elements to ensure it can contribute to the progressive enjoyment of human rights. These obligations do not require states to develop particular taxation policies but have the discretion to develop and enact policies most appropriate to their particular context in compliance with international obligations. The guide is set out below: The table presents key elements of a human rights-compliant taxation system.

The table outlines fundamental principles that should guide taxation policies to contribute to the progressive realisation of economic, social, and cultural rights. These principles include maximising available resources for investment in essential services, ensuring participation and transparency in the taxation process, promoting accountability for tax decisions, respecting equality and non-discrimination, fostering international cooperation, and addressing the climate crisis. Amnesty International's stance highlights the potential of taxation to generate substantial resources that could be utilised to protect and promote human rights. By adopting a human rights-based approach to taxation, states can create fairer and more equitable societies that uphold the rights and dignity of all individuals. The table provides an overview of each principle and its importance in building a tax system that aligns with human rights standards and addresses emerging challenges such as the climate crisis and economic inequality.



Table 10: A human rights compliant tax system (Amnesty International)

Fundamental Elements of a Human Rights-Compliant Taxation System	Description
Maximising Available Resources	Domestic taxation policies should be designed to maximise available resources for investing in the progressive realisation of economic, social, and cultural rights. This aligns with Article 2(1) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) on states devoting "maximum available resources" to ensure the progressive realisation of all economic, social, and cultural rights.
Participation and Transparency	Fundamental principles of participation and transparency should be adhered to throughout the taxation process. Public participation is guaranteed in various international and national instruments to ensure equal access and opportunities to participate, especially for people living in poverty.
Accountability	All decisions and measures on taxation must be subject to effective means of accountability. Tax policies, including tax incentives granted to foreign investors, should be open to judicial oversight, and public officials should be accountable for decisions that endanger the enjoyment of human rights. Accessible mechanisms for complaints and redress should be in place.
Equality and Non-discrimination	Taxation should respect and advance equality and non-discrimination. Actions or omissions related to revenue-raising policies must not directly or indirectly discriminate against any person. Implementing a progressive tax system can help avoid unfair impacts on the income of poorer households. Evaluations should consider different groups, particularly those facing structural discrimination, and taxes collected should be redistributed through social policies that benefit the poor.
International Cooperation and Assistance	States should respect their international cooperation and assistance obligations to promote tax cooperation, combat tax evasion/avoidance, and avoid policies that prevent other states from maximising their tax revenue. Steps should be taken to ensure maximum mobilisation of domestic resources.
Corporate Responsibility	Corporate actors should respect their human rights and responsibilities concerning taxation. States have obligations to regulate businesses within their jurisdictions, and corporate actors themselves have a responsibility to respect human rights under the UN Guiding Principles on Business and Human Rights. Countries should also consider the proposed global tax rate of 15% under pillar 2 to combat tax avoidance, but a cost-benefit analysis is recommended, especially for countries in the global south.
Addressing the Climate Crisis	Taxation policies should be designed to address the climate crisis and promote behavioural changes. For example, governments can use taxes as a social tool to reduce carbon emissions and support climate transitions. However, the impacts on poorer nations must be carefully considered and balanced to avoid adverse effects.

## 2.4. Institutions of human rights

### 2.4.1. The Committee on Economic, Social and Cultural Rights (CESCR)

The CESCR is a body of 18 independent experts that monitors the implementation of the ICESCR by state parties.<sup>79</sup> It was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out monitoring functions assigned to the ECOSOC in part IV of the Covenant. All state parties are obliged to submit regular reports to the Committee on how economic, social and cultural rights are being implemented. In addition to the reporting procedure, the Optional Protocol to the

<sup>79</sup> See <https://www.ohchr.org/en/treaty-bodies/cescr>

International Covenant on Economic, Social and Cultural Rights, which entered into force on 5<sup>th</sup> May 2013, gives the committee competence to receive and consider communications from individuals claiming that their under the Covenant have been violated including undertaking inquiries on grave or systematic violations of any of the economic, social and cultural rights. This body is thus charged to provide authoritative interpretation to the Covenant (ICESCR). To Date it has issued 25 general comments, covering most of the rights and obligations.<sup>80</sup> Also important is the body of expert-elaborated standards related to economic and social rights, which have been informed by and also informed the work of the CESCR, UN Special Procedures, and other international authorities.

These include: The 1986 Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (adopted 8 January 1987, reproduced in UN DOC. E/CN.4/1987/17); the 1997 Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (reproduced in 20 Human Rights Quarterly 459, 691-704 (1998)); the 2011 Maastricht principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (reproduced, with Commentary, in 34 Human Rights Quarterly 1084). In addition, the work of United Nations Special Rapporteurs (SR) provides a relevant thematic overview of international standards regarding specific rights. Several SRs are relevant in the context of migration and social and Economic rights such as SR on the human rights of migrants, SR on cultural rights, SR on education, SR on the right to food, SR on the right to health, SR on the right to safe drinking water and sanitation, SR on housing).

Table 11: SP Report on extreme poverty and human rights

<p>Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepulveda Carmona</p>	<p>In 2014 the Special Rapporteur submitted a report under Human Rights Council resolution 17/13, wherein she aimed to put a human face on debates about tax collection, tax structures, and tax abuse. However, the Special Rapporteur focused on the revenue-raising side of fiscal policy, in particular taxation.<sup>81</sup></p>	<p>She argues that Human rights obligations do not prescribe precise taxation policies, given that the States have the discretion to formulate the policies most appropriate to their circumstances. However, a wide range of international treaties such as the ICESCR and the Convention on the Rights of the Child, impose limits on the discretion of States in the formulation of fiscal policies to ensure that States respect, protect, and fulfil rights. She argues that although taxation policy may seem far removed from the daily problems of the poor, it plays a major role in determining and adjusting levels of inequality in a society and in funding essential services, social protection, and poverty reduction measures; and as a result central to realising the rights and defining the opportunities of people living in poverty. To assist them in opening the fiscal space towards the realisation of human rights, fiscal policies must be guided by the obligations imposed by the conventions and treaties in place. Thus, a State breaches its international obligation whenever its actions or omissions are not in conformity with a specifically determined conduct required of it by that obligation, for example, actions or omissions that diminish public revenues by allowing large-scale tax evasion or tax structures that have a disproportionate</p>
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<sup>80</sup> See

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11)

<sup>81</sup> Since taxation is the primary source of public resource generation, besides being the most sustainable and predictable source of financing for provision of public goods and services.

		<p>impact on the poorest segments of the population could constitute violations of human rights obligations, such as the obligation to allocate the maximum available resources to the enjoyment of economic, social and cultural rights or to eliminate discrimination.</p>
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Regional human rights instruments also establish obligations on states to protect socio-economic rights. In Europe, the most comprehensive guarantees of socio-economic rights are set out in the Revised European Social Charter (ETS No. 163 of 3 March 1966; hereafter ESC); some ESC rights protections are also included in the European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950, ETS 5; (hereafter ECHR).

#### 2.4.2. The International Court of Justice

The International Court of Justice is the principal judicial organ of the United Nations. It has a twofold role: to settle, by international law, legal disputes submitted to it by States (contentious cases) and give advisory opinions (advisory procedures) on legal questions referred to it by duly authorised UN organs and specialised agencies.<sup>82</sup> Since its founding, the Court has considered over 170 cases, issued numerous judgments, and issued advisory opinions in response to requests by UN Organisations.<sup>83</sup> In its judgments, the Court has addressed international disputes involving economic rights, rights of passage, and the non-use of force amongst others.

#### 2.5. The African Human Rights System

Several discontents cropped up in Africa as some scholars and people did not agree with the ‘European type’ of human rights. With this, the concept of relativism came into play. International bodies like the UN encouraged states to adopt and practice ‘their’ human rights. While at the beginning, the UN Charter anticipated regional systems, they were only about international peace and security however as time passed, an acceptance of the place of human rights and all the issues that affected states became evident.

##### 2.5.1. The African Charter on Human and People’s (ACHPR)- Banjul Charter

The Banjul Charter was born out of a desire to create a human rights instrument inspired by African notions of human rights. This is the heart of the African Human rights system and was a result of international and national pressure having regard to Human rights violations. The Charter was adopted under the auspices of the Organisation for the African Unity (OAU) now the African Union (AU) specifically to deal with human rights that express African views of human rights in the belief that such expressions would be more adequate in dealing with the realities in Africa. It was characterised by: the concept of people’s rights and its interpretation in comparison with other Human rights treaties, the concept of duties, anti-colonialism, the question of morality, and claw-back clauses.<sup>84</sup> Claw-back clauses have two major implications: the rights enumerated in the

<sup>82</sup> See <https://www.icj-cij.org/cases>

<sup>83</sup> See <https://www.un.org/en/global-issues/international-law-and-justice>

<sup>84</sup> The Banjul Charter- In its conventional sense, the claw-back concept relates to abandonment or deliberate breach of an obligation for given reasons. They are a major feature of the Banjul Charter and distinguishes it from other international regional instruments.

Charter are subject to domestic laws and the restriction of the rights guaranteed by the Charter cannot be challenged. However, in *Legal Resources Foundation v Zambia*,<sup>85</sup> the Commission explained that no state party to the Charter should avoid its responsibilities by recourse to limitations or claw-back clauses in the Charter. Further, the Charter can not be used to violate its chapters and sections.

Table 12: Key features of the Banjul Charter: A comparison

Banjul features	A comparison to other treaties and wider human rights implications
The Preamble	<ul style="list-style-type: none"> <li>The preamble of the Banjul Charter differs from that of the UDHR. It asserts the source of its inspiration, which stems from the desire to promote “freedom, equality, justice and dignity.”</li> <li>It is inspired by African legal philosophy and it aims at responding to African needs while relying upon “historical tradition and values of African civilisation”</li> </ul>
Instrument of both Human and Peoples’ Rights	<ul style="list-style-type: none"> <li>Its provisions are inspirational and refer to “peoples” rather than the individual as beneficiaries of the rights. The concept of “peoples” is increasingly being recognised and appreciated within the international human rights law thus speaking to the collective nature of human rights. Although this has not come without criticism, the argument is that the Charter recognises collective rights to promote human rights (individual rights).</li> <li>The African philosophy behind the concept. In Africa, “a man is part and parcel of the group” and “individual rights” could be explained and justified only by rights of the community.<sup>86</sup></li> <li>Considerations were given to the social, political, and economic conditions prevalent when the Charter was drafted, not all Africans were free from colonisation. South African countries like Namibia, Zimbabwe, and South Africa were still subjected to colonialism and racial segregation.</li> </ul>
The Charter as an Instrument of Individual Duties	<ul style="list-style-type: none"> <li>This is one of its most distinctive features. The Charter’s preamble states that “the enjoyment of rights and freedoms Also IMPLIES the performance of duties.” The duties imposed on individuals are contained in Articles 27, 28 and 29.</li> <li>While the same is in UDHR under Article 29, the duties section of the African Charter is innovative in several ways. It enunciates a list of specific autonomous duties (some of which have roots in African values and tradition), imposes a duty on persons to exercise their rights and freedom concerning the rights of others on moral grounds, and some duties highlight issues of basic concern in Africa. These duties this aimed at creating a source of positive law.</li> </ul>
The Right to Development	<ul style="list-style-type: none"> <li>It recognizes the right to development in a manner that distinguishes it from other instruments. The right to development has binding legal force in the Charter. The importance of this provision in the Charter can never be overstated because the UN Declaration of the Right to Development was adopted close to five and half years after the adoption of the African Charter in 1981.</li> <li>The concept of right to development is of African origin and it appears to have been first mentioned at the Economic Conference of the Group of 77 in October 1967. This right is considered to be a “specifically” African contribution to the international human rights discourse. Through Keba M’baye a Senegalese jurist, the right was formally recognised in Resolution 4 (XXXII) of the UN Commission on Human Rights in 1977. He found the justification for the right to development on several reasons based on political and economic considerations but founded on moral grounds.</li> </ul>

<sup>85</sup> African Commission No. 211 of 1999

<sup>86</sup> Bello (2015)

	<ul style="list-style-type: none"> <li>• Exploitation by the global north of the global south necessitated some of the arguments. The economic realities necessitated the need and obligation of the North to recognise and promote the right to development of the South amongst other reasons.</li> <li>• Several UN resolutions have stated that “the right to development is a human right that equality of opportunity for development is a human right and that equality of opportunity for development is as much a prerogative of nations as of the individuals within the nations”<sup>87</sup></li> <li>• It is provided under Article 22 of the Charter that: (1) All peoples shall have the right to their economic, social, and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. With a corresponding duty of the state to (2) individually and collectively, to ensure the exercise of the right to development. In the Charter, the right to development is viewed as a collective right and the Charter designates the “people” as the sole holders of the right to development.</li> </ul>
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While not exhaustive, Article 22 of the Charter deals with socio-economic rights and considers it to advance the right to development.

### 2.5.2. Additional Sources

There are other Conventions related to expressions of human rights under separate African instruments and they include but are not limited to the Abuja Declaration on Health Spending (ADHS), 2001, the African Convention on Preventing and Combatting Corruption (ACPCC), 2001, the Maputo Declaration on Agriculture and Food Security (MDAFS), 2003, the African Charter on the Values and Principles of Public Service and Administration, 2011, the African Charter on the Value and Principles of Decentralisation, Local Governance and Local Development, 2014

### 2.5.3. African Institutional Framework

#### 2.5.3.1. Organisation of African Union (OAU)

In their quest for unity, economic, and social development under the banner of the OAU, various initiatives were taken and substantial progress in many areas amongst others,<sup>88</sup> paved the way for the establishment of the AU. The OAU adopted two instruments to promote Human and People’s Rights on the continent i.e., the African Charter on Human and People’s Rights (Nairobi 1981) and the Grand Bay Declaration and Plan of Action on human rights. This led to the establishment of the African Human Rights Commission located in Banjul, the Gambia. Africa’s Priority Programme for Economic Recovery (APPER)- 1985: an emergency programme designed to address the development crisis of the 1980s, in the wake of protracted drought and famine that had

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<sup>87</sup> Resolution 41/128 “Declaration on the right to development”. Articles 1 & 2. Essentially terming the right to development an inalienable human right by virtue of which every human person and all peoples are entitled to participated in, contribute to and enjoy economic, social cultural and political development, in which all human rights and fundamental freedoms can be fully realised.

<sup>88</sup> Only highlighted Economic and social related actions

engulfed the continent and the crippling effect of Africa's external indebtedness.<sup>89</sup> OAU Declaration on the political and socio-economic situation in Africa and the fundamental changes (1990): underscored Africa's resolve to determine amongst others its destiny and to address the challenges to peace, democracy, and security.

Then there was the treaty establishing the African Economic Community (AEC)- 1991: commonly known as the Abuja Treaty. It created the AEC through six stages culminating in an African Common Market using the Regional Economic Communities (RECs) as building blocks.<sup>90</sup> There was also the Cairo Agenda for Action (1995): is a programme for relaunching Africa's political, economic, and social development. The African common position on Africa's external debt crisis (1997): A strategy for addressing the continent's external debt crisis amongst others.

The OAU initiatives paved the way for the birth of AU.

#### 2.5.3.2. African Union (AU)

In July 1999, the Assembly decided to convene an extraordinary session to expedite the process of economic and political integration in the continent. Since then, four summits have been held leading to the official launching of the AU: The Sirte Extraordinary Session (1999) decided to establish an African Union; the Lome Summit (2000) adopted the Constitutive Act of the Union; the Lusaka Summit (2001) drew the road map for the implementation of the AU; and the Durban Summit (2002) launched the AU and convened the 1<sup>st</sup> Assembly of the Heads of the States of the African Union. The vision of the AU is that of An integrated, prosperous, and peaceful Africa, driven by its citizens and representing a dynamic force in the global arena. This vision can only be realised through relentless struggle on several fronts and as a long-term endeavour. The AU has now shifted focus from supporting liberation movements under colonialism and apartheid as envisaged by the OAU since 1963 and the Constitutive Act, to an organization spearheading Africa's development and integration.

The objectives of the AU<sup>91</sup> amongst others are to: achieve greater unity and solidarity between the African countries and the peoples of Africa; accelerate the political and socio-economic integration of the continent; promote and defend African common positions on issues of interest to the continent and its peoples; encourage international cooperation, taking due account of the Charter of the UN and the UDHR; promote peace, security, and stability on the continent. Further, to promote democratic principles and institutions, popular participation and good governance; promote and protect human and people's rights by the African Charter and other relevant human rights instruments; establish the necessary conditions which enable the continent to play its rightful role in the global economy and international negotiations; promote sustainable at the economic, social and cultural levels as well as the integration of African economies; promote co-operation in all fields of human activity to raise the living standards of African peoples. In terms of coordination, coordinate and harmonise the policies between the existing and future RECs for the gradual attainment of the objectives of the Union; advance the development of the continent by promoting research in all fields, in particular in science and technology; and work with relevant

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<sup>89</sup> AU Website

<sup>90</sup> The Treaty has been in operation since 1994.

<sup>91</sup> Those aligned to human rights and socio-economic transformation.

international partners in the eradication of preventable diseases and the promotion of good health on the continent.

### 2.5.3.3. The African Court on Human and Peoples’ Rights

This was established by African countries to ensure the protection of human and people's rights in Africa. It complements and reinforces the functions of the African Commission on Human and Peoples’ Rights. Established under Article 1 of the Protocol to the African Charter on Human and Peoples’ Rights which was adopted by OAU. The Protocol came into force on 25<sup>th</sup> January 2004.<sup>92</sup> The number of cases undertaken by the court (of which social and economic rights are part). Other specialised Technical Committees and financial institutions: the following specialised Technical Committees are meant to address sectoral issues, and at the ministerial level (listed): The Committee on Rural Economy and Agricultural Matters, the Committee on Monetary and Financial Affairs, the Committee on Trade, Customs and Immigration Matters, the Committee on Industry, Science and Technology, Energy, Natural Resources and Environment, the Committee on Transport, Communications and Tourism, the Committee on Health, Labour and Social Affairs, and the Committee on Education, Culture, and Human Resources. The financial institutions are the African Central Bank, the African Monetary Fund, and the African Investment Bank.

### 2.5.3.4. The AU Commission

The Commission is a key organ and plays a central role in the day-to-day management of the AU. Among others it represents the Union and defends its interests; elaborates draft common positions of the union; prepares strategic plans and studies for the consideration of the Executive Council; elaborates, promotes, coordinates, and harmonises the programmes and policies of the union with those of the RECs; and ensures gender mainstreaming in all programmes and activities of the union.

## 3. Case law (African Cases)

In this section, the legal status of some of these social and economic rights is analysed.

Table 13: Cases determined within national courts in selected African countries

Country, Court Case	HR/Tax Issues	Decision demonstrating tax and HR link
<b>Kenya</b>		
1. Okiya Omtatah & Others v Cabinet Secretary for the National Treasury and Planning 7 others	On 27 <sup>th</sup> June 2023, the President signed into law the Finance Act which introduced fundamental changes to Kenya’s tax and social contributions regime: <ul style="list-style-type: none"> <li>• Introduction of new PAYE of 32.5% for income between KES 500,000 and KES 800,000 and</li> </ul>	<u>High Court</u> Issue 1: whether the test of conservatory orders had been met and whether the matter should be certified as raising a substantial question of law under Article 165(5) of the Constitution. The High Court agreed with the petitioners and suspended the implementation of the Finance Act 2023. The Court observed that it has a constitutional mandate to protect the supremacy of

<sup>92</sup> See <https://www.african-court.org/wpafc/>

	<p>35% for income exceeding KES 800,000.</p> <ul style="list-style-type: none"> <li>• The increase in VAT on petroleum products (excluding LPG gas) from 8% to 16%</li> <li>• Introduction of a nonrefundable housing levy of 1.5% which requires both employers and employees to contribute to the national housing Development fund (social contribution).</li> <li>• A requirement to remit withholding tax to the KRA within 5 days amongst other changes,</li> </ul> <p>Hon Okiya Omtatah and others challenged this Act on grounds that it is unconstitutional for violating various provisions of the constitution and Public Finance Management (PFM) Act. That it had nothing to do with raising revenue. Applications for conservatory orders were filed in the High Court and the court granted the same.</p> <p>The Respondents appealed to the Court of Appeal seeking the setting aside of the conservatory orders because the suspension of the Finance Act has the effect of halting the core operations of the government and the government stands to suffer great financial loss in reduced revenue and make the government incapable of meeting its financial commitments and discharging its executive authority amongst other grounds.</p> <p>The Respondents in the Court of Appeal moved to the Supreme Court further appealing the decision of the Court of Appeal.</p>	<p>the Constitution by ensuring that all laws conform to the Constitution and for public interest there was a real risk of the public being subjected to an unconstitutional law.</p> <p>Court of Appeal<sup>93</sup></p> <p>The Court considered the doctrine of presumption of constitutionality of a statute and the limitations there under, the place of public interest including the fact that it's the first time the Finance Act has been challenged both in terms of the procedure of enactment and in its contents.</p> <p>The Court stated that the Finance Act is a unique statute in the sense that it is enacted annually in respect of the estimates for expenditure for the financial year in which it relates, its effect in amending the various tax laws and duties, and its repealing effect. The Court stated that the Finance Act by nature has no transition or saving clause and arises out of the budget policy statement of national government revenues and expenditure.</p> <p>Thus it remains instrumental in defining the government policy for the period in question as it is used to raise revenue for the said period; which in essence finances human rights.</p> <p>The Court in exercising its jurisdiction, took note of the peculiar and unique circumstances of the Act. Tax is a continuous and annual mechanism and the members of the public can get a rebate for overpaid taxes and levies when making subsequent tax payments. The Court disagreed with the High Court on its blanket suspension and set aside the conservatory orders.</p> <p>Supreme Court</p> <p>The Appeal is still under consideration.</p> <p>The government has proceeded to implement the Act immediately and even backdated its effect.</p> <ul style="list-style-type: none"> <li>• Note Taxes must adhere to the tenets of taxation and not be oppressive.</li> <li>• Balancing of interests of the government and taxpayers</li> <li>• The taxes collected must be used to finance human rights and development in an accountable manner.</li> </ul>
<p>2. Matthew Okwanda the Minister of Health and Medical Services and 3 others<sup>94</sup></p>	<p>The case was about the problem of limited financial resources on the part of the government and how the government can enhance this toward the realisation of social and economic rights.</p>	<p>The court spoke of steps to be taken and steps to be seen to be taken by the state towards the realisation of economic and social rights. Whether these steps include fiscal measures in achieving these rights, the court did not elaborate. According to the court, the state is under the obligation to show how it is</p>

<sup>93</sup> Cabinet Secretary for the National Treasury and Planning & Others v Okiya Omtatah Okoiti & others, Civil Application No. E304 of 2023

<sup>94</sup> High Court of Kenya, Constitutional and Human Rights Division, Petition No. 94 of 2012.

<http://www.globalhealthrights.org/wp-content/uploads/2013/05/HC-2013-Okwanda-v.-Minister-of-Health-and-Medical-Services.pdf>



		addressing or intends to address economic and social rights through its policies and plans. Despite making this finding the court gave neither guidance nor indication on whether this obligation involves addressing finance, and financial obligations in the state's policies and plans. The Court goes no further in interpreting what concrete steps mean and whether these steps can be understood to mean the allocation of financial resources to the attainment of economic and social rights since rights require resources.
3. The Blockchain Association of Kenya (BAK)	Filed a petition before the High Court of Kenya challenging the legality and constitutionality of the Digital Asset Tax (DAT), introduced and passed as part of the Finance Bill 2023, which imposes a 3% tax on digital asset trade. Its imposition of onerous compliance requirements impacts the industry and innovation.	To be determined. Note: The adoption of blockchain technology is increasing, with some estimating that 70% of global markets will have a direct or indirect dependence on the system. Its ability to provide transparent, accurate, and up-to-date records has direct implications for the protection of human rights (of which social-economic rights are part). This would be a good case to follow to establish the link between tax and human rights.
<b>Uganda</b>		
4. Center for Health Human Rights and Development & 3 others v Attorney General <sup>95</sup>	The Petitioners in this case went to court challenging the failure of the government of Uganda to provide basic indispensable health items in government facilities for expectant mothers, which they argued led to a higher rate of maternal mortality. They faulted the government for failing to progressively realise the right to maternal health and further argued that the right to the highest attainable standard of health is a constitutional right and that inadequate human resources for maternal health, frequent stockouts of essential drugs for maternal health, and lack of emergency obstetric care services in hospitals and health centres was an infringement of the right to health. Additionally, the non-provision of basic maternal health care package in government hospitals resulting in the death of expectant mothers and their children was a violation of the right to health.	Despite being faced with the statistics and facts showing a breach of a constitutionally protected right to health, the court found against the petitioners. It made no order to compel the government to address the issue by formulating implementation and enforcement strategies for the realisation of the right to health, in particular, the right to maternal health care. In other words, the court left the discussion on the implementation and enforcement of health policies solely to the Executive arm of the government by agreeing with the Attorney General's arguments that the case before it required the Court to make a judicial decision involving and affecting political questions <sup>96</sup> and that in doing so, the Court would in effect be interfering with political discretion which by law is a preserve of the Executive and the Legislature (page 14). The Court emphasized the political and legal responsibility of the Executive arm of the government to determine, formulate, and implement policies of government but failed to recognize the fiscal responsibility of the Executive. In finding the petition against the petitioners, the court has implied that class actions are not permitted in addressing state responsibility towards

<sup>95</sup> Constitutional Court of Uganda, Constitutional Petition No. 16 of 2011

<sup>96</sup> The government in its defence relied on the legal doctrine referred to as the "political question" This doctrine emanated from the concept of separation of powers. It was a creation of court in the case of Marbury versus Madison, 5 US.137 as part of the broader concept of justification whether or not it is appropriate for a court to review the business of other branches of government. (page 19)

	The petitioners also presented statistics on the healthcare package.	financing the right to health. Also, the right to health was considered from the right to life perspective. A denial of the right to health is a violation of the right to life.
5. CISE Dispensers (U) Ltd V. Executive Secretary, National Drug Authority <sup>97</sup>	A case on regulation of health facilities	The Court stated that the right to health concerns the regulation of health facilities. Regulation of health facilities by the government requires that funds be placed aside to ensure that there are enough officers to regulate, supervise, and control the health facilities. However, the Ugandan court did not discuss any matter relating to or touching on finance. It only concerned itself with addressing whether there had been a contravention of statute law since the case concerned the dispensing of, and supplying of, restricted drugs by private medical practitioners. The law stated that restricted drugs could only be dispensed and supplied by public hospitals and health facilities. In the context of the right to health regulating the supply of restricted drugs by certain health facilities may adversely impact upon the availability of essential drugs. The availability of drugs has to do with the government having enough financial resources to ensure their constant supply. <sup>98</sup>
South Africa 6. Soobramoney Case, V. Minister Of Health <sup>99</sup>	The case was about resource allocation: specifically about the right to health.	The court recognised that usually there is a limited budget, and most government-funded hospitals struggle to meet ends. They have to find ways to how a limited budget can be used to the maximum advantage of the patients. However, the court distanced itself from deciding matters of resource allocation, it found itself less equipped to make such decisions. The court felt that political and medical authorities are best placed to discuss matters related to health financing.

<sup>97</sup> Civil Appeal No. 20 of 2009 – Court of Appeal Uganda. see <http://www.globalhealthrights.org/wp-content/uploads/2013/02/HC-2010-CISE-Dispensers-U-Ltd.-v-Executive-Secretary-National-Drug-Authority.pdf>

<sup>98</sup> CISE Dispensers (U) Ltd V. Executive Secretary, National Drug Authority (Civil Appeal No. 20 of 2009 – Court of Appeal Uganda) <http://www.globalhealthrights.org/wp-content/uploads/2013/02/HC-2010-CISE-Dispensers-U-Ltd.-v-Executive-Secretary-National-Drug-Authority.pdf>

<sup>99</sup> ([1997] ZACC 17; 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696; Case CCT 32/97) <http://www.globalhealthrights.org/wp-content/uploads/2013/01/CC-1997-Soobramoney-v.-Minister-of-Health.pdf>

7. Treatment Action Campaign Case and Others V. Minister of Health and Others <sup>100</sup>	The Constitutional Court of South Africa in the case was able to enforce a fundamental socio-economic right justifying the rights of women and connecting these rights to health violations as provided for in South Africa's local legal instrument, that is, their constitution.	This was a landmark case, as it did not just recognize the right to maternal, child, and reproductive health but also implemented the progressive notion of resource use. It ordered the government to come up with a plan to use the resources available, if not instantly, progressively. Financing of essential medicines is a condition upon the government; and finally, a Supreme Court of Canada <sup>101</sup> decision provides a basis for embracing many social and economic rights of vulnerable groups under the framework of equality rights in the context of the right to health. The Court recognized positive obligations to allocate resources, to maintain or implement the necessary service, and applied a reasonableness test to resource allocation decisions.
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A number of cases have been determined in the courts of law that draw a nexus between human rights including socio-economic rights and how the rights are to be financed. These cases from different jurisdictions will give insight and understanding into how courts have interpreted, understood, and enforced these rights including what courts have said on the state's obligation to progressively realise the socio-economic rights, and consequently, budget for its realisation of these human rights.

#### 4. Secondary material on the Nexus between Tax Policy and Human Rights

The second part of the Compendium summarises scholarly work, that demonstrates the link between tax and human rights over the years, while demonstrating how socio-economic rights can be financed, suggesting methods of innovative finance to help widen the approach to domestic resource mobilisation while emphasizing the effect of poor fiscal governance and how it can impede the realisation of human rights (especially socio-economic rights).

Table 15: Books, articles, and other material that draw a nexus between tax and human rights

Source & Author	Overview	Tax and HR contribution
Book: Tax, Inequality, and Human Rights Philip Alston & Nikki Reisch	The authors put together the debate of experts in human rights and tax law; specifically, on the linkages between the two fields. How each can help to tackle rapidly growing inequality in the	They argue that systemic corporate tax avoidance, widespread use of tax havens, persistent pressures to embrace austerity policies, and the growing gaps between the rich and poor lead to loss of revenue and in turn affect the funding of human rights. The cross-border nature of the tax, abusive practices like tax avoidance and evasion; and the reluctance of states to bring transparency and accountability to tax policies and practices impact human rights impacts. The responsibility of private sector actors for shaping and misshaping tax laws; and the need for critical

<sup>100</sup> Constitutional Court of South Africa, Case No. 8/02 Judgement of 5 July 2002 <http://www.globalhealthrights.org/wp-content/uploads/2013/01/CC-2002-Minister-of-Health-and-Ors.-v.-Treatment-Action-Campaign-and-Ors.-No-2.pdf>

<sup>101</sup> Eldridge V. British Columbia (Attorney General) [1997] 3 S.C.R. 624 (Supreme Court of Canada) [http://www.escribnet.org/sites/default/files/Factum\\_of\\_the\\_AG\\_Canada\\_0.pdf](http://www.escribnet.org/sites/default/files/Factum_of_the_AG_Canada_0.pdf)

	<p>economic, social, and political realms. Thus prominent scholars and practitioners examine how the foundational principles of tax law and human rights law intersect and diverge.</p>	<p>evaluation of domestic tax rules through the lens of equality and nondiscrimination which are core principles of Human Rights. They establish the need to understand fiscal policy as human rights policy. This has profound consequences for the well-being of citizens around the world.</p> <p>They argue that international human rights obligations influence the framework for both domestic and international tax reforms. What does human rights law require of state tax policies and how do tax laws and loopholes affect the enjoyment of human rights by people outside a state's borders? The argument is that tax and human rights both turn on the relationship between the individual and the state and neo-liberalism's erosion of the social contract threatens to undermine them both.</p> <p>The crux for them is that tax policy is, at the base, a social tool. It cannot be divorced from principles regarding social priorities and entitlements, which are human rights. Indeed human rights law is at the core, a framework to guide social policy and resource distribution.</p> <p>What is needed is greater recognition that the fields of tax and human rights are inherently intertwined and face a common challenge today. Thus there is a need to reconceptualise what constitutes a just society and the social good.</p>
<p>Tax and Development, Solving Kenya's Fiscal Crisis through Human Rights<sup>102</sup> Attiya Waris</p>	<p>The book establishes the link between human rights and taxation.</p>	<p>This book investigates whether a possible remedy in averting the fiscal crisis is first, to re-establish a link between taxation and government expenditure in the developing state and to utilise human rights law, principles, and policies to link tax revenue to expenditure through re-distribution.</p> <p>Waris argues that taxation is perceived by citizens as a compulsory contribution to the state yet the legitimacy of the State rests on the public's acceptance of the state's right to levy tax and redistribute it in such a manner as to promote the overall good of the society.</p>
<p>Book Chapter: The Right to Health and Health-Related Human Rights<sup>103</sup></p>	<p>In this book chapter, the authors review the scope and meaning of the right to health under international law.</p>	<p>They draw on public health discourses expanding beyond the right to health care. Academics in the field of law and public health, and national governments in their domestic laws and judicial interpretations have clarified this right- to encompass a wide range of social, political, and economic determinants of health as per CESCR in its General Comment 14.</p> <p>The normative content of the right to health now provides a foundation for state obligations to respect, protect, and fulfil the right to health.</p> <p>With limitations on other rights for public health goals; the authors stress the right's essential attributes of availability, accessibility, acceptability, and quality and the minimum core obligations of the right to health; and the progressive realisation of health-related human rights.</p>
<p>Article: Tax and the Right to Health</p>	<p>The author argues that while acknowledging that human rights are enshrined in numerous international treaties, the right to health is</p>	<p>The rights are also among the SDGs. However, most people in developing countries do not access them. Linking the efforts of CESCR as per General Comment 3, she states that it tried to compensate for the loopholes that facilitate governments' and their development partners' complacency in fulfilling these rights by defining non-derogable minimum core obligations that establish a minimum set of protections immediately applicable to all people in</p>

<sup>102</sup> Waris, (2019)

<sup>103</sup> Tobin J, Barrett D (2020)

	<p>limited by the principle of progressive realisation, which has left loopholes allowing the deferment of fundamental human rights- such as the rights to food, water, and sanitation- are critical determinants of health.</p> <p>Stressing General Comment 14, she states that the Committee interprets the right to health as an inclusive right that encompasses the underlying determinants of health and healthcare.</p> <p>The importance of these fundamental rights to health is demonstrated by the fact that access to them accounted for most of the reductions in child and ternalma mortality between 1990 and 2015.</p>	<p>all nations and not subject to the flexibilities permitted by progressive realisation.</p> <p>She advances an argument that to build a state-citizen relationship and to generate ongoing tax revenue, these rights should ideally be funded through a financial process that is transparent, accountable, and responsible and must include domestic revenue generation for public services.</p> <p>She thus states that while the responsibility for fulfilling fundamental human rights lies within national borders, sometimes governments'<sup>104</sup> ability to finance such fulfilment lies out of their reach. For instance, tax abuses hurt fundamental human rights, yet human rights scholars have largely ignored the need for revenue, and tax scholars rarely analyse laws and policies through a human rights lens.</p> <p>The pathway between government revenue, government expenditure, public services, and fundamental human rights is known. For example, she argues that a 10% increase in tax revenue leads to a 17 % increase in public health spending in low-income countries, and increasing public health spending by 1% decreases under-five mortality by 0.86%.</p> <p>However, the limiting factor in many countries she argues is the limited government revenue. Thus, leakages from current revenue streams should be curtailed. She further asserts and rightly so that lost revenue as a result of international and national injustices and inefficiencies include tax waivers, the failure to tax wealthy citizens and the informal sector, corporate tax avoidance, corruption, and debt repayment by the state.</p> <p>She poses the question, who are the duty-bearers for tax avoidance and what can they do? The UN Guiding Principles on Business and Human Rights direct MNCs to avoid adversely affecting human rights and guidelines from the OECD state that MNCs should contribute to environmental, economic, and social progress. She expresses concern that despite these guidelines, international corporate tax avoidance is estimated to be US\$ 500-650 billion each year, one-third of which is from low and middle-income countries. Among the strategies to tackle base erosion and profit shifting include and are not limited to the Tax Justice Network now driven by G20 and G8 and agreed to by 100 countries, which requires large MNCs to report profits and economic activity, by country, to the revenue authority of their parent company. High-income countries are encouraged to review their tax treaties with low- and middle-income countries to ensure that there are no adverse spillover effects on fundamental human rights.</p> <p>Enablers of tax avoidance and their professional bodies, including tax professionals, accountants, lawyers, bankers, and the nominees of shell companies, need to appreciate that tax planning often adversely affects fundamental human rights.</p> <p>In her concluding remarks, she asks the question, what role can individuals play in linking individual choices and human rights? She suggests a rather interesting approach that results in structural injustices For example, one link between individual choices and fundamental human rights is the taxes paid by MNCs, and an increased awareness of individual responsibility may drive consumers to choose brands and investments that do not avoid</p>
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<sup>104</sup> Which accounts for approximately 40 per cent of GDP in many low- and middle income countries.

		<p>taxes, to vote for governments that act to change unjust global institutional arrangements and to avoid banks that facilitate tax avoidance.</p> <p>Critical determinants of health are water, sanitation, healthcare, and education. They are fundamental and are included in the SDGs. Accordingly, she pens off by saying that action is required at many different levels by a range of duty-bearers. The duty bearers include MNCs, governments, professional enablers of tax avoidance, and individuals who are in a position to make voting, banking, consuming, and investment choices.</p>
<p>Report: Taxation and State Building in Kenya: ReproEnhancing Revenue Capacity to Advance Human Welfare<sup>105</sup></p> <p>Waris and others</p>	<p>The report highlights the various attempts made over the years to set minimum standards for particular human rights. For example, the 1952 Convention of the International Labour Office (ILO) on ‘Minimum Standards of Social Security,’ listed eight essential fields of social security to include amongst others medical supplies, medical insurance, and social insurance, the Millenium Development Goals, a series of eight international development goals signed up to by 192 United Nations member states and at least 23 international organisations in an attempt to create a practical benchmark for states to work towards in implementing human rights.<sup>106</sup></p>	<p>In the forward, it is acknowledged that tax is widely considered a complex subject that should be left to experts. This perception has contributed to the huge gap in information available to the public on the issues of tax and development. The report seeks to narrow the gap by providing a broad overview of key policy issues in Kenya from a tax justice perspective.</p> <p>Thus while the report addresses several issues on fiscal policy, it first lays out a tax and human rights agenda which is the concern of this compendium. The report starts with stating the importance of tax in state building by asking the question, how can a welfare state be funded in Africa? To answer the question, the Report asks stakeholders to consider the evolution of both human rights and taxation and how they relate to the African context.</p> <p>Giving a historical context, the concept of the welfare state evolved in Europe as a response to industrialisation and an increasing mob workforce who needed protection. There is a clear parallel between what happened in early nineteenth-century Europe and what is currently happening in Africa, with states moving away from poverty programmes towards social security funded through tax. The Report then proceeds to define a social contract but argues that, in the case of ex-colonies, it can be argued that there is no social contract or that the social contracts are weak since the geographical borders of these states were often the result of the ‘carving up’ of colonies of European powers.</p> <p>To thus facilitate an easy transition upon independence, the leaders of the newly independent states often accepted arbitrary divisions although the inhabitants did not. This resulted in the creation of both governments and populations who were not strongly bound by the idea of a social contract. Despite this, the report argues that there remains a need to justify taxation and legitimise its collection in developing countries.</p> <p>The same can be achieved by working towards the recognition of the need for tax collection on behalf of the citizens, and the subsequent benefits of redistributing it to the citizens. The argument is that before a state can fund its citizens, it needs to raise money to finance the welfare programmes it wishes to create and the sources of revenue in developing countries which include not only taxation but also other earnings such as those from state-owned enterprises and mineral royalties amongst other sources of revenue.</p> <p>Thus in funding welfare programmes, the report advises that there is a need to keep state income and donor aid separate to facilitate accountability to taxpayers and because it helps national economies avoid falling into the trap of dependency on foreign donors.</p>

<sup>105</sup> Waris A, Kohonen M, Ranguma J, Mosioma A (2010).

<sup>106</sup> The Realisation of these goals was by 2015 however, they didn’t come with revenue commitments.

		<p>Accordingly, this is where the report draws the link to human rights and argues that it only becomes more than just declarations of belief when they are clearly defined, have political backing, and are legally enforced. The legal rights exist as a fiscal reality only when they have budgeted costs, and they cannot be protected or enforced without public funding and support from citizens.</p> <p>The human rights discourse has distinguished between rights that ‘require goods and services’ and those that do not and the argument goes that civil and political rights do not require public financing while economic and social rights do.<sup>107</sup></p> <p>Additionally, the State’s participation in the international human rights framework means they agree to domesticate these obligations in their constitutions, laws, policies, and budgets.</p> <p>Although deciding on the minimum acceptable standard for each human right and quantifying the resources required to uphold it remains a major problem, a new approach has emerged with the rise of the ‘right to development’, proclaimed by the UN in 1986. The right alone makes explicit the link between the right and the resources required to fund it.</p>
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#### 4.1. Tax, Human Rights and Public Debt

This section on secondary material highlights the link between tax policy, debt, and human rights. Tax must equal to servicing of national debt without a hindrance to the realisation of human rights through social economic rights.

Table 15: Books, articles, and other material that draw a nexus between tax, debt and human rights

Source & Author	Overview	Tax, debt, and HR contribution
Financing Africa <sup>108</sup> Attiya Waris	Waris starts her book with a proverb from Ethiopia that says, “ <i>You think of water when the well is empty.</i> ” She introduces her book with the much-needed topic of, understanding fiscal law and policy which is key to the link between tax and human rights. The advent of, the African Continental Free Trade Agreement (AfCFTA) is very key for the 54 African states in pushing forward the agenda to change the fiscal landscape on	Fiscal law at the domestic level concerns government expenditures, revenues, debt, and taxation. While states globally have increased in some sources of revenue, they have decreased in others. She asserts that the politics in the fiscal area that comes with every new regime and that fiscal law situates itself during the fluctuating and at times unstable collection and redistribution of state revenue, is a constant challenge for all those involved in the process. She stresses the need for the principles of transparency, accountability, responsibility, efficiency, effectiveness, fairness, and justice to ensure the well does not run dry. Waris further states that the balance between revenue and resource collection on the one hand and resource redistribution on the other is maintained and rests on the fiscal provisions in a nation’s, institutions, constitution <sup>110</sup> ,

<sup>107</sup> This however the report calls, an artificial divide and argue that it has resulted in the apparent valuation of civil and political rights over economic and social rights, and the use of a ‘limitation of resources’ argument which they assert undermines the enforcement of human rights.

<sup>108</sup> Waris (2019)

<sup>110</sup> Ibid at p. 3- A Constitution should reflect the fiscal capacity of the state.

	<p>the African continent.<sup>109</sup> This she argues will boost intra-African trade by 60%. She notes the effects of global economic depressions and biased management of domestic fiscal systems on states; specifically African states which have undermined their fiscal self-sufficiency.</p> <p>Waris argues that for government revenue to be redistributed, it must first be taken away; which requires a whole set of fiscal laws, regulations, and policies at subnational, state, regional, and continental levels and even within a governance institution or body.</p> <p>Acknowledging that African societies are barely familiar with taxation processes, her book is premised on showing how government spending takes place, to make the case for what a government wants to take away. The delicate balance is a seesaw between the ability of people to pay and the right to receive support for decent living standards and development. The resources taken are what fiscal law and policy govern.</p>	<p>legislation,<sup>111</sup> regulations,<sup>112</sup> and policy<sup>113</sup> as well as international commitments it makes including but not limited to, treaties<sup>114</sup> and contracts with the private sector. The questions that follow then are: what exactly should be in a constitution? Should there be specific mentions of taxing rights or powers? Should there be debt ceilings? Should the budget proportions be pre-set? She asserts that no single African country to date<sup>115</sup> has a debt limit or ceiling constitutionally set out although taxation has a more varied treatment and gives country-specific examples.</p> <p>In Namibia, the government structure is established in two provisions in the constitution, with no mention of the word ‘tax’ or ‘taxation.’ In the Senegalese Constitution, there is a tax reference but no clear sign of a taxpayer’s duty or a government’s right to tax. She further canvases the law, regulations, and policy and states that it reveals a problem in the conceptualisation and coherence of fiscal law and policy. Sadly she notes that laws and policies seem to be an accident of fate or history and do not fit into the jigsaw puzzle of what should be the regulatory framework of a state.</p> <p>Using publicly available data, Professor Waris provides a snapshot of the diversity in fiscal approaches: Unpacking government resources and the balance with expenditure. Under this, Professor Waris discusses the different problems that have resulted in revenue leaks exacerbated by regulation issues including in technology spaces, which she argues impede the ability of states to finance their development agenda, alleviate poverty, and achieve fiscal self-sufficiency.</p> <p>Further, the absence of a regularly renegotiated fiscal social contract between a country’s population and its government is a policy gap that creates space for maladministration and leads to loopholes for both taxpayers and tax collectors as well as those in government redistributing or spending. She states and rightfully so that the only measure of a high and often by extension oppressive fiscal system, is public discontent, outcry, and threat or actual revolt by the people.<sup>116</sup> While these are ways to measure the willingness of a people to be taxed and contribute, the people and the society base willingness on how state resources are spent.</p>
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<sup>109</sup> Ibid- Several Initiatives preceeded AfCFTA: the global UN-led Financing for Development (FfD) processes, the Millennium Development Goals (MDGs), the Sustainable Development Goals (SDGs) and the Addis Tax Initiative (ATI). Additionally, data and debates on issues related to illicit financial flows, unpaid care work, the informal economy, the impact of digitisation, the future of work and the greater impact of these areas to financing development.

<sup>111</sup> Ibid at p. 3- must be in place to elaborate on the application of the Constitution.

<sup>112</sup> Ibid at p.3- regulation is attached to provisions of law to better elaborate on the legislation, guide on application (emphasis) for purposes of administration within a civil service.

<sup>113</sup> Ibid at P.3- Policy is codified and implemented and amended from time to time based on need and the political thinking of the ruling government, usually in line with party manifesto or platform.

<sup>114</sup> Ibid at P.3- which must be codified in the Constitutions, Legislations et al.

<sup>115</sup> 2019 date of publishing the book.

<sup>116</sup> Events in Kenya since the 2022 general election serves as a good example.



		<p>Despite this, she states that resources must be collected, but what remains crucial is the holistic fiscal system in which the revenue and expenditure are designed and balanced. Thus taxation is a central function of government. Using the principles of fairness and justice in tax collection and expenditure, she argues that it is part of the validation of a fiscal system and its ability to continue operating. To achieve this people must have a clear participatory role in determining the level of revenue collection and its distribution. The public is essential if a state is to sustain a society in which there is: peace, security, an unbiased justice system, a good education system, universal healthcare, low-income housing, food security, universal adult suffrage, growth of wealth, and rising living standards and development.</p> <p>Evidently from the foregoing, the duty of government is not only to raise taxes that are necessary to avoid all social ills but to use strategies around fiscal resources to ensure all members of society grow and prosper.</p> <p>She then delves into a discussion of understanding the 54 countries that make up the African continent through discussions around participation, budgeting, and access to information, African economic growth, taxation in Africa, African debt, and State expenditure.</p> <p>In explaining the above, she states that over half of African countries still mobilise less than 15% of their GDP in tax revenues, below the 20% level considered by the UN as necessary to achieve the set development goals. Key to note is that about 30% of the total public expenditure is allocated to social services and the same is varied across African countries. Giving an example of Nigeria, she states that over 20% of consolidated average government expenditure went towards health, education, skills training, and social protection over the 10 years of 2006-2016.</p> <p>In Kenya, social spending decreased from 39.7% of government expenditure in 2012-2013 to 25.18% in 2016-2017. Whilst several health targets have been agreed upon globally, the African Union heads of state, in 2001 in Abuja, set a health spending target of 15% of total government expenditure. Their performance against this threshold however she notes is less remarkable than the per capita spending.<sup>117</sup> Thus, countries need to change this trajectory. She then discusses ten fiscal challenges African states face when it comes to taxation, fiscal legitimacy, and the ability to collect and redistribute domestic resources as highlighted below: first, the tribal diversity within African states and the issues it brings. Second, legal compliance in matters of tax resulting from ignorance and deliberate attempts to bypass laws. Third, the failure of states to develop and update fiscal treaties, constitutions, laws, regulations, and policies-finance-related regulations and policies, if existent, are often not implemented or enforced. Fourth, most African</p>
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<sup>117</sup> Waris (2019)P. 28- Waris argues that there seems to be a lack of prioritisation of health spending within national budgets, as government expenditure on health as a share of total expenditure remained at around 10% during 2006-2014.

		<p>countries have not been committing financial resources to honour international commitments. Fifth, the separation of state from business continues to overwhelm the running of the government and the potential of the economy. Sixth, she singles out corruption as an issue that continues to undermine the ability of the state to collect taxes. Seventh, capacity training is still low across all financial-related institutions including the judiciary except the revenue authority. Eighth, she argues that there has been a lack of clarity in the state about domestic affairs, regional and continental tax, and fiscal planning and policy. Ninth, the participation in and access of people to the state is limited predominantly to those that lobby amongst other challenges, and tenth, the network of wealth chains globally and the secrecy jurisdictions in which their modes sit allow for the continental holding of asserts in foreign states to which developing country tax collectors have no access for information on transfers made.</p> <p>Some of her conclusive remarks provide a deeper understanding of fiscal regimes by stating that Africa is moving towards bridge-building via AfCFTA and that the tax landscape at all levels- requires greater consistency.</p>
<p>Legal Foundations of Debt</p> <p>Lyla Latif</p>	<p>The paper aims to address the challenges and opportunities associated with public debt in African economies and how they can be addressed through a comprehensive understanding of the historical emergence, legal foundations, theoretical dimensions, creation processes, rights and liabilities, and transparency mechanisms related to public debt.</p> <p>She also scrutinized debt through the human rights lens in this paper, which is the Interest in this compendium.</p>	<p>Latif argues that the human rights framework recognises that public debt should not hinder the realisation of economic, social, and cultural rights. The importance of debt sustainability and responsible borrowing practices in upholding human rights obligations become paramount. She argues that it involves assessing whether debt management policies are aligned with human rights principles of equality, non-discrimination, and participation. It further entails examining the potential adverse impacts of debt on marginalised and vulnerable populations and seeking ways to mitigate such risks.</p> <p>According to her, socio-legal approaches and human rights perspectives provide a comprehensive understanding of public debt in African economies. Such an analysis considers the economic efficiency, optimal debt levels, social dynamics, and human rights implications of public debt. It facilitates informed policy decisions that prioritise sustainable economic growth, social justice, and the fulfilment of human rights obligations.</p> <p>The initiatives such as the Heavily Indebted Poor Countries (HIPC) initiative, the Multilateral Debt Relief Initiative (MDRI), the Paris Club, and the G20 Debt Service Suspension Initiative (DSSI), which she argues reflects a shift towards integrating human rights considerations into the realm of public debt.</p> <p>To further advance this, Latif argues that these initiatives recognise the impact of debt burdens on the realisation of economic, social, and cultural rights, and by providing debt relief to the world's poorest countries, these initiatives aim to alleviate their debt burdens and create a fiscal space for poverty reduction and development thereby promoting the fulfilment of human rights.</p>

		Thus the importance of understanding Fiscal Law and Policy to aid in the discourse on tax and human rights. The link between these concepts of tax, debt, and human requires an understanding of Fiscal Law and Policy.
Working Paper 1 Is Africa's Fiscal Undermined by the Debt-related IFFs? A case study of selected SDC Member States <sup>118</sup> Lyla Latif	This working paper dealt with two questions: One is whether debt creates an enabling environment for IFFs to thrive. Second, whether there are any specific forms of debt-related IFFs. The scope of the paper is limited to addressing these two questions to bring to light the areas relating to law and finance that must be observed in states.	The current collective African debt has accumulated to US\$ 726 billion and it has been a problem since 1978. Sustaining such levels of debt repayments would be impossible, especially since the African income from commodity exports had slumped along with the levels of external aid and financial investment. The SADC states have been experiencing a slowdown in economic growth. Based on the IMF data presented in its 2020 Regional Economic Outlook, SADC countries' real GDP growth contracted to -5.5% after SADC economies showed declining wage growth and an overall contraction for their money supply. The 2021 IMF Regional Economic Outlook predicted economic growth and recovery projected towards 3.3% for SADC's Economy. This projection, however, has been revised downwards to a contraction of about 3% by the 2020 SADC report on the impact of the COVID-19 pandemic on the SADC economies. Member states have, therefore, resorted to borrowing to meet their financing needs. For instance, Zimbabwe is in a debt crisis. Its external debt burden is excessive and the country is incurring arrears. The currency conversion and high inflation have significantly eroded the currency's real value leading to unsustainable fiscal deficits. Countries like Zimbabwe in 2021 defaulted its debt and this pushed its government to enter into restructuring talks with private creditors and China Development Bank. Other SADC states are also estimating a rise in their debt-to-GDP ratio triggered by the COVID-19 pandemic. Thus the fiscal deficit as a result of the disruptions from the pandemic has raised the 2031 debt-to-GDP ratio to 66% for Malawi; 50% for Eswatini; 68.4% for Namibia; and 76.1% for Mauritius. This is further exacerbated by the nature of the creditors i.e. non non-official bilateral creditors. A country like Angola owes a larger share of its external debt to non-official bilateral creditors and this explains why Angola is the most indebted nation in the ADC region since the government takes out non-official loans which are subject to private confidential arrangements. Therein lies the danger of creating an IFF ecosystem through which debt proceeds can be shifted across borders with minimal oversight. African countries have also begun a trend in using Eurobonds to finance maturing debt obligations and heavy infrastructure projects paying interest rates between 5-16% on 10-year government bonds which are higher than the rates offered to European countries. The 2020 International Capital Market Association (ICMA) report estimated the domestic African bond market to be US\$802.9 billion dominated by South Africa whose government issued US\$329.3 billion in bonds. Mozambique's bond market is

<sup>118</sup> Latif (2023)

		<p>an example of government and creditor abuse of debt financing intended for development activities. Indebtedness has produced several serious consequences in Africa. It has meant shortages of essential imports, declining production, growing hardship among the poor who already are heavily taxed, and an inability to replace infrastructure and led amongst others to significant deterioration in the quality of life of the African population due to the diversion of funds away from economic and social redistribution towards repayment of the principal debt, interests, and penalty payments.</p> <p>Thus, when a government with high debt implements fiscal stimulus, consumers will be more likely to expect that tax increases will soon follow than when debt is low. The burden of taxation that is imposed on the African population prevents them from saving, which in the long term subjects the economy towards regression.</p> <p>These increasing levels of debt have resulted in developmental and state-building challenges for SADC nations. For instance, in its 2021 budget, Zambia allocated more money to debt servicing than to social economic rights like education, health, water, and sanitation. 88% of Zambians are living on less than US\$6 a day. Throughout the pandemic, Zambia has been spending 4 times more on debt payments (as a result of default since 2020) than on public health. 44% of government revenue is spent on repaying external debt in Angola, consequently, 6% is spent on public health. Within the SADC region, Angola has the highest child mortality.</p> <p>Alongside this debt problem, development challenges within SADC also stem out of the region's vulnerability to illicit financial flows. IFFs have a devastating impact on African economies, peace and security, human development, and the achievement of human rights. International organisations and institutions consider IFFs as the greatest obstacle to lifting millions out of poverty. Of the various forms of IFFs, debt-related IFFs are understudied.</p> <p>The impact of this according to the Money Drian report, showed how trade mis-invoicing and unjust debt undermine economic and social rights in southern Africa.</p>
<p>Tax Policy and Performance in Africa<sup>119</sup></p> <p>UNECA</p>		<p>UNECA in its performance report of tax policy<sup>120</sup> and its performance in Africa indicates that Africa has a low tax capacity (ability to collect taxes) of about 20% of GDP and a lower tax revenue to GDP ratio of 17% than other regions, largely because of inefficiencies in tax policy and revenue collection.</p> <p>Thus, addressing tax capacity constraints and collection inefficiencies could boost tax revenue in Africa by 3% of GDP (the difference between the current tax ratio and tax capacity). Collection efficiency for the value-added tax (VAT) in many African Countries is less than 50%, and</p>

<sup>119</sup> United Nations Economic Commission for Africa (2019)

<sup>120</sup> UNECA- the instruments governments use to raise revenue by taxing economic activities and its an important revenue component of fiscal policy.

		<p>property and wealth taxation is still an untapped source of revenue.</p> <p>Improving tax governance by combating corruption and bolstering accountability could reduce inefficiencies and, on average, mobilise up to USD 72 billion a year- about a third of the estimated average investment financing gap for achieving the SDGs and Agenda 2063 in Africa.</p> <p>According to UNECA, the trend on tax policy and performance were as follows: Africa’s weighted average to GDP ratio was 17% from 2000-2018, it improved from 17.9% in 2000 to 19.9% in 2005, but has since trended downwards reaching its lowest level of 12.9% in 2016 and 14.6% in 2018.</p> <p>The above trend was reflected in both direct and indirect taxes, which peaked at 5.5% and 12.6% respectively, in 2004.</p> <p>Resource taxes followed the same general trend, rising from 1.5% in 2000 and peaking at 3.2% in 2006, before gradually falling to 0.35% in 2016, with a slight recovery to 1.9% in 2017 and 2018</p> <p>The report then analysed the structure of the tax system and the performance of tax types. The primary function of the tax system is to generate revenue for the government while ensuring economic efficiency and easing the tax burden on the poorest segments of society through structures with some progressivity. Tax structures influence the incidence of each type of tax.</p> <p>NECA values an efficient tax system as a key consideration in achieving Agenda 2063 and the SDGs. The report further highlights the tax policy reforms and impacts by stating that since 2000 several African countries have reformed their tax policy and tax administration to mobilise additional revenue for development. These tax policy reforms included adjusting tax rates and broadening the tax base. Key reforms in the administration of taxes included integrating revenue collection responsibilities within a single agency, often a semi-autonomous revenue authority, and promoting compliance among taxpayers.</p>
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4.2. Challenges faced in resource mobilisation that affect Human Rights

This section continues from the preceding to highlight the challenges in mobilizing resources to finance human rights.

Table 16: Challenges faced in domestic resource mobilisation and its effect on the realisation of social and economic rights

Source & Author	Overview	Linkages
Article Obstacles to Increasing Tax Revenue in Low-	Financing development and human rights requires funds (whether in taxes, from the mobilisation to allocation and proper spending in an accountable manner, this paper	Two different approaches are used in answering the same: First, a comparative approach among countries today and within countries over time. This approach generates conservative answers and leads to an emphasis on the

<p>Income Countries<sup>121</sup></p>	<p>focused on the question: why do the governments of low-income countries not raise more tax revenues?</p>	<p>‘sticky’ nature of taxation. In ‘normal times,<sup>122</sup>’ revenue collections, measured as a proportion of GDP, do not change much from year to year. This is partly because effective taxation systems require a great deal of coordination and cooperation between revenue agencies and other organisations, both inside and outside the public sector.</p> <p>The ‘stickiness’ of tax collections also reflects the fact that the overall tax take is to a significant degree determined by the structure of national economies. For logistical reasons, it is much easier to raise revenue from economies (a) that are high-income, urban, and non-agricultural and (b) where the ratio of international trade to GDP is high. The government of the average low-income country raises less than 20% of GDP in revenue. It makes no sense for such governments to aim to match OECD tax talks of 30-45% of GDP. The Comparative and historical approaches both draw attention to the political constraints on the capacity of governments to raise more revenues.</p> <p>The most familiar is the capacity of wealthy people and companies to influence opaque processes of tax policy formulation and administration to ensure that they pay less in taxes than most people would consider reasonable. Such behaviours amongst others bring tax collection into disrepute, decrease the overall willingness to pay taxes, and also lose a lot in revenue. The tax system also serves another political purpose, the ability of governments to grant tax exemptions, holidays, and incentives; often without doing a cost-benefit analysis.</p> <p>The second approach is to examine the potential benefits of reforms in tax policy and administration. This generates more optimism about the possibility of raising additional revenues.</p> <p>How? Scope of governments of low-income countries to obtain more revenue by taxing transnational economic transactions; an understanding that policies are changing quite rapidly at the global level, advanced tax administration practices.</p>
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4.3. New Insights on Tax and Human Rights

This ever-growing area has led to policymakers, think tanks, academics, and tax experts devising and cooperating in the areas of taxation by coming up with innovative ways to finance social, economic, and cultural rights over the years. The literature below shows and demonstrates the need for innovative finance.

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<sup>121</sup> Moore (2013)

<sup>122</sup> Excluding situations of war, major internal conflict, the collapse or rapid reconstruction of state.

Table 17: Literature advancing innovating ways for taxation for purposes of financing human rights.

Author	Overview	Tax and HR contribution
<p>Journal Article:</p> <p>Framing the Argument to Broaden Kenya's Limited Fiscal Space for Health Financing by Introducing Zakat</p> <p>Lyla Latif</p>	<p>In this paper, Latif advances zakat as an alternative to financing health and argues that this will help broaden Kenya's fiscal space. She assessed Kenya's public health in rural areas and called it fragile due to the lack of healthcare workers, functional equipment, essential medicines, and proximate health facilities. She raised two questions: First, whether there is a need to increase domestic spending on public health. Second, whether an increase in public health spending will result in improving access and availability of public health. She answered this by considering the existing structure of the health sector and current health programs to understand the impact finance plays in their development; right from colonial times to post-colonial times for an understanding of challenges experienced today. Then she examined the commitment of the government to financing the health sector and discussed the adequacy of the government's health budget allocation. She addressed the twin issues: whether there is a need to increase health financing or a need for financial governance and then finally offered her thoughts on the current innovative methods to supplement the limited health budget.</p>	<p>The Kenyan government bears a legal duty to provide healthcare yet the health budget has been on a regressive scale since 2010. In 2018, the government allocated only 4 per cent to the health budget as compared to 7.1 per cent in 2010. The budget defines the Kenyan state and society's fiscal relationship and the relationship in turn influences the availability and accessibility of social services whose provision is affected by either an increase or decrease in the budget. Under the broader topic of health financing framework, she argues that the absence of a fiscal health framework has resulted in limited access and availability of healthcare services in Kenya and the public health sector continues to function and provide basic services as limited financing continues to reverse the progress made. Additionally, she argues that the frequent strikes by doctors and nurses over low wages, poor infrastructure, outdated equipment, and stock out of medical supplies are some of the problems restricting the development of the healthcare sector but reiterates that a fiscal health framework would solve some of these problems and sustain the healthcare sector in the long term. She differentiates the fiscal health framework and health financing framework. The former she argues is the source of earmarked revenues targeted for health spending and the latter draws the from fiscal health framework of what is available so that specific sums can be appropriated for financing specific health needs. She describes fiscal health law to mean, such public revenue that is earmarked specifically for health care. Latif further argues that in planning a health financing framework, the government would therefore look into the fiscal health fund to allocate additional funds for financing healthcare; which would serve alongside the health budget. Healthcare financing depends on a percentage of the national budget that is allocated to the health sector and additional financial support as provided through donor aid. Health financing through budgets remains minimal and constrained.<sup>123</sup> Her proposal: Islamic fiscal law. On whether it can support health financing in Kenya, she draws a link between Islamic law, human rights, and fiscal sociology. Under Islamic law, there is consensus among the four main schools of legal thought under the Sunni creed on revenue mobilisation. Common among the revenue sources is zakat which she translates to mean a wealth tax annually imposed on savings and assets. Zakat is domestically available in every country having a Muslim population that meets the eligibility criteria for paying the</p>

<sup>123</sup> Between the fiscal years 2013-14 and 2014-15 after devolution, 3.8 percent of the total budget was allocated to the national health sector. This budget was increased to 4.1 per cent in fiscal tears 2015-16 and 2017 yet in 2018, it was reduce to 3.9 per cent.

		<p>tax. Zakat revenue is religiously prescribed to be targeted toward specific beneficiaries in financing their well-being.</p> <p>She then questions its potential as a health financing strategy by placing zakat within human rights law and accordingly leads to a new fiscal sociology for the Kenya health sector.</p> <p>Tying this to the concepts of progressive realisation and maximum available resources, she argues that the former concept recognises the difficulty of resource constraints as a legitimate reason why a state may not be able to fully realise the right to health, and the former concept of (maximum available resources) which requires states to individually mobilise to the maximum revenue domestically to finance economic, social and cultural rights. She then isolates this concept and suggests broadening it to include Islamic revenue sources. Linking zakat to the maximum available resources gives legitimacy to a state that seeks to widen its revenue base to tap into religious funds.</p> <p>Drawing from Schumpeter’s theory, she argues that the state and society relationship is defined by taxation which in turn is expressed through the budget. She also believes that Schumpeter was not restrictive in his understanding of the state-society relationship as such, the provision of social services such as healthcare would reflect this relationship.</p> <p>On the issue of taxation she argues that while Schumpeter took a conventional approach i.e., tax imposed on income, profits, goods, and services, she broadens the fiscal understanding by adding religious taxes or sources of revenue to this.</p> <p>Whether there exists a health financing gap that justifies the need to increase domestic spending on public health, and if there is a need to look for sources outside existing revenue streams for health, she addresses with supporting evidence and illustration and concludes that, for the Kenyan government to meet its commitments to health financing by either allocating the 15 percent Abuja target or maintaining the WHO recommended 5 percent health budget for maternal and child healthcare, then additional domestic revenue must be mobilised and pitches zakat as a potential revenue stream.</p>
<p>Policy Brief Financing Government’s ‘Cinderella’ Establishing the need to mobilise additional sources of revenue to fund the Kenyan</p>	<p>In this paper, Latif examines whether health in Kenya is adequately financed.</p>	<p>By asking the question of whether health in Kenya is adequately financed, she advances the argument that there is a need for additional sources of revenue to fund health.</p> <p>This right includes the right to healthcare services as well as a right to reproductive healthcare. Article 43(1)(a) is subject to progressive realisation and the availability of resources. The minimum content of the right to health has been described in the Kenya Health Policy 2014-2030 and the Kenya Health Sector Strategic and Investment Plan 2014-2018.</p>



<p>healthcare sector<sup>124</sup></p> <p>Lyla Latif</p>		<p>The policy sums up the entire health needs of the country; which are to be implemented in time-bound stages per the principles of human rights.</p> <p>She also notes however that health financing has been on a reducing scale. There are shortfalls and the financial resources for implementation.</p> <p>To counter this and also broaden the revenue base, she posits Islamic taxation as an alternative source of revenue potentially available to the Kenyan government for financing health.</p> <p>Using the twin arguments of resource prioritisation (the need to make the best possible use of these limited resources to continually improve the well-being of society and increase the revenue in the long term) and increase of the resource base, she argues that instead of having a tax policy that increases taxes and ultimately burdens the poor and middle-income earners, governments should consider the discipline of Islamic taxation to increase revenue that can ultimately help finance social economic rights such as the right to the highest attainable health.</p>
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## 5. Conclusion

Taxes are the main contributor to government revenue in all countries. However, tax as a percentage of gross domestic product (GDP) is much lower in lower-income countries than in high-income countries.<sup>125</sup> The pathway between government revenue, government expenditure, public services, and fundamental human rights have been linked over the years although as noted is just gaining momentum. The discussions in the Compendium were restricted to socio-economic rights. The distinction that has traditionally been drawn between the nature of obligations that different generations of rights impose on the state is central to the dismal manner in which socio-economic rights have been treated as compared to civil and political rights for example. At the international level, the debate on whether socio-economic are justiciable or not began, as early as at the time of adopting the UDHR and further instruments ICCPR and ICESCR.

While under the ICCPR, states undertook to respect and ensure the rights listed thereunder without limitation, they subjected their obligations under the ICESCR to two restrictions: the rights would be realised progressively and only subject to the availability of resources. Moreover, a quasi-judicial body was established under the ICCPR to monitor its implementation by, inter alia, receiving and determining individual complaints of violations of the convention, a similar body was not established under the ICESCR. Instead, the implementation body established under the ICESCR was only given the power to examine state reports. Section one introduces human rights in terms of generation rights however it is no longer accurate, if it ever was, to speak of rights in terms of generations. The consensus is that human rights are indivisible, interdependent, and interrelated.

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<sup>124</sup> Latif (2019)

<sup>125</sup> Slemro J. (2016)

These rights are also adjudicated in the courts of law and quasi-judicial bodies that require states to take positive action in their realisation. The South African Constitutional Case<sup>126</sup> its first certification judgment summarised this point as follows:

“It is true that the inclusion of the socio-economic rights may result in courts making orders which have direct implications for budgetary matters. However, even when a court enforces civil political rights such as equality, freedom of speech, and the right to a fair trial, the order it makes will often have such implications. A court may require the provision of legal aid or the extension of state benefits to a class of people who formerly were not beneficiaries of such benefits. In our view, it cannot be said that by including socio-economic rights within a bill of rights, a task is conferred upon the courts so different from that ordinarily conferred upon them by a bill of rights that it results in a breach of the separation of powers.”

Thus a tripartite typology of state responsibility concerning human rights has been developed; the state must *respect, protect, and fulfil* all rights regardless of whether there are civil and political rights or socio-economic rights. The potential linkages between taxation and human rights are manifold and grouped under three broad headings: resource mobilisation, redistribution, and accountability as noted in the literature included in this compendium. Fiscal policies are thus a critical tool that states can employ to comply with their international human rights obligations. Revenue and expenditure are the two main instruments of fiscal policy. Both functions are critical to realising human rights, and human rights norms apply to all aspects of fiscal policy. It plays a major role in achieving equality, tackling discrimination, and strengthening governance and accountability, as well as combating poverty and funding development.

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<sup>126</sup> Ex parte Chairperson of the Constitutional Assembly: In Re Certification of the Consitution of the Republic of South Africa 1996 (4) SA 77(CC) paras 77-8

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