Human Rights Institute

The Obligation to Mobilise Resources:

Bridging Human Rights, Sustainable Development Goals, and Economic and Fiscal Policies

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A report of the International Bar Association's Human Rights Institute

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Foreword: Human rights, sustainable development goals and resource mobilisation: better understanding and more coordination is needed

Mr Juan Pablo Bohoslasky, UN Independent Expert on the effects of foreign debt © UN/Jean-Marc Ferré.

Why do we need to focus on resource mobilisation in the context of human rights and the Sustainable Development Goals (SDGs)? Several reasons come to mind: because there is an obligation to mobilise resources towards that end; because we know that, without sustainable finance, rights and goals will fall short; because it is unclear how the achievment of the SDGs and, more importantly, the realisation of human rights will be financed, that is: by whom, how, how much and for what purposes; and, from a special procedures perspective, because it is a cross-cutting issue for all mandates.

Clearly, the SDGs did not frame development issues consistently in a rights-based framework or language. Yet, there are some references to human rights in the SDGs and some of their targets without using a systematic human rights approach. The SDGs now include a Goal 16, covering rule of law, ensuring equal access to justice for all and protection of fundamental freedoms. Human rights language has been included, for example, in SDG 6: 'Ensure access to water and sanitation for all' and in SDG 2 on ending hunger.

This raises some questions. Can we, for example, call for further development of clean energy without paying close attention to principles preventing the displacement of indigenous peoples and forced evictions of millions of urban dwellers? Of course, one could not say that SDG wording could be interpreted against human rights law, but much more than this should be expected. Another weakness of the SDG framework may be seen in the limited accountability mechanism that has been set up to monitor the implementation of the SDGs at the global level, which are largely voluntary pledges of states.

Nonetheless, it is worth engaging strategically with the SDGs while emphasising the existence and binding nature of human rights obligations that underpin several of the SDGs. Not participating, not criticising and not taking advantage of what is actually useful for our agendas may give the impression that we perceive development as non-relevant from a human rights perspective. This approach would

ignore that SDGs and human rights mutually reinforce one another. Another risk is that SDGs are seen as something more and more detached from human rights. Actually, as nine mandate-holders warned in 2016, 'some States and sponsoring private actors are already "cherry-picking" goals and targets in the 2030 Agenda for Sustainable Development, and overlooking basic rights'.

A number of mandate-holders and treaty bodies are already working to identify and/or develop the legal framework of states' obligations to mobilise resources. Human rights should be at the core of development financing, guiding both its means and goals, so that funds are provided and spent without unfairly sacrificing anybody's rights, particularly those of the most vulnerable groups. To make this point clear: international development financing is not just about more resources. To ensure that everyone can enjoy a decent life, free from hunger and with access to education, healthcare, housing and drinking water, human rights must be at the core of development financing.

This includes specific, concrete and practical aspects of the duty to mobilise resources against the backdrop of economic and financial crisis, as well as governance and accountability gaps. For example, illicit financial flows and debt unsustainability undermine fiscal efforts to achieve development goals and realise human rights. Yet, how can these complex links be translated into practical and consistent standards and guidance to states and other stakeholders? How can international efforts be supported to end tax competition between states, tax abuse and shifting funds to tax havens so as to avoid adverse impact on the rights to food, water, sanitation and housing? How can we translate such analysis into pertinent and effective recommendations? How can we effectively address economic inequality, state capture and its adverse impacts on the enjoyment of civil and political rights?

Another important question that needs to be tackled is how extraterritoriality of human rights obligations is linked to the obligation to mobilise resources, the duty to seek international assistance and cooperate, and the relevance of states' human rights obligations when they act as members of international organisations. Clarifying this intricate issue would aid more forceful advocacy, for example, for a full applicability of human rights law to multilateral financial institutions.

We need to be able to conduct a human rights analysis of the possible consequences of economic policy choices. This does not mean questioning the policy space that authorities need in macroeconomic matters. But, for example, we need to reflect on whether it is reasonable to expect that austerity works when economies are weakening.[1] Obligations under human rights law should be a legitimate and necessary constraint when designing and implementing macroeconomic policies. The same can be said regarding bilateral investment treaties that do not allow host countries to capitalise on the benefits of these investments through effective regulatory tools.

A more systematic effort is needed to answer these crucial questions. More collaboration among human rights mechanisms and bodies could be fruitful in order to develop more sophisticated and effective tools and recommendations to tackle a number of human rights challenges that entail economic, fiscal and financial policies. The first step might be compiling relevant recommendations,

1 On the development of the Guiding Principles on Economic Reform and Human Rights, please see my forthcoming (2018) report to the UN Human Rights Council.

Concluding Observations and General Comments by special procedures and treaty bodies as a basis for further discussion.

This is why this research report prepared by the International Bar Association's Human Rights Institute (IBAHRI) is, in my view, a very helpful tool, in particular for mandate-holders. This report attempts to ascertain the scope and content of the obligation put on states to mobilise resources for the realisation of rights, while providing a detailed examination of the interpretation given over the past six years by a number of special procedures mandate-holders and treaty bodies.

It is key to better understand what has been done in this field, in particular in the special procedures system. A better understanding would allow the coordination of efforts, while seeking consistency and strengthening agendas and recommendations on what should be done in this field. Special procedures mandate-holders need to be ready to recommend to states, for example, if and how they should change their tax policies in order to fulfil their human rights obligations, and how economic inequality affects the enjoyment of human rights and how to tackle this issue. We should, for example, propose changes to banking sector regulation if discriminatory patterns against persons with disabilities or other social groups are to be found. Among other stakeholders, special procedures mandate-holders and treaty bodies need to be well-equipped for this challenge, and this research report is a big step in that direction.

Juan Pablo Bohoslavsky, United Nations Independent Expert on Foreign Debt and Human Rights

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In 2016, the IBAHRI commissioned a consultant, Caroline Dommen, to prepare a background paper that looked at economic and fiscal policies and how they relate to the achievement of the SDGs. This background paper was used as the basis for an expert meeting held by the IBAHRI on 11 June 2016, in conjunction with the Friedrich Ebert Stiftung (FES) Foundation, the Geneva Academy, and the Center for Economic and Social Rights. The expert meeting brought together a number of United Nations (UN) mandate-holders (mostly focused on economic and social rights) to discuss human rights and the SDGs.

The IBAHRI would like to thank all those who participated in the meeting, which contributed to the production of this report. The IBAHRI further expresses its gratitude to the researchers and author of this report, without whom this report would not have been produced.

Caroline Dommen

Caroline Dommen carried out the initial research and authored an extensive discussion document on which this report was based. She went on to develop the first draft of the current report.

Caroline Dommen is an international consultant. Her work focuses on sustainable development, economic issues and human rights. Her centre of interest lies at the intersections of questions relating to the economy, human rights and sustainability. She led the Quaker UN Office work on global economic issues for several years, with a focus on human rights-centred food systems. She founded and directed the non-governmental organisation (NGO) 3D – Trade – Human Rights – Equitable Economy. She was International Law Officer at the International Centre for Trade and Sustainable Development, and has also worked for the UN Conference on Trade and Development (UNCTAD) and the International Service for Human Rights. Caroline Dommen has a Masters in Law and Development. She is a member of several professional bodies, including the International Advisory Network of the Business & Human Rights Resource Centre and the International Union for Conservation of Nature (IUCN) – World Conservation Union Commission on Environmental Law.

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Magdalena Sepúlveda carried out further research and, based on her extensive knowledge of the issues, wrote the final report on behalf of the IBAHRI.

Magdalena Sepúlveda was the UN Special Rapportuer on extreme poverty and human rights from 2008 to 2014. She is a Senior Research Associate at the UN Research Institute for Social Development (UNRISD). She is also a member of the Steering Committee of the High Level Panel of Experts on Food Security and Nutrition (HLPE) of the UN Committee of World Food

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She has worked as a researcher at the Netherlands Institute for Human Rights, as a staff attorney at the Inter-American Court of Human Rights, as the Co-Director of the Department of International Law and Human Rights of the UN-mandated University for Peace in Costa Rica and as a Research Director at the International Council on Human Rights Policy in Geneva. She has also served as a consultant to several international organisations, including UN Women, the World Bank Group, UN High Commissioner for Refugees (UNHCR), the International Labour Organization and Office of the High Commissioner for Human Rights (OHCHR) and has worked with a range of NGOs in formal and informal capacities. She has published widely on human rights, poverty and development, and taught various postgraduate courses at universities in Latin America and at the Oxford University Summer Course on Human Rights. She is a Chilean lawyer who holds a PhD in International Law from Utrecht University in the Netherlands, an LLM in human rights law from the University of Essex in the United Kingdom and a postgraduate diploma from the Universidad Católica de Chile.

The research project was developed by IBAHRI Senior Fellow and UN Liaison Helene Ramos Dos Santos, and overseen and supported by IBAHRI Senior Programme Lawyers Shirley Pouget and Muluka Miti-Drummond. IBAHRI Director Phillip Tahmindjis and IBAHRI Geneva Consultant Laure Elmaleh also collectively contributed to editing the report.

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Executive summary

Over the past decade, the relationship between economic policies and human rights has attracted increased attention from scholars and lawyers, as well as by the UN Special Procedures and treaty bodies. For many years, the human rights community has expressed concerns about the negative impact on human rights of economic policies; however, the 2007 to 2008 global economic and financial crisis, and greater social scrutiny of the current historic levels of inequality within and between countries, increased attention on the topic.

These issues prompted some human rights advocates and monitoring bodies to strengthen their focus on issues only scarcely addressed before, such as the mobilisation of resources for compliance with human rights obligations, the negative impact of economic policies, such as austerity measures, on the enjoyment of human rights, the insufficiently regulated financial flows and tax evasion, and the extraterritorial impact of some taxation policies.

Today, the work of various human rights monitoring bodies has articulated the essential elements of states' obligation to mobilise resources for the realisation of human rights. The purpose of this publication is to ascertain, based on a detailed examination of UN treaty bodies and special procedures' views on the topic, the current interpretation of the scope and content of this obligation. As shown by this study, the obligation to mobilise resources is now clearly viewed as a standalone human rights obligation. States must ensure that an adequate amount of resources are mobilised for human rights realisation in a way that is consistent with human rights principles. Yet, while some aspects of the obligation to mobilise resources emerge as clear-cut, others require further consideration and clarification. The aspects that are still unclear could usefully be considered by human rights monitoring bodies in order to add weight, as well as practical and legal applicability, to the obligation to mobilise resources.

The focus on resource mobilisation for compliance with human rights is particularly timely, given the renewed emphasis on this question by the international community, as reaffirmed in the 2030 Agenda for Sustainable Development (the '2030 Agenda'), adopted in September 2015 by 193 countries. With its 17 SDGs, the 2030 Agenda covers a comprehensive set of issues across the three dimensions of sustainable development: economic, social and environmental. The 2030 Agenda is explicitly anchored in human rights norms and principles and recognises that a rights-based approach should underpin all poverty reduction efforts (2030 Agenda, paragraphs 18–20).

SDG 17, on means of implementation and global partnership, calls on all stakeholders to 'strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection' (SDG 17.1). It also calls on developed countries to implement fully their official development assistance commitments (SDG 17.2) and mobilise additional financial resources for developing countries from multiple sources (SDG 17.3). In the same vein, SDG 16, on peace and justice, calls on all stakeholders to 'significantly reduce illicit financial flows' by 2030 (SDG 16.4) and 'substantially reduce corruption and bribery in all their forms' (SDG 16.5). This is to be done through adherence to the rule of

law, which is the essential precondition for achieving the SDGs. These are critical tools to enhance resources available for human rights compliance.

While attention to the issue of mobilisation of resources has been driven mainly by those human rights bodies whose mandates include economic, social and cultural rights, the issue of resource mobilisation is at the core of the realisation of all human rights (civil, political, economic, social and cultural). As such, the present publication would be a useful tool for all human rights mechanisms and essential for those mandated with an explicit request to consider the SDGs in their work.

The objective of the report is threefold:

- to detail the constituent elements of states' obligation to mobilise resources for the realisation of human rights, with a view to strengthening the application of the obligation, and identifying aspects of the obligation that human rights mechanisms might usefully clarify in the future;

- to inform the work of legal practitioners and civil society organisations (CSOs) charged with monitoring, counselling or litigating functions in the area of resource mobilisation; and

- to provide a useful resource to appraise the renewed international development agenda defined by the SDGs. Implementing the 2030 Agenda will require the greatest attention to the human rights obligation to mobilise resources. This is particularly the case for SDG 1, on poverty eradication; SDG 16, on promoting peace and access to justice, particularly promoting the rule of law at the national and international levels, thus combating illicit financial flows; and SDG 17, on revitalising the global partnership for sustainable development. In discussions concerning resource mobilisation in the context of the SDGs, a human rights-based approach can usefully provide not only a legal grounding and articulation of policies with a specific focus on the poorest and most vulnerable, but also arguments that are politically and ideologically neutral, which can be of robust value in discussions about economic policy.

The obligation to mobilise resources: legal basis and guiding principles

The first chapter of this report examines the legal basis, related obligations and guiding principles of the obligation to mobilise resources as they have been interpreted by treaty bodies and special procedures. While many aspects of the obligation to mobilise resources have been clearly established, other aspects remain underexplored and ill-defined. In fact, the report identifies a number of areas in which the work of academic writers and practitioners provides a much more progressive, coherent and comprehensive picture of the obligation to mobilise resources that could assist human rights monitoring bodies to move forward.

Special procedures and treaty bodies have interpreted the obligation to mobilise resources alongside the main features and core principles of human rights theory. First, they have based the obligation to mobilise resources on states' obligations to take steps for the realisation of human rights; obligation

to devote the maximum available resources for the realisation of economic, social and cultural rights; and obligations of international assistance and cooperation.

Second, they have addressed the links between the obligation to mobilise resources with several other obligations, such as the obligation to progressively improve conditions; prohibition of taking deliberately retrogressive measures; the obligation to accord a degree of priority to human rights in the allocation of resources; the obligation to monitor the realisation of human rights, and to devise strategies and programmes for their implementation; and the obligation to ensure the minimum core level of economic, social and cultural rights. These related obligations shape part of the content of the obligation to mobilise resources. For example, as part of the obligation to progressively realise economic, social and cultural rights, states should 'identify the resources available to meet the objectives and the most cost-effective way of using them'. In line with the principle of non-retrogression, a state making cuts in social spending has the burden of proving that the retrogressive measure was the least human rights-damaging alternative. In order to fulfil its minimum core obligations, a state must demonstrate that every effort has been made to use all resources that are at its disposal to satisfy the minimum essential level of rights as a matter of priority. Among these human rights obligations, states should regularly monitor the realisation of human rights, including assessments as to whether the maximum available resources have been used to progressively achieve the full realisation of economic, social and cultural rights.

Third, from the work of human rights monitoring bodies, it is evident that core human rights principles should guide the implementation of the obligation to mobilise resources. The principle of non-discrimination shapes not only the ultimate outcome, but also the process of resource mobilisation. On the one hand, resource mobilisation should eventually lead to reduced economic, social and geographical disparities, and provide for wealth redistribution in order to redress systemic discrimination and spur progress towards substantive equality. On the other hand, 'the rights to equality and non-discrimination should be respected in all revenue-raising policies. Thus, any action, or omission by the state in this area must not discriminate, either directly or indirectly, against any individual or group or perpetuate discrimination and inequality.' Other principles, such as transparency, participation and accountability, are also often referred to by human rights monitoring bodies, although in a general manner, requiring more attention in the future. This is particularly the case regarding the principles of sustainability, efficiency, effectiveness and cooperation that some human rights monitoring bodies have linked to the obligation to mobilise resource, although without fully exploring their content and potential.

While the core features and principles of aforementioned international human rights law assist in the definition and implementation of the obligation to mobilise resources, uncertainties remain as to the legal basis of the obligation to mobilise resources, and the scope and content of the principles that should guide resource mobilisation. Human rights monitoring bodies should do more to clarify some components of the obligation to mobilise resources and develop assessment methodologies to monitor compliance by states. The lack of more precise legal concepts poses several challenges to human rights monitoring bodies seeking to assess compliance with the obligation to mobilise resources. How can they evaluate state responses in terms of compliance with the obligation to mobilise resources if the legal foundation of such obligations are themselves not clear? What are the

criteria to assess whether or not a state has done all that it can towards the mobilisation of resources? How much effort should a state be required to make to mobilise and administer resources for human rights-consistent outcomes?

Sources of resource mobilisation

From the variety of sources that states have to mobilise resources for human rights implementation, human rights monitoring bodies have traditionally focused mainly on resource mobilisation via international assistance and cooperation, paying little attention to efforts to mobilise resources from other sources. Nonetheless, in recent years, this has begun to change. Human rights monitoring bodies have increasingly looked to taxation as the source of domestic resource mobilisation.

This report explores how special procedures and treaty bodies have stressed the critical role of taxation as an effective tool for domestic revenue collection, to combat discrimination and address inequalities, and ensure compliance with minimum core content of economic, social and cultural rights.

The report also explores other options that are available to states to mobilise resources that have been addressed by treaty bodies, and special procedures, such as royalties paid for the utilisation of natural resources, debt and deficit financing, and trade and investment agreements. Yet, the additional attention to domestic resource mobilisation has not translated into more concrete conclusions or guidance about all aspects of the obligation to mobilise resources. With the exception of issues related to foreign debt, many of the observations or suggestions put forward remain too general to be of practical application.

Moreover, there are several other sources for resource mobilisation that have not yet been explored in any significant manner, such as monetary policies. This contrasts with the increasing public recognition that these policies affect the realisation of human rights, in particular economic and social rights.

Addressing resource diversion and foregone tax revenues

From the work of human rights treaty monitoring bodies, it is evident that the obligation to mobilise resources requires states not only to explore all potential sources of resources but also address resource diversion, such as illicit financial flows, tax evasion and corruption. This report identifies the emerging trends on how to address resource diversion and foregone tax revenues in compliance with human rights.

While a few human rights monitoring bodies have made evident that states that continue to tolerate resource diversion cannot claim insufficient resources as a justification for not implementing economic, social and cultural rights, this report highlights that human rights standards related to resource diversion have not been comprehensively developed and, in fact,

remain unaddressed by the majority of special procedures and treaty bodies. Similarly, with limited exceptions, human rights monitoring bodies have not paid sufficient attention to the human rights obligations of multinational corporations in relation to tax abuses and, more generally, in regard to resource mobilisation.

The obligation to mobilise resources in action: opportunities and challenges

In recent years, special procedures and treaty bodies have addressed the obligation to mobilise resources in regard to:

- the impact of austerity measures implemented by states after the 2007 to 2008 global economic and financial crisis;

- the impact that some policy measures, in particular taxation measures, have in other states (extraterritorial obligations); and

- the impact that the lack of regulation of the financial sector might have in the capacity of states to mobilise resources for the realisation of human rights.

While the development of legal standards for assessing compliance with the obligation to mobilise resources in these three areas are welcome, this report recommends that human rights monitoring bodies should apply them more consistently.

Recommendations

- All human rights monitoring bodies should accord due attention to the issue of the mobilisation of resources in their work. This is an issue highly relevant to the assessment of whether or not states are complying with their human rights obligations that has yet to be addressed adequately by special procedures and treaty bodies.

- Special procedures and treaty bodies should further clarify the scope and content of the obligation to mobilise resources, as well as the methodology to assess compliance by states and other actors with this obligation.

- When addressing issues of resource mobilisation, special procedures and treaty bodies should ensure greater coordination among themselves, as well as the consistency and complementarity of their analyses.

- Human rights monitoring bodies should consistently apply the legal developments related to resource mobilisation when reviewing states' reports or undertaking country missions.

- Human rights monitoring bodies should overcome their legalistic tendencies and collaborate more closely with other specialists, such as economists, tax specialists, political scientists, journalists and sociologists.

Under each chapter, this report has included a set of recommendations dealing specifically with some analytical challenges related to resource mobilisation for which special procedures need to develop more sophisticated analytical tools.

Special procedures and treaty bodies should:

- Provide additional clarity about obligations that are the foundations of the duty to mobilise resources. To this end, they can be guided by the work of scholars, advocates and practitioners that have discussed these obligations and concepts extensively, in most cases, providing a much clearer and more comprehensive understanding of the legal obligations they entail.

- Deepen the analysis of the principles that should guide resource mobilisation efforts.

- Be prepared to address new and emerging challenges related to resource mobilisation.

- Regularly request information from states on how they have adopted specific policy decisions: whether or not they have weighed costs and benefits of all policy choices and if policy trade-offs were explicitly addressed.

- Provide more concrete, practical and detailed guidance to states about all aspects of the obligation to mobilise resources, including drawing attention to the prerequisite of the rule of law.

- Consolidate, strengthen and further develop legal standards and methodologies to assess whether or not states have utilised all alternatives at their disposal for resource mobilisation.

- Consistently apply legal standards related to the mobilisation of resources already developed in General Comments (ie, treaty bodies) and thematic reports (ie, special procedures), in the examination of country-specific situations (in treaty bodies' Concluding Observations and special procedures' country missions).

- Consistently address issues of resource diversion and foregone tax revenue when assessing compliance by states of their obligation to mobilise resources.

- Define the role and responsibilities of multinational corporations and other business enterprises in resource mobilisation for the realisation of human rights.

- Develop a legal framework with which to assess tax lawyers, accounting and consulting firms' responsibility for creating the mechanisms that companies and wealthy individuals use to avoid paying taxes.

- Strengthen the legal standards used to better assess states' claims of lack of resources when austerity measures have been implemented.

- Further clarify the extraterritorial dimension of the obligation to mobilise resources for the realisation of human rights.

- Clearly define states' roles regarding the regulation of the financial sector and emphasise the importance of the rule of law in this context.

- Consider the work of academics and practitioners that have further developed and deepened the conceptual frameworks related to resource mobilisation.

Acronyms and clarifications

Acronyms

CAT	Committee against Torture
CCPR	Human Rights Committee, which monitors the ICCPR
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Committee on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
CSOs	civil society organisations
ECOSOC	Economic and Social Council of the United Nations
FES	Friedrich-Ebert-Stiftung
GDP	gross domestic product
GNI	gross national income
GNP	gross national product
HLPE	High Level Panel of Experts on Food Security and Nutrition
IBA	International Bar Association
IBAHRI	International Bar Association's Human Rights Institute
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRICT	Independent Commission for the Reform of International Corporate Taxation

IFI	international financial institutions
IMF	International Monetary Fund
IUCN	International Union for Conservation of Nature
LatinDADD	Red Latinoamericana sobre Deuda, Desarrollo y Derechos (Latin American Network for Debt, Development and Rights)
NGO	non-governmental organisation
ODA	official development assistance
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
SDGs	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNGA	United Nations General Assembly
UNRISD	United Nations Research Institute for Social Development
UPR	Universal Periodic Review
VAT	value added tax

Clarifications

An explanation of UN document ('UN Doc') abbreviations: UN Doc abbreviations feature capital letters combined with figures. The letter denotes the main organ to whose body of documentation the item belongs; Arabic numerals indicate sessions or years. For example:

- *E/C.12/…*: documents from the Committee on Economic, Social and Cultural Rights.[2]
- *CRC/C*: documents from the Committee on the Rights of the Child.

In 'Concluding Observations', after the reference is made to the UN body, there is a reference to the country under examination and the number of the report(s) that are examined. For example:

- *CRC/C/QAT/CO/3-4* indicates the CRC considered Qatar's combined third and fourth periodic reports.
- *E/C.12/ROU/CO/3-5* indicates the CESCR considered Romania's combined third to fifth reports.

While most of the documents examined were from the last ten years, due to their relevance, some older documents have also been included. Older Concluding Observations of the CESCR are included in annual reports of the Committee to the ECOSOC. They are referred to by two symbols: *E/2001/22* or *E/C.12/2000/21*

In 'General Comments', there is an indication of the document type and number. For example, *CRC/C/GC/19* indicates General Comment No 19. The full reference for this General Comment is 'General Comment No 19 on public budgeting for the realisation of children's rights (Art 4)'.

For reasons of practicality, the first time General Comments are mentioned, the study provides the full reference and, in subsequent references, they are identified with the name of the treaty body that issued them alongside their respective numbers: for example, CRC General Comment 19.

In special procedures' reports, letters denote the body to which these were submitted, as well as session numbers.

- *A/HRC/31* indicates a report submitted to the UN Human Rights Council (UNHRC) at the 31st session.
- *A/69* indicates a report to the UN General Assembly (UNGA) at the 69th session.

2 Due to the fact the Committee is a subsidiary organ of the ECOSOC, not legally a body established by the International Covenant on Economic, Social and Cultural Rights.

The study refers to various special procedures' reports without specifying in the text if they were issued by a current or former mandate-holder. However, the name of the mandate-holder who issued that specific report is included in the corresponding footnotes.

Finally, it is important to note that the documents quoted are meant to be illustrative of what human rights monitoring bodies have said. They do not exhaust all instances in which they have expressed an opinion.

Chapter 1: Introduction and background

1.1 Context and objectives

Over the past decade, the relationship between economic policies and human rights has attracted increased attention from scholars and lawyers, as well as UN human rights monitoring bodies, including treaty bodies and special procedures.

While, traditionally, human rights monitoring bodies were reluctant to discuss issues of resource mobilisation for compliance with human rights, this has changed in the past decade. Increased attention to economic and financial topics crystallised with the 2008 to 2009 financial crisis, with increased attention to historic levels of inequality within and between countries. It is now almost inevitable for human rights monitoring bodies[3] to discuss resource creation for human rights compliance and address the negative impact some economic policies, such as austerity measures, exert on the exercise of human rights. Thus, topics that in human rights fora were seldom discussed a few years ago – illicit financial flows, tax-avoidance and evasion, as well as tax havens – have begun to be a more common focus among human rights advocates and monitoring bodies.

This study looks at the 'jurisprudence' of human rights monitoring bodies: treaty bodies and special procedures. It encompasses a range of documents, from 'Concluding Observations', 'General Comments' and public statements on the part of treaty bodies, to thematic and country reports on special procedures. The purpose of this study is to ascertain, based on a detailed examination of this jurisprudence, the current interpretation of the scope and content of an obligation to mobilise resources for human rights realisation. It details the constituent elements of this obligation. With a view to strengthening its application, at the end of each chapter in the 'Concluding observations' section, the report identifies those aspects of the obligation to mobilise resources that human rights monitoring bodies might usefully clarify in the future.

Despite increased attention paid by human rights monitoring bodies regarding the obligation to mobilise resources, and the highly developed analytical and policy proposals they have devised to assess states' compliance with this obligation, this has not yet translated into sufficient practical impact. Thus, the study also proposes recommendations on how the obligation to mobilise resources might be strengthened in the future.

This study follows a groundbreaking report undertaken by the IBAHRI Task Force on tax abuses, poverty and human rights. The 2013 report put forward a number of recommendations to states and the legal profession on the need to articulate human rights and fiscal policies,[4] which are essential elements of states' obligation to mobilise resources for the human rights realisation.

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3 In the context of this study, reference to human rights monitoring bodies refers to both special procedures and treaty bodies.

4 IBAHRI Task Force, *Tax Abuses, Poverty and Human Rights* (IBAHRI 2013), available at www.ibanet.org/Article/Detail.aspx?ArticleUid=4A0CF930-A0D1-4784-8D09-F588DCDDFEA4 accessed 20 October 2017.

The focus on resource mobilisation is particularly timely given the international community's renewed emphasis on this question, as reaffirmed in the 2030 Agenda, adopted in 2015 by 193 countries.[5] With its 17 SDGs, the 2030 Agenda covers a comprehensive set of issues across sustainable development's three dimensions: economic, social and environmental. The 2030 Agenda is explicitly anchored in human rights norms and principles, and recognises that a rights-based approach should underpin all poverty reduction efforts (2030 Agenda, paragraphs 18–20).

In particular, SDG 17, on the 'means of implementation and global partnership for sustainable development', calls on all stakeholders to 'strengthen domestic resource mobilisation, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection' (SDG 17.1). It also calls on developed countries to fully implement their official development assistance commitments, including the commitment to achieve a target of 0.7 per cent gross national income for official development assistance (ODA/GNI) to developing countries and 0.15 to 0.2 per cent ODA/GNI to least-developed countries (SDG 17.2), as well as mobilise additional financial resources for developing countries from multiple sources (SDG 17.3).

Additionally, SDG 16, on 'peace and justice' is also relevant for resource mobilisation. Among other issues, it calls on all stakeholders to 'significantly reduce illicit financial flows' by 2030 (SDG 16.4), and to 'substantially reduce corruption and bribery in all their forms' (SDG 16.5).

1.2 Scope, limitations and clarification

This study draws out the content underlying the obligation to mobilise resources by making reference to the interpretations that special procedures and treaty bodies provide.[6]

Special procedures and treaty bodies' legal bearing

The UNHRC is the key UN intergovernmental body responsible for human rights. Its main functions are strengthening the promotion and protection of human rights around the globe and addressing situations of human rights violations.[7] The council has several mechanisms and procedures for its work, among them, undertaking Universal Periodic Reviews (UPRs) and working with special procedures.

The UPR is a peer-review mechanism by which states assess the human rights situations in all UN Member States. The special procedures are human rights monitoring mechanisms entrusted

5 UNGA, 'Transforming Our World: the 2030 Agenda for Sustainable Development' (25 September 2015) UN Doc A/RES/70/1 (the '2030 Agenda').

6 The Statute of the International Court of Justice specifies in Art 38(1)(d) that judicial decisions and the teachings 'of the most highly qualified publicists' are a means for the determination of the rules of international law. Many consider UN special procedures to be such publicists. Treaty body pronouncements have also been cited as means for determining legal rules. See Christine Chinkin, 'International Law – Sources' in Daniel Moeckli et al (eds), *International Human Rights Law* (2nd edn, OUP 2013).

7 UNGA resolution 60/252 from 27 March 2006.

to independent human rights experts or groups of such experts, known as special rapporteurs, independent experts or working groups. They report and advise on thematic or country-specific human rights situations. As at July 2017, there were 44 thematic and 13 country-specific mandates.

The President of the UNHRC appoints special procedure mandate-holders who serve in their personal capacity and do not receive financial remuneration for their work. Their independent status is intended to safeguard their impartiality. Special procedures can undertake country missions, issue 'communications', including urgent appeals to governments, call public attention to specific violations and elaborate on human rights norms. They are mandated to submit periodic reports to the UNHRC and, in some cases, to the UNGA.

The special procedures system is a unique mechanism that can draw high-level public attention to specific issues, prompt governments to re-examine and correct actions, and give a voice to victims. Although their reports and recommendations are not legally binding per se, they do carry weight as authoritative interpretations of international law. Over the years, special procedures have played a critical role in shaping the content of international human rights norms, shedding light on how states comply with such norms and advancing measures to improve respect for them.[8] The legal framework for their work is the Universal Declaration of Human Rights (UDHR), all major human rights treaties, and various resolutions, decisions and declarations adopted by UN bodies. While their specific mandate is contained in the resolution that establishes each of them in general, country mandates must focus on the country concerned, while thematic mandates monitor any UN member state's human rights compliance.

While resource mobilisation for human rights realisation is a cross-cutting issue for all human rights monitoring bodies, some special procedures have paid more attention than others to the issue of resource mobilisation. This is particularly the case among thematic mandates with a strong focus on economic, social and cultural rights, such as (in alphabetical order):

- the Special Rapporteur on the right to food ('Special Rapporteur on food');
- the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights (the 'Independent Expert on foreign debt');
- the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (the 'Special Rapporteur on health');
- the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (the 'Special Rapporteur on housing');

8 Ted Piccone, *Catalysts for Change: How the U.N.'s Independent Experts Promote Human Rights* (July 2012), available at www.brookings.edu/wp-content/uploads/2016/07/catalystsforchange_chapter.pdf accessed 20 October 2017.

- the Special Rapporteur on the rights of indigenous peoples (the 'Special Rapporteur on indigenous peoples');

- the Independent Expert on the promotion of a democratic and equitable international order (the 'Independent Expert on international order');

- the Independent Expert on human rights and international solidarity (the 'Independent Expert on international solidarity');

- the Special Rapporteur on extreme poverty and human rights (the 'Special Rapporteur on poverty') NB: until 2011, the mandate was known as the Independent Expert on the question of human rights and extreme poverty;

- the Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights (the 'Special Rapporteur on unilateral coercive measures');

- the Special Rapporteur on the human rights to safe drinking water and sanitation (the 'Special Rapporteur on water and sanitation'); and

- the Working Group on the issue of human rights and transnational corporations and other business enterprises (the 'Working Group on business and human rights').[9]

In the resolutions establishing several of the aforementioned mandates, there is an explicit request to consider the SDGs. Thus, they are compelled to deal with resource mobilisation in the context of the SDGs and human rights.

Treaty bodies are committees of independent experts that monitor states' implementation of specific human rights treaties (eg, the International Covenant on Economic, Social and Cultural Rights (ICESR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child). States appoint treaty body members based on their individual capacities, and members do not receive any remuneration for their work. Treaty bodies perform their functions in accordance with provisions in the treaties that establish them.[10] Most treaty bodies review States Parties' reports and issue 'Concluding Observations';[11] adopt 'General Comments' (or recommendations) that interpret treaty provisions;[12] organise thematic discussions; and some

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9 For the full list of special procedures, see http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewAllCountryMandates.aspx?Type=TM accessed 20 October 2017. For the full list of those mandates included in this report, see Annex 1.

10 The wording of various human rights treaties establishes treaty bodies, with the exception of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR does not establish a special body to monitor implementation and entrusts the UN Economic and Social Council (ECOSOC) with this task; its supervisory body, the Committee on Economic, Social and Cultural Rights, has a peculiar status as a subsidiary body of ECOSOC.

11 Except the Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, established by the Optional Protocol to the Convention against Torture, which has a preventive focus.

12 General Comments or recommendations codify the treaty bodies' views on a given issue to give states that have ratified the respective treaty a clear understanding of their obligations.

hand down official statements. Yet, only some treaty bodies are mandated with reviewing individual complaints or conducting country inquiries. As at July 2017, there were ten treaty bodies.[13] Treaty bodies play an important role in establishing the regulatory content of human rights treaty provisions and in lending concrete meaning to individual rights, as well as state obligations.[14]

The Committee on Economic, Social and Cultural Rights (CESCR), the body entrusted with overseeing implementation of the ICESCR,[15] and the Committee on the Rights of the Child (CRC), which monitors the Convention on the Rights of the Child,[16] have been the two treaty bodies that have given greater attention to the obligation to mobilise resources. As at July 2017, these conventions have 165 and 196 States Parties, respectively.

Eighteen members from different countries make up both committees. Members of the committees serve in their personal capacities and do not represent their country of nationality. The committees' interpretation of the obligations under their respective covenants are included in various documents, including their 'Concluding Observations', which contain concerns and recommendations coming out of a member-state report review; their 'General Comments', which contain specific intepretations of the content of the provisions of the covenant;[17] as well as substantive 'statements'. Both committees work under consensus rules; therefore, these documents represent the committees' univocal position.

Over the years, the obligations that human rights treaties have imposed have broadened in scope via human rights monitoring bodies' interpretations. These bodies not only clarify human rights treaties regulatory content, but their interpretation also effectively extends the scope of protections afforded. This is critical to understanding the obligation to mobilise resources, to be examined in the present study.

13 The Human Rights Committee (CCPR) monitors implementation of the ICCPR; the Committee on Economic, Social and Cultural Rights (CESCR) monitors implementation of the ICESCR; the Committee on the Elimination of Racial Discrimination (CERD) monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination; the Committee on the Elimination of Discrimination against Women (CEDAW) monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women; the Committee against Torture (CAT) monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment; the Committee on the Rights of the Child (CRC) monitors implementation of the Convention on the Rights of the Child; the Committee on Migrant Workers monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Committee on the Rights of Persons with Disabilities (CRPD) monitors implementation of the International Convention on the Rights of Persons with Disabilities; the Committee on Enforced Disappearances monitors the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance, and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment established pursuant to the Optional Protocol of the Convention.

14 Kerstin Mechlem, 'Treaty Bodies and the Interpretation of Human Rights' (2009), 42 Vanderbilt Journal of Transnational Law 90.

15 Adopted in December 1966, entered into force 1976.

16 Adopted by the UNGA on 2 November 1989, entered into force on 2 September 1990.

17 As of July 2017, the CESCR has issued 24 General Comments and the CRC has issued 20.

Limitations

The present study seeks to clarify the scope and content of the obligation to mobilise resources for human rights realisation as it has been interpreted by treaty bodies and special procedures. However, in practice, only some of the treaty bodies and special procedures have paid attention to the topic. While analysis of resource mobilisation has increased in recent years, it is still marginal to the work of human rights monitoring bodies. The CESCR, and a few special procedures mandate-holders, have made the greatest progress in this respect by dedicating full or partial thematic reports to aspects of the issue. Thus, it is not surprising that most of the references included here are based on the handful of reports that are most relevant to the topic. That said, a great many more reports and documents were analysed for this study; a complete list appears in the Annexes. The documents examined were identified as the most relevant among those issued by human rights monitoring bodies over the past ten years. However, many special procedures and treaty bodies have referred to resource mobilisation only occasionally. Some older documents were included in the analysis due to their relevance or because they reflect the consistency of the approach over the years.

A challenge has been analysing this wide, heterogeneous array of documents that refer to the obligation to mobilise resources, and present it in a systematic way, seeking to define and elaborate on its scope and content. This is difficult at times. Documents are not always consistent; they are often adopted under great time constraints by experts who work without a salary, have other full-time jobs and are supported by a Secretariat (the OHCHR) that is itself under continuous resource constraints. The staff supporting these independent experts are subject to high turnover and thus there is little 'institutional memory'. Moreover, despite great efforts to improve coordination among treaty bodies and special procedures, consistency remains a challenge. Under these circumstances, one cannot expect that treaty body and special procedures mandate-holders – nor even Secretariat staff – are fully aware of other bodies' latest General Comments or reports.

Yet, as this study will demonstrate, a relatively coherent picture of the obligation to mobilise resources has emerged. And because the study focuses on the interpretation that special procedures and treaty bodies offer, it does not aim to provide a comprehensive view of the issue of resource mobilisation for human rights realisation. The work of treaty bodies and special procedures reveals both gaps (ie, unaddressed areas or topics) and areas that have been under-examined. Moreover, it is highly possible that academic writers' and practitioners' work on the topic provides a much more progressive, coherent and comprehensive picture. In trying to be faithful to special procedures' and treaty bodies' interpretations, the study does not intend to limit or restrict the scope and content of human rights and related obligations. On the contrary, it seeks to shed light on areas that may require further attention by human rights monitoring bodies in the future.

Chapter 2: Obligation to mobilise resources for human rights realisation: legal basis and guiding principles

This chapter examines the legal basis, related obligations and guiding principles for resource mobilisation as they have been interpreted by treaty bodies and special procedures.

From the outset, it is important to note that special procedures and treaty bodies are not always explicit about the meaning of 'resources' in their work. They have not provided a definition of the term. The *Oxford English Dictionary* defines resources as 'a country's collective means of supporting itself or becoming wealthier, as represented by its reserves of minerals, land, and other natural assets'; and 'a stock or supply of money, materials, staff, and other assets that can be drawn on'.[18] Thus, according to the ordinary meaning of the term, and the object and purpose of human rights treaties,[19] 'resources' should be regarded in a broad sense as including all elements at states' disposal that can be drawn on to realise human rights.

2.1 Legal basis of the obligation to mobilise resources

The main basis for the obligation to mobilise resources lies in the texts of international treaties that enshrine obligations to take steps for human rights implementation; the obligation to devote maximum available resources to compliance with economic, social and cultural rights; in addition to international assistance and cooperation. These obligations are included in major human rights treaties and have been further developed by human rights treaty monitoring bodies.

Examples of key provisions include [emphasis author's own]:

Article 2(2) ICCPR:

> '[E]ach State Party to the present Covenant undertakes *to take the necessary steps*, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the present Covenant.'[20]

Article 2(1) ICESCR:

> 'Each State Party to the present Covenant *undertakes to take steps*, individually and through *international assistance and co-operation*, especially economic and technical, to the *maximum of its available resources*, with a view to achieving progressively the full realisation of the rights recognised

18 See https://en.oxforddictionaries.com/definition/resource accessed 30 September 2017.

19 Art 31(1) Vienna Convention on the Law of Treaties: 'A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'.

20 See also CCPR General Comment No 31 (2004) on the nature of the general legal obligation imposed on States Parties to the Covenant (2004) UN Doc CCPR/C/21/Rev.1/Add.13, para 7, which specifies that measures include 'legislative, judicial, administrative, educative and other appropriate measures'.

in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.'

Article 4 CRC:

'States Parties *shall undertake all appropriate legislative, administrative, and other measures* for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the *maximum extent of their available resources* and, where needed, within the framework of *international co-operation*.'

Article 4(2) CRPD:[21]

'With regard to economic, social and cultural rights, each State Party undertakes *to take measures to the maximum of its available resources* and, where needed, within the framework of *international cooperation*, with a view to achieving progressively the full realisation of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.'

The obligation to take steps

The obligation to take steps applies to the implementation of all human rights. With respect to civil and political rights, the Human Rights Committee (CCPR) specifies this requirement is 'unqualified and of immediate effect'.[22] The CRC has echoed this statement.[23] Similarly, the CESCR has specified that 'failure to comply with that requirement cannot be justified by reference to political, social, cultural or economic considerations within the state'.[24]

This obligation is immediately applicable and is not subject to limitation.[25] Moreover, it has noted that steps should be 'deliberate, concrete and targeted' towards full rights realisation.[26] As indicated by the various treaty-monitoring bodies, states shall take 'appropriate legislative, administrative and other measures' for the realisation of rights. There is no doubt that such measures include those related to resource mobilisation.[27] For example, in a recent General Comment, the CESCR explicitly noted that

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21 Adopted in 2006, entered into force 2008.

22 CCPR, General Comment No 31, para 14.

23 CCPR, General Comment No 5: General measures of implementation of the Convention on the Rights of the Child (2003) UN Doc CRC/GC/2003/5, para 5.

24 CCPR, General Comment No 31, para 14.

25 See, eg, CESCR, General Comment No 3: The nature of States Parties obligations (Art 2, para 1) (1990) UN Doc E/1991/23 para 2; General Comment No 13: the right to education (Art 12 of the ICESCR) (1999) UN Doc E/C.12/1999/10 para 43; General Comment No 14: the right to the highest attainable standard of health (Art 12 of the ICESCR) (2000) UN Doc E/C.12/2000/4, para 30. See also, Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights No 16, which reads as follows: 'All States Parties have an obligation to begin immediately to take steps toward full realisation of the rights contained in the Covenant'; and CRC, General Comment No 19 on public budgeting for the realisation of children's rights (Art 4) (2016) UN Doc CRC/C/GC/19, para 18.

26 See CESCR General Comment No 3, para 2.

27 CRC, General Comment No 19, para 18.

discharging the obligation to take steps using maximum available resources 'may require resource mobilisation by the state, including by enforcing progressive taxation schemes'.[28]

The obligation to devote maximum available resources

The obligation to devote 'maximum available resources' for the realisation of economic, social and cultural rights is contained in three prominent, widely ratified human rights treaties: the ICESCR (Article 2); the CRC (Article 4) and the CRPD (Article 4.2).[29] Thus, the vast majority of states are bound by this obligation as contained in any of these treaties.

While at first glance this obligation may appear vague, human rights monitoring bodies – in particular the CESCR and CRC – as well as academic writers and practitioners, have offered additional clarification.[30] Thus, today, there is greater clarity about several specific and practical aspects of this obligation. Yet, as we shall see in the present study, despite great progress made, there are still aspects of this concept that remain ill-defined.

What are 'resources'?

Special procedures and treaty bodies are not always explicit about the meaning of resources in their work. In 2011, a group of academics and practitioners met to further clarify the concept of 'maximum available resources' and concluded that the CESCR, CRC and several special procedures often provided a narrow interpretation of this concept, 'assuming that available resources have been fixed by previous policy choices and that the government's main duty lies in efficient administration of these resources'. Thus, in their view, human rights monitoring bodies 'have tended to limit analysis to budget expenditure and international assistance, while overlooking other determinants of the full set of resources available to realise human rights – including monetary policy, financial sector policy and deficit financing'.[31]

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28 CESCR, General Comment No 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities (2017) E/C.12/GC/24, para 23.

29 Different states have different obligations depending on which human rights treaties they have ratified. As of July 2017, 165 states are parties to the ICESCR; all states except the US are parties to the CRC; and 174 states are parties to the CRPD. For a complete list of UN human rights treaty Member States, see http://indicators.ohchr.org accessed 20 October 2017.

30 Human rights monitoring bodies as well as academics have addressed these issues. See, eg, CESCR 'An Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" under an Optional Protocol to the Covenant' UN Doc E/C.12/2007/1 (2007); CRC General Comment no 5, para 51, and 'Day of General Discussion – Resources for the Rights of the Child: Responsibility of States', 46th Session (2007); Danilo Türk, 'The Realisation of Economic, Social and Cultural Rights: Final Report submitted by Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities' (1992) UN Doc E/CN.4/Sub.2/1992/16; Robert E Robertson, 'Measuring State Compliance with the Obligation to Devote the "Maximum Available Resources" to Realising Economic, Social, and Cultural Rights' (1994) 16(4), Human Rights Quarterly 693; Radhika Balakrishnan et al, *Maximum Available Resources & Human Rights: Analytical Report* (Center for Women's Global Leadership 2011); Sigrun Skogly, 'The Requirement of Using the "Maximum of Available Resources" for Human Rights Realisation: A Question of Quality as Well as Quantity?' (2012) 12 Human Rights Law Review 393; Alison Graham, *National debt versus the right to social security: How should states' obligations during a financial crisis be interpreted?* (2016) PhD thesis, Lancaster University.

31 Radhika Balakrishnan et al, *Maximum Available Resources & Human Rights: Analytical Report* (Center for Women's Global Leadership 2011), p 2.

As discussed in this study, in the six years since this conclusion was reached – and maybe even triggered by this same assessment – treaty bodies and special procedures have increasingly adopted a broader interpretation of the notion of resources. Though they have not provided a clear definition, monitoring bodies seem now to assume that not all resources are monetary. Resources they name as relevant to human rights realisation include natural, human, technological, organisational, informational and administrative.[32] This broad interpretation is even in line with the ICESCR's drafting history. During the drafting process, the Lebanese representative noted 'it must be made clear that the reference [to resources] was to the real resources of the country and not to budgetary appropriations'.[33]

In line with the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (the 'Limburg Principles'),[34] which indicate that states have an obligation to develop *societal* resources as a way of increasing their available resources, human rights monitoring bodies have also suggested that states' investment in employment, education, training and healthcare should be increased for resource mobilisation.[35] Investing in accessible and quality education is an example that has been put forward as a measure that has strong medium- and long-term effects – both as a right in itself and as a means of expanding a state's assets[36] – and therefore on the resources available to support human rights in the long term. Along the same lines, the importance of systematically supporting 'parents and families which are among the most important "available resources" for children' has been highlighted.[37]

While the current interpretation of human rights monitoring bodies of the notion of resources encompasses financial and non-financial, some questions remain as to the nature of the resources. Special procedures and treaty bodies should strengthen the interpretation of resources as a dynamic concept, and states as active agents in the mobilisation of resources. In addition, they should emphasise that adherence to the rule of law is an essential concomitant to this. Regardless of the nature of the resources, if they are being corruptly diverted, their potential will be lost.

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32 CRC, 'Day of general discussion on "resources for the rights of the child – responsibility of states." Recommendations from the Committee on the Rights of the Child' (21 September 2007), 46th session of the CRC, paras 24–25. See also Aoife Nolan, 'Economic and Social Rights, Budgets and the Convention on the Rights of the Child', (2013) 21(2) International Journal of Children's Rights 248.

33 'Summary Records of the 271st meeting of the Commission on Human Rights' (1952) UN Doc E/CN.4/SR.271, p 5.

34 The Limburg Principles were adopted in 1986 by a group of distinguished international experts in international law. They provide a comprehensive framework for understanding the legal nature of ICESCR norms and are widely used, including by special procedures and the CESCR itself, as a means of interpreting those norms. Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Doc E/CN.4/1987/17 (1987), Annex, reprinted in (1987) 9(22) Human Rights Quarterly 122.

35 See, eg, CESCR Concluding Observations, Democratic Republic of the Congo, 16 December 2009, E/C.12/COD/CO/4, paras 16–17.

36 'Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/60, para 68.

37 CRC, 'Day of general discussion on "resources for the rights of the child – responsibility of States." Recommendations from the Committee on the Rights of the Child' (21 September 2007), 46th session of the CRC, paras 24–25. See also Aoife Nolan, 'Economic and Social Rights, Budgets and the Convention on the Rights of the Child', (2013) 21(2) International Journal of Children's Rights 248.

When are resources available?

From the current interpretation of available resources provided by treaty bodies and special procedures, it seems clear that states have more than just a static or fixed quantity of resources and fiscal space.[38] Some have interpreted the obligation to include the amount of resources that a state could reasonably develop, but has not yet developed, among available resources. Some special procedures have pointed out that the determination of available resources may well involve looking beyond those resources on the balance sheet of the treasury to also encompass those that 'a State *can* reasonably generate through adequate, appropriate and fair taxation of individuals and corporations or through the levying of tariffs'.[39]

Increasingly, treaty-monitoring bodies are interpreting resources broadly and assessing states' compliance to this obligation not only in reference to what they can do with *existing* resources, but also requiring them to take all necessary steps to *mobilise* resources.[40] Yet, to move forward, treaty-monitoring bodies will need to pay more attention to such policy choices as a government may have to mobilise factors of production to their full potential, as well as systematically ask states what they are doing to preserve and expand their assets. This includes going beyond, say, natural resources or requests for foreign aid, and applying this criterion to other assets, including human capital.

Is resource mobilisation relevant only to economic, social and cultural rights?

It is important to note that, while provisions regarding resource mobilisation are included in human rights treaties only in reference to economic, social and cultural rights, today it is beyond question that compliance with all human rights, including civil and political rights, requires state resource allocation. Traditional civil and political rights, such as the right to due process, fair and equitable elections and respect for freedom of information, all require adequately funded institutions and, by extension, resources. All human, civil, economic, political, social and cultural rights impose a range of obligations (obligations to respect, protect and fulfil) that require state involvement and resources for their implementation, if at a different level.

In recent years, human rights monitoring bodies have increased attention to provisions related to the obligation to take steps and devote maximum available resources, articulating them more clearly as an obligation to mobilise resources. Recently, the CESCR has lent more attention to domestic resource mobilisation, including through taxation, and its 2017 General Comment (General Comment No 24 of 23 June 2017) even addressed the issue directly. This stands in sharp contrast to the Committee's previous focus, which lent more attention to developing states' obligation to mobilise resources from international sources (ie, seeking international assistance and cooperation).[41]

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38 'Fiscal space' is government flexibility regarding spending choices. It can be further defined as the space in a government budget that allows it to provide resources for a desired purpose without jeopardising the sustainability of its financial position or overall economic stability.

39 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/60, para 13.

40 Radhika Balakrishnan et al, *Maximum Available Resources & Human Rights: Analytical Report* (Center for Women's Global Leadership 2011).

41 Nico Schrijver and Virginia Bras Gomes, IBAHRI-FES-Geneva Academy Expert meeting, 11 June 2016.

The CRC has also increased attention to domestic resource mobilisation, as evident in its General Comment No 19 (2016) on public budgeting for the realisation of children's rights.[42] In it, the CRC makes clear that 'budgets' includes 'public revenue mobilisation, budget allocation and expenditures of States'.[43] It also notes that 'all the core human rights treaties contain provisions that are similar to article 4 of the Convention'; thus, General Comments related to public budgets that other treaty bodies address 'should be seen as completing the present general comment'.[44] The CRC makes clear in this General Comment that the 'obligation to undertake "all appropriate measures" includes the duty to ensure that laws and policies are in place to support resource mobilisation' and that 'sufficient public resources are mobilised' to fully implement approved legislation, policies, programmes and budgets. These obligations refer to all rights included in the CRC, which enshrines children's civil and political, as well as economic, social and cultural rights. Special procedures with mandates related to economic, social and cultural rights regularly stress the importance of resources for human rights realisation. To cite one, the Special Rapporteur on health has lamented that insufficient resources have increased governments' inability to finance efficient health systems.[45]

While more attention has been paid to the obligation to mobilise resources in the economic, social and cultural rights contexts, this does not diminish the obligation's applicability to civil and political rights. Some human rights monitoring bodies have also articulated an obligation to mobilise resources for the realisation of civil and political rights. For example, the Special Rapporteur on extrajudicial, summary or arbitrary executions suggested Guatemala's executions crisis 'can be attributed in good part to the government's failure to behave in a fiscally responsible manner'. According to the Rapporteur, that state's low tax-collection rates do not afford an 'honest and effective police force and system of justice… along with a system which respects core economic, social and cultural rights'.[46]

In the same vein, the Special Rapporteur on the independence of judges and lawyers has recommended 'a minimum fixed percentage of gross domestic product (GDP) be allocated to the judiciary by the Constitution or by law' and that 'under important domestic economic constraints, the needs of the judiciary and the court system be accorded a high level of priority in the allocation of resources'.[47] Similarly, on her country visit to Mexico, another mandate-holder on the independence of judges and lawyers noted a shortage of financial and human resources – alongside the absence of suitable police and prosecutor training – as some of the national justice system's greatest challenges, noting also that juvenile justice system-related constitutional reform urgently required sufficient

42 CRC, General Comment No 19 on public budgeting for the realisation of children's rights (Art 4) (2016) UN Doc CRC/C/GC/19 of 20 July 2016.

43 CRC, General Comment No 19, para 4.

44 CRC, General Comment No 19, para 9.

45 'Interim report of the Special Rapporteur on health, Anand Grover' (main focus: health financing in the context of the right to health) (2012) UN Doc A/67/302, para 12.

46 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston', (Mission to Guatemala), A/HRC/4/20/Add.2 (2007) para 64.

47 'Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy' UN Doc A/HRC/11/41 (2009) paras 37–41 and 101.

funding for necessary infrastructure and system-staff specialised training.[48] Although much less frequently, treaty bodies dealing with civil and political rights have mentioned a need to allocate resources to implement these rights.[49]

Yet, overall, treaty bodies and special procedures whose mandates mainly focus on civil and political rights are often silent about issues of resource mobilisation. Considering the indivisibility of all human rights and the consensus that the realisation of all human rights requires resources for their implementation, this is a major gap. Indeed, as respect for the rule of law itself is a precondition for strengthening all human rights, this connection is even more apparent.

The obligation to seek and provide international assistance and cooperation

The UN Charter (Articles 55 and 56) establishes the principle of international cooperation among states and has been subject to a number of subsequent developments, such as ICESCR Articles 2(1) and 11(2);[50] CRC Article 4; and CRPD Article 32. As examined in this section, international assistance and cooperation obligations are the legal basis for considering that 'available resources' are not limited to those available within a state but include those available from the international community via international cooperation and assistance. The work by treaty monitoring bodies such as the CESCR,[51] CRC[52] and several special procedures has further confirmed this.[53]

48 'Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul' (Mission to Mexico) (2011) UN Doc A/HRC/17/30/Add.3.

49 See, eg, CAT, Concluding Observation on Ghana CAT/C/GHA/CO/1 (2011); Concluding Observation on Mozambique CAT/C/MOZ/CO/1 (20113) para 10; CCPR, Concluding Observation on Mozambique CCPR/C/MOZ/CO/1 (2013) para 7; and Concluding Observation on Paraguay CCPR/C/PRY/CO/3 (2013).

50 The ICESR refers to 'international assistance and cooperation', or similar formulations, also in Arts 15.4, 22 and 23.

51 See, eg, CESCR, General Comment No 3, para 14. See also the CESCR's General Comments on food and health which specify that 'States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required' and 'Depending on the availability of resources, States (in particular States in a position to assist developing countries in fulfilling their core and other obligations under the Covenant) should facilitate access to essential health facilities, goods and services in other countries, wherever possible and provide the necessary aid when required'. CESCR, General Comment No 12: the right to adequate food (Art 11) (1999) UN Doc E/C.12/1999/5, paras 36–37. See, eg, CESCR, General Comment No 14 (2000): the right to the highest attainable standard of health (Art 12 of the ICESCR) (2000) UN Doc E/C.12/2000/4, para 45; CESCR, General Comment No 15 (2002): the right to water (Arts 11 and 12 of the ICESCR) (2003). See also the CESCR's Statement on 'Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" Under an Optional Protocol to the Covenant', 2007.

52 CRC, 'Day of general discussion on "resources for the rights of the child – responsibility of States." Recommendations from the Committee on the Rights of the Child' (21 September 2007), 46th session of the CRC, para 5. The CRC's General Comment on public budgeting for children's rights refers mainly to financial resources and clearly asserts that resources include those existing within a state as well as those available from the international community.

53 See, eg, 'Report of the Special Rapporteur on water and sanitation, Catarina de Albuquerque' (Mission to Tuvalu) (2012); Report of the Special Rapporteur on the right to education (the 'Special Rapporteur on education'), Kishore Singh' (financing education and update on education in emergencies) (2011) UN Doc A/66/269, para 16; 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (Taxation and human rights) (2014) UN Doc A/HRC/26/28, para 30 and UN Doc A/HRC/24/44/Add.2, 'Report of the Working Group on Arbitrary Detention' (2010) UN Doc A/HRC/13/30/Add.2.

Following the interpretation the CESCR provides, international assistance and cooperation obligations are not the same for all states.[54] As noted by the Committee, the obligation to provide 'international assistance and cooperation, especially economic and technical' is different for developing and developed states ('those in a position to assist').[55] States Parties to the ICESCR, CRC and CRPD that lack the necessary resources for economic, social and cultural rights realisation are obliged to 'actively seek assistance' to ensure economic, social and cultural rights assertion on the part of everyone under their jurisdictions.[56] According to the CESCR, states in need of international assistance should make efforts to obtain it.[57] These obligations are further explored below.

Obligations of 'those in a position to assist'

It is not easy to determine the implications of the reference to international assistance and cooperation with regard to those states that are 'in a position to assist and cooperate with others' (ie, developed states). As noted by the Special Rapporteur on the right to food, the duty to provide assistance is still imperfectly defined in international law and 'in need of being further clarified'.[58]

In recent years, the CESCR and CRPD have used stricter language regarding international assistance and cooperation obligations, suggesting that, under their respective treaties, there is an obligation to provide the equivalent of 0.7 per cent of gross national product (GNP) to development assistance.[59] In the same vein, the Independent Expert on solidarity has taken the concept of international cooperation one step further, by means of a draft declaration on the right of peoples and individuals to international solidarity.[60] Still, it is difficult to maintain there is a clear-cut position between human rights monitoring bodies on this topic. It seems evident that obligations regarding international assistance and cooperation require further development by human rights treaty monitoring bodies in order to determine whether states are under an obligation to provide international assistance in particular circumstances or at certain levels. Moreover, human rights monitoring bodies should also be prepared to address new and emerging challenges related to international

54 For a comprehensive analysis of the obligations pertaining to international assistance and cooperation under the ICESCR, see Magdalena Sepúlveda, 'The obligations of "international assistance and cooperation" under the International Covenant on Economic, Social and Cultural Rights. A possible entry point for a human rights based approach to Millennium Development Goal No 8', (2009) 13(1) The International Journal on Human Rights 86.

55 See, eg, CESCR General Comment No 14, para 45; CESCR, General Comment No 15, para 38. See also Statement adopted by the Committee on Economic, Social and Cultural Rights on 4 May 2001 on 'substantive issues arising in the implementation of the international covenant on economic, social and cultural rights: poverty and the International Covenant on Economic, Social and Cultural Rights' E/C.12/2001/10, paras 15–18.

56 See, eg, CESCR Concluding Observations Ukraine E/1996/22, para 271; Concluding Observations Guyana E/C.12/GUY/CO/2-4 (2015); and Concluding Observations Uganda E/C.12/UGA/CO/1 (2015).

57 CESCR, General Comment No 2: Informational technical assistance measures (Art 22) (1990) UN Doc E/1990/23, para 10.

58 'Report of the Special Rapporteur on the right to food, Olivier De Schutter' ('The role of development cooperation and food aid in realizing the right to adequate food: moving from charity to obligation') (2009) UN Doc A/HRC/10/5, para 8.

59 See, eg, CESCR, General Comment No 22 on the right to sexual and reproductive health (Art 12 of the ICESCR) (2016) UN Doc E/C.12/GC/22 para 50; and CRPD, General Comment on Article 6: Women with disabilities (2015), para 58. Until recently, the ICESCR considered the target of 0.7 per cent of GNP as a UN recommendation and not an obligation imposed by the covenant. See, eg, CESCR General Comment No 14, para 40.

60 'Report of the Independent Expert on human rights and international solidarity, Virginia Dandan' (2013) UN Doc A/68/176.

resource mobilisation. They should acknowledge that, in the past decade, there has been significant change in the development financing landscape. New actors and financing sources have gained importance, including donors that are not members of the Organisation for Economic Cooperation and Development's (OECD) Development Assistance Committee: NGOs, climate funds, innovative financing mechanisms and South–South Cooperation initiatives. Private capital has also become an important financing source, via a diversified instruments range, including stock shares, bonds, debt securities, concessional loans and risk-hedging instruments (including guarantees), as well as workers' remittances and voluntary private contributions.[61] These new actors' responsibilities, as well as their activities' impact on human rights, will require a more sophisticated human rights analysis and will also require sharpening existing legal frameworks.

That said, special procedures and treaty bodies have spelt out several elements.

First, countries that provide international assistance and cooperation must do so in a way consistent with human rights.[62] A first step towards this has been achieved at the international level with the recognition that aid should not be determined by donors' interests,[63] but by an objective assessment of identified needs, in partnership with the recipient country.[64] Development aid is expected 'to be aligned with strategies developed at the level of the partner country'.[65] Every effort should be made, at each phase of a development project, to ensure that human rights are taken into account. This would apply from the initial assessment of a particular country's priority needs, to project design, all the way through to project implementation and final evaluation. For instance, even donor states' purely voluntary food aid contributions should comply with principles of non-retrogression, non-discrimination and aid-provision predictability.[66] Donors must ensure their aid is coordinated and effective, and should seek information about the human rights impacts of the funds they provide. Donor countries should make measurable progress towards contributing to full human rights realisation by supporting the efforts of governments in developing countries.

Second, the work by human rights monitoring bodies suggests that, where states have made commitments to provide certain assistance levels, those commitments should be met.[67] Any regression in the provided level of aid (eg, calculated as official development assistance in percentage of GDP) that is not fully justified should be treated, presumptively, as a violation of states' obligations under

61 Economic Commission for Latin America and the Caribbean: Financing the 2030 Agenda for Sustainable Development in Latin America and the Caribbean. The challenges of resource mobilisation, 2017.

62 CRC, General Comment No 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, para 61.

63 'Report of the Special Rapporteur on food, Olivier De Schutter' (2009) UN Doc A/HRC/10/5, paras 10 and 43.

64 'Report of the Special Rapporteur on food, Olivier De Schutter' (2009) UN Doc A/HRC/10/5, para 10.

65 'Report of the Independent Expert on international solidarity, Virginia Dandan' (2015) UN Doc A/HRC/29/35. The Independent Expert on international solidarity observed that a new chapter in the history of international cooperation was initiated in Busan (at an OECD-convened Forum on Aid Effectiveness in 2011).

66 'Report of the Special Rapporteur on food, Olivier De Schutter' (2009) UN Doc A/HRC/10/5, para 41; 'Report of the Independent Expert on debt, mission to Japan', (2014), A/HRC/25/50/Add. 2.

67 See, eg, CESCR Concluding Observations Sweden E/C.12/1/Add.70, para 7; Concluding Observations Germany E/2002/22, para 675.

international law.[68] Indeed, a Special Rapporteur has noted that 'repeated commitments of developed states to provide certain levels of assistance, particularly to reach the Millennium Development Goals, might in time crystallise into customary international law'.[69]

While, in general, human rights monitoring bodies have not explicitly recognised an obligation for developed states to provide assistance to poorer countries, such an obligation seems to arise in the context of disaster relief and humanitarian assistance. According to the CESCR, 'States Parties have a joint and individual responsibility... to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugee and internally displaced persons'.[70]

Finally, a number of practices have been frowned upon. These include donors not knowing who their resources are reaching or how they are being targeted;[71] activities that are ill conceived or even counterproductive in human rights terms for failing to focus on needs; conditions attached to the receipt of funding; and the focus on short-term interventions with no perspective on broader systems.[72]

Obligations for those in need of resources: seeking international assistance and cooperation

States that lack the resources needed to implement human rights have the obligation to seek international cooperation or assistance, be it bilateral, regional, interregional, global or multilateral. While several human rights bodies have suggested that countries seeking aid should first take steps to mobilise domestic resources, in practice, they have paid more attention to international assistance and cooperation obligations.

In general, human rights monitoring bodies have identified several obligations for states seeking international assistance. For example, such states are required to identify in their reports any particular needs they may have for technical assistance or development cooperation;[73] they should ensure proper management of the assistance received, making sure, for instance, that the resources received reach the most vulnerable groups and are utilised in a timely and effective manner;[74] and they are to determine their own viable development or assistance programmes. One best practice that has been cited in this respect was establishing a human rights-based approach to development that

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68 'Report of the Special Rapporteur on food, Olivier De Schutter' (2009) UN Doc A/HRC/10/5, paras 9 and 41.

69 'Report of the Special Rapporteur on food, Olivier De Schutter' (2009) UN Doc A/HRC/10/5, paras 9 and 41.

70 CESCR General Comment No 12, para 38 and General Comment No 14, para 40.

71 'Report of the Special Rapporteur on water and sanitation, Catarina de Albuquerque' (Financing for the realisation of the rights to water and sanitation) (2011) UN Doc A/66/255. The Special Rapporteur on health adds that donor interventions are often fragmented and poorly coordinated: 'Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover' (main focus: health financing in the context of the right to health) (2012) UN Doc A/67/302, para 30.

72 'Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover' (main focus: health financing in the context of the right to health) (2012) UN Doc A/67/302, para 23. See also CESCR, General Comment No 2: Informational technical assistance measures (Art 22) (1990) UN Doc E/1990/23, paras 7–8.

73 Eg, CESCR, General Comment No 2, para 10.

74 See, eg, 'Report of the independent expert on poverty, Mission to Viet Nam' (2011), A/HRC/17/34/Add.1, para 99 and 'Report of the Special Rapporteur on education, Kishore Singh' (financing education and update on education in emergencies) (2011) UN Doc A/66/269, para 17.

ensured debt relief, investment flows and business opportunities in Myanmar worked to guarantee human rights realisation for that nation's populace.[75]

In order to prove the use of the maximum available resources, developing states should demonstrate that, where necessary, they have made every effort to seek and implement international assistance and cooperation for human rights realisation.[76] States' reports should also identify any particular technical-assistance or development-cooperation needs they may have. In addition, it is essential that they report on adherence to the rule of law at the national level. Without this, international assistance can be corruptly diverted from its intended beneficial consequences.

2.2 Obligations related to resource mobilisation

In reference to economic, social and cultural rights-related obligations, relevant treaties' (eg, ICESCR) texts include qualifiers that have been interpreted as implying states' additional obligations.

These obligations are:

- to continuously improve conditions;
- the prohibition of deliberately retrogressive measures;
- to accord a degree of priority to human rights in the allocation of resources;
- to monitor realisation, and devise implementation strategies and programmes; and
- to insure a minimum core level of each economic, social and cultural right.

The obligation to continuously improve conditions

> '[W]ith a view to *achieving progressively the full realisation* of the rights recognised in the present Covenant' (Article 2(1) ICESCR) [emphasis author's own].

According to its ordinary meaning, the term 'progressive' means 'making continuous forward movement'.[77] Thus, the progressive realisation of economic, social and cultural rights requires states

75 'Report of the Special Rapporteur on the situation of human rights in Myanmar (the 'Special Rapporteur on Myanmar'), Tomás Ojea Quintana' (2013) UN Doc A/HRC/22/58, paras 33–34.

76 See, eg, CRC, General Comment No 19 (2016) on public budgeting for the realisation of children's rights (Art 4) (2016) UN Doc CRC/C/GC/19, paras 35–36; CESCR, General Comment No 22 (2016) on the right to sexual and reproductive health (Art 12 of the ICESCR) (2016) UN Doc E/C.12/GC/22, para 50. This is also included in Concluding Observations – see, eg, CESCR Concluding Observations Ukraine E/1996/22, para 271.

77 *Oxford Student's Dictionary* (2nd edn, Oxford University Press 1988).

to take continuous steps forward to achieve those rights' full realisation. To this end, states must move 'as expeditiously and effectively as possible'.[78]

The requirement to continuously improve conditions is reiterated in ICESCR Article 11(1) on the right to adequate living conditions, including food, clothing and housing. According to this provision, 'States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the *continuous improvement of living conditions*' [emphasis author's own].

This obligation is extremely important vis-à-vis the obligation to mobilise resources. If States Parties must take continuous steps towards the full realisation of economic, social and cultural rights, then states' passivity in the case of a decline in these rights' protection due to external circumstances may be considered a violation of this obligation. States cannot be passive towards a decline in the degree of protection afforded a particular right; they must take action that seeks to redress or improve the situation. This obligation is particularly stringent in regard to vulnerable groups. States must actively take steps to protect vulnerable groups, even in times of severe resource constraints.

The CESCR has stressed this obligation when States Parties have remained passive in the face of rights-protections deterioration due to, for example, HIV infection rate increases or environmental degradation due to third-party natural resource exploitation.[79] According to the CESCR, in such cases, states are required to take steps to address the situation. For example, when considering the implementation of the ICESCR in the Solomon Islands, the Committee noted that there were threats to the natural environment due to deforestation and overfishing, which affected the right to an adequate standard of living (ICESCR Article 11). It therefore recommended that the state take measures to prevent excessive exploitation of the country's natural resources.[80]

The non-retrogression obligation

> '[A]ny deliberately retrogressive measures… would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.'[81]

According to the CESCR, a 'deliberately retrogressive measure' can be defined as any measure implying a step back in protection levels accorded to economic, social and cultural rights as a consequence of a Member State's intentional decision.[82] According to the CESCR, there is a strong presumption that retrogressive measures are incompatible with the obligations imposed by economic, social and cultural rights, and that states bear the burden of proving their compatibility. The CESCR has noted that, to assess whether a retrogressive measure is in compliance with the obligations the

78 CESCR, General Comment No 3, para 9.

79 See, eg, Concluding Observations Russian Federation E/1998/22, paras 113 and 126.

80 Concluding Observations Solomon Islands E/2000/22, paras 204 and 209.

81 CESCR, General Comment No 3, para 9.

82 See, eg, CESCR General Comment No 4 on the Right to Adequate Housing (Art 11 (1)) (1991) UN Doc E/1992/23, para 11; General Comment No 13, para 45; General Comment No 14, para 32.

ICESCR imposes, it would look at whether: (1) there was reasonable justification for the action; (2) alternatives were comprehensively examined; (3) there was genuine participation of affected groups in examining the proposed measures and alternatives; (4) the measures were directly or indirectly discriminatory; (5) the measures would have a sustained impact on the realisation of rights, an unreasonable impact on acquired rights, or whether an individual or group would be deprived of access to the minimum essential level of economic, social and cultural rights; and (6) whether there was a national-level independent review of the measures.[83]

The *prima facie* prohibition of retrogressive measures imposes a strict form of scrutiny and must include a high level of justification.[84] As examined in section 5.1 below, this is particularly important in the face of austerity measures (eg, those many states implemented in the wake of the 2007 to 2008 economic and financial crisis).

In a public statement, the CESCR has also commented on the non-retrogression principle's resource dimensions.[85] According to the Committee, if a state uses 'resource constraints' to justify a retrogressive measure, it will assess the situation considering, inter alia, the country's development level; the alleged breach's severity, in particular whether it impinges upon 'the minimum core content of the Covenant'; the country's current economic situation and whether it was experiencing a recession; the existence of other serious claims on the State Party's limited resources; whether the State Party had sought to identify low-cost options; and whether the State Party had sought international cooperation and assistance or rejected offers of resources without sufficient reason. Special procedures' practices seem to fall in line with the CESCR's views.[86]

The obligation to accord a degree of human rights priority to resource allocation

> '[W]ith a view to achieving progressively the full realisation of the rights recognised in the present Covenant.' (ICESCR Article 2(1))

Due to material limitations, prioritisation is always necessary when states allocate resources (eg, they must decide which rights are to be implemented and which expenditures are the most compelling). While states have a sovereign right to make resource allocation decisions, by ratifying or acceding to human rights treaties, they assume limitations on this discretion.

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83 See General Comment No 19, on the right to social security (Article 9) (2008), UN Doc E/C.12/GC/19, para 42.

84 CESCR, General Comment No 14, para 43; General Comment No 12, para 17; General Comment No 15, para 41; 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (Taxation and human rights) (2014) UN Doc A/HRC/26/28.

85 CESCR Statement: An evaluation of the obligation to take steps to the 'maximum of available resources' under an Optional Protocol UN Doc E/C.12/2007/1 (2007).

86 See, eg, CESCR E/C.12/2007/1, para 10; Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona (2011), UN Doc A/HRC/17/34; 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28; Report of the Special Rapporteur on water and sanitation, Catarina de Albuquerque' (2011) UN Doc A/66/255, para 13; Report of the Special Rapporteur on health, Anand Grover' (2014) UN Doc A/69/299; and 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/60, para 66.

The Limburg Principles – widely accepted by human rights monitoring bodies – note that: '28. In the use of the available resources due priority shall be given to the rights-realisation recognised in the Covenant, mindful of the need to assure to everyone the satisfaction of subsistence requirements as well as the provision of essential services.'

Important principles of international law support this principle. First, human rights treaties are binding on States Parties and these must meet their obligations in good faith.[87] Second, states cannot invoke domestic law as a justification for failing to meet a treaty's terms.[88]

The obligation to accord 'due priority' to economic, social and cultural rights implementation leaves states a wide discretionary margin for deciding how to allocate available resources and has proved to be an extremely difficult obligation for international monitoring bodies to supervise.[89] In reviewing state reports, the CESCR often simply asks states to raise budget percentages devoted to the social sector[90] or indicate that the respective state has not prioritised its duties under the ICESCR.[91]

The CRC has also explicitly requested states prioritise budgetary allocations for implementing children's economic, social and cultural rights, in both its General Comment No 19 and in several concluding recommendations.[92] It also recommends that states specify the amount and proportion of the state budget spent on children's rights, in order to allow evaluations on the impact of such expenditure.[93] In the same vein, some special procedures have recommended that states reallocate government expending from military expenditure to spending on social sectors (eg, education and health).[94]

87 Art 26 Vienna Convention on the Law of Treaties: 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith.'

88 Art 27 Vienna Convention on the Law of Treaties: 'A Party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.'

89 Already in 1995, a CESCR member noted 'if States Parties appearing before the Committee were to be asked what their priorities were, the Committee should ask itself whether it had the expertise to judge those priorities and whether or not it was qualified to judge a Government's political choices. In a fully democratic society, which the Covenant was supposed to guarantee, how could the Committee challenge what the people demand?' Adekuoye in E/C.12/1995/SR.22, para 50.

90 See, eg, Concluding Observations Equatorial Guinea E/C.12/GNQ/CO/1 (2012), para 13; Concluding Observations Uganda E/C.12/UGA/CO/1 (2015); Concluding Observations Seychelles CRC/C/SYC/CO/2-4 (2012); Concluding Observations Thailand CRC/C/THA/CO/3-4 (2012), para 20.

91 See, eg, Concluding Observations the former Yugoslav Republic of Macedonia E/C.12/MKD/CO/2-4 (2016), para 15.

92 See, eg, Concluding Observations Guinea-Bissau CRC/C/GNB/CO/2-4 (2013), para 9.

93 See, eg, Concluding Observations Cyprus CRC/C/CYP/CO/3-4 (2012), para 16.

94 'Report of the Independent Expert on international order, Alfred de Zayas' (Exploring the adverse impacts of military expenditures on the realisation of a democratic and equitable international order) (2014) UN Doc A/HRC/27/51, para 45; 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona', (2011) A/HRC/17/34, para 81.

The obligation to monitor rights realisation and devise implementation strategies and programmes

Monitoring is always required under international human rights treaties.[95] The CESCR and CRC on several occasions have called on States Parties to regularly evaluate budget allocations made for the implementation of their respective rights in order to assess whether the maximum available resources are being used to progressively achieve these rights' complete realisation.[96] This obligation is effective immediately, and is not in any way eliminated by resource constraints.[97]

The guidelines that treaty bodies have issued to help states prepare their reports under UN human rights treaties specify that they should provide information on budget allocations and trends 'as percentages of national or regional budgets and GDP and disaggregated by sex and age for the implementation of the State's human rights obligations and the results of any relevant budget impact assessments'.[98] Thus, reporting guidelines under the CRC ask States Parties to indicate whether the budget allocated for the convention implementation can be clearly identified and monitored as it relates to the comprehensive national strategy for children and corresponding plan(s).[99] Consequently, when reviewing some states' reports, the CRC recommends that they implement tracking systems for budget-wide children's resources allocation and use.[100]

The CESCR has recommended several states to 'regularly assess whether the maximum available resources have been used for the progressive realisation of the rights recognised in the Covenant, taking into account the Committee's declaration of September 2007 on the obligation to act "to the maximum of its available resources".'[101]

The CRC has emphasised that using the maximum available resources requires making children visible in budgets. According to the Committee, 'no State can tell whether it is fulfilling children's economic, social and cultural rights "to the maximum extent of… available resources", as it is required to do under article 4, unless it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly'.[102]

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95 See, eg, ICCPR Art 40.

96 See, eg, Concluding Observations Gambia E/C.12/GMB/CO/1 (2015); Concluding Observations Armenia E/C.12/ARM/CO/2-3 (2014); Concluding Observations UK CRC/GBR/CO/4 (2008); and Concluding Observations Thailand CRC/C/THA/CO/3-4 (2012).

97 CESCR, General Comment No 3, para 11. See also CESCR, General Comment No 8: the relationship between economic sanctions and respect for economic, social and cultural rights' (1997) UN Doc E/C.12/1997/8, para 13.

98 UN, 'Compilation of guidelines on the form and context of reports to be submitted by States Parties to the international human rights treaties' (2009) HRI/GEN/2/Rev.6, para 43.

99 CRC, 'Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States Parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child' (2015) UN Doc CRC/C/58/Rev.3 (CRC Reporting guidelines), para 19.

100 See, eg, Concluding Observations Guatemala CRC/C/GTM/CO/3-4 (2010).

101 CESCR, Concluding Observations Armenia UN Doc E/C.12/ARM/CO/2-3, para 9. It made a similar recommendation to Gambia in its Concluding Observations to that country in 2015, UN Doc E/C.12/GMB/CO/1.

102 CRC, General Comment No 5 (2003) on General measures of implementation of the Convention on the Rights of the Child (Arts 4, 42 and 44, para 6) UN Doc CRC/GC/2003/5, para 51.

The Special Rapporteur on water and sanitation, the Special Rapporteur on the right to education and treaty bodies have stressed that states, as part of their obligation to take steps, should adopt a national strategy, based on human rights principles, that defines state objectives and sets out policies and corresponding benchmarks.[103] The CESCR has stated that the national strategy should identify the resources available to meet objectives and the most cost-effective way of using these resources.[104]

The obligation to ensure minimum core obligations

The notion of 'minimum core obligations' refers to states' obligation to meet minimum and essential economic, social and cultural rights levels.[105] Treaty bodies, in particular the CESCR, have defined minimum core obligations in detail.[106] In fact, over the years, in its General Comments, the Committee has regularly included references to the substantive examined rights' minimum core obligations.[107] Special procedures also refer often to rights' minimum core content.[108]

Treaty bodies and special procedures have regularly repeated that a state cannot justify noncompliance with core obligations that are immediate obligations and remain in place even in times of conflict, emergency and natural disaster[109] or economic crisis.[110] States have the positive obligation to mobilise resources from those living within their borders and, where necessary, the international community in order to satisfy these minimum core obligations.[111]

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103 UNGA, 'Report of the Special Rapporteur on water and sanitation, Catarina de Albuquerque' (2011) UN Doc A/66/255; UNHRC, 'Report of the Special Rapporteur on education, Kishore Singh' (2011) UN Doc A/66/269. See also Limburg Principle 23, Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1987), UN Doc E/CN.4/1987/17, Annex, reprinted in 9 HuM.RS.Q (1987) 122; Magdalena Sepúlveda Carmona, *The Nature of Obligations under the International Covenant on Economic Social and Cultural Rights* (Intersentia 2003).

104 CESCR, General Comment No 12, para 21; CESCR, General Comment No 14, para 53.

105 CESCR, General Comment No 3, para 10. See also 'Report of the Special Rapporteur on education, Kishore Singh' (2011) UN Doc A/66/269; 'Report of the Special Rapporteur on water and sanitation, Catarina de Albuquerque' (2011) UN Doc A/66/255; 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28; and 'Report of the Independent Expert on international solidarity, Virginia Dandan' (2015) UN Doc A/70/316.

106 See, eg, CESCR, 'General Comment No 3 and CRC, General Comment No 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (Art 24)' (2013) UN Doc CRC/C/GC/15, para 73.

107 See, eg, CESCR General Comment No 12, paras 8–13; General Comment No 14, paras 43–45; General Comment No 15, paras 37–38; General Comment No 17, paras 39–40; General Comment No 18, para 31; General Comment No 19, paras 59–61; and General Comment No 22, para 49.

108 See, eg, 'Interim report of the Special Rapporteur on health, Anand Grover' (main focus: health financing in the context of the right to health) (2012) UN Doc A/67/302, para 9; 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28.

109 See, eg, CESCR, General Comment No 14, para 43; General Comment No 12, para 17; 'Report of the Independent Expert on international solidarity, Virginia Dandan' (2015) UN Doc A/70/316.

110 CRC, General Comment No 19, para 31. 'The immediate and minimum core obligations imposed by children's rights shall not be compromised by any retrogressive measures, even in times of economic crisis'. CESCR, General Comment No 3, para 14.

111 See, eg, 'Report of the Special Rapporteur on water and sanitation, Catarina de Albuquerque' (2011) UN Doc A/66/255. See also, CESCR, General Comment Nos 3, 12 and 14.

However, 'any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints'.[112] A state wishing to claim a 'lack of available resources must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations'.[113] 'Where available resources are demonstrably inadequate, the obligation remains for a State Party to ensure the widest possible enjoyment of economic, social and cultural rights under the prevailing circumstances.'[114] Thus, based on the CESCR's work, it is now evident that minimum core obligations should be understood in context. A country's resources may be a factor in determining whether a minimum core is feasible; that said, the state bears the burden of proof.

2.3 Resource mobilisation guiding principles

Based on work by treaty monitoring bodies, it is possible to conclude that resource mobilisation should be carried out in compliance with key human rights principles: non-discrimination, transparency, participation and accountability. Other principles are emerging as critical to resource mobilisation in addition to these, specifically sustainability, efficiency and cooperation.

Equality and non-discrimination

States have an obligation to guarantee that human rights are exercised without discrimination of any kind. This is a fundamental pillar of international human rights law established in numerous provisions[115] and that human rights treaty monitoring bodies and special procedures have expanded.[116]

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112 CESCR, General Comment No 3, para 10.

113 See, eg, CESCR, General Comment No 3, para 10; 'Statement: An evaluation of the obligation to take steps to the "maximum of available resources" under an Optional Protocol' UN Doc E/C.12/2007/1 (2007) (CESCR).

114 CESCR, General Comment No 3, para 11; 'Statement: An evaluation of the obligation to take steps to the "maximum of available resources" under an Optional Protocol' UN Doc E/C.12/2007/1 (2007) (CESCR).

115 The principles of equality and non-discrimination are of the utmost importance in international law. Prohibitions of discrimination are contained in, eg, the UN Charter (Arts 1(3), 13(1)(b), 55(c) and 76), the UDHR (Arts 2 and 7), the ICCPR (Arts 2(1) and 26), the CRC (Art 2) and the ICESCR (Arts 2(2) and 3). There are also instruments specifically aimed at addressing only specific prohibited grounds for discrimination, such as the CERD and CEDAW. Other instruments seek to address the prohibition of discrimination within some UN agencies, such as the International Labour Organization Convention No 111, which refers to discrimination in the exercise of the right to work (employment and occupation), and the UN Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education.

116 These articles are further developed in General Comments adopted by the CESCR, in particular General Comment No 20 (2009) on non-discrimination in economic, social and cultural rights; No 16 (2005) on the equal right of men and women to the enjoyment of economic, social and cultural rights (Art 3); and General Comment No 3 (ICCPR, Arts 2, 3, 14, 24, 26 and 27.) See also General Comments adopted by the CCPR, in particular General Comment No 28 (2000) on equality of rights between men and women and General Comment No 18 (1989) on non-discrimination. There are also two conventions that deal with discrimination: the Convention on the Elimination of All Forms of Discrimination against Women and Convention on the Elimination of All Forms of Racial Discrimination. These principles have also been developed by their corresponding treaty bodies such as CEDAW General Observation No 25 on temporary special measures. Special procedures have also further developed these principles into their work, such as the 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28; 'Report of the Working Group on the issue of discrimination against women in law and in practice, Mayra Gomez' (Discrimination against women in economic and social life, with a focus on economic crisis) (2014) UN Doc A/HRC/26/39, paras 8–10; 'Report of the Special Rapporteur on poverty, Philip Alston' (2015) UN Doc A/HRC/29/31; 'Report of the Special Rapporteur on Myanmar, Yanghee Lee' (2015) UN Doc A/HRC/28/72, para 62.

Mobilising resources in compliance with equality and non-discrimination principles

Based on work by treaty bodies and special procedures, resource mobilisation should be done in a manner that respects equality and non-discrimination principles.[117]

The CRC has reiterated the need to mobilise resources for *all* children's rights and in an equitable manner.[118] The Special Rapporteur on extreme poverty expanded these principles' application to states' tax-collection activities.

> 'The rights to equality and to non-discrimination should be respected in all State revenue-raising policies. Thus, any action or omission by the State in this area must not discriminate, either directly or indirectly, against any individual or group (including on the basis of race, gender, disability or economic and social status) or perpetuate discrimination and inequality…
>
> In revenue collection, compliance with these rights may require states to set up a progressive tax system with real redistributive capacity that preserves, and progressively increases, the income of poorer households. It also implies that affirmative action measures aimed at assisting the most disadvantaged individuals and groups that have suffered from historical or persistent discrimination, such as well-designed subsidies or tax exemptions, would not be discriminatory. In contrast, a flat tax whereby all people are required to pay an equal proportion of their income would not be conducive in achieving substantive equality, as it limits the redistributive function of taxation…'[119]

Other special procedures have taken a similar approach.[120] In his report on Brazil, the Special Rapporteur on the right to food noted that 'the tax structure in Brazil remains highly regressive. Tax rates are high for goods and services and low for income and property, bringing about very inequitable outcomes.' Thus, he noted this 'regressive system of taxation seriously limits the redistributive aspects of the [Zero Hunger] programmes'.[121] In reference to schools funded through subnational budgets, the Special Rapporteur on education noted that the state must ensure that differences in revenues collected locally do not result in education-level inequalities between different regions of the same country.[122]

Resource mobilisation and inequality

As stated, resource mobilisation should be done in compliance with equality and non-discrimination principles, but such mobilisation can at the same time be used by states when taking on and redressing systemic discrimination and ensuring equal access to economic, social and cultural rights.

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117 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 16.

118 CRC, General Comment No 19 (2016) UN Doc CRC/C/GC/19, para 11.

119 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, paras 13–15 (footnotes omitted).

120 See, eg, 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/60.

121 'Report of the Special Rapporteur on food, Mission to Brazil' (2010) A/HRC/13/33/Add.6, para 36.

122 'Report of the Special Rapporteur on education, Kishore Singh' (2011) UN Doc A/66/269, para 46.

In light of current-day inequality levels caused by historic inequality, human rights monitoring bodies have paid substantial attention to the issue, both as a human rights concern in and of itself, and as a cause of other human rights violations.[123] In his 2015 report on the subject, the Special Rapporteur on extreme poverty provided an overview of the world's widening economic and social inequalities, illustrating how they stifle equal opportunity and lead to laws, regulations and institutions that favour the powerful and perpetuate discrimination against certain groups, such as women.[124] The Independent Expert on debt points out ways inequality can adversely impact state revenues.[125] Several special procedures have pointed out that states are under a legal obligation to address economic inequalities,[126] and treaty bodies often ask states to provide information on specific measures adopted to reduce economic, social and geographical inequalities.[127] For example, some special procedures have pointed to an appropriate tax system as one of the most important tools available to governments for addressing income inequality.[128] They have also noted that a state with a very narrow tax base or that fails to confront tax evasion may result in its inability to fund social protections or adequate and accessible public services, a situation likely to create or entrench inequalities.[129]

While tax structures can be a tool for combating inequality, human rights monitoring bodies have noted that, if not carefully designed, they can also perpetuate it. Thus, they have called on policy-makers to be aware of the extent to which tax and other revenue-mobilising policies strengthen or break down inequalities or discriminate against different types of households.[130] Tax structures can, for example, potentially reduce women's participation in the labour market, contributing to discrimination, as CEDAW has noted. CEDAW found, for example, that Switzerland's system of joint taxation for two-income married couples, which bars childcare cost deductions, was an impediment to women's participation in the labour market.[131] This is an instance of discriminatory – and thus human rights-inconsistent – resource mobilisation.

123 See, eg, CESCR: General Comment No 20; Concluding Observations Portugal E/C.12/PRT/CO/4 (2014); Concluding Observations Paraguay E/C.12/PRY/CO/4 (2015); and CRC: Concluding Observations Thailand CRC/C/THA/CO/3-4 (2012). See also 'Report of the Special Rapporteur on poverty, Philip Alston' (2015) UN Doc A/HRC/29/31.

124 'Report of the Special Rapporteur on poverty, Philip Alston' (2015) UN Doc A/HRC/29/31.

125 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/60.

126 See, eg, 'Report of the Special Rapporteur on poverty, Philip Alston' (2015) UN Doc A/HRC/29/31; 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/60.

127 UN, 'Compilation of guidelines on the form and context of reports to be submitted by States Parties to the international human rights treaties' (2009) HRI/GEN/2/Rev.6, para 55.

128 See, eg, 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/60, para 12; 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28.

129 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 17.

130 UNDP, 'Gender Equality and Poverty Reduction: Taxation', cited in 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28.

131 CEDAW: Concluding Observations Switzerland CEDAW/C/CHE/CO/3 (2009), paras 37–38; Concluding Observations Lebanon CEDAW/C/LBN/CO/3 (2007), paras 32–33; and 'Report of the Special Rapporteur on poverty, Philip Alston' (2015) UN Doc A/HRC/29/31.

Transparency

Special procedures and treaty bodies have recommended that states undertake resource mobilisations transparently,[132] including with regard to the acceptance, management and spending of official development funds that a state receives.[133] Often enough, however, they simply make reference to the principle of transparency, without further elaborating on its implementation. On scant occasions, a handful of human rights monitoring bodies have specified that lack of transparency in resource mobilisation can 'lead to inefficiencies, mismanagement of public finances and corruption' and consequently to 'insufficient resources for human rights'.[134]

Transparency is often linked to information access. It is also considered a prerequisite for participation and accountability. The Working Group on Business and Human Rights pointed out that transparency is a means of preventing and countering the corruption that can lead to a diversion of funds.[135]

Participation

Human rights monitoring bodies have lent more attention to the principle of participation. They have stressed, for example, that a human rights approach requires states to debate fiscal options openly, avoid making technocratic decisions behind closed doors and instead foster greater transparency and participation.[136]

Special emphasis has been placed on domestic taxation and natural resources management, with resource mobilisation related thereto. As one special rapporteur noted:

> '[D]ecision-making processes regarding tax and public revenues must therefore be based on full transparency and the broadest possible national dialogue, with effective and meaningful participation of civil society and those who will be directly affected by such policies, including people living in poverty. Fiscal policies should be subjected to the scrutiny of the population during design, implementation and evaluation stages, with the various interests transparently identified. This will require capacity-building and fostering fiscal literacy in the population. The population should have access to all relevant information in an accessible and understandable

132 See, eg, CESCR: Concluding Observations Guatemala E/C.12/GTM/CO/3 (2014); Concluding Observations Burundi E/C.12/BDI/CO/1, para 14; Concluding Observations Honduras E/C.12/HND/CO/2 (2017), para 20; Concluding Observations El Salvador E/C.12/SLV/CO/3-5 (2014); CRC: General Comment No 19, para 76; 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, paras 20–23.

133 Concluding Observations Tajikistan E/C.12/TJK/CO/2-3 (2015).

134 CRC, General Comment No 19, para 76. See also Report of the Special Rapporteur on the situation of human rights in Cambodia (the 'Special Rapporteur on Cambodia'), Surya P Subedi' (A human rights analysis of economic and other land concessions in Cambodia) (2012) UN Doc A/HRC/21/63/Add.1, Summary.

135 See, eg, 'Report of the Working Group on business and human rights' (Visit to Azerbaijan) (2015) UN Doc A/HRC/29/28/Add.1; CESCR, 'Concluding Observations on Georgia' (2002) UN Doc E/C.12/1/Add.83, para 11.

136 See, eg, 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona' (2011), UN Doc A/HRC/17/34, para 81.

format, and inclusive mechanisms should be put in place to ensure that they are actively engaged in devising the most appropriate policy options.'[137]

It has also been noted that governments should encourage independent organisations and academic institutions to develop alternative policy options and carry out assessments of all options and proposed measures' social impact.[138]

Regarding natural resources exploitation, it has been noted that lack of local community consultation regarding land and other concessions contributes to marginalisation and conflicts with companies and local authorities, potentially jeopardising these concessions' long-term economic benefits, not to mention other adverse human rights impacts.[139]

In the area of business and human rights, it has been considered particularly important to have a multi-stakeholder approach involving government, business and civil society, alongside an active civil society that advocates for progress and monitoring implementation by governments and businesses with regard to their respective duties and responsibilities.[140]

Accountability

Human rights are inseparable from the notion of accountability.[141] Accountability can involve accounting for one's actions (being transparent about one's own activity), or being held accountable in case of damages (enabling access to remedies). Accountability mechanisms must be accessible, transparent, effective and gender-sensitive.[142] What special procedures have picked up on as more of a challenge is *how* to ensure accountability in human rights resource mobilisation. Of particular concern is whether business actors can be held accountable on issues of resource mobilisation and, if so, how (see section 4.6 below).

Sustainability

An important point – which UN human rights mechanisms have addressed only timidly – is resource mobilisation initiatives' sustainability. In its General Comment on public budgeting, the CRC underlined that resources should be mobilised, allocated and spent in an 'accountable, effective, efficient, equitable, participatory, transparent and sustainable manner'.[143] Yet it did not further explain the resource mobilisation implications of these principles, including as related to sustainability. Issues of sustainability are particularly relevant to countries that depend heavily on extractive industries for domestic resource mobilisation.

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137 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 22 (footnotes omitted).

138 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona' (2011) A/HRC/17/34, paras 25–28.

139 'Report of the Special Rapporteur on Cambodia, Surya P Subedi' (2012) UN Doc A/HRC/21/63/Add.1, para 129.

140 'Report of the Working Group on business and human rights' (Visit to Ghana) (2014) UN Doc A/HRC/26/25/Add.5; 'Report of the Working Group on business and human rights' (Visit to Azerbaijan) (2015) UN Doc A/HRC/29/28/Add.1.

141 'Report of the Special Rapporteur on poverty, Philip Alston' (World Bank and human rights) (2015) UN Doc A/70/274.

142 'Report of the Working Group on the issue of discrimination against women in law and in practice, Mayra Gomez' (2014) UN Doc A/HRC/26/39, para 20.

143 CRC, General Comment No 19, para 11; Concluding Observations Argentina CRC/C/ARG/CO/3-4 (2010).

Efficiency/effectiveness

Treaty monitoring bodies[144] and special procedures[145] have increasingly addressed issues of resource allocation efficiency and effectiveness.

As human rights experts identified in 1987, and have since reiterated,[146] 'the obligation of progressive achievement exists independently of the increase in resources; it requires effective use of resources available'.[147] In this regard, treaty bodies have sometimes recommended that states expand certain ministries' capacities to ensure effective resource-allocation.[148]

The CESCR now regularly urges that states improve tax-collection effectiveness in order to increase resources available for economic, social and cultural rights.[149] The Special Rapporteur on health has recommended the state 'administer the existing budget efficiently and mobilise additional resources, which may include, for example, changes to the State's taxation policy or smart incurrence of debt'.[150]

The Special Rapporteur on extreme poverty has stressed the importance of improving tax-collection efficiency, including by improvements in tax administration[151] and by reconsidering ineffective tax loopholes, exemptions and waivers that disproportionally benefit society's better-off segments[152] (see section 3.4 below).

Cooperation

Human rights monitoring bodies increasingly recognise that, when dealing with resource mobilisation, certain states, in particular low-income states and states with high debt levels or loans, have limited discretion to act; wealthy states and international financial institutions, as well as transnational corporations, constrain their actions.[153]

Particular attention has been paid to the limited discretion that states have to effectively address competitive tax incentives, tax evasion, tax abuse and other illicit financial flows. Therefore, special

144 See, eg, CRC, General Comment No 19, para 11; Concluding Observations Maldives CRC/C/MDV/CO/3 (2007); Concluding Observations Armenia E/C.12/ARM/CO/2-3 (2014); Concluding Observations Democratic Republic of Congo E/C.12/COD/CO/4 (2009).

145 See, eg, 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona' (2011), UN Doc A/HRC/17/34, para 80; 'Report of the Special Rapporteur on health, Anand Grover' (2014) UN Doc A/69/299, para 20.

146 'Report of the Special Rapporteur on water and sanitation, Catarina de Albuquerque' (2011) UN Doc A/66/255; 'Report of the Special Rapporteur on education, Kishore Singh' (2011) UN Doc A/66/269; see also, Magdalena Sepúlveda Carmona, *The Nature of Obligations under the International Covenant on Economic Social and Cultural Rights* (Intersentia 2003).

147 Limburg Principle 23.

148 Concluding Observations Armenia E/C.12/ARM/CO/2-3 (2014).

149 See, eg, CESCR, Concluding Observations Paraguay (2015) UN Doc /C.12/PRY/CO/4.

150 'Report of the Special Rapporteur on health, Anand Grover' (2014) UN Doc A/69/299, para 20.

151 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, paras 56 and 57.

152 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona' (2011), UN Doc A/HRC/17/34, para 81.

153 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/60, para 64.

procedures and treaty bodies have acknowledged the imperative to collaborate in this field.[154] The Special Rapporteur on extreme poverty recommends 'a contemporary interpretation of existing obligations of international cooperation and assistance' in order to move from an 'outdated emphasis on tax sovereignty to a more modern conception of international tax cooperation in a globalised and interdependent world economy'.[155] At the same time, she has remarked on how difficult it has been to reach international agreement on tax cooperation owing to powerful entrenched interests and the reluctance of states to cede any sovereignty on tax affairs.

The CESCR and several special procedures, including the Independent Expert on the promotion of a democratic and equitable international order, have stressed that states should take concerted and coordinated measures against tax evasion globally as part of their domestic and extraterritorial human rights obligations, as well as their duty to protect people from third-party human rights violations, including by transnational corporations and other business enterprises.[156] Moreover, some special procedures have called for upgrading the UN Tax Committee to an intergovernmental tax body as a way to provide a democratic and inclusive platform for discussing tax matters.[157]

2.4 Concluding observations

The present chapter reviewed the way that treaty bodies and special procedures have interpreted the legal basis of resource mobilisation obligations, as well as the principles that should guide them. Yet, the content of some of these legal obligations is complex and subject to disagreement. Moreover, the practical application of principles that should guide resource mobilisation have yet to be examined in any depth.

Obligations related to progressive realisation, international assistance and cooperation, the prohibition on deliberately retrogressive measures and key concepts, such as 'maximum available resources' and 'minimum core content', remain elusive. The lack of a clear understanding of these obligations and concepts poses several challenges to human rights monitoring bodies seeking to assess compliance with rights realisation-related resource mobilisation obligations. How can they evaluate state responses in terms of compliance with the obligation to mobilise resources if the legal foundation of such obligations are themselves not clear? What are the criteria to assess whether or not a state has done all that it can to mobilise resources? How much effort should a state be required to take to mobilise and administer resources for human rights-consistent outcomes?

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154 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/60, para 64; 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28. See also, CESCR General Comment No 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities (2017).

155 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 35.

156 See, eg, CESCR General Comment No 24; 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28; 'Report of the Independent Expert on international order, Alfred de Zayas' (Preliminary views on the conceptual and legal framework of the mandate) (2012) UN Doc A/HRC/21/45.

157 See, eg, 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28; 'Reports of the Independent Expert on international order, Alfred de Zayas' (2012) UN Doc A/HRC/21/45 and (2016) A/71/286, para 54.

Similarly, human rights monitoring bodies should deepen the analysis of the principles that guide resource mobilisation efforts. The potential of the principle of 'sustainability' is particularly worth stressing here. The criteria for 'sustainability' have hardly been addressed except in relation to natural resources, and then only in a few instances. The criteria should be defined more clearly and applied systematically. If, for instance, a state borrows heavily to finance human rights-promoting interventions, might a resulting unsustainable debt burden be considered inconsistent with human rights?

Fortunately, scholars, advocates and practitioners have discussed these obligations and principles extensively, in most of the cases providing a much clearer and more comprehensive understanding of the legal obligations they entail.[158] Thus, special procedures and treaty bodies' next step should be to:

- provide additional clarity about obligations that are the foundations of the duty to mobilise resources; to this end, they can be guided by the work of scholars, advocates and practitioners that have discussed these obligations and concepts extensively, in most cases providing a much clearer and more comprehensive understanding of the legal obligations they entail;

- deepen the analysis of the principles that should guide resource mobilisation efforts; and

- be prepared to address new and emerging challenges related to resource mobilisation.

158 For recent bibliography, see, eg, Aoife Nolan, Rory O' Connell and Colin Harvey (eds) *Human Rights and Public Finance: Budgets and the Promotion of Economics and Social Rights* (Hart Publishing 2013); Aoife Nolan, Nicholas Lusiani and Christian Courtis, 'Two steps forward, no step back? Evolving criteria on the prohibition of retrogression in economic and social rights' in Aoife Nolan, *Economic and Social Rights after the Global Financial Crisis* (Cambridge University Press 2014); Aoife Nolan, Rory O'Connell, Colin Harvey, Mira Dutschke and Eoin Rooney, *Applying an International Human Rights Framework to State Budget Allocations. Rights and Resources* (Routledge 2014); Shareen Hertel and Lanse Minkler, *Economic Rights: conceptual, measurement, and policy issues* (Cambridge University Press 2007); Radhika Balakrishnan et al, *Maximum Available Resources & Human Rights: Analytical Report* (Center for Women's Global Leadership 2011); Sigrun Skogly, 'The Requirement of Using the 'Maximum of Available Resources' for Human Rights Realisation: A Question of Quality as Well as Quantity?' (2012) 12 Human Rights Law Review 393; and Alison Graham, *National debt versus the right to social security: What are states' obligations during a financial crisis be interpreted?* (2016) PhD thesis, Lancaster University.

Chapter 3: Sources for mobilising resources

Governments have a variety of policy options for mobilising resources for human rights compliance, including increasing tax revenues, seeking more aid, eliminating illicit financial flows, borrowing or restructuring debt, and adopting more accommodative macroeconomic policies. In reviewing states' compliance with the obligation to mobilise resources, human rights monitoring bodies have not yet explored all possible alternatives.

The following analysis focuses on issues that treaty bodies and special procedures have examined. Thus, it is not a comprehensive or systematic analysis of the sources of resources. As examined below, there are still several sources that human rights monitoring bodies are yet to address, while others have been subject to cursory examination.

3.1 Taxation

Taxes are the resource mobilisation source to which human rights monitoring bodies have paid the greatest attention. This is not surprising, considering the important role that taxes play as an effective tool for domestic revenue collection, resource redistribution and for moving away from foreign aid dependency. In general, treaty bodies and special procedures consider that 'maximum available resources' include those that could potentially be collected through taxation.

However, monitoring bodies' overall analysis is not yet comprehensive (eg, some areas are not covered) or consistent (eg, they do not systematically address taxation issues and some issues have only been addressed on rare occasions).

Still, in recent years, it has been possible to identify some emerging areas of agreement – thanks in particular to the work of a few special procedures mandate-holders who have addressed the topic in their thematic reports, as well as CESCR efforts that have lent increased attention to the topic in Concluding Observations, statements and in its latest General Comment (ie, the General Comment of 24 June 2017).

Some special rapporteurs and the CESCR have referred to taxation as an effective tool for rights-realisation revenue generation; strengthening governance, accountability and participation in public affairs; and taking on non-discrimination while reducing wealth inequalities.[159]

Several human rights monitoring bodies have noted the advantages of mobilising domestic resources through taxation over external resource mobilisation.[160] 'The more a state can rely on domestic rather

159 See, eg, 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28 and 'Report of the Special Rapporteur on poverty, Philip Alston' (Extreme inequality and human rights) (2015) UN Doc A/HRC/29/31. See also E/C.12/CRI/CO/5 (2015), para 15 and E/C.12/TUN/CO/3 (2016), para 15.

160 See, eg, CESCR, Concluding Observations Kenya E/C.12/KEN/CO/2-5, para 18 and 'Report of the Special Rapporteur on housing, Raquel Rolnik' (2010) UN Doc A/HRC/13/20/Add 3.

than external resource mobilisation, the more it will be able to deploy sustainable development strategies and policies that are responsive to the needs of its people and accountable to them.'[161] Moreover, domestic resource mobilisation diminishes the reliance on external aid, which has been considered 'unpredictable and unsustainable', 'inconsistent and insecure'.[162]

Based on human rights monitoring bodies' existing work, it is clear that human rights law does not prescribe precise taxation policies; states have the discretion to formulate those most appropriate to their circumstances. It does, however, impose some limits on states' discretion related to their taxation policies.

Devoting maximum available resources

A commonly held position suggests that states neglecting to undertake reasonable efforts to ensure domestic revenue generation may be failing to use their maximum available resources.[163] Taxation is often presented as one of the most effective tools for generating resources for human rights realisation.[164] Using maximum available resources requires widening the tax base and improving tax-collection efficiency. It has also been suggested that, when states' taxation ratios are clearly lower than their development levels, the implication is that they are not taking steps to leverage maximum available resources.[165] Low domestic taxation revenue has been considered a major obstacle to a state's ability to meet obligations to devote 'maximum available resources' for the realisation of economic, social and cultural rights.[166]

In recent years, the CESCR has been more explicit in addressing the links between taxation and maximum available resources. It 'urges' states to implement tax policy that is 'adequate', 'progressive' and 'socially equitable or fair', to ensure sufficient resource mobilisation to implement economic, social and cultural rights.[167] Reviewing Great Britain and Northern Ireland's report, the CESCR noted concerns regarding:

> '[T]he adverse impact that recent changes to the fiscal policy in the State Party, such as the increase in the threshold for the payment of inheritance tax and the increase of the value-added tax, as well as the gradual reduction of the tax on corporate incomes, are having on the ability of the State Party to address persistent social inequality and to collect sufficient resources to achieve

161 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 52.

162 'Interim report of the Special Rapporteur on health, Anand Grover' (2012) UN Doc A/67/302.

163 See, eg, 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/60, para 12, E/C.12/SLV/CO/3-5 (2014), para 8.

164 See, eg, Concluding Observations El Salvador E/C.12/SLV/CO/3-5 (2014), para 8; Concluding Observations Honduras E/C.12/HND/CO/2 (2017), para 20.

165 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, paras 55–57.

166 See, eg, 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona' (2011), UN Doc A/HRC/17/34, para 49; 'Report of the Special Rapporteur on food, Olivier De Schutter', Mission to Guatemala (2010) A/HRC/13/33/Add.4, para 87(e).

167 See, eg, Concluding Observations Canada E/C.12/CAN/CO/6, para 10; Concluding Observations Paraguay E/C.12/PRY/CO/4 (2015); Concluding Observations UK E/C.12/GBR/CO/6 (2016), para 17; Concluding Observations Burundi E/C.12/BDI/CO/1 (2015), para 14; Concluding Observations Costa Rica E/C.12/CRI/CO/5 (2015), para 15.

the full realisation of economic, social and cultural rights for the benefit of disadvantaged and marginalised individuals and groups.'

Thus, it recommended that the state 'ensure that its fiscal policy is adequate, progressive and socially equitable and improves tax collection so as to increase resources available for implementing economic, social and cultural rights'.[168]

The issue of improving tax collection to ensure the maximum use of available resources has also received greater attention in recent years. Several treaty bodies and special procedures have recommended enhanced tax collection as a way to increase resource availability.[169] The Special Rapporteur on extreme poverty noted that tax-collection efficiency can be increased through tax-administration improvements. If all developing countries were able to raise 15 per cent of their national revenues through tax collection (a commonly accepted minimum – the OECD average is 37 per cent), they could collect no less than an additional US$198bn per year, more than all foreign development assistance combined. Domestic investment in tax collection can pay off; lack of investment in this area constitutes a short-term false economy.[170]

As noted, 'low levels of revenue collection have a disproportionate impact on the poorest segments of the population and constitute a major obstacle to the capacity of the State to finance public services and social programmes', on which the poor are particularly dependent.[171] References have also been made to the benefits of improving informal-sector taxation, in particular in countries with large informal sectors.[172] Nevertheless, from a human rights perspective, this potential source of state revenue should be assessed from a perspective of equity and equality; if the informal sector is constituted largely by those who have less, targeting it to raise revenues may exacerbate inequality.

Taking on discrimination and addressing inequalities

It has been noted that states must implement fiscal policies in line with the principle of non-discrimination, and be vigilant in balancing the need to increase taxation revenue with their responsibilities to both protect the most vulnerable and prevent additional inequality. According to several human rights monitoring bodies, compliance with the principle of equality and non-discrimination may require setting up a progressive tax system with real redistributive capacity that progressively increases the enjoyment of economic, social and cultural rights, in particular among

168 CESCR, Concluding Observations UK E/C.12/GRB/CO/6 (2016), paras 16–17.

169 See, eg, CESCR, Concluding Observations Paraguay E/C.12/PRY/CO/4 (2015), para 10; Concluding Observations UK E/C.12/GBR/CO/6 (2016); Concluding Observations Burundi E/C.12/BDI/CO/1 (2015); Concluding Observations Ireland E/C.12/IRL/CO/3 (2015), para 11; Concluding Observations Guatemala E/C.12/GTM/CO/3 (2014), para 8. See also CRC, Concluding Observations Guatemala CRC/C/GTM/CO/3-4 (2010), para 26.

170 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, quoting ActionAid, 'Accounting for Poverty: How international tax rules keep people poor', 2009, p 5.

171 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 44. See also 'Report of the Special Rapporteur on the right to education, Kishore Singh' (2011) UN Doc A/66/269, para 52.

172 See, eg, 'Interim report of the Special Rapporteur on health, Anand Grover' (2012) UN Doc A/67/302, para 21.

those living in poverty.[173] Some special procedures note that regressive taxation systems constitute an inequitable financing mechanism, something not in accordance with human rights.[174] Similarly, the CESCR has stressed that only redistributive and socially fair tax systems make it possible to combat inequalities.[175]

Furthermore, it has been stressed that tax reform that comes in the form of cuts, exemptions and waivers may disproportionately benefit society's wealthier segments and discriminates against those living in poverty.[176] It has also been suggested that direct taxes, such as personal income tax, would be more in line with principles of equality and non-discrimination than indirect taxes, such as value added (VAT) or sales taxes. The latter are often considered regressive because they generally eat into a larger proportion of the income of those living in poverty.[177] For example, on her Paraguay country visit, the Special Rapporteur on extreme poverty noted that, because the country had no income tax, the government relied primarily on sales tax for revenue. This had a profoundly discriminatory impact: the poorest ten per cent of the population was paying 18 per cent of their income in VAT, while this tax represented a mere 4.6 per cent of income among the population's richest one per cent.[178]

With a recognition that each country's situation is different, it has nonetheless been noted that 'the higher the prevalence of regressive taxes in the mix of revenue-raising sources, the more likely it is that a State will run afoul of the principles of equality and non-discrimination and that the minimum essential enjoyment of rights by the poorest will be threatened'.[179] Compliance with the principle of equality and non-discrimination would also require affirmative action measures, such as well-designed subsidies or tax-exemptions in favour of individuals and groups that have suffered from historical or persistent discrimination. This compliance would also oppose flat taxes where all contributors are required to pay an equal proportion of their incomes.[180]

While the CRC has only rarely considered taxation questions, it did call for a progressive tax policy in its Guatemala report considerations, as well as during its 2007 'Day of General Discussion on Resources for the Rights of the Child'.[181]

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173 See, eg, 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28 and 'Report of the Special Rapporteur on poverty, Philip Alston' (2015) UN Doc A/HRC/29/31. See also CESCR, Concluding Observations Tunisia E/C.12/TUN/CO/3 (2016), para 15; Concluding Observations Burundi E/C.12/BDI/CO/1 (2015), para 14; Concluding Observations Burundi E/C.12/GBR/CO/6 (2016), para 16; and Concluding Observations Uruguay CRC/C/URY/CO/2 (2007).

174 'Interim report of the Special Rapporteur on health, Anand Grover' (2012) UN Doc A/67/302, para 16. See also 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28.

175 See, eg, Concluding Observations Costa Rica E/C.12/CRI/CO/5 (2016), paras 15–16 and Concluding Observations Tunisia E/C.12/TUN/CO/3 (2016), para 15.

176 See, eg, 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona' (2011), UN Doc A/HRC/17/34, paras 50–51.

177 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 46.

178 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona', mission to Paraguay (2012) UN Doc A/HRC/20/25/Add.2, paras 43–44.

179 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 47.

180 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 16.

181 Concluding Observations Guatemala CRC/C/GTM/CO/3-4 (2010) and 'Day of general discussion on resources for the rights of the child – responsibility of States. Recommendations from the Committee on the Rights of the Child' (21 September 2007), 46th session of the CRC.

Taxation's redistributional aspect has also been stressed for its positive impact on human rights realisation.[182] As one Special Rapporteur noted:

> '[M]any developing countries have experienced significant economic growth in recent decades, although without a proportionate reduction in poverty or inequality, indicating that the benefits of growth have been concentrated in the hands of a few. This is in large part because the proceeds of growth have not been adequately taxed and redistributed, leading to a concentration of wealth that has considerable negative implications for human rights, social cohesion and future economic growth prospects.'[183]

Even the UN Secretary-General has highlighted the importance of progressive tax policies in addressing inequality and poverty, and recommended that states adopt a combination of progressive income taxes and highly redistributive transfers to decrease income inequality and its impact on social development.[184]

The Special Rapporteur on extreme poverty, in his report on inequality and human rights, stressed the detrimental effects of economic inequalities on the exercise of human rights and noted that implementing fiscal policies specifically aimed at reducing inequality should be part of an agenda for tackling inequality.[185] He stressed that '[a]ppropriate redistributive measures through taxation and other fiscal policies must be seen as an integral part of a commitment to ensuring full respect for human rights across the entire society'.[186]

Ensuring substantive gender equality

For many years, CEDAW has stressed the negative impact some tax structures may have on women and called on states to ensure that their tax systems do not have a discriminatory impact on them.[187] Special procedures also stressed certain taxation policies' gender impact. They largely stressed how some tax structures may discriminate against women, directly or indirectly.

The Special Rapporteur on extreme poverty has noted that, when tax structures assume women's income to be supplemental to total household income, it 'actively disincentives wage-earning and therefore could reduce participation in the labour market by women, potentially threatening

182 The CESCR recommended, eg, that Namibia implement a more redistributive fiscal policy: CESCR, Concluding Observations Namibia (2015) UN Doc E/C.12/NAM/CO/1; see also similar CESCR recommendations to Canada, Honduras and Macedonia; CESCR, Concluding Observations on Honduras (2016) UN Doc E/C.12/HND/CO/2 and CRC, Concluding Observations on Guatemala (2010) UN Doc CRC/C/GTM/CO/3-4.

183 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 40.

184 Report of the Secretary-General, 'The role of the United Nations in promoting a new global human order and an assessment of the implications of inequality for development', A/67/394 of 26 September 2012, para 56.

185 'Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston' (Extreme inequality and human rights) (2015) UN Doc A/HRC/29/31.

186 'Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston' (Extreme inequality and human rights) (2015) UN Doc A/HRC/29/31, para 53.

187 See, eg, Concluding Observations Switzerland CEDAW/C/CHE/CO/3 (2009); Concluding Observations Lebanon CEDAW/C/LBN/CO/3 (2014); Concluding Observations Côte d'Ivoire CEDAW/C/CIV/CO/1-3 (2011), para 19.

their right to work. Policymakers should be aware of the extent to which tax policies, such as the treatment of income derived from jointly-owned assets of married couples, strengthen or break down gender inequalities, or discriminate against different types of households.'[188] In the same vein, the Special Rapporteur on violence against women has recommended that the Netherlands ensure the taxation system fosters and facilitates women's participation in the labour market.[189] The Special Rapporteur has also noted sales taxes' regressive onus on women, 'who tend to use larger portions of their income on basic goods because of gender norms that assign them responsibility for the care of dependents'.[190]

Ensuring minimum core-obligation compliance

A connection with minimum core-obligation compliance has also been stressed. The Special Rapporteur on extreme poverty noted that 'a well-placed tax threshold (namely, the income below which an individual or household is exempted from income tax) is also crucial for ensuring that the taxation system does not jeopardise the ability of people living in poverty to enjoy minimum essential levels of economic, social and cultural rights'.[191]

In the same vein, the CESCR has stressed that, when states implement austerity measures, they must ensure they do not undermine the minimum core content of all economic, social and cultural rights[192] (see section 5.1 below).

3.2 Natural resource revenues

Natural resources[193] can be a vital source of revenue that states can use to comply with their human rights obligations.[194] Special procedures and treaty bodies have regularly raised concerns about revenue mobilisation vis-à-vis natural resources exploitation, although not in a systematic or consistent manner. In particular, their reports indicate:

- Natural resources **exploitation and production** should be carried out in a socially and environmentally responsible manner that prevents human rights violations. Several special procedures – including the Special Rapporteurs on Cambodia and Myanmar, as well as treaty bodies – have expressed concerns when the financial and social benefits of natural resource

188 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 49.

189 See, eg, 'Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk' (Intersections between culture and violence against women) (2007) A/HRC/4/34/Add.4.

190 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 46.

191 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 48.

192 See, eg, CESCR, Concluding Observations on Canada (2016) UN Doc E/C.12/CAN/CO/6, para 10.

193 In this study, the term 'natural resources' refers to renewable and non-renewable raw materials found in nature that can be used for economic production or consumption, such as minerals, water, land, forestry or fishing.

194 As acknowledged, eg, by the Special Rapporteur on Cambodia, see 'Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P Subedi' (A human rights analysis of economic and other land concessions in Cambodia) (2012) UN Doc A/HRC/21/63/Add.1, para 127; 'Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee' (2015) UN Doc A/HRC/28/72, para 49.

exploitation bypass the people. Consequently, monitoring bodies often express concerns when natural resources exploitation is linked to encroachment on community lands and livelihoods, mass evictions, pollution and environmental degradation, with resultant rights violations related to health, food, housing and water.[195]

The CESCR has noted that states violate their duty to protect the rights included in the ICESCR 'by granting exploration and exploitation permits for natural resources without giving due consideration to the potential adverse impacts of such activities on the individual and communities' enjoyment of Covenant rights'.[196]

- **Natural resources should be sufficiently/effectively/fairly taxed**. A state allowing or directly undertaking natural resources exploitation without ensuring a fair share of its proceeds are taxed and/or allocated towards guaranteeing human rights could be failing to mobilise adequate resources.[197]

- A state's population has a **right to enjoy a fair share of the financial and social benefits natural resources can provide**. The Special Rapporteur on extreme poverty frames these natural resources-related rights in reference to the right to self-determination, which expressly encompasses individuals' (and not state or government) rights to freely dispose of their natural wealth and resources.[198] Considering that many natural resources are finite and non-renewable, she adds that the right must be specially protected and take future generations' rights into account. The Special Rapporteur on the rights of indigenous peoples has underlined that indigenous communities should share in benefits arising from natural resources exploitation on their traditional territories, and that such 'sharing must be regarded as a means of complying with a right, and not as a charitable award or favour'.[199]

- In decision-making about natural resources use, states must ensure **participation, access to information and high transparency and accountability standards**.[200] The biggest challenge to translating natural resources wealth into societal benefits is thought to lie in establishing

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195 See, eg, Concluding Observations São Tomé and Príncipe CRC/C/STP/CO/2-4 (2013); CESCR Concluding Observations Democratic Republic of Congo (2009) E/C.12/COD/CO/4, para 6; 'Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P Subedi' (A human rights analysis of economic and other land concessions in Cambodia) (2012) A/HRC/21/63/Add.1, paras 72, 114–129 and 138–157; CESCR Togo 2013, paras 27–28; Reports of the Special Rapporteur on the situation of human rights in Cambodia, Surya P Subedi' (2012 and 2014) A/HRC/21/63/Add.1, paras 129–130 and 200 and A/HRC/27/70, para 48; and 'Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee' (2016) UN Doc A/HRC/31/71, para 63.

196 CESCR General Comment No 24, para 18.

197 Eg, 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28 and 'Report of the Special Rapporteur on food, Olivier De Schutter' (Mission to Cameroon) (2013) UN Doc A/HRC/22/50/Add.2. The Special Rapporteur on the right to food has recommended that Cameroon reconsider the tax policy on concessions of agricultural land and for exploitation of natural resources, to optimise the revenue earned from these resources to improve food security for vulnerable groups.

198 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, paras 18–19.

199 'Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (Special Rapporteur on indigenous people), S James Anaya' (2010) UN Doc A/HRC/15/37.

200 'Report of the Special Rapporteur on Cambodia, Surya P Subedi' (2012) UN Doc A/HRC/21/63/Add.1, para 9.

transparent participatory processes and managing natural resources revenue accountability.[201] Some have pointed to the Extractive Industries Transparency Initiative as a specifically beneficial practice, as it allows the public to know how much the government receives from the country's natural resources by disclosing taxes and other payments that oil, gas and mining companies make.[202] It has been stressed that concessions revenue should be disclosed in a way that permits comprehensive analysis, otherwise accountability is not assured.[203]

3.3 Debt and deficit financing

Debt financing can lead to establishing conditions for human rights realisation. However, human rights monitoring bodies note that this depends on several factors, including loan terms and conditions, prudent loan use and proper debt management. For this reason, human rights monitoring bodies have been addressing the issue of foreign debt from a human rights perspective for decades.[204]

Governments borrow by taking out loans from other governments, commercial banks and international financial institutions such as the International Monetary Fund (IMF) and the World Bank, as well as by issuing bonds to investors.[205] Human rights bodies have stressed both creditors' and debtors' responsibility for respecting, protecting and complying with human rights.

The Guiding Principles on foreign debt and human rights highlight that:

> '[A]ll States, whether acting individually or collectively (including through international and regional organisations of which they are members), have the obligations to respect, protect and fulfil human rights. They should ensure that any and all of their activities concerning their lending and borrowing decisions, those of international or national public or private institutions to which they belong or in which they have an interest, the negotiation and implementation of loan agreements or other debt instruments, the utilisation of loan funds, debt repayments, the renegotiation and restructuring of external debt, and the provision of debt relief when appropriate, do not derogate from these obligations.'[206]

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201 'Report of the Working Group on business and human rights' (Visit to Ghana) (2014) UN Doc A/HRC/26/25/Add.5, referring to the Natural Resource Charter and the Extractive Industries Transparency Initiative, of which Ghana is a member.

202 'Report of the Special Rapporteur on Myanmar, Tomás Ojea Quintana' (2014) UN Doc A/HRC/25/64, paras 32 and 79.

203 'Report of the Special Rapporteur on Cambodia, Surya P Subedi' (2012) UN Doc A/HRC/21/63/Add.1, para 11.

204 See, eg, 'Report of the Independent Expert on foreign debt, Cephas Lumina, on Guiding principles on foreign debt and human rights', (2012) UN Doc A/HRC/20/23 and 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (Activities during 2014/2015 and sovereign debt restructuring) (2015) UN Doc A/70/275.

205 Radhika Balakrishnan et al, *Maximum Available Resources & Human Rights: Analytical Report* (Centre for Women's Global Leadership 2011), p 15.

206 See, eg, 'Report of the Independent Expert on foreign debt, Cephas Lumina', (2012) UN Doc A/HRC/20/23, para 6. See also 'Report of the Special Rapporteur on water and sanitation, Catarina de Albuquerque' (2011) UN Doc A/66/255.

The Independent Expert on foreign debt is the human rights monitoring body that has provided the widest analysis on the issue; though others have contributed to the debate as well. Special procedures and treaty bodies have considered, for example, the obstacle high external debt burdens may impose to compliance with human rights treaty obligations, particularly those relating to economic, social and cultural rights, as well as to the human rights issues surrounding loan conditions.[207] In recent years, they have tended to look mostly at debt restructuring and austerity policies' fiscal policy arenas and human rights impacts,[208] as well as whether funds freed up through debt-relief programmes have been devoted to human rights-related spending.[209] All concur that any response to financial crises must fully comply with human rights law[210] (see section 5.1 below).

Monitoring bodies' work makes evident that states receiving funds or grants from states or international financial institutions (IFI) have the duty to take into account their human rights obligations – in particular economic, social and cultural rights – in all negotiations with lenders.[211] Similarly, creditor states and IFIs alike are obliged to consider the consequences of their financial decisions so as not to affect states' obligation to realise economic, social and cultural rights.[212] As interpreted by treaty bodies and special procedures, the latter obligation falls on states as both lenders in bilateral loans and as members of international organisations providing financial assistance.[213]

Lender obligations have been specified over the years, including, first and foremost, the requirement that lenders conduct a human rights impact assessment as a prerequisite to providing new loans, in addition to the desirability of lenders carrying out due diligence exercises. [214] This should not only focus on the likelihood of whether the loan will be serviced in the future, but on the impact that lending will have on populations and their exercise of human rights. Over the years, the Independent Expert on foreign debt has detailed the content of the due diligence analysis that lenders should

207 See, eg, CESCR, 'Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights – Statement by the Committee on Economic, Social and Cultural Rights' (2016) UN Doc E/C.12/2016/1, paras 4 and 11; and 'Report of the Independent Expert on international solidarity, Virginia Dandan' (2014) UN Doc A/HRC/26/34 (draft proposed declaration).

208 CERD, Concluding Observations UK (2001) UN Doc CERD/C/GBR/CO/18-20; CESCR, Concluding Observations Czech Republic (2014) UN Doc E/C.12/CZE/CO/2; CRC, Concluding Observations Jamaica (2015) UN Doc CRC/C/JAM/CO/3-4.

209 See, eg, CRC, Concluding Observations Guinea (2013) UN Doc CRC/C/GIN/CO/2; CESCR, Concluding Observations Togo (2013) UN Doc E/C.12/TGO/CO/1.

210 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/60, para 70.

211 This has been a long-standing position. See, eg, CESCR Concluding Observations Bulgaria E/2000/22 para 236; Concluding Observations Cameroon E/2000/22, para 352; Concluding Observations Argentina E/2000/22, para 276; Concluding Observations Georgia E/2001/22, para 96; Concluding Observations Egypt E/2001/22, para 170; Concluding Observations Senegal E/C.12/1/Add.62, para 60.

212 See, eg, 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2015) UN Doc A/70/275.

213 According to human rights monitoring bodies, states must comply with human rights obligations via their own actions as well as through their actions as members of international organisations such as the IMF and the World Bank. Thus, this duty is stressed in particular to states viewed as having an influence in the decision-making organs of international financial institutions. See, eg, Concluding Observations Italy E/2001/22, para 126; Concluding Observations Belgium E/2001/22, para 493; Concluding Observations Germany E/C.12/1/Add.68, para 31 and A/HRC/25/50/Add.2 (2014), para 68.

214 Guiding principles on foreign debt and human rights, paras 38–41.

complete, and has even given over a full report to financial complicity, analysing the impact lending may have on governments engaged in gross human rights violations.[215]

Similarly, it has been noted that lenders should consider human rights obligations and impacts when establishing conditions, and allow countries sufficient fiscal space to spend on social programmes, the realisation of economic, social and cultural rights, and to achieving the SDGs alongside their own development goals.[216] Privatisation of government assets is a common condition on loans to developing countries. Several monitoring bodies concur that IFIs and donors must work to eliminate inappropriate conditionalities attached to financing agreements.[217]

Another critical issue subject to increased discussion has been 'debt sustainability', revealing a gradual shift to a debt paradigm that greater respects the importance of human rights.[218] The Guiding Principles on foreign debt and human rights reiterate that 'debt sustainability assessments must not be limited to economic considerations (the debtor State's economic growth prospects and ability to service their debt obligations) but must also take into consideration the impact of debt burdens on a country's ability to create the conditions for the realisation of all human rights.'[219]

The CRC has recognised that sustainable debt management by states can contribute to mobilising resources for the rights of the child, and that long-term unsustainable debt can be a barrier to a state's ability to mobilise resources for children's rights. Sustainable debt management includes having transparent legislation, policies and systems in place, with clear roles and responsibilities for borrowing and lending, as well as managing and monitoring debt. Thus, the CRC has also called on states to carry out human rights impact assessments in relation to debt agreements.[220]

3.4 Trade and investment agreements

Engaging in international trade and attracting foreign investment can be a means of mobilising resources from abroad. Nonetheless, these can also undermine domestic resource mobilisation and human rights realisation. To avoid undermining human rights obligations, treaty bodies and special

215 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (Financial complicity: Lending to States involved in gross violations of human rights) (2015) UN Doc A/HRC/28/59.

216 Eg, 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 33; 'Independent Expert comments on the draft outcome document of the 3rd International Conference on Financing for Development in Addis Ababa to all member States, Juan Pablo Bohoslavsky' (Human rights must be at the core of development financing) (2015), available at www.ohchr.org/Documents/Issues/IEDebt/Paper3FFD22May2015.pdf accessed 20 October 2017.

217 See, eg, 'Report of the Special Rapporteur on water and sanitation, Catarina de Albuquerque' (2011) UN Doc A/66/255.

218 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2015) UN Doc A/70/275.

219 'Independent Expert comments on the draft outcome document of the 3rd International Conference on Financing for Development in Addis Ababa to all member States, Juan Pablo Bohoslavsky' (Human rights must be at the core of development financing) (2015).

220 CRC, General Comment No 19, paras 78–79. See also para 47.

procedures often call on states to undertake human rights impact assessments regarding the trade and investment agreements they negotiate and implement.[221]

The Special Rapporteur on food has provided states with detailed guidelines on how human rights impact assessments should be prepared to ensure the trade and investment agreements into which they enter are consistent with their obligations as stipulated by international human rights instruments[222] (see section below on human rights impact assessments).

The CESCR, for example, requested that developed and developing states take economic, social and cultural rights into account in bilateral as well as multilateral trade and investment agreements. This has been emphasised as an extraterritorial obligation, for example, in the case of Switzerland (in reference to the consequences of its foreign trade policies on its partner country's population)[223] and as a domestic obligation, for example, in the case of Tunisia (in reference to impacts on their own vulnerable populations).[224]

Monitoring bodies' efforts have acknowledged that, while foreign investment and liberalisation may bring a country economic rewards, such investments are often sought and implemented without detailed consideration of risks or possible adverse effects; the cost of attracting foreign or private investment or entering into trade agreements is frequently left out of the equation.

One question to which special procedures and treaty bodies have paid little attention in relation to trade liberalisation is reducing tariff revenues. The cost to a country that arises from reduced tariff revenues – in terms of foregone income and administrative expense related to tax collection – is usually not factored into the equation when calculating the opportunity costs that arise from trade liberalisation agreements. This is an area that special procedures and treaty bodies might want to look at in more detail, to help shape future resource mobilisation policies and trade agreements in ways that are human rights consistent. They should follow human rights guidelines in the Guiding Principles on human rights impact assessments of trade and investment agreements as developed by the Special Rapporteur on food.[225] The Guidelines state, for example, that 'States should not enter into trade or investment agreements that would require them to adopt measures, such as lowering a tariff or strengthening intellectual property rights, that would result in an infringement of human rights they have agreed to uphold'[226] and 'States should refrain from concluding agreements

221 See, eg, CESCR, Concluding Observations Kenya E/C.12/KEN/CO/2-5 (2016), para 14; Concluding Observations Tunisia E/C.12/TUN/CO/3 (2016), para 19; and Concluding Observations Costa Rica E/C.12/CRI/CO/4 (2008). CRC, Concluding Observations Turkey CRC/C/TUR/CO/2-3 (2012), para 23; Concluding Observations Republic of Korea CRC/C/KOR/CO/3-4 (2012), para 27. See also CEDAW, Concluding Observations Columbia CEDAW/C/COL/CO/6 (2007), para 29; Concluding Observations Philippines CEDAW/C/PHI/CO/6 (2006), para 26; and Concluding Observations Guatemala CEDAW/C/GUA/CO/6 (2006), para 32. See also 'Report of the Special Rapporteur on food on his mission to the World Trade Organisation' (2009) A/HRC/10/5/Add.2, paras 37–38.

222 'Addendum to the Report of the Special Rapporteur on food, Olivier De Schutter on Guiding principles on human rights impact assessments of trade and investment agreements' (2011) UN Doc A/HRC/19/59/Add.5.

223 See, eg, E/C.12/CHE/CO/2-3 (2010).

224 E/C.12/TUN/CO/3 (2016), para 19.

225 'Report of the Special Rapporteur on food, Olivier De Schutter' (2011) UN Doc A/HRC/19/59/Add.5.

226 'Report of the Special Rapporteur on food, Olivier De Schutter' (2011) UN Doc A/HRC/19/59/Add.5, para 2.2.

that would affect their public budgets or balance of payments in a way that would impede the full realisation of human rights, making the fulfilment of human rights impossible or delayed.' [227]

Human rights bodies have expressed acute concern regarding investment agreements, particularly bilateral investment agreements and their arbitration provisions. Building on the Guiding Principles on business and human rights,[228] special procedures and treaty bodies have made a number of recommendations related to bilateral investment agreements, including that they:

- be interpreted in a manner that does not conflict with human rights law, since the purpose of both development-stimulating investment treaties and human rights laws is to benefit individuals;[229]
- be developed and negotiated in Myanmar using the Principles for Responsible Contracts;[230] and
- include clauses on children's rights in Nicaragua.[231]

One recurrent concern about investment agreements is that they are often treated as standalone legal codes that contain no references to human rights. By way of example, Ghana's 2013 Investment Promotion Centre Act did not contain any provisions on respecting human rights or responsible business conduct.[232] In that context, recommendations stated that legislation designed to attract and facilitate foreign investment should include safeguards to prevent negative impacts from such investment and to facilitate respect for human rights in the private sector.[233]

Another concern raised by treaty bodies and the Special Rapporteur on health is that international investment agreements are often negotiated and concluded in secrecy, which jeopardises the right to information and participation in decision-making processes. At the same time, it makes it hard to gauge whether an investment agreement will ultimately mobilise resources in a way that is positive for human rights realisation.[234] Secrecy and confidentiality have been justified on the grounds that disclosure could harm the state's economic interest.[235]

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227 'Report of the Special Rapporteur on food, Olivier De Schutter' (2011) UN Doc A/HRC/19/59/Add.5, para 2.4.

228 The 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The Special Representative annexed the Guiding Principles to his final report to the UNHRC (A/HRC/17/31). The UNHRC endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011.

229 'Report of the Special Rapporteur on health, Anand Grover' (2014) UN Doc A/69/299, para 55.

230 'Report of the Special Rapporteur on Myanmar, Tomás Ojea Quintana' (2013) UN Doc A/HRC/22/58, para 34.

231 CRC, Concluding Observations Nicaragua UN Doc CRC/C/NIC/CO/4; CESCR, General Comment No 18: Article 6 of the International Covenant on Economic, Social and Cultural Rights (2005) E/C.12/GC/18.

232 'Report of the Working Group on business and human rights' (Visit to Ghana) (2014) UN Doc A/HRC/26/25/Add.5, para 17.

233 'Report of the Working Group on business and human rights' (Visit to Ghana) (2014) UN Doc A/HRC/26/25/Add.5, para 17.

234 Eg, 'Interim report of the Special Rapporteur on health, Anand Grover' (2014) UN Doc A/69/299, para 50.

235 Eg, 'Interim report of the Special Rapporteur on health, Anand Grover' (2014) UN Doc A/69/299, para 51.

Similarly, another cause for concern is that investment agreements generally contain provisions enabling private investors to sue states if investment conditions change over time. This has led to litigation regarding states' measures to protect public-policy objectives, such as health or the environment. Investor–state arbitration has drawn fierce criticism, including for lack of transparency, preventing third parties from accessing the system – and thus solutions – and benefiting 'transnational corporations at the cost of states' sovereign functions of legislation and adjudication'.[236] The UN Commission on International Trade Law (UNCITRAL) Convention on Transparency in Treaty-Based Investor-State Arbitration has been pointed to as providing an opportunity for increased investor–state arbitrations transparency.[237]

Human rights impact assessments

As noted earlier, in 2011, the Special Rapporteur on the right to food presented Guiding Principles on human rights impact assessments of trade and investment agreements (the 'Guiding Principles on trade and investment'). These have since garnered considerable support from human rights advocates and development practitioners worldwide.

A human rights impact assessment is a tool that informs policy choices by preventing and remedying adverse human rights effects, and ensures that these are made based on the best available information.[238] A state may have to make choices about its priorities, for instance, where trade and investment agreements contribute to economic growth and thus facilitate the state's ability to realise rights through mobilising budgetary resources, while at the same time such agreements negatively affect the state's capacity to protect the rights of certain groups, such as workers in the state's least efficient economic sectors. Human rights impact assessments can help identify the best choice among competing policy options for mobilising resources; identify both positive and negative human rights impacts of a trade or investment agreement; and help states prioritise those economic and social benefits that can make a sustainable contribution to the realisation of all human rights, over the short-term economic and/or political gains such agreements provide.[239] The process of setting priorities and managing trade-offs, as well as the substance of outcomes, must all comply with human rights-related transparency, participation and non-discrimination principles.[240]

A human rights impact assessment requires taking the country's unique context into consideration and examining 'the fiscal and economic sustainability of trade and investment agreements'.[241] Therefore, human rights and environmental impact assessments are particularly advisable[242] since environmental degradation can reduce the long-term revenue that natural resources yield.

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236 Eg, 'Interim report of the Special Rapporteur on health, Anand Grover' (2014) UN Doc A/69/299, para 4.

237 'Report of the Working Group on business and human rights' (Improving policy coherence for inclusive and sustainable development) (2015) UN Doc A/HRC/29/28.

238 'Report of the Special Rapporteur on food, Olivier De Schutter' (Guiding principles on human rights impact assessments of trade and investment agreements) (2011) UN Doc A/HRC/19/59/Add.5, para 6.2.

239 Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements, para. 6.1.

240 Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements, para. 6.1.

241 Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements, para 2.4.

242 'Report of the Working Group on business and human rights' (Visit to Ghana) (2014) UN Doc A/HRC/26/25/Add.5.

Calls for human rights impact assessments have not been limited to trade and investment agreements. Several human rights monitoring bodies have advised states to undertake human rights impact assessments on other resource mobilisation policies. For example, they have called on states to assess the impact of their domestic tax policies as well as the spill-over effects their tax policies impose on other countries, in addition to the impact of austerity measures and other adjustment programmes.[243]

In 2017, the CESCR made its views clear regarding trade and investment agreements and human rights impact assessments in a General Comment. According to the Committee:

> 'States Parties should identify any potential conflict between their obligations under the Covenant and trade or investment treaties, and refrain from entering into such treaties where such conflicts are found to exist, as required under the principle of the binding character of treaties. The conclusion of such treaties should therefore be preceded by human rights impact assessments, taking into account both the positive and negative human rights impacts of trade and investment treaties, including their contribution to the realisation of the right to development. Such impacts on human rights of the implementation of the agreements should be regularly assessed, to allow for the adoption of any corrective measures that may be required. The interpretation of trade and investment treaties currently in force should take into account the human rights obligations of the State, consistent with Article 103 of the Charter of the United Nations and with the specific nature of human rights obligations. States parties cannot derogate from the obligations under the Covenant in trade and investment treaties they may conclude. They are encouraged to insert, in future treaties, a provision explicitly referring to their human rights obligations, and to ensure that mechanisms for the settlement of investor-State disputes take human rights into account in the interpretation of investment treaties or of investment chapters in trade agreements.'[244]

Human rights impact assessments are also an important accountability tool. By explicitly clarifying what can be expected from a particular resource mobilisation policy, errors, omissions and actors involved can be more clearly identified if the expected resources are not mobilised or when human rights are affected.

A major limitation of human rights impact assessment methodologies is that they most often seek to assess potential human rights impacts of specific resource mobilisation policies, rather than consider whether these policies are best suited for countries seeking to comply with obligations to mobilise maximum available resources for human rights. On a positive side, one special procedure noted that emerging methodologies make it possible to monitor whether maximum available resources are being directed to economic, social and cultural rights, declaring such assessments should focus on whether all available resources are being mobilised, as well as on whether they are being used effectively.[245]

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243 See, eg, Concluding Observations UK E/C.12/GBR/CO/6 (2016), para 17; and 'Report of the Independent Expert on foreign debt, Cephas Lumina' (Mission to Greece) (2014) A/HRC/25/50/Add.1, para 92.

244 CESCR General Comment No 24, para 13 (footnotes omitted).

245 'Report of the Special Rapporteur on water and sanitation, Catarina de Albuquerque' (2011) UN Doc A/66/255.

Tax incentives and tax holidays

As countries compete for foreign investment, they increasingly grant tax incentives to corporations to attract or retain investment.[246] Special procedures have expressed concern about these tax incentives as they can involve customs duty and tax exemptions that incentivise direct private sector investment.[247] Tax incentives to attract investment have global ramifications; they create a competitive 'race to the bottom'.[248] The Special Rapporteur on extreme poverty noted that such incentives warrant a heightened level of scrutiny in human rights terms because they reduce state revenues and therefore the resources states can devote to rights realisation. Furthermore, evidence that incentives actually attract investment is weak.[249] As such, the CESCR recommends states carefully review their allowable tax exemptions.[250]

The Special Rapporteur on extreme poverty has further stated that '[W]here a State is alleged to be failing to use its maximum available resources to fulfil obligations to progressively realise economic, social and cultural rights, incentives would have to be justified by a clear description of deliberate, concrete and targeted advances towards the fulfilment of human rights that can be expected from their implementation.'[251] States Parties would also bear 'the burden of proving periodically that the granting of corporate tax breaks was the least restrictive policy option from the perspective of economic, social and cultural rights'.[252]

3.5 Concluding observations

Traditionally, human rights monitoring bodies have lent greater attention to resource mobilisation via international assistance and cooperation (examined in Chapter 2, above), paying little attention to efforts to mobilise resources from other sources. For example, treaty bodies' reporting guidelines call for states to supply at times quite detailed information on development cooperation and human rights assistance, including the extent to which states benefit from or provide such cooperation or assistance.[253] That said, they do not request any other information on resource mobilisation.

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246 See Michael Keen and Mario Mansour, *Revenue Mobilisation in Sub-Saharan Africa: Challenges from Globalisation*, IMF Working Paper (2009); UNCTAD, *Least Developed Countries Report* 2013.

247 See, eg, 'Report of the Special Rapporteur on Cambodia, Surya P Subedi' (2012) UN Doc A/HRC/21/63/Add.1, paras 33, 43 and 48; 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 64.

248 See, eg, 'Interim report of the Special Rapporteur on health, Anand Grover' (2012) UN Doc A/67/302, para 19; 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28.

249 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 65.

250 See, eg, Concluding Observations Burundi E/C.12/BDI/CO/1 (2015). Treaty bodies do acknowledge that some tax deductions and privileges can contribute to the human rights realisation. See CESCR recommendations that Uganda and Russia reintroduce tax benefits as incentives for hiring persons with disabilities: Concluding Observations Uganda E/C.12/UGA/CO/1 (2015) and Concluding Observations Russia E/C.12/RUS/CO/5 (2011).

251 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 67.

252 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 67.

253 UN, 'Compilation of guidelines on the form and context of reports to be submitted by States Parties to the international human rights treaties' (2009) HRI/GEN/2/Rev.6, para 43; CRC, 'General guidelines regarding the form and content of initial reports to be submitted by States Parties under article 44, paragraph 1 (a) of the convention' (1991) UN Doc CRC/C/5 (CRC Reporting Guidelines), para 19.

Yet, as we have seen in the present section, in recent years, increasing attention has been paid to other resource mobilisation sources, in particular, taxation. This is in line with the 2030 Agenda which, in stark contrast with the Millennium Development Goals – which focused on aid as a principal development-financing source – includes SDG 17 ('means of implementation'), putting 'domestic resource mobilisation' or national fiscal policies at the centre of the development agenda.[254]

Special procedures and treaty bodies have not yet explored in any significant manner some critical options that are available to states to mobilise domestic resources for human rights realisation. For example, human rights monitoring bodies do not generally address monetary policies and the way in which decisions adopted by central banks contribute or hinder the availability of resources for the realisation of human rights (eg, using the excess of foreign exchange reserves). The lack of attention to monetary policies and central banks contrasts with the increasing public recognition that these policies affect the realisation of human rights, in particular, economic and social rights.[255] Human rights monitoring bodies should develop legal standards to better address all alternatives for resource mobilisation. The lack of attention to these issues also contrasts with the work that even some small NGOs are doing, such as regularly including in their analyses and reports a broader set of alternatives for resource mobilisation when assessing states' compliance with human rights obligations.[256]

To address these prevailing gaps, human rights monitoring bodies should consolidate, strengthen and further develop legal standards and methodologies to assess whether or not states have utilised all alternatives for resource mobilisation. This must include an analysis of adherence to the rule of law at the national level, without which resources can be diverted through fraud or corruption. Today, when reviewing states' reports (treaty bodies) or in-country missions (special procedures), human rights monitoring bodies rarely ask states to demonstrate whether they have done all they could to mobilise sufficient resources.

It would also be advisable, for example, for special procedures and treaty bodies to regularly request information from states on how they arrive at specific policy decisions, whether or not they have weighed certain economic policy choices' costs and benefits, and if policy trade-offs were explicitly addressed. This will foster transparency regarding decisions made as well as enable the designing of complementary policy measures that ensure those whom the economic policy may adversely affect are protected.

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254 SDG target 17.1: 'Strengthen domestic resource mobilisation, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection.'

255 See, eg, James Heintz 'Central Banks: Do They Have Human Rights Obligations?' in A Bottom-Up Approach To Righting Financial Regulation, Issue No 2, Center of Concern, January 2012, available at www.coc.org/rbw/central-banks-do-they-have-human-rights-obligations-january-2012 accessed 20 October 2017. See also, Diane Elson, Radhika Balakrishna and James Heintz 'Public Finance, Maximum Available Resources and Human Rights' in Aoife Nolan, Rory O'Connell and Colin Harvey (eds) *Human Rights and Public Finance: Budgets and the Promotion of Economic* (Hart Publishing 2014).

256 See, eg, the work of the Center for Economic and Social Rights (www.cesr.org accessed 20 October 2017) and the Center of Concern (www.coc.org accessed 20 October 2017), as well as other members of the Righting Finance Initiative.

Special procedures and treaty bodies should:

- regularly request information from states on how they have adopted specific policy decisions, whether or not they have weighed costs and benefits of all policy choices, and if policy trade-offs were explicitly addressed;

- provide more concrete, practical and detailed guidance to states about all aspects of the obligation to mobilise resources, including drawing attention to the prerequisite of the rule of law; to this end, they should request specific information of states;

- consolidate, strengthen and further develop legal standards and methodologies to assess whether or not states have utilised all alternatives at their disposal for resource mobilisation; and

- consistently apply legal standards related to the mobilisation of resources already developed in General Comments (ie, treaty bodies), and thematic reports (ie, special procedures), in the examination of country-specific situations (in treaty bodies' Concluding Observations and special procedures' country missions).

Chapter 4: Addressing resource diversion and foregone tax revenues

To fulfil obligations to devote maximum available resources to the enjoyment of economic, social and cultural rights, states must not only generate greater resources but also avoid resource diversion, such as corruption, tax evasion and capital flight.[257] Adherence to the rule of law is an essential precondition here. Human rights monitoring bodies' efforts make evident that states that continue to tolerate resource diversion cannot claim insufficient resources as a justification for not implementing economic, social and cultural rights.

4.1 Illicit financial flows

In recent years, the UN human rights system has increasingly focused on the issue of illicit financial flows. The UNHRC has issued specific resolutions on the topic and asked its Advisory Committee to conduct a study on the impact of illicit financial flows on the enjoyment of human rights.[258] Treaty bodies and special procedures have also lent increased attention to the issue. For example, in its Concluding Observations, the CESCR 'urged' some States Parties to take 'rigorous measures' to combat illicit financial flows, tax evasion and fraud 'with a view to raising national revenues and increasing reliance on domestic resources'.[259] This increased attention on the topic dovetails with SDG commitments. Under the 2030 Agenda, states have committed to significantly reducing illicit financial flows by 2030 (SDG 16.4).

The Independent Expert on foreign debt, whom the UNHRC requested to study the topic in depth, has classified a wide range of phenomena, including corruption, tax evasion and tax avoidance, as illicit financial flows.[260] This section addresses each of them separately, also examining what other treaty bodies and special procedures have said on the subject. Yet, as noted by the Independent Expert on foreign debt, the majority of illicit financial flows are related to cross-border tax-related transactions: 'curbing tax-related illicit financial flows thus has the potential to make the largest fiscal impact and would enlarge domestic resources available for the realisation of human rights, including social, economic, and cultural rights'.[261]

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257 See, eg, 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28. See also, CESCR Concluding Observations Romania E/C.12/ROU/CO/3-5 (2014), paras 7–8; CRC, General Comment No 19 (2016), UN Doc CRC/C/GC/19; and Concluding Observations Togo CRC/C/TGO/CO/3-4 (2012).

258 See, eg, Resolution A/HRC/31/L.24/rev 1 on the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, and the importance of improving international cooperation.

259 See, eg, Concluding Observations Honduras E/C.12/HND/CO/2 (2017), para 20; Concluding Observations Kenya E/C.12/KEN/20/2-5, para 18.

260 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' ('Final study on elicit financial flows, human rights and the 2030 Agenda for Sustainable Development') (2016), UN Doc A/HRC/31/61, para 5.

261 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' ('Final study on elicit financial flows, human rights and the 2030 Agenda for Sustainable Development') (2016), UN Doc A/HRC/31/61, para 5.

4.2 Fiscal abuses: evasion, avoidance and other illegal practices

Fiscal abuses are part of the broader problem of illicit financial flows. The term 'fiscal abuses' gives rise to several definitional problems. Does it include tax evasion, tax avoidance or conduct in the grey areas between evasion and avoidance, such as aggressive tax planning?[262] Special procedures and treaty bodies have yet to define or use the term consistently.

As noted by the Special Rapporteur on extreme poverty, 'tax abuse is not a victimless practice; it limits resources that could be spent on reducing poverty and realising human rights, and perpetuates vast income inequality… a State that does not take strong measures to tackle tax abuse cannot be said to be devoting the maximum available resources to the realisation of economic, social and cultural rights. Moreover, high levels of tax abuse undermine the principles of equality and non-discrimination.'[263]

From the point of view of resource mobilisation, human rights monitoring bodies have stressed that tax abuses limit public revenue that could be spent on human rights in rich and poor countries alike. If states do not tackle tax abuses, these are likely to disproportionately benefit wealthy individuals to the detriment of the most disadvantaged. Thus, they call on states to intensify efforts to combat tax avoidance and evasion.[264] 'Actions or omissions that diminish public revenues by allowing large-scale tax evasion… 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.'[265]

The CESCR has raised this point in the context of resource mobilisation. It has, for instance, recommended that Kenya take measures 'to combat illicit financial flows and tax avoidance with a view to raising national revenues'[266] and that the UK 'take strict measures to tackle tax abuse, in particular by corporations and high-net-worth individuals'.[267]

4.3 Corruption

UN treaty bodies have indicated that corruption entails a failure by states to comply with their obligation to use the maximum available resources.[268] It was pointed out that corruption resulted

262 The 2013 IBAHRI report defines tax abuses as tax practices that are contrary to domestic and international tax laws and policies, such as tax evasion, tax fraud and other illegal practices – including tax losses resulting from other illicit financial flows such as bribery, corruption and money laundering. See *Tax Abuses, Poverty and Human Rights* (IBAHRI 2013), p 24.

263 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, paras 59–60.

264 See, eg, 'Report of the Independent Expert on foreign debt, Cephas Lumina' (Mission to Greece) (2014) A/HRC/25/50 Add.1, para 92.

265 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 5, citing CESCR, General Comment No 20 (2009) on non-discrimination in economic, social and cultural rights (2009) UN Doc E/C.12/GC.20.

266 CESCR, Concluding Observations Kenya E/C.12/KEN/CO/2-5 (2016). The CESCR has also called on Burkina Faso to redouble its efforts to combat illicit financial flows E/C.12/BFA/CO/1 (2016).

267 CESCR, Concluding Observations UK E/C.12/GBR/CO/6, paras 16–17.

268 See, eg, CRC, General Comment No 19 (2016) UN Doc CRC/C/GC/19, para 34. See also, CESCR, Concluding Observations Moldova (2003) UN Doc E/2004/22; CRC, Concluding Observations Togo (2012) UN Doc CRC/C/TGO/CO/3-4; CESCR, Concluding Observations Romania (2014) UN Doc E/C.12/ROU/CO/3-5, paras 7–8.

in fewer resources being available to secure children's rights in Venezuela[269] and led to decreased revenue and resources in Georgia.[270]

Treaty bodies have requested states intensify their efforts to combat corruption, including by increasing transparency in the public sector and ensuring effective functioning of all anti-corruption measures.[271] The CESCR has expressly noted that corruption 'undermines a State's ability to mobilise resources for the delivery of services essential for the realisation of economic, social and cultural rights. It leads to discriminatory access to public services in favour of those able to influence authorities, including by offering bribes or resorting to political pressures.'[272] Special procedures have also lent greater attention to the issue of corruption and its impact on securing human rights, in particular during their country missions.[273]

4.4 Corporate profit shifting

Corporate profit shifting refers to techniques that transfer profits to low-tax jurisdictions. While tax evasion practices contravene domestic laws and regulations, this complex corporate tax avoidance scheme is difficult for tax authorities to prove and prosecute.[274]

Transfer prices are related to cross-border payments from one part of a multinational enterprise, for goods or services provided by another part of the same multinational enterprise. Tax abuse through transfer pricing occurs when a transnational corporation manipulates the prices of related-party transactions to increase profits in low-tax countries and decrease profits in higher-tax countries. The Independent Expert on foreign debt has explained that 'profit shifting' gives rise to several damages. First, it leads to a number of tax-revenue losses by both developed and developing countries. Second, corporate tax avoidance perpetuates inequality 'since the benefits accrue to a small minority while revenue losses will need to be made up by the rest if the population'. Third, it creates an unfair competitive advantage for transnational corporations, as domestic enterprises cannot take advantage of it. Finally, it increases the cost of tax administration as, 'the more sophisticated tax avoidance schemes become, the more ineffective capacity-building efforts to strengthen tax administration becomes'.[275] Some special procedures have noted that increased international cooperation on tax matters is necessary to stop the unnecessary loss of resources[276] (see section 2.3 above).

269 CRC, Concluding Observations Venezuela (2014) CRC/C/VEN/CO/3-5. Under the heading 'allocation of resources', it directed similar recommendations to Cambodia, CRC, Concluding Observations Cambodia (2011) CRC/C/KHM/CO/2-3, para 16.

270 CESCR, Concluding Observations Georgia (2002) E/C.12/1/Add.83, para 11.

271 Concluding Observations Uganda E/C.12/UGA/CO/1 and Burkina Faso CRC/C/BFA/CO/3-4.

272 CESCR General Comment No 24, para 20.

273 'Report of the Independent Expert on foreign debt, Cephas Lumina' (Mission to Vietnam) (2012) A/HRC/20/23/Add.3; 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona' (Mission to Zambia) A/HRC/14/31/Add.1, paras 92–96.

274 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/61, para 17.

275 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/60, para 20.

276 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/60, para 20; 'Independent Expert on international order, Alfred-Maurice de Zayas' (2016) UN Doc A/71/286; 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28.

As discussed below (in section 5.2), the preferential corporate taxation schemes that some countries implement can erode other countries' ability to mobilise sufficient resources; certain special procedures, as well as the CESCR have been emphatic in considering this practice in violation of human rights obligations.[277] In its most recent (2017) General Comment, the CESCR noted that '[L]owering the rates of corporate taxes with a sole view to attracting investors encourages a race to the bottom that ultimately undermines the ability of all states to mobilise resources domestically to realise Covenant rights'. The Committee further notes that, 'as such, this practice is inconsistent with the duties of the State Parties to the Covenant'.[278]

Other special procedures have also referred to the companies' obligations to pay taxes more broadly. For example, the Special Rapporteur on extreme poverty has noted that business enterprises that knowingly avoid paying tax are purposefully depriving countries of the resources they need to fulfil their human rights obligations and thus are in breach of their own obligations to respect human rights.[279] The Working Group on business and human rights notes the responsibility to respect human rights applies to all corporate activities and that business enterprises should not seek to undermine the state's legitimate exercise of environmental and social oversight.[280]

4.5 Financial secrecy legislation, tax havens or low-tax jurisdictions

Some human rights monitoring bodies have expressed concern about financial secrecy legislation and low corporate income tax jurisdictions because they affect the State Party as well as other states' ability (see section 5.2 below) to meet their obligations to mobilise maximum available resources for the implementation of economic, social and cultural rights.[281]

The Special Rapporteur on extreme poverty has noted that tax havens enable large-scale tax abuse (as well as illicit activities) and deprive countries of revenue they need to fulfil their obligations. In addition, given that most tax havens are located in – or under the jurisdiction of – wealthy countries, the global flow of money to these centres exacerbates global inequalities.[282] Secrecy legislation and tax havens include an extraterritorial component that is examined below (see section 5.2 below).

277 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/60, paras 41–43; 'Independent Expert on international order, Alfred-Maurice de Zayas' (2016) UN Doc A/71/286, para 29; 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, paras 74–78.

278 CESCR General Comment No 24, para 37.

279 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28.

280 'Report of the Working Group on business and human rights' (Visit to Ghana) (2014) UN Doc A/HRC/26/25/Add.5.

281 See, eg, Concluding Observations UK E/C.12/GBR/CO/6 (2016), para 16; Concluding Observations Canada E/C.12/CAN/CO/6 (2016), para 9.

282 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 61.

4.6 Concluding observations

Based on the interpretation that special procedures and treaty bodies provide, it is possible to conclude that, when states do not take measures to ensure fair and progressive tax collection or when they facilitate or actively promote tax abuse, either at the domestic or cross-border level, they may be in violation of international human rights law. However, they have not yet addressed the issue of resource diversion or foregone tax revenues in a systematic manner. The Independent Expert on foreign debt has noted that efforts to improve revenue collection, close loopholes for tax evasion/avoidance and ensure tax justice have not been accorded their warranted priority.[283] For example, while tax evasion is currently a particularly high-profile issue, few special procedures have addressed it; treaty bodies mention it in passing without giving it the attention it deserves. This constitutes a major failure, considering that a state that does not take strong measures to collect all possible taxes cannot be said to be devoting maximum available resources to the realisation of economic, social and cultural rights.

Similarly (with the exception of the most recent CESCR General Comment), human rights monitoring bodies have not paid sufficient attention to multinational corporations' tax abuses, despite the fact these have major human rights consequences. First, they eliminate resources that could be used for securing human rights as they exacerbate income inequalities. Second, they shift and increase the tax burden to other taxpayers, often in violation of principles of equality and non-discrimination. Third, they increase developing states' reliance on sometimes unpredictable or unreliable international assistance.

While the CESCR has lent greater attention to the issue in its latest General Comment (2017), other human rights bodies, including the Working Group on business and human rights, must speak up and say a great deal more. This should include reference to the necessity for adherence to the rule of law. Better guidance by human rights monitoring bodies would assist states in their efforts to mobilise resources for human rights.

283 'Independent Expert comments on the draft outcome document of the 3rd International Conference on Financing for Development in Addis Ababa to all Member States, Juan Pablo Bohoslavsky' (Human rights must be at the core of development financing) (2015), available at www.ohchr.org/Documents/Issues/IEDebt/Paper3FFD22May2015.pdf accessed 31 October 2016.

Although states are thought to bear the primary responsibility for mobilising resources for human rights realisation,[284] human rights monitoring bodies have acknowledged the powerful role other actors play in economic policy, hence their impact on resource mobilisation. The Independent Expert on equitable international order has noted that the Guiding Principles on business and human rights do not contain any provision concerning businesses' obligation to pay their fair share of taxes. Neither is there mention of tax evasion, tax fraud or tax havens.[285]

Thus, despite all recent developments by human rights monitoring bodies, questions remain. What is the applicable law in relation to the obligation to mobilise resources for private actors, and how they can be held accountable? Under their due diligence obligation, are business entities obliged to consider financial returns or resources they make available to governments and local communities based on their activities? Are these returns human rights-consistent?

These are challenging, fascinating legal questions that special procedures and human rights lawyers might be well suited to address. It could include looking from a human rights (resource mobilisation) perspective at what companies' obligations are when it comes to paying tax and structuring their tax obligations. Human rights monitoring bodies – in particular the Working Group on business and human rights – have several tools not yet fully exploited that they could use to strengthen corporate accountability vis-à-vis resource mobilisation. For example, they might choose to call on states to develop legal and regulatory frameworks that safeguard against the human rights risks to which businesses' tax-related behaviour gives rise.

Another challenge for monitoring bodies is to develop a legal framework with which to assess tax lawyers, accounting and consulting firms' responsibility for creating mechanisms companies and wealthy individuals use to avoid paying taxes.

Special procedures and treaty bodies should:

- consistently address issues of resource diversion and foregone tax revenue when assessing compliance by states of their obligation to mobilise resources;

284 See, eg, 'Report of the Independent Expert on international solidarity, Virginia Dandan' (2015) UN Doc A/70/316; 'Report of the Independent Expert on international solidarity, Virginia Dandan' (2014) UN Doc A/HRC/26/34 (Proposed draft declaration); OHCHR, 'Independent Expert comments on the draft outcome document of the 3rd International Conference on Financing for Development in Addis Ababa to all member States, Juan Pablo Bohoslavsky' (Human rights must be at the core of development financing) (2015); 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (Mission to Greece) (2016) A/HRC/31/60/Add.2; 'Report of the Special Rapporteur on housing, Leilani Farha' (Responsibilities of local and other subnational governments in relation to the right to adequate housing) (2015) UN Doc A/HRC/28/62, para 5; 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28; 'Report of the Special Rapporteur on indigenous people, S James Anaya' (2010) UN Doc A/HRC/15/37; Working Group on business and human rights, April 2015, Business and Human Rights Guiding Principle 9. In ratifying a human rights treaty, the state takes on the legal obligation to implement the rights set out in it, thus it is a given that treaty bodies focus primarily on state duties. The Special Rapporteur on housing has recalled that, although the main responsibility for mobilising resources lies with states, it will be crucial to include local national governments as duty bearers in discussions about resource mobilisation. See 'Report of the Special Rapporteur on housing, Leilani Farha' (Responsibilities of local and other subnational governments in relation to the right to adequate housing) (2015) UN Doc A/HRC/28/62.

285 'Report of the Independent Expert on international order, Alfred de Zayas' (2016), UN Doc A/71/286, para 27.

- define the role and responsibilities of multinational corporations and other business enterprises in resource mobilisation for the realisation of human rights; and

- develop a legal framework with which to assess tax lawyers, accounting and consulting firms' responsibility for creating the mechanisms that companies and wealthy individuals use to avoid paying taxes.

Chapter 5: The obligation to mobilise resources in action: opportunities and challenges

This chapter reviews the ways in which special procedures and treaty bodies have developed the obligation to mobilise resources in reference to three tangible issues:

- austerity measures implemented by states, in particular after the 2007 to 2008 global financial and economic crisis;
- the extraterritorial impact of certain policy measures; and
- the insufficient regulation of the financial sector.

5.1 Austerity measures

In recent years, treaty bodies and special procedures have discussed the issue of resource mobilisation mostly in reference to austerity measures that states have implemented since the onset of the 2007 to 2008 economic and financial crisis.

Facing measures states took as a result of the crisis, human rights monitoring bodies have stressed that states cannot use the economic damage the crisis caused to justify actions or omissions that amount to violations of basic human rights obligations. They have made evident that states cannot claim that the financial crisis leaves them with no choice but to cut social benefits and services. Even during times of severe resource constraints – whether caused by a process of adjustment, economic recession or by other factors – when available resources are demonstrably inadequate, the obligation remains for states to demonstrate that every effort has been made to mobilise all resources at its disposal in an effort to satisfy, as a matter of priority, minimum essential levels of economic, social and cultural rights, and to protect society's most disadvantaged and marginalised members or groups.[286]

It is evident from the work of the human rights monitoring bodies that these obligations are not dispensed with during times of crisis and recovery and, on the contrary, in these circumstances, states should 'maximise means of harnessing resources specifically for the realisation of economic, social and cultural rights'.[287] To this end, 'States should identify additional sources of fiscal space to increase resources for social and economic recovery. From an array of options, States should particularly consider widening the tax base, improving the tax-collection efficiency and reprioritizing expenditures. Such reforms could help States achieve a more progressive, equitable and sustainable

286 See, eg, CESCR, General Comment No 3, para 12, No 12, para 28 and No 14, para 18; Statement on 16 May 2012. See also, E/C.12/ISL/CO/4 (2012); E/C.12/UKR/CO/6 (2014); E/C.12/PRT/CO/4 (2014); and A/HRC/25/50/add.1 (2014) and 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona' (on human rights-based approach to recovery) (2011) UN Doc A/HRC/17/34.

287 'Report of the Independent Expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona' (on human rights-based approach to recovery) (2011) UN Doc A/HRC/17/34, para 80.

tax structure while complying with a human rights framework'.[288] Thus, a fiscal austerity plan should be based on an appropriate balance between cutting expenditures and increasing taxes.

When public expenditure must be cut, the CESCR has developed strict criteria to assess austerity-measure compliance in accordance with the ICESCR.[289] In a letter sent to states on the matter,[290] the CESCR chairperson acknowledged that decisions to 'adopt austerity measures are always difficult and complex', 'especially when these austerity measures are taken in a recession',[291] but emphasised that:

> 'Any proposed policy change or adjustment has to meet the following requirements: First, the policy must be a temporary measure covering only the period of crisis. Secondly, the policy must be necessary and proportionate, in the sense that the adoption of any other policy, or a failure to act, would be more detrimental to economic, social and cultural rights. Thirdly, the policy must not be discriminatory and must comprise all possible measures, including tax measures, to support social transfers to mitigate inequalities that can grow in times of crisis and to ensure that the rights of the disadvantaged and marginalised individuals and groups are not disproportionately affected. Fourthly, the policy must identify the minimum core content of rights or a social protection floor, as developed by the International Labour Organization, and ensure the protection of this core content at all times.'[292]

Four years after the aforementioned letter, the CESCR issued a statement on 'Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights'. This statement was triggered by the fact that the CESCR frequently faced situations where States Parties to the ICESCR did not comply with their obligations owing to the adoption of fiscal consolidation programmes, 'including structural adjustment programmes and austerity programmes as a condition for obtaining loans'.[293] In its statement, the CESCR further developed the legal framework that was previously applied in concluding recommendations in order to provide guidance to States Parties and other actors regarding the scope of ICESCR obligations in relation to incurring debt. The statement clarified that borrowing states should:

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288 'Report of the Independent Expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona' (on human rights-based approach to recovery) (2011) UN Doc A/HRC/17/34, para 80.

289 The analysis here focuses on the obligation to mobilise resources. Yet, treaty bodies and special procedures have addressed several aspects of the crisis. Eg, they have identified its causes, expressed concern over the most vulnerable groups, identified harmful policies that states have implemented as well as recommended policy measures that would be in line with a human rights-based approach. See, eg, 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona' (2011) A/HRC/17/34; 'Report of the Special Rapporteur on housing, Raquel Rolnik' (the financial crisis and its causes) (2009) UN Doc A/HRC/10/7.

290 Letter, dated 16 May 2012, to States Parties to the International Covenant on Economic, Social and Cultural Rights from the Chairperson of the Committee on Economic, Social and Cultural Rights.

291 Letter, dated 16 May 2012, to States Parties to the International Covenant on Economic, Social and Cultural Rights from the Chairperson of the Committee on Economic, Social and Cultural Rights.

292 Letter, dated 16 May 2012, to States Parties to the International Covenant on Economic, Social and Cultural Rights from the Chairperson of the Committee on Economic, Social and Cultural Rights.

293 CESCR statement on public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights, 22 July 2016, UN Doc E/C.12/2016/1, para 1.

- ensure that any conditions attached to loans do not unreasonably reduce their ability to respect, protect and confer ICESCR rights;

- take all measures possible to ensure that any negative impacts on the exercise of economic, social and cultural rights are reduced to a bare minimum; and

- if the adoption of retrogressive measures is unavoidable, such measures should be necessary and proportionate (ie, 'in the sense that the adoption of any other policy or failure to act would be more detrimental to economic, social and cultural rights'). 'They should not result in discrimination; they should mitigate inequalities that can grow in times of crisis and ensure that the rights of disadvantaged and marginalised individuals and groups are not disproportionately affected; and they should not affect the minimum core content of the rights protected under the Covenant.'

Lender states should ensure they do not impose obligations on borrowing states that would lead them to adopt retrogressive measures in violation of their ICESCR obligations.

In stronger language, the statement notes that both lending and borrowing states seeking loans with certain conditionalities are required to carry out a human rights impact assessment prior to the loan's provision, to ensure such conditionalities do not disproportionately impact economic, social and cultural rights, or lead to discrimination.

The statement also reiterates international financial institutions such as the IMF and the World Bank's obligations to comply with human rights as well as states' obligations as international organisation members.

In reviewing states' reports and country visits, treaty bodies and special procedures have also addressed austerity measures. They have expressed concerns that austerity measures and other structural adjustments have a disproportionately negative impact on women, children, persons with disabilities, older persons, people with HIV/AIDS, ethnic minorities, migrants or the unemployed, often with devastating social consequences.[294] They have also applied the aforementioned legal framework to specific country situations, such as those of Iceland,[295] Ireland,[296] Greece,[297] Portugal,[298] Slovenia,[299] Thailand[300] and Ukraine.[301] They have particularly emphasised a need to undertake

294 See, eg, 'Report of the Working Group on the issue of discrimination against women in law and in practice, Mayra Gomez' (Discrimination against women in economic and social life, with a focus on economic crisis) (2014) UN Doc A/HRC/26/39, paras 28 and 114; 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (Mission to Greece) (2016) A/HRC/31/60/Add.2; 'Report of the Working Group on business and human rights' (Visit to the United States of America) (2014) UN Doc A/HRC/26/25/Add.4; 'Report of the Special Rapporteur on housing, Raquel Rolnik' (Mission to the United States) (2010) UN Doc A/HRC/13/20/Add.4.

295 Concluding Observations Iceland E/C.12/ISL/CO/4 (2012).

296 Concluding Observations Ireland E/C.12/IRL/CO/3 (2015).

297 'Report of the Independent Expert on foreign debt, Cephas Lumina' (Mission to Greece) (2014) A/HRC/25/50/Add.1.

298 Concluding Observations Portugal E/C.12/PRT/CO/4 (2014).

299 Concluding Observations Slovenia E/C.12/SVN/CO/2 (2014).

300 Concluding Observations Thailand CRC/C/THA/CO/3-4 (2012).

301 Concluding Observations Ukraine E/C.12/UKR/CO/6 (2014)

human rights impact assessments for austerity measures and conduct comprehensive assessments of the cumulative impact these measures have on disadvantaged and marginalised groups' enjoyment of economic, social and cultural rights. In reviewing the UK's report, the CESCR expressed concern regarding regressive tax measures, such as increasing VAT and gradually reducing corporate income tax. The CESCR considered that these measures impacted the state's ability to collect sufficient resources to achieve a full realisation of economic, social and cultural rights, as well as the state's ability to address persistent inequality.[302] Consequently, it calls on the state to conduct a human rights impact assessment of the changes that the fiscal policy introduces, 'including an analysis of the distributional consequences and the tax burden of different income sectors and marginalised and disadvantaged groups'.[303]

Thus, the compatibility of austerity measures with human rights will depend partly on whether the state has sought revenue-raising alternatives before making cuts in areas that are important for ensuring the guarantee of economic, social and cultural rights, such as public sector employment, public services or social protection.[304] Then, states should take measures to ensure that austerity measures do not deprive the enjoyment of their rights to disadvantaged and marginalised individuals or groups.[305]

Instead of adopting fiscal consolidation measures, some special procedures have recommended states undertake counter-cyclical measures (eg, fiscal stimulus packages and social-protection interventions) as a means of mitigating some of the most severe impediments to guaranteeing human rights, particularly for vulnerable and disadvantaged groups, and leveraging a more rapid recovery from an economic crisis.[306]

Directly related to resource mobilisation, some special rapporteurs, including the Independent Expert on a democratic and equitable international order, have suggested that, to ensure the maximum use of available resources for the realisation of economic, social and cultural rights, consideration should also be given to reprioritising spending on social sectors (eg, education and health) over military spending.[307] This would be in line with the obligation to accord a degree of priority to human rights in resources allocation (see section 2.2 above).

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302 Concluding Observations UK E/C.12/GBR/CO/6 (2016), para 16. In 2015, it made similar recommendations to Greece and Italy.

303 Concluding Observations UK E/C.12/GBR/CO/6, para 17.

304 See, eg, 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona' on the human rights based approach to recovery from the global economic and financial crises, with a focus on those living in poverty (2011) UN Doc A/HRC/17/34.

305 CESCR, Concluding Observations Italy E/C.12/ITA/CO/5 (2015).

306 'Report of the Working Group on the issue of discrimination against women in law and in practice, Mayra Gomez' (Discrimination against women in economic and social life, with a focus on economic crisis) (2014) UN Doc A/HRC/26/39, para 30. See also 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona' (2011) A/HRC/17/34 (human rights-based approach to recovery).

307 See, eg, 'Report of the Independent Expert on international order, Alfred de Zayas' (2014) UN Doc A/HRC/27/51, para 45; 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona' (2011) A/HRC/17/34, para 81.

5.2 Extraterritorial obligations

Some human rights bodies have focused attention on the extraterritorial impact of the obligation to mobilise resources, in particular of taxation policies. 'Extraterritorial obligations'[308] refer to states' obligations to respect, protect and fulfil human rights beyond their borders.[309] As explained by the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights,[310] these obligations require states to:

- refrain from conduct which nullifies or impairs the enjoyment and exercise of economic, social and cultural rights of persons outside their territories;

- conduct prior assessments of their laws, policies and practices' risks and potential extraterritorial impacts on the enjoyment of economic, social and cultural rights;

- take necessary measures to ensure that non-state actors who they are in a position to regulate (eg, private individuals and transnational corporations, as well as other business enterprises) do not nullify or impair the exercise of economic, social and cultural rights; and

- take steps to create an international, enabling environment conducive to the universal fulfilment of economic, social and cultural rights, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection and development cooperation.

As noted by some treaty bodies and special procedures, extraterritorial obligations are critical when dealing with the obligation to mobilise resources. For example, the CESCR has regularly called on states to refrain from actions that interfere directly or indirectly with the resource mobilisations necessary to fully realise economic, social and cultural rights in other countries.[311] As noted by the Special Rapporteur on extreme poverty, 'globalisation and increased cross-border flows of goods and capital have vastly increased the chances that one state's actions or omissions may affect another

308 The textual basis for such obligations are, eg, the provisions related to international assistance and cooperation in the UN Charter (Art 55), and several International Court of Justice decisions acknowledging the extraterritorial scope of human rights treaties as well as the Advisory opinion on the Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion, 1996, ICJ 226 (8 July), para 29. Moreover, these obligations have been established by the Guiding Principles on extreme poverty and human rights (A/HRC/21/39), endorsed by UNHRC resolution 21/11.

309 For an in-depth discussion on extraterritorial obligations, see Malcolm Langford, Wouter Vandenhole, Martin Scheinin and Willem van Genugten (eds), *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social, and Cultural Rights in International Law* (Cambridge University Press 2013); Sigrun Skogly, *Beyond National Borders: States' Human Rights Obligations in International Cooperation* (Intersentia 2006); and Rolf Künnemann, 'Extraterritorial Application of the International Covenant on Economic, Social and Cultural Rights,' in Fons Coomans and Menno Kamminga (eds), *Extraterritorial Application of Human Rights Treaties* (Intersentia 2004).

310 The Maastricht Principles constitute an international expert opinion issued in 2011, restating human rights law on extraterritorial obligations of states. Several of the experts who signed the principles are former members of international human rights treaty bodies and Special Rapporteurs to the UNHRC. As noted, the Principles 'do not purport to establish new elements of human rights law. Rather, the Maastricht Principles clarify extraterritorial obligations of states on the basis of standing international law.' *The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, FIAN International, January 2013.

311 See, eg, CESCR General Comment No 15, paras 31–33; General Comment No 18, para 52; General Comment No 19, para 54; General Comment No 23, para 70; see also 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, paras 30–31.

state's ability to raise public revenues, and increased the ways and means that companies and individuals can use to evade and avoid taxes'.[312]

States' extraterritorial obligations are particularly relevant in regard to certain states' tax practices (eg, financial secrecy legislation, tax havens and low-tax jurisdictions) as well as to transnational corporations' abusive practices such as corporate profit shifting (see section 4.4 above). Some special procedures and treaty bodies have noted that one state's tax practices may undermine another state's ability to mobilise maximum available resources for the progressive realisation of economic, social and cultural rights.[313] This is the case, for example, when a state provides excessive protection to bank secrecy. As the Independent Expert on foreign debt explains, jurisdictions with high levels of financial secrecy combined with low tax rates become ideal locations for high-net-worth individuals, as well as transnational corporations to shelter funds.[314] Treaty bodies and special procedures have stressed that providing excessive protection to bank secrecy and allowing permissive corporate tax rules may affect the ability of states where economic activities are taking place to meet their obligation to mobilise maximum available resources.[315]

The CEDAW's efforts are noteworthy in this area. In 2016, after examining Switzerland's report, it concluded that Swiss financial secrecy policies and lax rules on corporate reporting and taxation jeopardised women's rights overseas.[316] In its assessment, the CEDAW expressed concern that 'the State Party's financial secrecy policies and rules on corporate reporting and taxation have a potentially negative impact on the ability of other states, particularly those already short of revenue, to mobilise the maximum available resources for the fulfilment of women's rights'.[317] Consequently, the CEDAW urged Switzerland to honour its international human rights obligations by 'undertaking independent, participatory and periodic impact assessments of the extraterritorial effects of its financial secrecy and corporate tax policies on women's rights and substantive equality, and ensure that such assessments are conducted in an impartial manner with public disclosure of the methodology and findings'.

By holding Switzerland accountable for eroding other countries' tax bases, the CEDAW made a groundbreaking step on various fronts. It addressed how powerful, high-income state behaviour might impact people living in other countries. It suggested that obstructing other countries from strengthening domestic resource mobilisation might be inconsistent with international human rights standards. Finally, the case also shows how, by joining forces, civil society organisations can adopt the

312 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 75.

313 CESCR General Comment No 24, para 37; 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28, para 32. See also 'Independent Expert on international order, Alfred-Maurice de Zayas' (2016) UN Doc A/71/286, para 6.

314 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) A/HRC/31/61, para 9.

315 CESCR General Comment No 24, para 37; 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) A/HRC/31/61; 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28.

316 The Committee was encouraged by a submission that the Center for Economic and Social Rights, Alliance Sud, the Global Justice Clinic at New York University School of Law, Public Eye and the Tax Justice Network presented with regard to Swiss responsibility for extraterritorial impacts of tax abuse on women's rights, 2 November 2016, available at http://cesr.org/sites/default/files/downloads/Switzerland_CEDAW_Submission_TaxFinance_1mar2016.pdf accessed 20 October 2017.

317 Concluding Observations Switzerland CEDAW/C/CHE/CO/4-5, 18 November 2016.

interdisciplinary approach needed to address complex issues (the organisations that submitted the information were highly diverse and included human rights and tax-justice organisations, as well as an academic institution).

In regard to transnational corporations' abusive tax practices, treaty bodies and special procedures have noted that states should encourage business actors whose conduct they are in a position to influence to ensure that they do not undermine efforts of the states in which they operate to fully realise economic, social and cultural rights, for example, by resorting to tax evasion and tax avoidance strategies in those countries.[318] To combat transnational corporations' abusive transfer-pricing practices (see section 4.4 above), the CESCR has recommended that states 'explore the possibility to tax multinational groups of companies as single firms, with developed countries imposing a minimum corporate income tax rate during a period of transition'.[319]

Moreover, human rights monitoring bodies' efforts make evident that, when acting as a member of an international organisation, a state remains responsible for its own conduct in relation to its human rights obligations, within and outside its territory.[320] The CESCR has noted, for example, that 'State Parties have an obligation to ensure that their actions as members of international organisations take due account of the right to health'.[321] In regard to resource mobilisation, this implies, for example, that, when states influence decisions on lending policies and credit agreements as members of an international financial institution (eg, the IMF, the World Bank and regional development banks), they should avoid jeopardising the economic, social and cultural rights of the population in the country concerned, as well as avoid undermining that state's ability to use maximum available resources to realise economic, social and cultural rights.[322]

While it is commendable that, on occasion, human rights monitoring bodies have addressed the negative impact that tax-related policies adopted by developed countries have in other countries, there are still various policies adopted or supported by developed states that have an impact in the mobilisation of resources of other countries that have yet to be consistently addressed, including conditionalities attached to official development assistance (eg, trade liberalisation).

318 See, eg, CESCR General Comment No 24, para 37.

319 CESCR General Comment No 24, para 37.

320 Final draft of 'Guiding principles on extreme poverty and human rights submitted by the Special Rapporteur on poverty, Magdalena Sepulveda Carmona', UN Doc A/HRC/21/39, para 97.

321 CESCR General Comment No 14, para 39.

322 It is interesting to note that the language the CESCR uses in its General Comments to qualify the nature of these obligations is not always consistent. Sometimes it is considered mandatory ('have an obligation' – CESCR General Comment No 17, para 56) and in other General Comments it is recommendatory ('should' – General Comment No 15, para 58).

5.3 Financial sector

The financial sector can be defined as the 'set of institutions, instruments, and the regulatory framework that permit transactions to be made by incurring and settling debts; that is, by extending credit'.[323] Financial intermediaries (banks and other financial institutions) provide a link between households, firms and governments by transferring funds from savers to borrowers for consumption and investment purposes. Among their main functions, they mobilise savings, provide expert advice, ensure risk management, monitor borrowers and facilitate the exchange of goods and services.

Financial institutions therefore play a key role not only in resource mobilisation, but also in defining how and if businesses choose to address human rights. This is particularly the case for financial institutions whose business relationships with clients require them to provide financial and investment advice, including opinions and assessments of financial risks and opportunities, or to handle transactions on their behalf.[324]

While not as frequent as one might hope, increasingly, special procedures and treaty bodies are addressing financial institutions in their work. For example, the Working Group on business and human rights has lent some attention to the issue by acknowledging initiatives that could improve the links between international financial regulation, sustainable development and human rights, and, in particular, the capacity to mobilise resources.[325]

Soon after the financial crisis, certain special procedures exposed problems in the architecture of the global financial and monetary systems, and noted that the human rights framework obliges states to take immediate steps to regulate the actions of banking and financial sector entities under their control, in order to prevent them from violating or infringing upon human rights and ensure that they serve the interests of society (eg, ensuring access to credit without discrimination). To this end, it was noted that states should discourage harmful practices by establishing accountability mechanisms that penalise risky behaviours and prosecute perpetrators.[326]

It has also been noted that insufficiently regulated international financial institutions have played a role in enabling aggressive tax avoidance or evasion on the part of transnational corporations and the super-rich.[327]

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323 Patricia Alexander and Sally Baden, 'Glossary on macroeconomics from a gender perspective' (February 2000) Institute of Development Studies, University of Sussex and investopedia.com; OECD Glossary of Statistical Terms, available at https://stats.oecd.org/glossary accessed 20 October 2017.

324 'Report of the Working Group on business and human rights' (Visit to the United States of America) (2014) UN Doc A/HRC/26/25/Add.4.

325 'Report of the Working Group on business and human rights' (Improving policy coherence for inclusive and sustainable development) (2015) UN Doc A/HRC/29/28.

326 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona' (2011) UN Doc A/HRC/17/34, paras 82–85. See also, 'Report of the Special Rapporteur on housing, Raquel Rolnik' (2009) UN Doc A/HRC/10/7.

327 See, eg, 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky', (2015) A/HRC/28/60, para 56; 'Report of the Independent Expert on international order, Alfred de Zayas' (2016) A/71/286; 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28.

Similarly, low-tax demands from the financial sector and lack of regulation have been considered indicative of a state's unwillingness (rather than inability) to use its maximum available resources.[328] On a related issue, several special procedures have proposed a financial transaction tax as a way of curbing speculation and reducing financial market volatility.[329]

Despite these developments, special procedures and treaty bodies have not yet consistently addressed financial sector reform as a method of resource mobilisation, nor the negative impact of the global failure to enforce adequate regulation on the financial sector. While it is recognised that the UN Guiding Principles for business and human rights also apply to the financial sector, very little has been done to connect international financial regulation, sustainable development and human rights.

5.4 Concluding observations

In recent years, special procedures and treaty bodies have addressed the obligation to mobilise resources in regard to:

- the impact of austerity measures implemented by states after the 2007 to 2008 global economic and financial crisis;
- the impact that some policy measures, in particular taxation measures, have in other states; and
- the impact that lack of regulation to the financial sector might have in the capacity of states to mobilise resources for the realisation of human rights.

While the development of human rights standards in relation to the aforementioned three issues is worth stressing, special procedures and treaty bodies should more consistently and systematically address issues of resource mobilisation in their work. There is still an important vacuum in the legal standards that human rights monitoring bodies need to address to better assess states' claims of lack of resources.

In this regard, academics have already further developed and deepened the conceptual frameworks related to, for example, fiscal and monetary policies; human rights bodies should take these into account.[330]

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328 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' (2014) UN Doc A/HRC/26/28.

329 See, eg, 'Report of the Independent Expert on international order, Alfred de Zayas' (2016) A/71/286; 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona' (2011) A/HRC/17/34; Concluding Observations Iceland E/C.12/ISL/CO/4 (2012). In addition, in 2012, in a joint statement, the mandate-holders on extreme poverty, food, business, foreign debt and international solidarity proposed imposing a global financial transaction tax aimed at offsetting the costs of the economic, financial, fuel, climate and food crises, and to protect basic human rights.

330 See, eg, Aoife Nolan, Rory O'Connell and Colin Harvey (eds), *Human Rights and Public Finance: Budgets and the Promotion of Economic and Social Rights* (Hart Publishing 2013).

Special procedures and treaty bodies should:

- strengthen the legal standards used to better assess states' claims of lack of resources;
- further clarify the extraterritorial dimension of the obligation to mobilise resources for the realisation of human rights;
- clearly define states' roles regarding the regulation of the financial sector and emphasise the importance of the rule of law in this context; and
- consider the work of academics and practitioners that have further developed and deepened the conceptual frameworks related to the three aforementioned topics.

Chapter 6: Final conclusions and recommendations

Historically, human rights monitoring bodies, as well as human rights advocates, have hesitated to address resource mobilisation. However, as this report demonstrates, the situation is currently changing. Over the past decade, treaty bodies and special procedures have increasingly defined the obligation to mobilise resources.

They have made notable headway determining the scope and content of this obligation, strengthening states' accountability and helping them comply with their obligations under human rights instruments in addition to political commitments made as part of the 2030 Agenda.

Yet, progress has been achieved through the work of a handful of treaty bodies and special procedures, mainly those holding mandates related to economic, social and cultural rights. Those bodies dealing with civil and political rights are, in general – with some notable exceptions – neglecting issues of resource mobilisation, despite the fact that respect for the rule of law is a precondition for strengthening all human rights, including economic, social and cultural rights.

- **All human rights monitoring bodies should accord due attention to the issue of mobilisation of resources in their work. This is an issue highly relevant to the assessment of whether or not states are complying with their human rights obligations that has yet to be addressed adequately by special procedures and treaty bodies.**

Despite the progress, further clarification by human rights monitoring bodies on the scope and content of the obligation to mobilise resources and how to assess compliance by states and other actors with this obligation is needed. Under each chapter, the report has included a set of recommendations dealing specifically with some analytical challenges related to resource mobilisation for which special procedures need to develop more sophisticated analytical tools.

To this end, human rights monitoring bodies might wish to count on the work of academics and practitioners that has elaborated and deepened the conceptual frameworks related to the obligation to mobilise resources. Human rights monitoring bodies still lag behind academia and activists in their resource mobilisation analyses. This is particularly evident regarding the human rights impact of tax abuses,[331] including tax havens;[332] the impact of fiscal and monetary policies in the enjoyment

331 See, eg, IBAHRI Task Force, *Tax Abuses, Poverty and Human Rights* (IBAHRI 2013); Thomas Pogge and Krishen Mehta (eds), *Global Tax Fairness* (Oxford University Press 2016); Lima Declaration on Tax Justice and Human Rights, signed by more than 100 civil society organisations as a result of an international strategy meeting, 'Advancing Tax Justice through Human Rights', held in Lima, Peru in 2015, convened by the Center for Economic and Social Rights, the Global Alliance for Tax Justice, Oxfam, Red Latinoamericana sobre Deuda, Desarrollo y Derechos (LatinDADD), Red de Justicia Fiscal de América Latina y el Caribe and the Tax Justice Network.

332 See, eg, Paul Beckett, *Tax Havens and International Human Rights* (Taylor & Francis 2017). This is also particularly evident in the links between taxation and gender equality. Civil society organisations have been extremely active in addressing the gender impact of fiscal policies. Eg, in June 2017, several entities held a Women's Rights and Tax Justice conference in Bogotá.

of human rights and gender equality;[333] and the links between domestic resource mobilisation and inequalities,[334] corruption and human rights,[335] which all require further attention on the part of human rights monitoring bodies.

Special procedures and treaty bodies should further clarify the scope and content of the obligation to mobilise resources, as well as the methodology to assess compliance by states and other actors with this obligation.

The systematic review of the work of a considerable number of treaty bodies and special procedures (see the annexes for the full list) reveals that, on issues related to resource mobilisation – with some notable exceptions – there is a lack of coordination and little knowledge about how other special procedures mandate-holders or treaty bodies have been advancing the topic. Moreover, sometimes there seems to be a disconnect between the legal frameworks developed when interpreting and clarifying legal standards (eg, in General Comments by treaty bodies and thematic reports by special procedures), and their work monitoring specific states (eg, in Concluding Observations by treaty bodies and country missions of special procedures).

- **When addressing issues of resource mobilisation, special procedures and treaty bodies should ensure greater coordination among themselves, as well as the consistency and complementarity of their analyses.**

- **They should consistently apply the legal developments related to resource mobilisations when reviewing states' reports or undertaking country missions.**

As recognised by a group of special procedures, to be able to better address issues of resource mobilisation, human rights monitoring bodies 'need to be well equipped for this challenge'.[336] This raises several critical issues ranging from the mandate-holders' professional backgrounds (predominantly legal and not economic), to the expertise and support the OHCHR provides. Some special procedures have already noted that the OHCHR should consider incorporating more professionals with backgrounds in development, economic, fiscal, financial regulation, trade and investment policy.[337] Addressing issues of resource mobilisation requires breaking down professional silos and adopting an interdisciplinary approach. For example, more collaborative work between

333 See, eg, Aoife Nolan, Rory O'Connell and Colin Harvey (eds), *Human Rights and Public Finance: Budgets and the Promotion of Economic and Social Rights* (Hart Publishing 2013).

334 See, eg, Annette Alstadsæter (Norwegian University of Life Sciences) Niels Johannesen (University of Copenhagen) Gabriel Zucman (UC Berkeley and NBER) *Tax Evasion and Inequality*, 28 May 2017.

335 See Lucy Koechlin and Magdalena Sepúlveda, 'Corruption and Human Rights. Exploring the Connection', in Robert Rotberg (ed), *Corruption, Global Security, and World Order* (Brookings Institution Press 2009); Martine Broersma and Hans Nelen (eds), *Corruption & Human Rights: Interdisciplinary Perspectives* (Intersentia Uitgevers NV 2010); and Anne Peters, 'Corruption and Human Rights', Basel Institute on Governance, Working Paper No 20 (Basel September 2015).

336 'Human rights, SDGs and resource mobilisation: Better understanding and coordination are needed', outcome of the Expert seminar organised by the Geneva Academy, IBAHRI and Friedrich-Ebert-Stiftung (FES) on 11 June 2016 on 'Human Rights and Sustainable Development Goals'.

337 'Human rights, SDGs and resource mobilisation: Better understanding and coordination are needed', outcome of the Expert seminar organised by the Geneva Academy, IBAHRI and Friedrich-Ebert-Stiftung (FES) on 11 June 2016 on 'Human Rights and Sustainable Development Goals'.

economists and human rights professionals would improve understanding on both sides of how the two disciplines can complement each other in the quest for human rights-consistent mobilisation of resources. It is through a collaborative, interdisciplinary approach that the complexities of these challenges can be addressed.

Human rights monitoring bodies should overcome their legalistic tendencies and collaborate more closely with other specialists, such as economists, tax specialists, political scientists, journalists and sociologists.

By providing a systemic review of the contemporary interpretation of the obligation to mobilise resources undertaken by special procedures and treaty bodies, the report has sought to assist them in identifying the areas that might be usefully clarified in the future. The fact that the report has examined the work of a significant number of treaty bodies and special procedures should also assist individual mandate-holders and treaty body members to assess and better understand the developments undertaken by their peers. Similarly, the study should inform the work of legal practitioners and civil society organisations charged with monitoring, counselling or litigating functions in the area of resource mobilisation. More generally, this study should be a useful resource to implement the 2030 Agenda, which calls for further attention to the human rights obligation to mobilise resources.

Finally, in times when human rights realisation must take place in an economic and political context that is not necessarily conducive to domestic resource or development financing mobilisation, the progress made regarding the obligation to mobilise resources should further inspire human rights monitoring bodies, academia, legal practitioners and others to give greater attention to the question of costs for the realisation of human rights.

Annex 1: Relevant guidelines proposed by special procedures

- **Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy'**, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 21 March 2011, A/HRC/17/31.

- **Guiding principles on human rights impact assessments of trade and investment agreements**, Framework Report of the Special Rapporteur on the right to food, Olivier De Schutter, 19 December 2011, A/HRC/19/59/Add.5.

- **Principles for responsible contracts: integrating the management of human rights risks into State-investor contract negotiations: guidance for negotiators**, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 25 May 2011, A/HRC/17/31/Add.3, www.ohchr.org/Documents/Issues/Business/A.HRC.17.31.Add.3.pdf.

- **Guiding principles on extreme poverty and human rights**, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, 18 July 2012, A/HRC/21/39.

- **Guiding principles on foreign debt and human rights**, Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina, 10 April 2011, A/HRC/20/23.

- **Proposed draft declaration on the right of peoples and individuals to international solidarity**, Annex to the Report of the Independent Expert on human rights and international solidarity, Virginia Dandan, 1 April 2014, A/HRC/26/34.

Annex 2: Special procedure reports considered

Reference
Special Rapporteur on the right to food
UNHRC, 'Report of the Special Rapporteur on the right to food, Olivier De Schutter' (Guiding principles on human rights impact assessments of trade and investment agreements) (2011) UN Doc A/HRC/19/59/Add.5.
UNHRC, 'Report of the Special Rapporteur on the right to food, Olivier De Schutter' (The role of development cooperation and food aid in realizing the right to adequate food: moving from charity to obligation) (2009) UN Doc A/HRC/10/5.
UNHRC, 'Report of the Special Rapporteur on the right to food, Olivier De Schutter' (Mission to Cameroon) (2013) UN Doc A/HRC/22/50/Add.2.
UNHRC, 'Report of the Special Rapporteur on the right to food, Olivier De Schutter' (Mission to Malawi) (2014) UN Doc A/HRC/25/57 Add.1.
UNHRC, 'Report of the Special Rapporteur on the right to food, Olivier De Schutter' (Mission to Guatemala) (2010) UN Doc A/HRC/13/33 Add.4.
UNHRC, 'Report of the Special Rapporteur on the right to food, Olivier De Schutter' (Mission to Brazil) (2009) UN Doc A/HRC/13/33 Add.6.
UNHRC, 'Report of the Special Rapporteur on the right to food, Olivier De Schutter' (Agribusiness and the right to food) (2010) UN Doc A/HRC/13/33.
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
UNGA, 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover' (main focus: effective and full implementation of the right to health framework, including justiciability of economic, social and cultural rights and the right to health; the progressive realisation of the right to health; the accountability deficit of transnational corporations; and the current system of international investment agreements and the investor-State dispute settlement) (2014) UN Doc A/69/299.
UNGA, 'Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover' (main focus: health financing in the context of the right to health) (2012) UN Doc A/67/302.
UNGA, 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover' (Mission to Vietnam) (2012) UN Doc A/HRC/20/15/Add.2.
Special Rapporteur on extreme poverty and human rights/Independent Expert on the question of human rights and extreme poverty
UNGA, 'Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston' (The World Bank and human rights) (2015) UN Doc A/70/274.
UNHRC, 'Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston' (Extreme inequality and human rights) (2015) UN Doc A/HRC/29/31.
UNGA, 'Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston' (The implementation of the right to social protection through the adoption of social protection floors) (2014) UN Doc A/69/297.
UNHRC, 'Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona' (Taxation and human rights) (2014) UN Doc A/HRC/26/28.
UNHRC, 'Final draft of the Guiding Principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona' (2012) UN Doc A/HRC/21/39.
UNHRC, 'Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona' (Mission to Paraguay) (2012) UN Doc A/HRC/20/25/Add.2.
UNHRC, 'Report of the Independent Expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona on the human rights based approach to recovery from the global economic and financial crises, with a focus on those living in poverty' (2011) UN Doc A/HRC/17/34.
UNGA, 'Report of the Independent Expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona' (The importance of social protection measures in achieving Millennium Development Goals) (2010) UN Doc A/65/259.
UNHRC, 'Report of the Independent Expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona' (Mission to Ireland) (2011) UN Doc A/HRC/17/34/Add.2.

Special Rapporteur on the right to education
UNHRC, 'Report of the Special Rapporteur on the right to education, Kishore Singh' (financing education and update on education in emergencies) (2011) UN Doc A/66/269.
UNHRC, 'Report of the Special Rapporteur on the right to education, Kishore Singh' (Mission to Ecuador) (2013) UN Doc A/HRC/23/35/Add.2.
Special Rapporteur on the right to adequate housing
UNHRC, 'Report of the Special Rapporteur on the right to adequate housing, Leilani Farha' (Responsibilities of local and other subnational governments in relation to the right to adequate housing) (2015) UN Doc A/HRC/28/62.
UNHRC, 'Report of the Special Rapporteur on the right to adequate housing, Raquel Rolnik' (Mission to the United States) (2010) UN Doc A/HRC/13/20/Add.4.
UNHRC, 'Report of the Special Rapporteur on the right to adequate housing, Raquel Rolnik' (Mission to Maldives) (2010) UN Doc A/HRC/13/20/Add.3.
UNHRC, 'Report of the Special Rapporteur on the right to adequate housing, Raquel Rolnik' (the financial crisis and its causes) (2009) UN Doc A/HRC/10/7.
Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights
UNHRC, 'Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy' (2015) UN Doc A/HRC/30/45.
UNGA, 'Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy' (2015) UN Doc A/70/345.
Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people
UNHRC, 'Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S James Anaya' (2010) UN Doc A/HRC/15/37.
Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment
UNHRC, 'Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H Knox' (Preliminary report) (2012) UN Doc A/HRC/22/43.
UNHRC, 'Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H Knox' (Mapping report) (2013) UN Doc A/HRC/25/53.
Special Rapporteur on the human right to safe drinking water and sanitation
UNGA, 'Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque' (Mission to Tuvalu) (2012) UN Doc A/HRC/24/44/Add.2.
UNGA, 'Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque' (Financing for the realisation of the rights to water and sanitation) (2011) UN Doc A/66/255.
Special Rapporteur on the independence of judges and lawyers
UNHRC, 'Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul' (Mission to Mexico) (2011) UN Doc A/HRC/17/30/Add.3.
UNHRC, 'Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy' (2009) UN Doc A/HRC/11/4.
Working Group on the issue of human rights and transnational corporations and other business enterprises
UNGA, 'Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises' (Measuring the implementation of the Guiding Principles on business and human rights) (2015) UN Doc A/70/216.
UNHRC, 'Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises' (Improving policy coherence for inclusive and sustainable development) (2015) UN Doc A/HRC/29/28.
UNHRC, 'Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises' (Visit to Azerbaijan) (2015) UN Doc A/HRC/29/28/Add.1.
UNHRC, 'Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises' (Report on the First African Regional Forum on Business and Human Rights) (2015) UN Doc A/HRC/29/28/Add.2.

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UNGA, 'Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises' (National action plans on business and human rights) (2014) UN Doc A/69/263.
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UNHRC, 'Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises' (Visit to Ghana) (2014) UN Doc A/HRC/26/25/Add.5.
UNGA, 'Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises' (Business-related impacts on the rights of indigenous peoples) (2013) UN Doc A/68/279.
UNHRC, 'Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises' (Visit to Mongolia) (2013) UN Doc A/HRC/23/32/Add.1.
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UNHRC, 'Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full employment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/60.
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UNHRC, 'Final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/61.
UNGA, 'Report of the independent expert on the effects of foreign debt and other related international financial obligation of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky' (Activities during 2014/2015 and sovereign debt restructuring) (2015) UN Doc A/70/275.
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UNHRC, 'Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky' (Mission to Greece: 30 November–7 December 2015) (2016) A/HRC/31/60/Add.2.
UN, 'Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights, Cephas Lumina' (Mission to Greece: 22–27 April 2013), (2014) A/HRC/25/50/Add.1.
Independent Expert on the promotion of a democratic and equitable international order
UNHRC, 'Report of the Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas' (Exploring the adverse impacts of military expenditures on the realization of a democratic and equitable international order) (2014) UN Doc A/HRC/27/51.
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UNGA, 'Report of the Independent Expert on human rights and international solidarity, Virginia Dandan' (2015) UN Doc A/70/316.
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UNGA, 'Report of the Independent Expert on human rights and international solidarity, Virginia Dandan' (2014) UN Doc A/69/366.
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UNHRC, 'Report of the Independent Expert on human rights and international solidarity, Rudi Muhammad Rizki' (2010) UN Doc A/HRC/15/32.
Working Group on the issue of discrimination against women in law and in practice
UNHRC, 'Report of the Working Group on the issue of discrimination against women in law and in practice, Mayra Gomez' (Discrimination against women in economic and social life, with a focus on economic crisis) (2014) UN Doc A/HRC/26/39.
UNHRC, 'Report of the Working Group on the issue of discrimination against women in law and in practice', (country mission to the Netherlands) (2007) UN Doc A/HRC/4/34/Add.4.
Special Rapporteur on extrajudicial summary or arbitrary executions
UNHRC, 'Report of the Special Rapporteur on extrajudicial summary or arbitrary executions, Philip Alston', (Mission to Guatemala) (2007) UN Doc A/HRC/4/20/Add.2.
Country-specific mandates
UNHRC, 'Report of the Special Rapporteur on the situation of human rights in Cambodia, Rhona Smith' (2015) UN Doc A/HRC/30/58.
UNHRC, 'Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P Subedi' (2014) UN Doc A/HRC/27/70.
UNHRC, 'Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P Subedi' (2013) UN Doc A/HRC/24/36.
UNHRC, 'Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P Subedi' (A human rights analysis of economic and other land concessions in Cambodia) (2012) UN Doc A/HRC/21/63/Add.1.
UNHRC, 'Report of the Independent Expert on the situation of human rights in the Central African Republic, Marie-Therese Keita Bocoum' (2016) UN Doc A/HRC/33/63.
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UNHRC, 'Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee' (2016) UN Doc A/HRC/31/71.
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Annex 3: Treaty body documents considered

Reference
Committee on Economic, Social and Cultural Rights (CESCR)
'Concluding Observations on the fourth periodic report of the Democratic Republic of Congo' (2009) UN Doc E/C.12/COD/CO/4.
'Concluding Observations on the fifth report of Germany' (2011) UN Doc E/C.12/DEU/CO/5.
'Concluding Observations on the fifth report of the Russian Federation' (2011) UN Doc E/C.12/RUS/CO/5.
'Concluding Observations on the combined second and third periodic reports of Armenia' (2014) UN Doc E/C.12/ARM/CO/2-3.
'Concluding Observations on the third periodic report of Guatemala' (2014) UN Doc E/C.12/GTM/CO/3.
'Concluding Observations on the combined third to fifth periodic reports of Romania' (2014) UN Doc E/C.12/ROU/CO/3-5.
'Concluding Observations on the fourth periodic report of Paraguay' (2015) UN Doc E/C.12/PRY/CO/4.
'Concluding Observations on the initial report of the Republic of Moldova' (2003) UN Doc E/2004/22.
'Concluding Observations on the initial report of Togo' (2013) UN Doc E/C.12/TGO/CO/1.
'Concluding Observations on the fourth periodic report of Portugal' (2014) UN Doc E/C.12/PRT/CO/4.
'Concluding Observations on the second periodic report of the Czech Republic' (2014) UN Doc E/C.12/CZE/CO/2.
'Concluding Observations on the third periodic report of Ireland' (2015) UN Doc E/C.12/IRL/CO/3.
'Concluding Observations on the fourth periodic report of Mongolia' (2015) UN Doc E/C.12/MNG/CO/4.
'Concluding Observations on the initial report of Uganda' (2015) UN Doc E/C.12/UGA/CO/1.
'Concluding Observations on the initial report of Burundi' (2015) UN Doc E/C.12/BDI/CO/1.
'Concluding Observations on the second periodic report of Greece' (2015) UN Doc E/C./GRC/CO/2.
'Concluding Observations on the fourth periodic report of Iraq' (2015) UN Doc E/C.12/IRQ/CO/4.
'Concluding Observations on the fifth periodic report of Italy' (2015) UN Doc E/C.12/ITA/CO/5.
'Concluding Observations on the initial report of the Gambia' (2015) UN Doc E/C.12/GMB/CO/1.
'Concluding Observations on the sixth periodic report of Canada' (2016) UN Doc E/C.12/CAN/CO/6.
'Concluding Observations on the combined second to fifth periodic reports of Kenya' (2016) UN Doc E/C.12/KEN/CO/2-5.
'Concluding Observations on the initial report of Namibia' (2015) UN Doc E/C.12/NAM/CO/1.
'Concluding Observations on the second periodic report of Honduras' (2016) UN Doc E/C.12/HND/CO/2.
'Concluding Observations on the initial report of Burkina Faso' (2016) UN Doc E/C.12/BFA/CO/1.
'Concluding Observations on the combined second to fourth periodic reports of the former Yugoslav Republic of Macedonia' (2016) UN Doc E/C.12/MKD/CO/2-4.
'Concluding Observations on Georgia' (2002) UN Doc E/C.12/1/ADD.83.
'Concluding Observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland' (2016) UN Doc E/C.12/GBR/CO/6.
'Concluding Observations on the fourth and fifth periodic report of Angola' (2016) UN Doc E/C.12/AGO/CO/4-5.
'Concluding Observations on the fourth periodic report of Iceland' (2012) UN Doc E/C.12/ISL/CO/4.
'Concluding Observations on the second and third periodic reports of Switzerland' (2010) UN Doc E/C.12/CHE/CO/2-3.
'Concluding Observations on the second periodic report Slovenia' (2014) UN Doc E/C.12/SVN/CO/2.
'Concluding Observations on the third periodic report of Guatemala' (2014) UN Doc E/C.12/GTM/CO/3.
'Concluding Observations on the third periodic report of Tunisia' (2014) UN Doc E/C.12/TUN/CO/3.
'Concluding Observations on the first periodic report of Burundi' (2015) UN Doc E/C.12/BDI/CO/1.
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'Concluding Observations on the sixth periodic report of Ukraine' (2014) UN Doc E/C.12/UKR/CO/6.

'Concluding Observations on the combined third to fifth periodic reports of El Salvador' (2014) UN Doc E/C.12/SLV/CO/3-5.
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'Concluding Observations on the fifth periodic report of Costa Rica' (2016) UN Doc E/C.12/CRI/CO/5.
Statements and other documents
'Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights – Statement by the Committee on Economic, Social and Cultural Rights' (2016) UN Doc E/C.12/2016/1.
'An evaluation of the obligation to takes steps to the "maximum of available resources" under an optional protocol to the covenant – statement' (2007) UN Doc E/C.12/2007/1.
'Guidelines on treaty-specific documents to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights' (2009) UN Doc E/C.12/2008/2.
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