

## **Tax Working Group Public Submissions Information Release**

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Human Rights Commission  
Te Kāhui Tika Tangata

# Tax Policy and Human Rights

Submission of the New Zealand Human Rights Commission  
to the Tax Working Group

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**Tax Policy and Human Rights:  
Submission of the Human Rights Commission to the Tax Working Group**

**Overview and Recommendations**

1. The Human Rights Commission (Commission) welcomes the opportunity to make this submission to the Tax Working Group (Working Group). The Commission is New Zealand's National Human Rights Institution (NHRI). NHRI's promote and monitor the domestic implementation of international human rights standards as part of the United Nation's (UN) human rights system. The Commission is accredited as an "A Status" NHRI, meaning that it meets the required standards of practice and independence set by the Global Alliance of NHRIs and the UN High Commissioner for Human Rights.
2. Philip Alston, UN Special Rapporteur for extreme poverty and human rights has stated that "tax policy is, in many respects, human rights policy."<sup>1</sup> That is because human rights standards offer a universal and comprehensive normative framework in which tax policy can be assessed. The duty under the International Covenant for Economic, Social and Cultural Rights (ICESCR) to devote the "maximum available resources" to economic, social and cultural rights gives legal force to demands for effective and fair taxation systems which contribute to the realisation of human rights for all. The human rights principles of equality and non-discrimination also reinforce understandings of fairness which at times is trumped in tax policy by the pursuit of efficiency. Tax also plays a key role in shaping how accountable governments are to their people.
3. This link between tax policy and human rights is not necessarily an intuitive one. However, it has been increasingly addressed by UN bodies and can be summed up as follows:<sup>2</sup>

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<sup>1</sup> Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, A/HRC/29/31 (26 May 2015) para. 53, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/29/31](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/31).

<sup>2</sup> See Olivier De Schutter, *Taxing for the realization of economic, social and cultural rights*, Institute for Interdisciplinary Research in Legal sciences (May 2017) <https://sites.uclouvain.be/cridho/documents/Working.Papers/CRIDHO-WP-2017-29May%202017-O.DeSchutter3.pdf>; Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, A/HRC/29/31 (26 May 2015) [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/29/31](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/31); Philip Alston, Keynote Address at Christian Aid conference on the Human Rights Impact of Tax and Fiscal Policy, "Tax Policy is Human Rights Policy: The Irish Debate" (12 February, 2015) <http://www.rightingfinance.org/wp-content/uploads/2015/10/speech.pdf>; Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepulveda Carmona, A/HRC/26/28 (22 May 2014) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/033/74/PDF/G1403374.pdf?OpenElement>.

- a. **Resource availability:** Tax allows States to raise revenue to fund human rights expenditure, such as for health, education, housing, social protection, all of which are indispensable human rights.
  - b. **Redistribution of wealth:** Tax allows for States to redistribute wealth from the richest part of the population to the poor. The regressive or progressive nature of a State's tax structure shapes the allocation of income and assets across the population, and thereby affects the right to equality and non-discrimination.
  - c. **Accountability:** Tax policy is central to democratic accountability and the human rights principles of participation and transparency, including around how decisions about tax are reached and what decisions are made. Tax policies reflect the real priorities of government to which it needs to be held accountable.
  
- 4. The Commission's submission focuses on this relationship between tax policy and human rights. It makes the following recommendations to the Working Group:
  - a. **Adopt a human rights-based approach to its review of New Zealand's tax system, grounded in international human rights standards and directed at promoting and protecting human rights.**
  
  - b. **Consider the following principles in the design, development, implementation and evaluation of tax policy and budget allocations:**
    - i. **Non-discrimination and equality**
    - ii. **Mobilising "maximum of available resources"**
    - iii. **Access to information, transparency, accountability and participation**
  
  - c. **Call on the Government to implement the following recommendations of the UN Committee for Economic, Social and Cultural Rights following its review of New Zealand in March 2018:**
    - i. **Take measures to ensure the maximisation of the resources allocated for the realisation of Covenant rights, including by making the necessary adjustments to the Public Finance Act 1989 by introducing human rights impact assessments.**
    - ii. **Give appropriate consideration of the Government's ICESCR obligations when fiscal and resource generation and allocation decisions are made.**

**iii. Ensure resources dedicated to the achievement of the 2030 Agenda for Sustainable Development are underpinned by the obligations under ICESCR.**

**d. Ensure transparency and accountability in tax policy, including through broad public participation; analysis of the distributional consequences and tax burden borne by different income sectors and disadvantaged groups; and by considering gender impacts of tax policy.**

5. The Commission is happy to be contacted for further discussion on this submission. We have included a list of resources that the Working Group may find useful at the end of the submission.

#### **International human rights law and tax policy**

6. The 2030 Agenda for Sustainable Development incorporates 17 Sustainable Development Goals (SDGs), focused on social, economic, political, cultural and environmental development through good governance, the rule of law, access to justice, personal security, and the fight against inequality.<sup>3</sup>

7. The SDGs are explicitly grounded in human rights derived from the Universal Declaration of Human Rights and core UN human rights treaties.<sup>4</sup> In particular, the goals and their targets reflect many of the rights set out in the ICESCR,<sup>5</sup> including, among others, the right to education, the right to health, the right to an adequate standard of living, non-discrimination and gender equality.<sup>6</sup> The implementation of the SDGs is dependent on good governance, transparency, participation and accountability.

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<sup>3</sup> For an overview of the relationship between the SDGs, human rights and corruption see Angela Barkhouse, Hugo Hoyland and Marc Limon, *Policy Brief Corruption: A Human Rights Impact Assessment*, Universal Rights Group, [https://www.universal-rights.org/wp-content/uploads/2018/04/Policy\\_report\\_corruption\\_LR\\_spread.pdf](https://www.universal-rights.org/wp-content/uploads/2018/04/Policy_report_corruption_LR_spread.pdf).

<sup>4</sup> UN General Assembly Resolution 70/1 (25 September 2015) para. 10. The Danish National Human Rights Institute has completed a full analysis of all SDGs mapped to all human rights treaties. See The Human Rights Guide to “A Blueprint for the Sustainable Development Goals, <http://sdg.humanrights.dk/>.

<sup>5</sup> See Report of the UN Secretary-General on the Question of the realization in all Countries of Economic, Social and Cultural Rights, A/HRC/34/25 (14 December 2015) para.10 (“Many of the targets under the Goals explicitly reflect the content of relevant international human rights standards. Many address availability, accessibility, affordability and quality of education, health, water and other services related to those rights. The goals include targets on access to safe, nutritious and sufficient food for all, universal health coverage, free equitable and quality primary and secondary education, access to safe and affordable water, sanitation, hygiene and housing, and access to safe, effective, quality and affordable essential medicines and vaccines for all.”)

<sup>6</sup> UN General Assembly Resolution 70/1 (25 September 2015) paras. 8, 10.

8. New Zealand is legally bound by the key human rights treaties that underpin the SDGs, giving rise to obligations to respect, protect and fulfil human rights. Most important, when it comes to tax policy, is the ICESCR ratified by the Government in 1978, which protects the most fundamental needs of citizens – the right to health, the right to work, the right to education and the right to an adequate standard of living including food and housing. Under the ICESCR, the Government agreed to:

take steps . . . to the **maximum of its available resources**, with a view of **achieving progressively the full realization of the rights recognised in the present Covenant** by all appropriate means, including particularly the adoption of legislative measures.<sup>7</sup>

9. With this provision, the Government's decisions about how it will mobilise resources and how it defines its spending priorities become human rights issues, which will be discussed further below.
10. At the core of the ICESCR is the wellbeing and dignity of people, which forms the foundation of the Treasury's Living Standards Framework, setting out four capitals (financial/physical, natural, social, human) against which government policy can be assessed.
11. The close relationship between government's tax policy and human rights has been increasingly recognised by UN treaty body committees that monitor the ICESCR and the Convention on the Rights of the Child, as well as by Special Rapporteurs and the Office of the High Commissioner for Human Rights (OHCHR).
12. In 2012, the UN Secretary General observed that progressive tax policies play an important role in addressing inequality and poverty and called for Governments to consider a combination of progressive income taxes and highly redistributive transfers to decrease income inequality and its impact on social development.<sup>8</sup>
13. Two years later, former UN Special Rapporteur on extreme poverty and human rights, Magdalena Sepulveda Carmona, presented a report to the UN Human Rights Council on tax policy and human rights. The report explained the scope and content

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<sup>7</sup> Article 2(1). Similarly, the Government has agreed under the Convention on the Rights of the Child (art. 4) and the Convention on the Rights of Persons with Disabilities (art. 4(2)) to take measures to the maximum extent of their available resources to implement the rights recognised in the Conventions.

<sup>8</sup> 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 (26 September 2012) para. 56 <http://undocs.org/A/67/394>.

of human rights principles and obligations relevant to tax policy. It reminded States that:

Although taxation policy may seem far removed from the daily problems of the poor, it in fact plays a major role in determining and adjusting levels of inequality in a society and in funding essential services, social protection and poverty reduction measures; it is therefore central to realizing the rights and defining the opportunities of people living in poverty.<sup>9</sup>

14. The current Special Rapporteur on extreme poverty and human rights has also emphasised the impact tax policy has on levels of inequality, stating:

The regressive or progressive nature of a State's tax structure, and the groups and purposes for which it gives exemptions or deductions, shapes the allocation of income and assets across the population, and thereby affects levels of inequality and human rights enjoyment.<sup>10</sup>

15. In 2017, the OHCHR published a guide titled "Realizing Human Rights Through Government Budgets". The publication explores the link between international human rights obligations and budget policies and processes.<sup>11</sup> It provides a guide for governments on their human rights obligations as they develop and implement revenue-raising schemes, decide on budget allocations and implement planned expenditure and assess budget's impact on the realisation of human rights.

16. Moreover, in December 2017, the Inter-American Commission on Human Rights published a report on "Poverty and Human Rights in the Americas", calling on Governments to adopt human rights-based fiscal policies to eradicate poverty, recognising that "the principles of human rights constitute a framework that underpins the key functions of fiscal policy and taxation."<sup>12</sup> The Inter-American Commission identified three factors preventing government fiscal policies from reducing poverty: insufficient tax revenues; regressive nature of tax systems; and insufficient social spending.

17. Drawing on this material, the Commission recommends that the Tax Working Group adopts a human rights-based approach to its review of New Zealand's tax system. A

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<sup>9</sup> Ibid., para. 3.

<sup>10</sup> Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, A/HRC/29/31 (26 May 2015), para. 53, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/29/31](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/31).

<sup>11</sup> UN Office of the High Commissioner for Human Rights (2017), *Realizing Human Rights Through Government Budgets*, <http://www.ohchr.org/Documents/Publications/RealizingHRThroughGovernmentBudgets.pdf>.

<sup>12</sup> The report was published in Spanish but a summary has been provided by the Center for Economic and Social Rights, <http://www.cesr.org/iachr-calls-states-adopt-human-rights-based-fiscal-policies-eradicate-poverty>.

human rights-based approach is one that is based on international human rights standards and directed at promoting and protecting human rights. According to the United Nations Development Group, a human rights-based approach includes the following human rights principles and standards:

- a. **Universality and Inalienability:** Everyone is entitled to human rights.
- b. **Indivisibility:** Economic, social and cultural right have equal status to civil and political rights.
- c. **Inter-dependence:** Realisation of one right is often dependent on the realisation of others.
- d. **Equality and Non-discrimination:** All humans are equal and entitled to human rights without discrimination.
- e. **Participation and Inclusion:** All humans are entitled to meaningful participation and inclusion in the enjoyment of human rights.
- f. **Accountability and Rule of Law:** States and businesses are accountable for observance of human rights and rule of law.<sup>13</sup>

18. A human rights-based approach to tax policy may help to focus efforts on those who are most at risk, most marginalised and most vulnerable, or, to use the terminology of the 2030 Agenda for Sustainable Development, those who are “left furthest behind.”

### **Key human rights principles in relation to tax policy**

19. The Commission encourages the Working Group to consider the human rights principles of equality and non-discrimination, maximum available resources, and participation and accountability to guide all phases of the design, development, implementation and evaluation of tax policy. We elaborate on these principles below.

#### **Equality and Non-discrimination**

20. The rights to equality and non-discrimination are a central tenet of international<sup>14</sup> and

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<sup>13</sup> United Nations Development Group, *The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies* (2003) [https://undg.org/wp-content/uploads/2016/09/6959-The\\_Human\\_Rights\\_Based\\_Approach\\_to\\_Development\\_Cooperation\\_Towards\\_a\\_Common\\_Understanding\\_among\\_UN.pdf](https://undg.org/wp-content/uploads/2016/09/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf).

<sup>14</sup> International Covenant for Civil and Political Rights (ICCPR) and the International Covenant for Economic, Social and Cultural Rights (ICESCR), Article 3 (“The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant”); ICESCR, Article 2.2 (“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race,



domestic<sup>15</sup> human rights law and require that any action or omission by the State must not discriminate, either directly or indirectly, against any individual or group, on specified grounds.

21. The Commission considers income and wealth inequality to be the most pressing issues that requires addressing under the current tax system. Major international institutions such as the Organisation for Economic Cooperation and Development (OECD), the World Bank and the International Monetary Fund have acknowledged that extreme inequalities in wealth and income are economically inefficient and socially damaging. However, large disparities in wealth and income continue to exist in New Zealand. An estimated 15-16% of New Zealanders live in poverty.<sup>16</sup> Of those, 27% are children living in households with income that is 60% or less of New Zealand's median household income.<sup>17</sup> Furthermore, in 2017, 28% of income growth went to 1% of New Zealanders and the 1.4 million people who make up the poorest 30% of the population got just 1%.<sup>18</sup>

22. According to the former Special Rapporteur on extreme poverty and human rights, compliance with the rights to equality and non-discrimination requires 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 portion of their income would not be conducive in achieving substantive equality, as it limits the redistributive function of taxation.<sup>19</sup>

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colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”); ICCPR Article 26 (“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”)

<sup>15</sup> Section 19 of the New Zealand Bill of Rights Act provides that “Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993.” Section 21 of the Human Rights Act 1993 sets out the prohibited grounds of discrimination, which include among other things sex, race, ethnic or national origins, disability, and age.

<sup>16</sup> Perry, B. (2017). *Household incomes in New Zealand: Trends in indicators of inequality and hardship 1982 to 2016*. Wellington: Ministry of Social Development, <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/household-incomes/>. New Zealand has no official definition of poverty, so various measures are used, such as the percentage of those earning less than 60% of the median household income after housing costs.

<sup>17</sup> Office of the Children's Commissioner, Child Poverty Monitor, Defined as households with income 60% or less of New Zealand's median household income, adjusted after housing costs, tax and for family size and type – see Child Poverty Monitor 2017, <http://www.childpoverty.co.nz/flow-infographics/income-poverty-2016>

<sup>18</sup> <https://www.oxfam.org.nz/news/richest-1-kiwis-bagged-28-all-wealth-created-last-year>

<sup>19</sup> Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, A/HRC/26/28 (22 May 2014) para. 16, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/033/74/PDF/G1403374.pdf?OpenElement>.

23. Accordingly, the Rapporteur recommended that States should evaluate the differential impact of existing and proposed fiscal policies on different groups, in particular those who suffer from structural discrimination.<sup>20</sup> The Rapporteur also noted that, overall, high tax rates for goods and services and low rates for income, wealth and property bring about inequitable and discriminatory outcomes.<sup>21</sup>

24. Typically, indirect taxes, such as those based on consumption, are regressive because they generally constitute a larger portion of the income of people living in poverty.<sup>22</sup> After the United Kingdom increased the threshold for the payment of inheritance tax and increased VAT, the UN Committee for the ICESCR recommended that the Government:

conduct a human rights impact assessment, with broad public participation, of the recent changes introduced to its fiscal policy, including an analysis of the distributional consequences and the tax burden of different income sectors and marginalized and disadvantaged groups.<sup>23</sup>

25. It has also been argued that women bear the regressive brunt of consumption taxes because they tend to use larger portions of their income on basic goods due to gender norms that assign them responsibility for the care of dependents.<sup>24</sup>

#### Maximum Available Resources

26. As outlined earlier in this submission, New Zealand is legally bound under the ICESCR to “take steps . . . to the maximum of its available resources, with a view of achieving progressively the full realization of the rights.” Taxation is therefore a vital tool in meeting human rights obligations under the ICESCR so that the Government can mobilise resources to invest in health, education, housing, social protection.

27. The Committee for ICESCR has interpreted the obligation to use maximum of available resources to mean:<sup>25</sup>

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<sup>20</sup> Ibid. para. 17.

<sup>21</sup> Ibid. para. 47.

<sup>22</sup> Ibid. para. 46.

<sup>23</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/6 (14 July 2016) para. 17.

<sup>24</sup> Ibid. para. 46, citing UNDP, Gender Equality and Poverty Reduction: Taxation, Issues Brief, No. 1, April 2010.

<sup>25</sup> See Committee for Economic, Social and Cultural Rights, General Comment No. 3 (1990); United Nations Development Group, The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies (2003) pg. 29.

- a. Governments must do the maximum it can to mobilise resources within the country and budget revenue.
- b. Governments must give due priority to economic, social and cultural rights in the use of resources.
- c. Government expenditure should be efficient and effective.
- d. Governments should not adopt deliberately retrogressive measures affecting economic, social and cultural rights.

28. The Government has similar obligations that are specific to children’s rights. Under the Convention on the Rights of the Child, States are required to “mobilize resources” for the realisation of children’s rights. The UN Committee on the Rights of the Child general comment no. 19, on public budgeting for the realisation of children’s rights, interprets this obligation as requiring States to take concrete sustainable measures to mobilize domestic resources.<sup>26</sup>

29. At a recent conference on “Taxation and the SDGs” major international organisations including the IMF, OECD, UN and World Bank called on governments around the world to strengthen and increase the effectiveness of their tax systems to generate the domestic resources needed to meet the SDGs and promote inclusive economic growth.<sup>27</sup>

30. States obligation to direct the maximum available resources to fund economic, social and cultural rights is directly undermined through tax minimalisation and evasion practices by wealthy individuals and corporations.

31. The former UN Special Rapporteur on extreme poverty and human rights, has described tax the effect of tax abuse on human rights in the following way:

Tax abuse is thus not a victimless practice; it limits resources that could be spent on reducing poverty and realizing human rights, and perpetuates vast income inequality. While the rich benefit from this practice, the poor feel the negative impact on their standard of living, their unequal political power and the inferior quality of health and education services for themselves and their children. . .<sup>28</sup>

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<sup>26</sup> Committee on the Rights of the Child, General comment No. 19 (2016) on public budgeting for the realization of children’s rights (art. 4) CRC/C/GC/19 (20 July 2016)  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19&Lang=en).

<sup>27</sup> <http://www.oecd.org/tax/platform-for-collaboration-on-tax-conference-statement-2018.pdf>.

<sup>28</sup> Ibid. para. 3.

32. She added:

States that do not take strong measures to tackle tax abuse cannot be said to be devoting the maximum available resources to the realization of economic, social and cultural rights.<sup>29</sup>

33. Similarly, a 2013 study by the International Bar Association on Tax Abuses, Poverty and Human Rights found that:

Tax abuses have considerable negative impacts on the enjoyment of human rights. Simply put, tax abuses deprive governments of the resources required to provide the programmes that give effect to economic, social and cultural rights, and to create and strengthen the institutions that uphold civil and political rights. Actions of states that encourage or facilitate tax abuses, or that deliberately frustrate the efforts of other states to counter tax abuses, could constitute a violation of their international human rights obligations, particularly with respect to economic, social and cultural rights.<sup>30</sup>

34. The Commission recently highlighted the Government's human rights obligations in relation to base erosion and profit-sharing in its submission to the Finance and Expenditure Committee on the Taxation (Neutralising Base Erosion and Profit Shifting) Bill. The Commission's submission highlighted that planning strategies to evade tax, it not only results in unfairness and the loss of public trust in the integrity of the tax system, but it deprives the government of the resources it needs to fulfil its international human rights obligations.

35. The human rights obligations of businesses are highlighted under the OECD Guidelines for Multinational Enterprises, including the obligations to respect human rights, seeks ways to prevent or mitigate adverse human rights impacts, and carry out human rights due diligence.<sup>31</sup> Furthermore, under the United Nations Guiding Principles on Business and Human Rights require States to protect against human rights abuses by business enterprises and for businesses to respect human rights, including an expectation that companies act with due diligence to avoid infringing on the rights of others.<sup>32</sup>

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<sup>29</sup> Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepulveda Carmona, A/HRC/26/28 (22 May 2014) para. 60.

<sup>30</sup> International Bar Association, Tax Abuses, Poverty and Human Rights: A report of the International Bar Association's Human Rights Institute Task Force on Illicit Financial Flows, Poverty and Human Rights (October 2013) pg. 2, <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=4A0CF930-A0D1-4784-8D09-F588DCDDFEA4>.

<sup>31</sup> OECD Guidelines for Multinational Enterprises, pg. 31, <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

<sup>32</sup> UN Guiding Principles on Business and Human Rights, [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

## Accountability, access to information, transparency and participation

36. Accountability, access to information, transparency and participation are important human rights principles that should guide all phases of the design, development, implementation and evaluation of tax policy. The right to participation is the cornerstone of democracy and human rights and is guaranteed by ICCPR, article 25 and the right of access to information is protected by article 19. The principle of accountability, whereby the government is accountable to its people for its actions in realising or failing to realise human rights, is also important.
37. The Commission welcomes the open and inclusive spirit of the Working Group in its review of the current tax system. Ensuring participation and transparency in the tax system is a way to ensure that the voices of the most vulnerable groups in society are heard. The Commission encourages the Working Group to take specific measures to ensure equal access and opportunities to participate, particularly for people living in poverty or those suffering from structural discrimination.<sup>33</sup>
38. Transparency and accountability in terms of what and how taxes are raised and budget setting are also essential. If people are to hold the Government to account for realising rights, they too need to know about the budget. This is particularly true for marginalised and excluded groups, such as women, children, persons with disabilities, indigenous peoples and minorities, as the budget has a disproportionate impact on their welfare.<sup>34</sup>
39. The Commission has called for the Government to make legislative changes to ensure that the SDGs and human rights are considered when making fiscal decisions. The Commission recently submitted a report to the UN Committee on Economic, Social and Cultural Rights prior to its review of New Zealand in March 2018. The Commission recommended that the Committee call on the Government to amend the Public Finance Act to ensure that economic, social and cultural rights are taken into account in fiscal decisions.<sup>35</sup>

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<sup>33</sup> Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepulveda Carmona, A/HRC/26/28 (22 May 2014) para. 22.

<sup>34</sup> UN Office of the High Commissioner for Human Rights (2017), Realizing human rights through government budgets: <http://www.ohchr.org/Documents/Publications/RealizingHRThroughGovernmentBudgets.pdf>.

<sup>35</sup> Economic, Social and Cultural Rights in New Zealand: Submission of the Human Rights Commission for the Fourth Periodic Review of New Zealand under the International Covenant on Economic, Social and Cultural Rights (15 February 2018) pg. 5, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fNHS%2fNZL%2f30299&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fNHS%2fNZL%2f30299&Lang=en).

40. The CESCR Committee's concluding observations expressed concern that the Government's obligations under ICESCR are not adequately considered in the budget process and that budgetary allocations for areas relating to the ICESCR remain insufficient. Accordingly, the Committee recommended that the Government:

take measures to ensure the maximization of the resources allocated for the realization of Covenant rights, including by making the necessary adjustments to the Public Finance Act (1989) by introducing human rights impact assessments. It also recommends that appropriate consideration of the Covenant obligations of the State party is established when fiscal and resource generation and allocation decisions are made. While noting the State party's commitment to the Goals of the 2030 Agenda for Sustainable Development, the Committee recommends that the initiatives and resources allocated to their achievement be underpinned by the Covenant obligations.<sup>36</sup>

41. The UN Committee on the Rights of the Child has also recommended that the Government enhance allocations and budgetary measures in relation to child poverty. The Committee called on the Government to adopt a child-rights approach to the budget and ensure transparent and participatory budgeting process.<sup>37</sup> It also urged the Government to:

increase substantially the allocations necessary to directly and comprehensively tackle child poverty and ensure that budgetary lines for children in disadvantaged, vulnerable situations and situations of poverty that may require affirmative social measures are adequate and protected even in situations of economic crisis, natural disasters or other emergencies.<sup>38</sup>

42. The Commission welcomed an approach along these lines in the Child Poverty Reduction Bill through the amendment of sections 38 and 39 of the Public Finance Act.<sup>39</sup> Linking child poverty reporting with the annual budgetary process by requiring a report on child poverty to be included with the supporting information for the main Appropriations Bill, the Government's realisation of children's rights.<sup>40</sup>

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<sup>36</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of New Zealand (1 May 2018) para. 15  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fNZL%2fCO%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fNZL%2fCO%2f4&Lang=en).

<sup>37</sup> UN Committee on the Rights of the Child, Concluding Observations on the fifth periodic report of New Zealand, 21 October 2016, CRC/C/NZL/CO/5, paras, 36(a) and (b),  
[http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NZL/INT\\_CRC\\_COC\\_NZL\\_25459\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NZL/INT_CRC_COC_NZL_25459_E.pdf).

<sup>38</sup> *Ibid.*, para. 35(b).

<sup>39</sup> See Human Rights Commission Submission on the Child Poverty Reduction Bill to the Social Services and Community Committee.

<sup>40</sup> This clause follows the recommendation of *EAG Working Paper No 6* that an amendment be made to the Public Finance Act to require the Minister of Finance to specify, as part of the annual budgetary process, the allocations earmarked for meeting the short-term and long-term child poverty targets, *EAG Working Paper No 6* page 21, Recommendation 7.3.

43. A good example of the incorporation of human rights in relation to women's rights is through gender budgeting. In 2016 the OECD released a *Recommendation on Gender Equality in Public Life* which included a recommendation for Governments to adopt specific and targeted policies and for the mainstreaming gender-responsiveness into all government action to ensure that policies or budgets do not inadvertently discriminate against women.<sup>41</sup> The OECD has defined gender budgeting as:

Integrating a clear gender perspective within the overall context of the budgetary process, through the use of special processes and analytical tools, with a view to promoting gender-responsive policies.<sup>42</sup>

44. In 2017, the Budgeting and Public Expenditures Division of the OECD published a report titled *Gender Budgeting in OECD Countries*. The report highlighted the many disparities and inequalities that exist between the sexes and emphasised that they “appear to have become embedded, to a greater or lesser extent, in the baseline of public policies and the allocation of public resources.”<sup>43</sup> According to the OECD “The factor most frequently cited as the primary reason for the introduction of gender budgeting is perceived inequalities.”<sup>44</sup>

45. The 2016 OECD Gender Budgeting Survey, found that almost half of OECD countries have introduced or are actively considering the introduction of gender budgeting. For example, in Australia a “Women’s Budget Statement” has been published annually since 2008 providing discussion of government policies significant for women and gender equality more broadly. The Canadian Government has also committed to the analysis of gender-specific policy impacts on women, publishing its first Gender Statement in 2017.<sup>45</sup>

46. New Zealand has not indicated any intention to adopt gender budgeting measures and has not taken any administrative steps in the direction of implementing gender budgeting.<sup>46</sup> Moreover, the Treasury’s well-being approach does not indicate specific focus on gender. However, a Working Paper published by the New Zealand Treasury

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<sup>41</sup> 2015 OECD Recommendation of the Council on Gender Equality in Public life, <http://dx.doi.org/10.1787/9789264252820-en>.

<sup>42</sup> OECD, Gender budgeting in OECD countries (2017) pg. 6 <http://www.oecd.org/gender/Gender-Budgeting-in-OECD-countries.pdf>. The established definition of Gender Budgeting used by the European Commission is “a gender-based assessment of budgets, incorporating a gender perspective at all levels of the budgetary process and restructuring revenues and expenditures in order to promote gender equality” (Council of Europe, 2009)

<sup>43</sup> OECD, Gender budgeting in OECD countries (2017) Executive Summary, pg. ii <http://www.oecd.org/gender/Gender-Budgeting-in-OECD-countries.pdf>.

<sup>44</sup> Ibid., pg. 10.

<sup>45</sup> <https://www.budget.gc.ca/2018/docs/plan/chap-05-en.html>

<sup>46</sup> OECD, Gender budgeting in OECD countries (2017), Figure 2.9, pg 18.

in April 2018 argued that New Zealand would benefit from exploring the potential application of gender budgeting principles to increase the transparency of fiscal policy and inform policy debate.<sup>47</sup>

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<sup>47</sup> Ibid., Executive Summary, pg. ii <http://www.oecd.org/gender/Gender-Budgeting-in-OECD-countries.pdf>.



## Useful Resources

UN Office of the High Commissioner for Human Rights (2017), Realizing human rights through government budgets:

<http://www.ohchr.org/Documents/Publications/RealizingHRThroughGovernmentBudgets.pdf>

Tax as a Fundamental Human Rights Issue, YouTube Video by Philip Alston, Special Rapporteur for extreme poverty and human rights:

<https://www.youtube.com/watch?v=YdRGFp7D66A>

Tax Policy is Human Rights Policy: The Irish Debate, Philip Alston, Special Rapporteur on extreme poverty and human rights (12 February 2015): <http://www.rightingfinance.org/wp-content/uploads/2015/10/speech.pdf>

Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, UN Doc. A/HRC/29/31 (26 May 2015):

[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/29/31](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/31)

Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepulveda Carmona, UN Doc. A/HRC/26/28 (22 May 2014): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/033/74/PDF/G1403374.pdf?OpenElement>

Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of New Zealand (1 May 2018):

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fNZL%2fCO%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fNZL%2fCO%2f4&Lang=en).

Committee on the Rights of the Child, Concluding Observations on the fifth periodic report of New Zealand (21 October 2016):

[http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NZL/INT\\_CRC\\_COC\\_NZL\\_25459\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NZL/INT_CRC_COC_NZL_25459_E.pdf)

International Bar Association, Tax Abuses, Poverty and Human Rights (October 2013)

<https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=4A0CF930-A0D1-4784-8D09-F588DCDDFEA4>

Gender Budgeting in OECD Countries (2017): <http://www.oecd.org/gender/Gender-Budgeting-in-OECD-countries.pdf>.

Center for Economic, Social and Cultural Rights, Human Rights and Taxation:  
<http://www.cesr.org/human-rights-taxation>