

DISRESPECTING SOCIO-ECONOMIC RIGHTS THROUGH TAX EVASION AND AVOIDANCE IN DEVELOPING COUNTRIES©

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INTRODUCTION

It has been rightly stated that three things are certain in life: death, taxes, and mankind's unrelenting effort to evade both.¹ The problem of tax evasion is not a recent one. The natural desire of the citizen to pay as small a tax as possible is as old as taxation.² While tax evasion inflates the perpetrators' wealth, it also imposes a pecuniary loss on others. The government is directly harmed since it loses revenue, and fellow citizens are indirectly harmed as they absorb a higher tax burden to compensate for the evader's unpaid taxes.³

Tax avoidance and evasion both seek to minimize tax payment, the difference between them being that avoidance pursues legal means to that end, whereas evasion involves illegality.⁴ The distinction between tax evasion and tax avoidance is a question of legal boundaries. Evasion is outside the law whereas avoidance is not. Tax evasion applies to the deliberate escape accomplished by breaking the letter of the law while tax avoidance refers to an escape accomplished by legal procedures which may be contrary to the intent of the sponsors of the law but nevertheless do not violate the letter of the law.⁵ Whilst the tax evader breaks the law, the tax avoider sidesteps it.⁶

According to Justice Oliver Wendell Holmes in *Bullen v Winconsin*,

We do not speak of evasion because when the law draws a line, the case is on one side of it or the other, and if on the safe side, it is none

¹ S Klepper and D Nagin "The Anatomy of Tax Evasion" (1989) 5 *Journal of Law, Economics and Organisation* p.1

² LA Buck "Income Tax Evasion and Avoidance : Some General Considerations" (1936-37) 25 *Georgetown Law Journal* p.863

³ GS Moohr "Tax Evasion as White Collar Fraud" (2008-2009) 9 *Houston Business and Tax Law Journal* p.208

⁴ KD Deane "Law, Morality and Tax Evasion" (1984) 13 *Anglo-American Law Review* p.1

⁵ G Gilbert, CC Laforteza and L Uriarte "International Tax Evasion and Avoidance : Transnational Corporations and States" (1991-92) 66 *Philippine Law Journal* p.390

⁶ *Ibid*

the worse legally that a party has availed themselves to the full of what the law permits. When an act is condemned as an evasion, what is meant is that it is on the wrong side of the line indicated by the policy if not by the mere letter of the law.⁷

Also, in the case of *Helvering v Gregory*, the court held that “anyone may so arrange his affairs that his taxes shall be as low as possible, he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one’s taxes.”⁸ Evasion is regarded as improper, dishonest and reprehensible. Avoidance, on the other hand, is generally considered to be a sign of great acumen, perspicacity and skill.

It should be noted however that this careful distinction has been criticised by those who strongly believe that, economically, avoidance and evasion are substantially equivalent; it is of little consequence economically whether a particular activity, transaction or arrangement falls within the law or not.⁹ Hence, some countries do not look kindly upon either tax evasion or avoidance practices of taxpayers. These countries believe that the gain of the tax evader or tax avoider is still the government’s loss.¹⁰ As a result, they have adopted measures to curb and punish both tax evasion and avoidance practices. Malaysia, for example, has gone beyond merely penalizing escape from the letter of the law; tax avoidance is also frowned upon.¹¹

The reason may not be far-fetched. The harm occasioned by the practices of tax evasion and avoidance cannot be overemphasised. Although the problem of tax evasion is a challenge all over the world, developing countries seem to be more affected. This is partly due to the fact that they are mostly not well equipped to detect and curb the sophisticated means employed by individual and corporate tax

⁷ *Bullen v. Winconsin* (1916) 240 U.S. 625, at 631.

⁸ *Helvering v. Gregory* 69.F. (2d) 809, C.C.A 2d, 1934.

⁹ BB Milnes, *Tax Avoidance and Evasion: the Individual and Society* (Pan Opticum Publishing, London 1979) p.24. A Thompson “Some Thoughts on Tax Avoidance” (1978) *128 New Law Journal* p.629

¹⁰ *Supra*, G Gilbert, n5

¹¹ *Ibid*

evaders situated in those countries. Tax evasion by big multinational companies severally limits the capacity of the developing countries to raise their domestic resources to implement development programs. The present international tax system has failed to prevent multinational enterprises from avoiding payment of corporation taxes in jurisdictions where they operate.¹² According to the United Kingdom House of Commons Committee on Public Accounts, “it is far too easy for companies to exploit the rules and set up structures in low tax jurisdictions, rather than pay tax where they actually conduct their business and sell their goods and services.”¹³

The World Bank has noted that around \$100 billion in tax revenue is lost annually by developing countries because of transactions directly linked to offshore hubs. Nevertheless, the total development finance loss is estimated to be between \$250 to \$300 billion. Such loss of revenue for developing countries ‘bleeds them of essential resources.’¹⁴

The legal practice of seeking to minimise a tax bill by taking advantage of a tax loophole, adopting an unintended interpretation of tax regulations or out rightly evading a tax payment are a major component of illicit financial flows.¹⁵ According to an African Union and UN Economic Commission for Africa joint report conducted in 2014, Africa loses massive financial resources amounting to \$50 billion annually through illicit activities of multinationals and wealthy individuals.¹⁶ Such activities include tax evasion, money laundering and international bribery. Over the last 50 years, Africa is estimated to have lost in excess of one trillion dollars through illicit financial flow alone, a sum that is equivalent to the entire

¹² S Darcy, “The Elephant in the Room: Corporate Tax Avoidance and Business and Human Rights” (2017) 2 *Business and Human Rights Journal* p.1-5

¹³ House of Commons Committee on Public Accounts. “Tax Avoidance – Google” *Ninth Report of Session 2013-2014* (2013)

¹⁴ Speech by the World Bank Managing Director – Sri Mulyani Indrawati- at Event on Tax Evasion and Development Finance, 17th, April, 2005. Available at <http://www.worldbank.org/en/news/speech/2015/04/17/speech-wb-md-coo-sri-mulyani-event-tax-evasion-development-finance>.

¹⁵ The Report of the High Level Panel on Illicit Financial Flows from Africa -2015. See <https://www.uneca.org/content/illicit-financial-flows-africa-rise>.

¹⁶ United Nation’s Economic Report on Africa, 2014. See www.uneca.org/publications/economic-report-africa-2014.

overseas development aid received by all African countries during the same period. According to the report, this loss negatively affects employment, income, education, and health care. These areas are effective in transforming the economies of these countries.¹⁷

Estimates show that the developing world lost \$991.2 billion in illicit financial flows in 2012, over ten times the amount of the official development aid received by these countries in that year, and greater than the amount of net foreign direct investment received.¹⁸ Sub-Saharan African countries accounted for 8% of cumulative illicit financial flows from the developing world during 2003-2012; South Africa and Nigeria are ranked in the top ten globally.¹⁹

In Nigeria, many registered companies are in the habit of not only avoiding taxes but also evading some. Statistics provided by the Federal Inland Revenue Service showed that only 120,000 companies, representing 27.7% of the total 440,000 firms operating in the country, paid any form of tax. The remaining 320,000 have been evading tax.²⁰ Hence, it is not surprising to note that Nigeria's recent rating as third from the bottom on the 2015 global ranking in "Ease of Paying Taxes".²¹ Nigeria is ranked 187th out of 189 economies covered by the survey that assessed the time it takes for a company to prepare, file and pay its taxes, and the total tax liability, among other things. While the worldwide compliance period is 268 hours, it takes a Nigerian company 908 hours to comply with tax payment, which is more than three times the standard benchmark.²² Constraints to prompt payment of tax will undoubtedly open a leeway to tax evasion.

¹⁷ *Ibid*

¹⁸ D Kar and J Spanjers, "Illicit Financial Flows From Developing Countries: 2003-2012" (2014) Report by *Global Financial Integrity*.

¹⁹ *Ibid*

²⁰ J Inokotong, "320,000 Companies Evade Tax Payment" Nigeria Pilot Newspaper, 10 August, 2015.

²¹ Paying Taxes 2015: The Global Picture, A Report by Price Waterhouse Cooper commissioned by the World Bank. See <https://www.pwc.com/gx/en/paying-taxes/pdf/pwc-paying-taxes-2015-high-resolution.pdf>.

²² *Ibid*

INFRINGEMENT OF SOCIO-ECONOMIC RIGHTS THROUGH TAX EVASION

Human rights, especially socio-economic rights, require access to financial resources. Failure to allocate adequate financial resources can hinder the enjoyment of the rights to health and education.

Taxation is one of the major sources of finance available to a state. However, if there is widespread tax evasion, the state would be unable to fully access this financial resource. Tax evasion can also have a negative impact on economic development. By constraining the amount of financial resources available, the state would be unable to allocate sufficient funding towards the development of its human resources. This, in turn, can hinder economic development. Therefore, for example, where the citizens of a state cannot enjoy rights such as the right to education and the right to health, this could impede their development as individuals. As a result, such a state cannot achieve economic prosperity because its citizens would be unable to engage in activity necessary for economic development.

THE RESPONSIBILITY OF CORPORATIONS TO RESPECT HUMAN RIGHTS

Under international law, states have the following obligations:

- 1) Obligation to respect-States must refrain from interfering directly or indirectly with the enjoyment of human rights.
- 2) Obligation to protect-States should take measures to ensure that their parties do not undermine or violate human rights.
- 3) Obligation to fulfil-States should take legislative, administrative, budgetary, judicial and other necessary steps towards the full realisation of human rights.²³

The preamble to the International Covenant on Economic, Social and Cultural Rights mandates all state parties to recognise that the idea of human beings enjoying freedom can only be achieved if conditions are created whereby everyone may enjoy their economic, social and cultural rights. Article 2 of the Covenant provides that all state parties undertake to take steps to achieving progressively the

²³ United Nations Committee on Economic, Social and Cultural Rights, General Comments No.15, 2002.

full realisation of the rights by all means, including the adoption of legislative means. It is imperative to note that Article 5 makes it clear that nothing in the Covenant may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the human rights. However, these provisions have not directly held companies responsible for human rights violations. Rather, state parties are simply burdened with the direct and indirect responsibility of not violating human rights, and not allowing any of their subjects, which can be individuals or companies, to do the same.

No mechanism exists at the regional or universal levels that would hold corporations accountable for violations of international law. However, this does not mean that international laws cannot be applied directly to corporations if this is consistent with their obligation to respect human rights.²⁴ Of course, states have a duty to protect economic and social rights through the adoption of measures that regulate private actors in order to ensure that they do not engage in conduct that violates these rights.²⁵

At present, no international treaty exists that would make business enterprises the subject of international legal obligations. Nevertheless, the Business and Human Rights Movement emphasizes the inalienable, indivisible and universal rights of individuals that cannot be violated by any entity.²⁶ Through this movement, regardless of the profit implications, businesses have an obligation to be aware of the impact of their actions so as to ensure that the rights of citizens will not be infringed.

²⁴ *Social and Economic Right Action Centre v. Nigeria*, Communication No.155/96 2001 A.H.R.L.R. 60

²⁵ O Schutter, "Corporations and Positive Duties in the Area of Economic and Social Rights" in Eide Riedel (ed) *Economic, Social and Cultural Rights in International Law: Contemporary Issues* (Oxford University Press, 2013).

²⁶ J Bauer and E Umlas, "Making Corporations Responsible: The Parallel Tracks of the B Corp Movement and the Business and Human Rights Movement" See <http://ssrn.com/abstract=2650136>.

There is a clear international consensus that companies have a responsibility to respect human rights in whatever jurisdiction they operate. On June 16, 2011, the United Nations Human Rights Council recognized this responsibility when it endorsed the UN Guiding Principles on Business and Human Rights. These principles are structured around the three pillars of the ‘Protect, Respect and Remedy’ framework. First of all, it is the state’s duty to ‘protect’ against human rights abuses by third parties, including corporations, through appropriate policies, regulations and adjudication.²⁷ Secondly, business enterprises have a corporate responsibility to ‘respect’ human rights. This means that they should act with due diligence to avoid infringing upon the rights of others, and address the adverse effects of their actions.²⁸ Lastly, victims of corporate related abuse should be afforded greater access to ‘remedy’, which could be either judicial or non-judicial.²⁹ This tripartite framework emphasizes the multi-stakeholder nature of the issues surrounding business and human rights.

International human rights treaties do not explicitly mention tax. Yet, all treaties with resource implications are based on the assumption that governments will allocate resources to meet their human rights obligations.³⁰ Hence, companies that engage in transfer pricing for the purpose of tax abuse and profiteering are in breach of international human rights standards. The UN Guideline Principles on Business and Human Rights requires companies to respect human rights. This responsibility exists regardless of whether or not the states themselves require companies to act responsibly. Although tax planning strategies, such as transfer pricing, are legal, this cannot be used as a defence when a company has knowingly used the strategy to evade tax, and extract substantial profits at the expense of developing countries.

²⁷ The UN Guiding Principles on Business and Human Rights: Analysis and Implementation. See www.kenan.ethics.duke.edu

²⁸ *Ibid*

²⁹ *Ibid*

³⁰ “Chains of Abuse: The Global Diamond Supply Chain and the Case of the Central African Republic” a Report by the *Amnesty International* (2015, United Kingdom).

The scope of a state's duty to protect human rights also includes an extraterritorial dimension. This is particularly important in the context of business activity. The UN Committee on Economic, Social and Cultural Rights has clarified that states have a duty to prevent third parties, such as companies, from violating human rights abroad. Companies operating across borders can undermine human rights in other jurisdictions in numerous ways. For example, when the decisions of a parent company operating in one country leads to human rights abuses by one of its subsidiaries in another country. Therefore, a state should take measures to prevent companies incorporated or headquartered in their jurisdiction from causing or contributing to human rights abuses in other countries. This can be accomplished through a combination of legal and political means.

CORPORATE ENTITIES SHOULD BE HELD ACCOUNTABLE FOR THEIR OBLIGATION TO RESPECT SOCIO-ECONOMIC RIGHTS

It is not enough to simply outline and define corporate responsibility to respect human rights. Rather, it is also necessary to establish an appropriate mechanism that can be used to enforce this responsibility, and hold companies accountable when they fail to comply with their human rights obligations.³¹ For example, John Ruggie's Guiding Principles³² is a mechanism for holding transnational corporations accountable for their responsibility to respect human rights. However, this is a voluntary mechanism or soft law, which is not legally binding on companies.³³ As well, voluntary mechanisms are ineffective in preventing human rights violations and fostering 'corporate behaviour that promotes human rights'.

³¹ Hunt and Khosla (n 3) 3; Lee and Hunt (n 32) 231; Grover and others (n 5) 237.

³² In his Guiding Principles, Ruggie makes it clear that, 'Nothing in these Guiding Principles should be read as creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regard to human rights.' Ruggie, 'Guiding Principles' (n 13) 6. In their critique of Ruggie's Guiding Principles, Vawda and Baker note that, 'Efforts to put real juridical teeth into the corporate human rights arena have been fraught with disappointment. The most recent effort resulted in a mandate to Professor Ruggie ... who proposed a new Framework for Business and Human Rights in 2008, and Guiding Principles to implement the Framework in 2011. Ruggie's efforts unfortunately merely recapitulate the legal status quo, which contains aspirational frameworks, but no hard substantive rules or remedial procedures. His 2007 Mapping Report explicitly repudiated earlier claims at the UN that human rights norms applied directly to corporations. He conceded, however, that there were indirect effects mediated through the human rights duties of states to regulate private actors, and that there were soft law norms pushing corporations to respect human rights and to provide voluntary remedies for violations.' Vawda and Baker (n 7) 64-65 (internal citations and footnotes omitted).

³³ Grover and others (n 5) 240-243.

Furthermore, voluntary mechanisms have failed ‘to provide remedies for affected individuals and groups as required under international human rights law’.³⁴

In June 2014, the UN Human Rights Council adopted a resolution, which was championed principally by developing countries,³⁵ to establish ‘an open-ended intergovernmental working group on a legally binding instrument on transnational corporations and other business enterprises with respect to human rights’.³⁶ According to this resolution, the working group’s mandate ‘shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises’.³⁷ However, it should be noted that the adoption of this resolution was opposed by a number of developed countries.³⁸ Thus, any future treaty enacted through this process may not be supported or ratified by developed countries.³⁹

³⁴ *Ibid* 242.

³⁵ While introducing the draft resolution, Ecuador stated that ‘While companies enjoyed protection, victims of harmful corporate activities had no legal protection, only voluntary norms. An internationally binding legal instrument would protect these victims.’ In the same vein, South Africa stated that ‘...it held a strong view that transnational corporations and other business enterprises often operated in an environment where appropriate national regulations were either totally absent or very weak. This was thus an important resolution.’ India also expressed its support for the draft resolution and it stated that ‘...the issue of transnational corporations and human rights was an important area and ... the international community must hold corporations accountable for human rights violations arising from their business operations. The Guiding Principles had a limited field of application and could not provide remedy for victims of human rights violations. The resolution opened for States the opportunity to discuss the issue of transnational corporations and close important protection gaps.’ UN Human Rights Council, ‘Council Extends Mandates on Extreme Poverty, International Solidarity, Independence of Judges, and Trafficking in Persons - Establishes Working Group to Elaborate an International Legally Binding Instrument on Transnational Corporations and Other Business Enterprises’ (26 June 2014) <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14785&LangID=E>> accessed 31 December 2014.

³⁶ UN Human Rights Council, ‘Elaboration of an International Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with Respect to Human Rights,’ *A/HRC/26/L.22/Rev.1*, (25 June 2014) para 1.

³⁷ *Ibid*.

³⁸ Some of the developed countries contended that the focus should be on the implementation of the Ruggie Guiding Principles. According to the US, ‘Individual States had taken a number of steps to implement the Guiding Principles, which were a success, even though they were only three years old. The draft resolution was a threat to the Guiding Principles. A “one size fit all” legally binding instrument was not an appropriate solution for the vast and diverse business field.’ The UK stated that, in its view, the Guiding Principles ‘offered the best way forward for dealing with these important issues, taking into account the needs of citizens and ensuring that they would benefit from economic development.’ Japan equally ‘...reiterated its commitment to the Guiding Principles on Business and Human Rights and said that their wide acceptance by a range of stakeholders was an important achievement that needed to be built upon. The international community could deepen its understanding of the issues related to business and human rights by learning from the implementation of the Guiding Principles.’ Ireland also ‘...expressed its strong commitment to the Guiding Principles on Business and Human Rights’ and stated that, ‘even if much was achieved since their establishment, still more needed to be done’. According to Ireland, ‘An intergovernmental working group was not equipped to discuss the issue of reparation and remedies for victims of human rights violations by transnational corporations; this needed to be brought to different forums, such as the International Law Commission, which had technical capabilities, or an intergovernmental group of experts. The issue could not be effectively addressed by the Working Group and this would jeopardize the implementation of the United Nations Guiding Principles on Business and Human Rights.’ UN Human Rights Council, ‘Council Establishes Working Group to Elaborate an International Legally Binding Instrument on Transnational Corporations and Other Business Enterprises’ (n 114).

³⁹ The twenty countries that voted in favour of the adoption of the resolution are: Algeria, Benin, Burkina Faso, China, Congo, Côte d’Ivoire, Cuba, Ethiopia, India, Indonesia, Kazakhstan, Kenya, Morocco, Namibia, Pakistan, Philippines,

Since most transnational corporations have their headquarters in developed countries, the opposition expressed by these countries to the adoption of this resolution does not sit well for a treaty that is intended to hold transnational corporations accountable for their human rights obligations.⁴⁰ Ruggie expressed scepticism about the need for an international treaty in this regard. In his view, there is a certain intuitive and even moral appeal to the idea that there ought to be one international law governing the conduct of all business enterprises everywhere under a common set of standards protecting human rights. However, such a treaty would be too abstract. This would serve little use to individuals who need to determine whether their human rights have indeed been violated. The crux of the problem is this: while business and human rights may be a single label attached to a range of activities, the issues themselves are vast, diverse, and conflicted. Therefore, such an issue area cannot be governed through a single set of

Russian Federation, South Africa, Venezuela and Viet Nam. The fourteen countries that voted against the resolution are: Austria, Czech Republic, Estonia, France, Germany, Ireland, Italy, Japan, Montenegro, Republic of Korea, Romania, The Former Yugoslav Republic of Macedonia, United Kingdom, and United States of America. The thirteen countries that abstained from voting are: Argentina, Botswana, Brazil, Chile, Costa Rica, Gabon, Kuwait, Maldives, Mexico, Peru, Saudi Arabia, Sierra Leone, and United Arab Emirates. This implies that the countries that opposed the adoption of the resolution and those that abstained from voting were more than the countries that supported the adoption of the resolution. UN Human Rights Council, 'Council Establishes Working Group to Elaborate an International Legally Binding Instrument on Transnational Corporations and Other Business Enterprises' (n 114).

⁴⁰ As Ntina Tzouvala points out, '...given that the states that voted against the resolution are capital-exporting states, where most of the transnational companies in question are registered, their hostility or reluctance regarding the initiative is a bad omen for its future. Indeed, even if the treaty is drafted successfully lack of ratification by these states would be fatal to its efficiency'. Ntina Tzouvala, 'Human Rights and Transnational Corporations: A Step Forward?' (*Human Rights in Ireland*, 30 June 2014) <<http://humanrights.ie/international-law/international-human-rights/human-rights-and-transnational-corporations-a-step-forward/>> accessed 31 December 2014. Chris Esdaile, 'A Step Forward? A Sceptical View on the Need for a New Business and Human Rights Treaty' (*Open Democracy*, 26 May 2014) <<https://www.opendemocracy.net/openglobalrights-blog/chris-esdaile/step-forward-sceptical-view-on-need-for-new-business-and-human-r>> accessed 26 December 2014 (noting that, '...even if a treaty were agreed, many states would probably not ratify it. The US – which was particularly hostile to the UN Norms – has a poor record of ratifying treaties (it has the dubious privilege of standing alongside only Somalia and South Sudan in having failed to ratify the UN Convention on the Rights of the Child), and it is unlikely to be alone in objecting to a treaty on business and human rights. A treaty negotiation process, therefore, would face the very real possibility of ending up with a watered-down set of rules, and a treaty with few ratifications. The process itself might generate added hostility to the prospect of binding rules on business and human rights. In short, such a negotiation process may leave us in no better position than we are now.'). See further, Frédéric Mégret, 'Would a Treaty Be All It Is Made up To Be?' (*James G. Stewart*, 4 February 2015) <<http://jamesgstewart.com/would-a-treaty-be-all-it-is-made-up-to-be/>> accessed 11 February 2015. For a contrary view see, Chip Pitts, 'The World Needs a Treaty on Business and Human Rights' (*Open Democracy*, 26 May 2014) <<https://www.opendemocracy.net/openglobalrights-blog/chip-pitts/world-needs-treaty-on-business-and-human-rights>> accessed 26 December 2014 (contending that, 'Businesses currently have rights they can legally enforce at a global level, including intellectual property rights (under the TRIPS agreement), and rights as investors to sue states directly in arbitration tribunals established by bilateral investment treaties. Yet, individuals whose rights are violated by such businesses have no standing and cannot seek damages at an international level. That's an obviously unfair imbalance that requires correction ... More uniform global standards -- shoring up the playing field at a higher level -- would enhance compliance, reduce risk, and be good for everyone. Such standards would promote too the integrity and coherence of the global human rights system and of global business activity ... Treaties ... can help establish accountability'). David Bilchitz, 'The Moral and Legal Necessity for a Business and Human Rights Treaty' (*Business & Human Rights Resource Centre*, 10 February 2015) <<http://business-humanrights.org/sites/default/files/documents/The%20Moral%20and%20Legal%20Necessity%20for%20a%20Business%20and%20Human%20Rights%20Treaty%20February%202015%20FINAL%20FINAL.pdf>> accessed 23 February 2015.

comprehensive and actionable treaty obligations. That is why the principled pragmatism on which the Guiding Principles rest recommends international legal instruments that are carefully crafted precision tools.⁴¹

CONCLUSION

Tax evasion can hamper the ability of countries to implement programs that can ensure the enjoyment of socio-economic rights. This failure, in turn, can impede the development of the capabilities of individuals living in such countries. When there is no human development, there can be no economic development. While it is true that the states bear the primary responsibility to respect, protect and fulfil human rights, companies also have a responsibility to respect human rights, and should comply with the tax laws of the countries wherein they are operating.

Thus, corporations that engage in tax evasion are not merely failing to comply with tax laws, they are also indirectly disrespecting human rights, especially socio-economic rights. Therefore, it is crucial for countries to adopt and implement measures at the national level to curb tax evasion. In addition, countries need to incorporate a human rights approach into the enforcement of their tax laws. Under this approach, tax evasion by business entities with significant financial resources should not merely be regarded as a failure to comply with tax laws, it should also be construed as a failure to respect human rights.

⁴¹ John G Ruggie, 'Closing Plenary Remarks' (Third United Nations Forum on Business & Human Rights, Geneva, December 2014) 6

<http://www.ohchr.org/Documents/Issues/Business/ForumSession3/Submissions/JohnRuggie_SR_SG_BHR.pdf> accessed 26 December 2014. It should be noted that Ruggie is however not opposed to a treaty addressing corporate involvement in 'gross' human rights violations. According to Ruggie, 'I have suggested as an initial step consideration of a legal instrument addressing corporate involvement in the category of "gross" human rights violations. I did so because of the severity of the abuses involved; because the underlying prohibitions already enjoy widespread consensus among states yet there remains considerable confusion about how they should be implemented in practice when it comes to legal persons; and because the knock-on effects for other aspects of the business and human rights agenda would be considerable.' Ruggie, *ibid* 7. Jenny S Martinez, 'A First Step is Better than No Step At All' (*James G. Stewart*, 3 February 2015) <<http://jamesgstewart.com/a-first-step-is-better-than-no-step-at-all/>> accessed 11 February 2015; John G Ruggie, 'Life in the Global Public Domain: Response to Commentaries' (*James G. Stewart*, 5 February 2015) <<http://jamesgstewart.com/life-in-the-global-public-domain-response-to-commentaries/>> accessed 11 February 2015. But *cf.* James G Stewart, 'A New Instrument on "Gross" Violations? Enthusiasm and Apprehension' (*James G. Stewart*, 2 February 2015) <<http://jamesgstewart.com/a-new-instrument-on-corporate-responsibility-for-gross-human-rights-violations-enthusiasm-and-apprehension/>> accessed 11 February 2015.