

## Taxation and human rights: Towards a sustainable realisation of minimum core obligations in Nigeria

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**Summary:** *Twenty-four years after the establishment of the fourth republic and the Constitution that ushered in the democratic regime in Nigeria, the 1999 Constitution of the Federal Republic of Nigeria, socio-economic rights remain non-justiciable. Efforts by human rights organisations, academics and the bench (both within the country and regionally) have led to the design and development of various theories to support the measured enforcement of socio-economic rights. One such principle is the principle of minimum core obligations. This principle enjoins states to strive to satisfy the basic levels of these socio-economic rights. Despite these efforts, Nigeria and most African countries are still many years away from the sustainable realisation of socio-economic rights. There are a plethora of journal articles and textbook pages examining why this is so, but one thing remains certain, namely, that socio-economic rights cannot be enforced in the absence of adequate fiscal resources. While states have many sources of raising revenue, development practitioners have long realised that taxation remains the most sustainable way for governments to raise revenue. Thus, beyond the rights framework developed to ensure the promotion and protection of minimum core obligations, taxation*

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*remains a critical consideration to the realisation of this objective. This article addresses the scope of minimum core obligations and analyses the roles and limitations of taxation as a means of sustainably realising minimum core obligations in Nigeria. It argues that illicit financial flows, corruption and a large informal economy, among others, tend to affect the ability of the government to raise revenues, and that there is a direct link between these problems and an inadequate socio-economic rights framework in Nigeria. Implicit in the obligation to respect, protect, and fulfil the essential minimum standards of these socio-economic rights is the obligation of the government to mobilise domestic resources for the protection and promotion of socio-economic rights.*

**Key words:** *taxation; taxation and human rights; minimum core obligations; progressive realisation; socio-economic rights*

## 1 Introduction

In the wake of the numerous socio-economic challenges facing Nigeria today, including extreme poverty and economic inequality, there is a growing realisation that tax policies play a crucial role in the fulfilment of human rights in the country. Taxation remains a sustainable means through which the government can generate the revenue needed to provide essential public services and protect rights.<sup>1</sup> It is a tool key to raising resources in order to tackle inequality, reduce poverty, and achieve minimum core obligations in Nigeria. The concept of minimum core obligations aims to determine a minimum legal standard for the ambitious and indeterminate nature of socio-economic rights.<sup>2</sup> Nigeria today continues to face massive developmental issues that indirectly affect human rights. According to the World Bank, inequality with respect to income and job opportunities remains high and has heightened the rate of poverty in the country, with an expected 84 million Nigerians living below the poverty line in 2023.<sup>3</sup> As of 2022, as many as four in ten Nigerians live below the national poverty line and are unable to access education and basic infrastructural facilities such as electricity,

1 Centre for Human Rights and Global Justice Organisation 'Tax and human rights', <https://chrgj.org/focus-areas/inequalities/tax-and-human-rights/> (accessed 7 May 2022).

2 KG Young 'The minimum core of economic and social rights: A concept in search of content' (2008) 33 *Yale Journal of International Law* 113-114. In its most basic form, it is seen that this concept creates a minimalist strategy to protecting socio-economic rights and trades 'rights-inflation for rights-ambition'.

3 The World Bank 'Nigeria Overview: Development news, research, data' 2021, <https://www.worldbank.org/en/country/nigeria/overview#1> (accessed 7 May 2022).

safe drinking water and improved sanitation.<sup>4</sup> These basic amenities represent minimum core human rights obligations that the Nigerian government ought to provide for its citizenry. There is no doubt that the unavailability of resources represents a major barrier to the realisation of human rights, particularly economic, social and cultural rights. Taxation, therefore, plays an important role in the fulfilment of human rights and sustainable development.<sup>5</sup>

Indeed, tax policy has both economic and non-economic aspects. Fiscal policy makers in Nigeria are mostly concerned with the maximisation of tax revenues which is the economic aspect of taxation, while paying little attention to non-economic aspects such as human rights that are often regarded as secondary.<sup>6</sup> To achieve minimum core obligations and a rights-based approach to taxation, there is a need for Nigerian fiscal policy makers to take into account the human rights of citizens, as well as the needs of the general public when implementing tax policies. This article assesses the relationship between taxation and human rights, and the role of taxation in helping the Nigerian government meet its minimum core obligations. The second part of the article examines the concept of minimum core obligations and its applicability under Nigerian law. The third part discusses the prospects of taxation as a tool for socio-economic development. The fourth part analyses the relationship between taxation and minimum core obligations in Nigeria. This part addresses the numerous tax challenges that hinder the realisation of minimum core obligations in Nigeria, and the role of taxation in the fulfilment of human rights and minimum core obligations in Nigeria. This part discusses the importance of taxation and the need to strengthen tax revenue collection tools to ensure that the Nigerian government is adequately enriched with resources to meet its minimum core obligations. The fifth and final part concludes the article and provides recommendations on how the government can raise revenue for the protection of human rights in Nigeria.

4 The World Bank 'Deep structural reforms guided by evidence are urgently needed to lift millions of Nigerians out of poverty, says New World Bank Report' 22 March 2022, <https://www.worldbank.org/en/news/press-release/2022/03/21/afw-deep-structural-reforms-guided-by-evidence-are-urgently-needed-to-lift-millions-of-nigerians-out-of-poverty> (accessed 7 May 2022).

5 International Bar Association's Human Rights Institute 'The obligation to mobilise resources: Bridging human rights, Sustainable Development Goals, and economic and fiscal policies' December 2017, [https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/IBA\\_Obligation\\_to\\_Mobilise\\_Resources\\_SDG\\_2017\\_En.pdf](https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/IBA_Obligation_to_Mobilise_Resources_SDG_2017_En.pdf) (accessed 7 May 2022).

6 Tax Justice Network 'Taxation and human rights' (2011) 2 *Africa Tax Spotlight*, [https://www.taxjustice.net/cms/upload/pdf/Africa\\_Tax\\_Spotlight\\_6th\\_edition.pdf](https://www.taxjustice.net/cms/upload/pdf/Africa_Tax_Spotlight_6th_edition.pdf) (accessed 7 May 2022).

## 2 The concept of minimum core obligations and its applicability under Nigerian law

The concept of minimum core obligations was introduced by the United Nations (UN) Committee on Economic, Social and Cultural Rights (ESCR Committee) for the purpose of ensuring that the 'satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every state party'.<sup>7</sup> The principle requires states to strive to satisfy and protect the basic minimum levels of socio-economic rights of their citizens. There are two cogent facets of this obligation, namely, the essential elements that are crucial for socio-economic rights to have meaningful significance; and the immediate actions that a state must take to fulfil the minimum core obligations.<sup>8</sup> The *raison d'être* for this concept was articulated by Alston who enthused that if socio-economic rights are recognised as such, it would entail the provision of minimum benefits, and the absence of these benefits would be equivalent to a violation.<sup>9</sup> Minimum core obligations cover a set of economic, social and cultural rights that require both immediate and progressive realisation.

The principle of progressive realisation of socio-economic and cultural rights is recognised under the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>10</sup> and refers to the obligation of states to as 'expeditiously and effectively as possible' protect socio-economic and cultural rights, such as the right to education, the right to health, the right to adequate housing, the right to adequate food, water, and sanitation, among others.<sup>11</sup> The principle of progressive realisation recognises that states cannot

7 United Nations Office of the High Commissioner for Human Rights, ESCR Committee General Comment 3: The nature of states parties' obligations (art 2(1) of the Covenant) adopted at the 5th session of the Committee on Economic, Social and Cultural Rights on 14 December 1990 (contained in Document E/1991/23/14 December 1990 E/1991/23) para 10.

8 N Orago 'The place of the minimum core approach in the realisation of the entrenched socio-economic rights in the 2010 Kenyan Constitution' (2015) 59 *Journal of African Law* 237.

9 P Alston 'Out of the abyss: The challenges confronting the new United Nations Committee on Economic, Social and Cultural Rights' (1987) 9 *Human Rights Quarterly* 352-353.

10 Art 2 of ICESCR states that '[e]ach state party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures'. See International Covenant on Economic, Social and Cultural Rights.

11 As above. The ESCR Committee also prohibits states from taking retrogressive measures in relation to socio-economic rights. See AJ Ali 'Interpretation of economic, social and cultural rights under the African Charter on Human and Peoples' Rights' (2018) 30 *Journal of Ethiopian Law* 1.

completely and immediately protect socio-economic rights (as they would civil and political rights) due to the inadequacy of resources.<sup>12</sup> Accordingly, these rights are to be gradually recognised over time and progress be made toward the complete realisation of these rights based on the availability of resources.<sup>13</sup>

Indeed, minimum core obligations developed as a response to the problem created by the concept of progressive realisation of resources.<sup>14</sup> The concept of minimum core obligations recognises that socio-economic rights have core components that cannot and should not be limited by the freedom of states to progressively and gradually realise socio-economic rights.<sup>15</sup> Minimum core obligations encompass the responsibility of states to protect their citizens from poverty and starvation, provide basic housing, primary education and emergency health care, to ensure that every individual in their territory enjoys a dignified life at all times. Even during times of economic crisis or emergency, these obligations are to be implemented and states are required to use all available resources, including international assistance, to ensure that their citizens enjoy the bare minimum of socio-economic rights.<sup>16</sup> The developments in international human rights law, especially the ESCR Committee's General Comment 3, have underscored the fact that states can no longer rely on the justification of resource constraints to evade their minimum core obligations.<sup>17</sup> There is a higher threshold for states to prove that they exhausted all the resources at their disposal in meeting these minimum core obligations.<sup>18</sup> According to scholars such as Brand, the interpretation and enforcement of socio-economic rights should be directed towards establishing a society in which all

12 L. Chenwi 'Unpacking "progressive realisation", its relation to resources, minimum core and reasonableness, and some methodological considerations for assessing compliance' (2013) 46 *De Jure* 742.

13 As above.

14 L. Forman and others 'Conceptualising minimum core obligations under the right to health: How should we define and implement the "morality of the depths"' (2016) 20 *International Journal of Human Rights* 531, 533.

15 As above. In this sense, the 'core' refers to the irreducible component of the right without which it loses its value. In this context, states have an obligation to protect the irreducible component of socio-economic rights. See Forman and others (n 14) 537.

16 International Network for Economic, Social and Cultural Rights 'Minimum core obligations', <https://www.escr-net.org/resources/minimum-core-obligations> (accessed 7 May 2022).

17 General Comment 14 and General Comment 15 demonstrate that these obligations are non-derogable. See ESCR Committee General Comment 14: The right to the highest attainable standard of health; and ESCR Committee General Comment 15: The right to water (arts 11 and 12 of the Covenant).

18 General Comment 3 (n 7) para 10.

the fundamental needs of its citizens are fulfilled, and they are not subjected to deprivation.<sup>19</sup>

In realising socio-economic and cultural rights, states have both general and specific obligations. The specific obligations refer to the obligation of states to respect, protect and fulfil rights of citizens by taking steps toward their realisation.<sup>20</sup> A specific obligation, in particular, is interpreted into a series of obligations, some of which demand immediate application, and others being subject to progressive realisation.<sup>21</sup> General obligations, on the other hand, require states to take appropriate measures toward realising socio-economic rights, and adopt effective and cost-efficient programmes to protect these rights.<sup>22</sup> According to General Comment 3 of the ESCR Committee, there are certain human rights provisions contained in ICESCR that states must immediately implement at all times, even in situations of emergency or economic downturn.<sup>23</sup> Some of these provisions include the freedom from discrimination;<sup>24</sup> equality between men and women;<sup>25</sup> the right to fair wages and remuneration;<sup>26</sup> the right to form trade unions and the right to strike;<sup>27</sup> a provision on special protection of minors;<sup>28</sup> free and compulsory primary education;<sup>29</sup> freedom of parents' choice in educational matters;<sup>30</sup> the right to private education;<sup>31</sup> freedom of scientific research;<sup>32</sup> and so forth. States, therefore, have an obligation to take immediate steps to apply these human rights provisions and use all appropriate means to ensure that these rights are protected. Some of these 'appropriate means' may take the form of financial, administrative, educational or social measures such as adopting a national policy in the educational, health or sanitation sector to ensure the immediate protection of human rights. Governments may also adopt legislative measures such as incorporating international

19 D Brand 'The proceduralisation of South African socio-economic rights jurisprudence or "what are socio-economic rights for?"' in H Botha, A van der Walt & J van der Walt (eds) *Rights and democracy in a transformative constitution* (2003) 33.

20 International Commission of Jurists 'Adjudicating economic, social and cultural rights at national level: A practitioners guide' 2014, <https://www.icj.org/wp-content/uploads/2015/07/Universal-ESCR-PG-no-8-Publications-Practitioners-guide-2014-eng.pdf> (accessed 7 May 2022).

21 As above.

22 As above.

23 General Comment 3 (n 7) para 5.

24 Art 2(2) ICESCR.

25 Art 3 ICESCR.

26 Art 7(a)(i) ICESCR.

27 Art 8 ICESCR.

28 Art 10(3) ICESCR.

29 Art 13(2)(a) ICESCR.

30 Art 13(3) ICESCR.

31 Art 13(4) ICESCR.

32 Art 15(3) ICESCR.

human rights treaties such as ICESCR into national law to ensure that the law is directly applied in their country, and that their citizens can have access to judicial or administrative remedies.<sup>33</sup>

The African Charter on Human and Peoples' Rights (African Charter) in articles 2, 14-18, 20-22 and 24 contains specific economic, social and cultural rights, such as the right to freedom from discrimination; the right to property; the right to work under equitable and satisfactory conditions; the right to good health; the right to education; the protection of the rights of the child; the right to self-determination; the right to an existence; and the right to development; among others.<sup>34</sup> These rights have been held to be justiciable by the African Commission on Human and Peoples' Rights (African Commission) by virtue of article 45 of the African Charter. This was the rationale behind the African Commission's decision in *SERAC*,<sup>35</sup> where it held the Nigerian government liable for the environmental degradation resulting from oil exploration in the Niger Delta region and, by extension, guilty of violating the socio-economic and other rights of its inhabitants, such as the right to life, the right to property; the right to health; and the right to a safe environment.

The African Charter is said to diverge from the usual approach to implementing economic, social and cultural rights as observed in ICESCR. This is due to a few factors: First, the African Charter lacks clauses that allow for the reduction or suspension of these rights. Additionally, the obligations outlined in the Charter are immediately applicable rather than being gradually fulfilled over time, which means that they are afforded the same level of importance and safeguarding as other rights in the African Charter.<sup>36</sup> In *Free Legal Assistance Group & Others v Zaire*<sup>37</sup> the African Commission held that the failure of the government 'to provide basic services such as drinking water and electricity and the shortage of medicine' violated the right to health. The African Commission did not pay regard to whether the respondent government had all the necessary resources or whether it needed more time to provide these amenities.

33 General Comment 3 (n 7) para 6.

34 C Odinkalu 'Analysis of paralysis or paralysis by analysis? Implementing economic, social and cultural rights under the African Charter on Human and Peoples' Rights' (2001) 23 *Human Rights Quarterly* 327.

35 *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) (*SERAC*).

36 See S Ibe 'Beyond justiciability: Realising the promise of socio-economic rights in Nigeria' (2007) 7 *African Human Rights Law Journal* 225.

37 (2000) AHRLR 74 (ACHPR 1995) para 47.

However, scholars such as Yeshanew argue that the African Commission interpreted the progressive realisation qualification into article 16 of the African Charter.<sup>38</sup> In the 2009 *Southern Cameroon* case<sup>39</sup> the African Commission held that the respondent state was under the obligation to invest its resources in the best way possible to attain the progressive realisation of the right to development, and other economic, social and cultural rights. However, this case was faulted for introducing the term inadvertently since the right in contention was not an economic, social or cultural right according to the Commission's classification in the first place.<sup>40</sup> Nonetheless, this concept has been fully transplanted through soft law instruments such as the Pretoria Declaration 2004<sup>41</sup> and the Nairobi Principles 2011<sup>42</sup> that apply the concept of progressive realisation of economic, social and cultural rights under the African Charter. Furthermore, soft law instruments recognise the application of minimum core obligations under the human rights jurisprudence of the African Charter.<sup>43</sup> Thus, state parties have an obligation to ensure that a significant number of citizens are not 'deprived of the availability of the essential elements of a particular right. This obligation exists regardless of the availability of resources and is non-derogable.'<sup>44</sup>

Nigeria is a party to ICESCR and, therefore, is obligated to take steps, to the maximum of its available resources, to achieve the immediate and progressive realisation of economic, social and cultural rights in the country. Furthermore, its obligations under the African Charter (as can be seen above) also require it to ensure the fulfilment of minimum core obligations in relation to socio-economic rights. In line with its obligations under international law, the country recognises socio-economic rights in chapter II of its 1999 Constitution titled 'The Fundamental Objectives and Directive Principles of State Policy'.<sup>45</sup>

Section 14 of the 1999 Constitution recognises the principles of democracy and social justice upon which Nigeria is built. In particular, sections 14(2)(b) and (c) provide that 'the security and

38 S Yeshanew *The justiciability of economic, social and cultural rights in the African regional human rights system: Theory, practice and prospect* (2013) 251.

39 *Gunme & Others v Cameroon* (2009) AHRLR 9 (ACHPR 2009) para 205.

40 Ali (n 11) 11.

41 Resolution on Economic, Social and Cultural Rights in Africa, 36th ordinary session, Dakar (7 December 2004).

42 The Commission reported the adoption of the Nairobi Principles in its 31st Activity Report to the Executive Council of the AU, EX.CL/717(XX).

43 Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights.

44 Principles and Guidelines (n 43) para 17.

45 Constitution of the Federal Republic of Nigeria 1999 Cap C.23 Laws of the Federation of Nigeria, 2004.

welfare of the people shall be the primary purpose of government' and that the people's participation in their government 'shall be ensured in accordance with the provisions of this Constitution'. Nigeria's economic obligations are contained in section 16 which urges the state to direct its policy towards ensuring the promotion of a planned and balanced economic development,<sup>46</sup> including providing suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment and sick benefits and welfare of the disabled.<sup>47</sup>

Section 17 provides for a state social order founded on ideals of freedom, equality and justice, in furtherance of which the exploitation of human resources in any form shall be for the good of the community.<sup>48</sup> In addition, this section urges the government to direct its policy towards ensuring that all citizens have equal opportunities to secure an adequate means of livelihood as well as adequate opportunities to secure suitable employment;<sup>49</sup> that the conditions of work are just and humane and that there are adequate facilities for leisure, social, religious and cultural life;<sup>50</sup> that the health, safety and welfare of all individuals in employment are protected;<sup>51</sup> that there are adequate medical and health facilities for all persons;<sup>52</sup> that there is equal pay for equal work without discrimination;<sup>53</sup> and that children, young persons and the aged are protected from exploitation.<sup>54</sup>

Section 18 directs the Nigerian government to provide equal and adequate educational opportunities at all levels including *as and when practicable* free, compulsory and universal primary education, free secondary education, free university education and free adult literacy programmes.<sup>55</sup> The use of the phrase 'as and when practicable' represents the progressive realisation of rights as explained by the ESCR Committee in General Comment 3 on ICESCR.<sup>56</sup> Section 20 of the 1999 Constitution recognises the obligation of the state to 'protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria'.

46 Sec 16(2)(a) Constitution of Nigeria (n 46).

47 Sec 16(2)(d) Constitution of Nigeria (n 46).

48 Sec 17(1)(d) Constitution of Nigeria (n 46).

49 Sec 17(2)(a) Constitution of Nigeria (n 46).

50 Sec 17(2)(b) Constitution of Nigeria (n 46).

51 Sec 17(2)(c) Constitution of Nigeria (n 46).

52 Sec 17(2)(d) Constitution of Nigeria (n 46).

53 Sec 17(2)(e) Constitution of Nigeria (n 46).

54 Sec 17(2)(f) Constitution of Nigeria (n 46).

55 Secs 18(1) & (3) Constitution of Nigeria (n 46).

56 General Comment 3 (n 7) para 9.

The above-mentioned provisions of chapter II of the Constitution have been interpreted to reflect the ideals of the democratic system upon which Nigeria was built and serve as a guide for policy action by the government.<sup>57</sup> These provisions have been held to be unenforceable in Nigerian courts by virtue of section 6(6)(c) of the Constitution which prohibits the courts from entertaining claims arising under or as a result of the provisions of chapter II.<sup>58</sup>

Nonetheless, there has been significant judicial activism in this regard domestically, such as in *Aiyeyemi & Others v The Government of Lagos State & Others*,<sup>59</sup> where SERAC argued on the principles of equity, good conscience and *ubi jus ibi remedium* to make a case for the socio-economic rights of these persons against the demolition of their homes and eviction by the Lagos state government. This supports the argument that the African Charter is considered an integral part of Nigerian legislation since it has been ratified by virtue of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act<sup>60</sup> and there are no gaps in its enforcement in the Nigerian legal system. The fact that the African Charter does not have a specific provision for enforcing its human and people's rights within the domestic jurisdiction is deemed unimportant. In the case of *Ogugu v State*<sup>61</sup> it was established that Nigerian courts have the authority to enforce the African Charter.

From this analysis above, one can glean that Nigeria has minimum core obligations as part of its international human rights obligations (under both ICESCR and the African Charter) to protect socio-economic rights. Additionally, since the human rights jurisprudence in Nigeria recognises the application of the African Charter provisions and its jurisprudence, the minimum core obligations, by extension, form part of Nigerian law. Thus, notwithstanding the fact that chapter II of the Nigerian Constitution appears to make socio-economic rights non-justiciable, the minimum core obligations of the government are enforceable through any of the creative strategies adopted for the enforcement of socio-economic rights in Nigeria, namely, liberal

57 Ibe (n 36).

58 See the case of *Archbishop Okogie v The Attorney-General of Lagos State* (1981) 2 NCLR 350 where the Court of Appeal held that socio-economic claims arising from ch II are non-justiciable in Nigerian courts.

59 Unreported Suit M/474/2003.

60 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

61 *Ogugu v State* (1994) 9 NWLR Part 475 710.

interpretation of the courts,<sup>62</sup> the enactment of legislation by the national assembly, and through the African Charter Act.<sup>63</sup>

### 3 Making a case for taxation as a tool for socio-economic development

Philip Alston, UN Special Rapporteur on Extreme Poverty, 2014-2020 outlined the inadequacy of measuring well-being through a single economic measure, and instead suggested that governments can adopt a more holistic approach that includes using tax revenue not only to promote economic growth but also to address social inequalities, improve public services, protect the environment, and enhance the overall quality of life of citizens.<sup>64</sup> To this end, the Tax Justice Network highlighted the need for sustainable tax revenue that may be leveraged as a tool for wealth redistribution and income to address inherent inequalities in our society. This is because it serves as a linchpin that helps states to achieve their responsibilities towards the citizenry through its mechanisms geared at increased revenue. Magdalena Sepúlveda, the former UN Special Rapporteur on Extreme Poverty, supported this viewpoint by emphasising the fact that progressive tax systems have the potential to serve as a means of reducing poverty and addressing the associated human rights violations frequently endured by individuals affected by poverty.<sup>65</sup> This then lends credence to the concept of tax justice which is built on equitable tax policies and laws to help states to meet their obligations towards its citizenry.

Furthermore, in achieving the human rights objectives of taxation, it is relevant to adhere to four principles outlined by the Tax Justice Network, referred to as the '4 R's' of taxation, which are revenue to fund public services; redistribution to reduce existing inequalities; repricing as a tool for disincentivising certain societal ills; and

62 See *Gbemre v Shell Petroleum Development Company Nigeria Limited & Others* (2005) AHRLR 151 (NgHC 2005).

63 DG Olike 'Economic, social and cultural rights under the 1999 Constitution and the enforceability problem' *AfricLaw*, <https://africlaw.com/2016/07/08/economic-social-and-cultural-rights-under-the-1999-constitution-of-the-federal-republic-of-nigeria-and-the-enforceability-problem/> (accessed 2 October 2023).

64 Report of the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, United Nations General Assembly, 27 May 2015.

65 Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, United Nations General Assembly, A/HRC/26/28, 22 May 2014.

representation as a tool for achieving wider political participation and better governance.<sup>66</sup>

The first 'r', which is revenue, becomes advantageous for states in fulfilling their human rights commitments when it is adequately raised through taxation. This aligns with international human rights law, which requires states to gradually maximise their domestic resources and engage in international cooperation (as outlined in the Maastricht Principles) to effectively achieve human rights obligations. Furthermore, it encompasses a human rights approach which mandates that a state's tax is progressive since it is the hallmark of a good tax system for the tax system to provide a level field across all economic strata. While this does not guarantee the achievement of government obligations, it is a step in the right direction.<sup>67</sup>

The second 'r', which is redistribution, is a potent tool for achieving government objectives by redistributing wealth and resources within society. This entails levying higher taxes on the 'haves' so as to finance government obligations that would benefit the 'have-nots'. More specifically, this approach can assist governments in fulfilling their minimum core obligations by allocating funds to essential sectors such as health care, education, social welfare and infrastructure. By so doing, it would promote human rights through the mitigation of socio-economic inequalities and the advancement of inclusivity within society.<sup>68</sup>

The third 'r', which is repricing, serves as a valuable tool for social engineering and shaping certain behaviours within society to foster sustainable development. For example, in order to safeguard the right to health, tax authorities may impose higher taxes on harmful products, thereby increasing their prices and reducing demand. The revenue generated from these taxes can then be utilised to finance the healthcare sector.<sup>69</sup>

The fourth 'r', representation, indicates that increased dependence of governments on tax revenue is frequently associated with

66 Tax Justice Network 'What are the four "Rs" of tax?', <https://taxjustice.net/faq/what-are-the-four-rs-of-tax/#:~:text=The%20four%20%E2%80%9CRs%E2%80%9D%20of%20tax%20refer%20to%20the%20key%20benefits,tobacco%20consumption%20and%20carbon%20emissions> (accessed 2 October 2023).

67 Tax Justice Network 'Tax justice and human rights: The 4 Rs and the realisation of rights' July 2021, [https://taxjustice.net/wp-content/uploads/2021/12/Tax-Justice-Human-Rights-Report\\_July\\_2021.pdf](https://taxjustice.net/wp-content/uploads/2021/12/Tax-Justice-Human-Rights-Report_July_2021.pdf) (accessed 2 October 2023).

68 As above.

69 M Kooshkebaghi and others 'The role of taxation measures in the management of harmful products, services, and practices in Iran: A qualitative study' (2022) 22 *BMC Public Health* 2307.

improved governance and political representation. This is because when citizens actively participate in the integration and utilisation of tax revenue, governments are held accountable to ensure that resources are appropriately and efficiently allocated towards fulfilling their minimum core obligations.

Nonetheless, there must be active efforts to ensure that taxation does not work counterintuitively. There are cases, such as in Brazil, whereby proposed tax reforms during the Cardoso presidency (1995-2003) threatened the realisation of socio-economic rights. This often was primarily due to inequitable and regressive tax systems whereby lower earners bear the highest burden of taxation in form of taxes on consumption, and instances where tax reforms cut the allocation of funding to programmes that foster the economic and social rights of the vulnerable.<sup>70</sup> On the contrary, progressive taxation is praised for its potential to facilitate the redistribution of wealth, which is crucial for ensuring access to essential goods and services for both privileged and disadvantaged groups through increased government revenue and budgetary allocations. It is essential for these tax systems to possess transparency, accountability and effectiveness. If tax systems fail to embody these principles, they would contradict the objective of a fair tax system. The next part of this article examines the relationship between taxation and minimum core obligations in Nigeria.

## 4 Taxation and minimum core obligations in Nigeria

### 4.1 Tax challenges to achieving minimum core obligations in Nigeria

There is no doubt that governments turn to taxation to fulfil human rights and minimum core obligations since taxes are important to the economic wealth and development of any nation. Nevertheless, the Nigerian tax regime continues to face myriads of challenges that make the country lag behind in every statistic on taxes. According to the Organisation for Economic Cooperation and Development (OECD),<sup>71</sup> Nigeria's tax-to-gross domestic product (GDP) ratio in

70 A Blyberg & H Hofbauer 'Progressive realisation article 2 & governments' budgets: Retrogression due to tax reforms reducing funds for the realisation of ESC rights', <https://internationalbudget.org/wp-content/uploads/PR-Retrogression-due-to-tax-reforms-booklet.pdf> (accessed 2 October 2023).

71 Organisation for Economic Cooperation and Development (OECD) 'Revenue statistics in Africa 2021 – Nigeria', <https://www.oecd.org/ctp/tax-policy/revenue-statistics-africa-nigeria.pdf> (accessed 7 May 2022).

2019 stood at 6 per cent which is far below the recommended 15 per cent required to achieve poverty reduction and economic growth.<sup>72</sup> The country's tax-to-GDP ratio decreased by 0,3 per cent from 6,3 per cent in 2018, which is significantly lower than the 16,6 per cent average for 30 African countries, including Morocco and Seychelles, which recorded 34,3 per cent, South Africa with 26,2 per cent and Rwanda with 17,2 per cent.<sup>73</sup> The lagging tax revenue index of Nigeria is often attributed to several factors, including the low level of tax compliance due to tax evasion and avoidance, corruption and illicit financial flows (IFFs), a lack of expansion of the tax net, complex tax procedures and a lack of transparency and accountability. These issues are discussed expansively in this part.

#### 4.1.1 *Tax evasion and tax avoidance*

The low level of tax compliance in Nigeria is a huge problem that renders the country one of the lowest income tax countries in the world in terms of GDP percentage.<sup>74</sup> Across Nigeria, the overall number of taxpayers, including individuals and companies, that are not paying any form of tax is alarming. As of the second quarter of 2019, the Federal Inland Revenue Service (FIRS) confirmed that there were only 20 million taxpayers in the country, leaving at least 49 million people evading taxes.<sup>75</sup> Tax evasion and tax avoidance are forms of tax non-compliance in Nigeria, with the former being illegal and the latter being legal. Usually, tax evaders in Nigeria fail to render tax returns to the relevant tax authority in order to escape the liability to tax.

Tax evasion may also come in the form of issuing fraudulent tax returns so as to reduce tax liabilities, making a false declaration of income receipt from any professional, business, trade or employment, or intentionally omitting to state the gross amount of dividends or rents received in Nigeria from foreign sources. According to a 2019 survey about tax perceptions conducted by the Nigeria Economic Support Group (NESG), low tax morale constitutes a major factor

72 V. Gaspar and others 'Tax capacity and growth: Is there a tipping point?' (2016) IMF Working Paper WP/16/234, <https://www.imf.org/external/pubs/ft/wp/2016/wp16234.pdf> (accessed 7 May 2022).

73 Report of the Special Rapporteur (n 65).

74 M Umar and others 'Income tax non-compliance in Nigeria and the moderating effect of public governance quality: A suggested framework' (2016) 7 *Mediterranean Journal of Social Sciences* 339.

75 M Abdullahi 'FIRS: Nigeria now has 41 million taxpayers – but revenue generation still low' *TheCable* 8 October 2021, <https://www.thecable.ng/firs-nigeria-now-has-41-million-taxpayers-but-revenue-generation-still-low/> (accessed 7 May 2022).

driving tax evasion and non-compliance in Nigeria.<sup>76</sup> Other factors that may result in this behaviour include poor management and misuse of taxes, lack of sense of civic responsibility, the inability of taxpayers to access public services and the unfair distribution of basic amenities in the country.<sup>77</sup>

The complex tax laws and complicated computing methods also contribute to the tax apathy of many Nigerians. Indeed, the average Nigerian sees taxes as an act of unfairly deducting a percentage of their frugal income to an undeserving country, since the government does not provide adequate basic infrastructure to commensurate the taxes being paid. In addition, the ignorance of many citizens as to their civil obligations to pay taxes also serves as a major cause of tax evasion in Nigeria. On the other hand, tax avoidance refers to a long list of complex strategies that individuals and corporate entities adopt to reduce their tax obligations. These strategies are legal and usually involve an exploitation of the loopholes in the tax law by the taxpayers or their advisers.<sup>78</sup>

Tax evasion and avoidance can have devastating impacts on the Nigerian economy and could prevent the government from achieving its minimum core obligations to its citizens. As pointed out by the FIRS,<sup>79</sup> Nigeria is losing US \$15 billion every year to tax evasion and avoidance, particularly due to the practices of multinational corporations that use different loopholes in tax laws to avoid paying taxes. As of 2021, over US \$170 billion in tax revenues was reported to have been lost as a result of the tax-evading practices of multinationals carrying on their businesses in Nigeria.<sup>80</sup> Some of the wealthiest taxpayers and many multinationals use several means to undermine tax revenues and break out of the Nigerian corporate tax system.<sup>81</sup> Some of the strategies adopted include the shifting of profits to tax havens; the utilisation of huge tax concessions granted by the

76 ICTD 'The NESG Nigeria tax and subsidy perception dataset' 11 March 2019, <https://www.ictd.ac/dataset/nesg-nigeria-tax-subsidy-perception-dataset/> (accessed 7 May 2022).

77 G Zakariya'u and others 'Tax evasion and Nigeria tax system: An overview' (2015) 6 *Research Journal of Finance and Accounting* 202.

78 See DG Olika 'Tax morality: Examining the BEPS debate, work of the OECD and its impact on Africa' (2017) 11 *Pretoria Student Law Review* 89, 91.

79 M Okwe 'Nigeria is losing \$15 billion annually to tax evasion, says FIRS' *The Guardian* 4 October 2019, <https://guardian.ng/business-services/nigeria-loses-15-billion-annually-to-tax-evasion-says-firs/> (accessed 7 May 2022).

80 E Ujah 'How Nigeria lost over \$178 bn to tax evasion by multi-nationals-FIRS Boss' *Vanguard* 11 January 2021, <https://www.vanguardngr.com/2021/01/how-nigeria-lost-178bn-to-tax-evasion-by-multi-nationals-%E2%80%95-firs-boss/amp/> (accessed 7 May 2022).

81 J Liu & O Otusanya 'How multinationals avoid taxes in Africa and what should change' 5 April 2022, <https://theconversation.com/amp/how-multinationals-avoid-taxes-in-africa-and-what-should-change-179797> (accessed 7 May 2022).

government; tax treaty abuse; and hybrid mismatch arrangement. In doing this, they end up drastically reducing the revenue that was calculated to be generated from a total number of taxpayers, and this in turn prevents the government from providing essential basic facilities such as electricity, roads, clean water, healthcare services, education, social security, pensions, and other public services. An ancillary issue to the tax evasion and tax avoidance problem is the fact that Nigeria, like the governments of most African countries, appears not to be giving the issue the attention it deserves.<sup>82</sup>

#### 4.1.2 *Corruption and illicit financial flows*

Corruption is prevalent in the administration of taxes in Nigeria and undoubtedly has contributed to the current abysmal state of the economy. The aftermath of corruption and illicit financial flows (IFFs) in Nigeria has increased the rate of poverty, unemployment, human rights abuses, and organised crimes in the country, with the Nigerian people being deprived of basic public services and infrastructure.<sup>83</sup> According to the OECD, IFFs generally involve illegal or corrupt practices such as money laundering, smuggling, fraud or counterfeiting, or where the source of funds may be legal, but their transfer may be illegal such as tax evasion or transfer mispricing by individuals and companies. It may also cover funds intended for other illegal activities such as terrorist financing or bribery by international companies.<sup>84</sup> All of these illegal and corrupt practices pose a great challenge to the political and economic security of Nigeria and result in a diversion of revenues from public priorities. The huge resources lost to IFFs are sufficient to fund public services and infrastructure, create jobs, alleviate poverty, and revamp the Nigerian economy.<sup>85</sup> Although it may be difficult to quantify IFFs, there is widespread agreement that the amounts involved are significant and growing, and that they cause significant economic problems, particularly in resource-rich countries such as Nigeria.<sup>86</sup> According to estimates

82 See generally Y Brauner 'Serenity now! The (not so) inclusive framework and the multilateral instrument' (2022) 25 *Florida Tax Review* 489.

83 L Micah and others 'Tax system in Nigeria – Challenges and the way forward' (2012) 3 *Research Journal of Finance and Accounting* 9-16, <https://core.ac.uk/reader/234629280> (accessed 7 May 2022).

84 OECD 'Illicit financial flows from developing countries: Measuring OECD responses' 2014, [https://www.oecd.org/corruption/illicit\\_financial\\_flows\\_from\\_developing\\_countries.pdf](https://www.oecd.org/corruption/illicit_financial_flows_from_developing_countries.pdf) (accessed 7 May 2022).

85 Independent Corrupt Practices Commission (ICPC) 'Illicit financial flows (IFFs)', <https://icpc.gov.ng/special-projects/illicit-financial-flows-iffs/> (accessed 7 May 2022).

86 The World Bank 'Illicit financial flows (IFFs)' 7 July 2017, <https://www.worldbank.org/en/topic/financialsector/brief/illicit-financial-flows-iffs> (accessed 7 May 2022).

of the African Union (AU) Illicit Financial Flows Report,<sup>87</sup> Africa is losing nearly US \$50 billion through profit shifting by multinational corporations and approximately 20 per cent of this amount is from Nigeria alone.

In 2021 the Human and Environmental Development Agenda (HEDA) Resource Centre projected that Nigeria loses approximately US \$15 to 18 billion annually as a result of IFFs. This amount accounts for about 30 per cent of Africa's loss to IFFs in the last ten years.<sup>88</sup> The Central Bank of Nigeria further re-echoed the assertion of Global Financial Integrity that Nigeria ranks as one of the largest countries experiencing IFFs in the world.<sup>89</sup> Therefore, there is no doubt that the inflow and outflow of money laundering linked to corruption, terrorism and organised crime, reduce tax revenue needed to fund poverty-reducing programmes and infrastructure in Nigeria. In light of the multidimensional and transnational nature of IFFs,<sup>90</sup> significant domestic resources are lost, which hinders the Nigerian government from improving infrastructure, creating job opportunities, and reducing poverty and inequality. An ancillary issue around corruption and IFFs is the failure of the government to combat corruption and fight IFFs in Nigeria.<sup>91</sup>

#### 4.1.3 *Informal economy*

The need to increase the revenue base of the government remains a human rights obligation – to mobilise maximum available resources – in the context of achieving minimum core obligations in Nigeria. There is no doubt that Nigeria can raise revenues needed to provide basic amenities by expanding its tax net to accommodate individuals and corporations operating outside the tax net. The informal economy is one sector in particular that many stakeholders and experts have advocated to be brought into the tax base. This is

87 African Union 'Illicit financial flows: Report of the High Level Panel on Illicit Financial Flows from Africa', [https://www.unodc.org/documents/NGO/AU\\_ECA\\_Illicit\\_Financial\\_Flows\\_report\\_EN.pdf](https://www.unodc.org/documents/NGO/AU_ECA_Illicit_Financial_Flows_report_EN.pdf) (accessed 7 May 2022).

88 E Addeh 'Nigeria loses \$18bn to illicit financial flows annually' *This Day* 16 April 2021, <https://www.thisdaylive.com/index.php/2021/04/16/heda-nigeria-loses-18bn-to-illicit-financial-flows-annually/> (accessed 7 May 2021).

89 Central Bank of Nigeria 'Renewed vigilance to prohibit illicit financial flows in Nigeria's banking system', [https://www.cbn.gov.ng/out/2015/ccd/illicit\\_financial\\_flows.pdf](https://www.cbn.gov.ng/out/2015/ccd/illicit_financial_flows.pdf) (accessed 7 May 2022).

90 M Moyo 'Tackling illicit financial flows, a matter of survival for Africa's development' 15 June 2021, <https://www.un.org/africarenewal/magazine/july-2021/tackling-illicit-financial-flows-matter-survival-africas-development> (accessed 7 May 2022).

91 For innovative ways to combat corruption and protect taxpayers' money, see D Olike, 'Taxpayers' right in challenging the mismanagement of public funds in Nigeria: Towards a liberal approach' (2021) 13 *Italian Journal of Public Law* 569.

largely because with participants in the informal economy not being subjected to tax, this causes relatively fewer resources to be available to the government and, by implication, fewer available resources for the government to meet its minimum core obligations.

The informal economy in Nigeria is the largest employer of labour and makes significant contributions to the country's GDP.<sup>92</sup> The exact nature of the informal economy, however, is difficult to describe and define.<sup>93</sup> In simple terms, the informal economy is defined as all aspects of the economy falling outside the scope of the formal economy.<sup>94</sup> The informal economy or certain aspects of it sometimes is referred to in the development literature with different terms, such as shadow economy, underground economy, and so forth. The informal economy is an important subject in the international development agenda, due to its considerable nature and the role it plays in driving economic growth and employment in Nigeria and the rest of the developing world. This is particularly because, despite its role in the economy of Nigeria, the informal economy is difficult to regulate and tax.<sup>95</sup>

The literature on taxing the informal economy in Nigeria is fairly developed, with the position of the scholars or policy researchers differing depending on the writer. The idea behind taxing the informal economy is premised on the considerable nature of the informal economy, its contribution to economic growth in Nigeria and the belief that taxing the informal economy will improve domestic resource mobilisation.<sup>96</sup> Scholars have also argued that taxing the informal economy can help improve accountability levels in society,<sup>97</sup> address equity considerations, improve the possibility

92 E Etim & O Daramola 'The informal sector and economic growth of South Africa and Nigeria: A comparative systematic review' (2020) 6 *Journal of Open Innovation: Technology, Market, Complexity* 135.

93 T Kundt 'Opportunities and challenges for taxing the informal economy and subnational taxation' (K4D Emerging Issues Report. Institute of Development Studies; Brighton, UK) 2.

94 The informal economy refers to activities that necessitate a cost but are removed from the rights and benefits of the formal economy. See N Khuong 'Does informal economy impede economic growth? Evidence from an emerging economy' (2021) 11 *Journal of Sustainable Finance and Investment* 104.

95 See F Mpofu 'Informal sector taxation and enforcement in African countries: How plausible and achievable are the motives behind? A critical literature review' (2021) 4 *Open Economics* 72. The informal economy is often considered a hindrance to domestic resource mobilisation on the continent. See also N Benjamin & A Mbaye 'The informal sector in Francophone Africa: The other side of weak structural transformation' (2020) Policy Brief, Africa Growth Initiative at Brookings 7.

96 A Makochekanwa 'Informal economy in SSA: Characteristics, size and tax potential' (2020) MPRA Paper 98644, University Library of Munich, Germany 19.

97 S de Mel & C Woodruff 'The demand for, and consequences of, formalisation among informal firms in Sri Lanka' (2013) 5 *American Economic Journal: Applied*

of the informal sector participants to scale,<sup>98</sup> and so forth. This argument intuitively accords with reason and has been the driving force behind formalisation policies such as a reduction in the cost of registration of businesses, government regulation, which makes banks agents for the collection of taxes from informal sector players, and so forth.<sup>99</sup> In addition to these formalisation policies, the government has deployed innovative means to tax informal sector participants without drawing them into the formal economy, such as presumptive taxation,<sup>100</sup> partnering with associations that informal sector participants belong to for the purpose of administering taxes on the informal businesses, and so forth.<sup>101</sup>

While these measures have contributed to ensuring that informal sector participants pay their taxes, there is a near unanimous position in the existing literature that tax contributions from the informal sector participants are negligible.<sup>102</sup> Thus, it is questionable whether it accords with sound economic judgment to allocate resources to effectively taxing the informal economy where the cost of doing so may outweigh the potential revenue to be derived.<sup>103</sup> To further complicate the debate, it is the position of some scholars that in most cases, informal sector players already pay some form of or multiple levies on their income to some form of association, war lord, local government authority, and so forth. This position

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*Economics* 122. Although there also is research that suggests that this notion is based on a Eurocentric understanding of taxation and state formation and based on fieldwork in Northern Nigeria, it is to be believed that increased taxation of the informal economy will heighten social divisions rather than positively influence accountability and the social contract. See K Meagher 'Taxing times: Taxation, divided societies and the informal economy in Northern Nigeria' (2018) 54 *Journal of Development Studies* 1.

- 98 This is based on the 'growth gains theory' which posits that informal sector participants are in the informal sector for the purpose of expanding and growing into the formal sector, although research on the sector in other parts of the developing world reveals the contrary. See L Medina & F Schneider 'Shadow economies around the world: What did we learn over the last 20 years?' (2018) IMF Working Papers 18(17) 28. See also D McKenzie & Y Sakho 'Does it pay firms to register for taxes? The impact of formality on firm profitability' (2010) 91 *Journal of Development Economics* 15.
- 99 M Rogan 'Tax justice and the informal economy: A review of the debates' (2019) WIEGO Working Paper 41, WIEGO 5.
- 100 F Mpfu 'Taxing the informal sector through presumptive taxes in Zimbabwe: An avenue for a broadened tax base, stifling of the informal sector activities or both' (2021) 13 *Journal of Accounting and Taxation* 155.
- 101 Such as the Identifiable Group Taxation (IGT) that was adopted in Ghana based on the activities of informal sector businesses and individuals. See G Dube & D Casale 'The implementation of informal sector taxation: Evidence from selected African countries' (2016) 14 *eJournal of Tax Research* 607.
- 102 A Joshi and others 'Taxing the informal economy in Africa: The current state of knowledge and agendas for future research' (2014) 50 *Journal of Development Studies* 1325.
- 103 This is the case as the evidence that taxing the informal sector will yield to improved domestic resources is less established in the literature. See A Joshi and others 'Taxing the informal economy: Challenges, possibilities, and remaining questions' (2012) ICTD Working Paper 4, 9.

canvasses the point that the data on the population of the informal economy not being taxed is grossly inaccurate as taxes are for the most part being paid to local governments or associations but not to central or state governments.<sup>104</sup> To this school, it is unclear whether imposing income taxes applicable to formal sector players will not further reduce the income of the players in the informal economy, subject them to multiple taxes,<sup>105</sup> and further limit their capacity to grow. In recent times, the question has also arisen as to whether taxing the informal economy amidst economic recovery post-COVID would not only help to deepen the prevalent social inequalities on the continent.<sup>106</sup>

Interventions for the purpose of improving the taxation of the informal economy has come in the form of either trying to make the process of formalisation easier for taxing purposes or designing innovative ways in which to tax the participants without formalising them. The varying forms of interventions notwithstanding, the progress made by the stakeholders in taxing the informal economy in Nigeria has been limited. A review of the existing literature reveals that providing a strategy to improve formalisation with minimal cost implications for the informal sector players is the objective of scholars and policy makers.<sup>107</sup> However, one criticism of the approaches that have been implemented thus far is that the problem of taxing the informal economy is often discussed as the primary problem (with most policy interventions directed primarily at it). Meanwhile, this problem is a manifestation of the larger problem of large-scale informal economic activity that is evidenced by informal trading activity and informal cross-border trade,<sup>108</sup> that is, if there was no informal economic activity, the problem of taxing the informal economy would not exist. Thus, where this problem is treated as the primary problem and made the focal point of policy interventions; it could greatly assist in addressing the issues of taxing and financing the informal economy.

Accordingly, while it is clear that expanding the tax net to cater to the participants of the informal economy would significantly

104 K Meagher 'Disempowerment from below: Informal enterprise networks and the limits of political voice in Nigeria' (2014) 42 *Oxford Development Studies* 419-438.

105 D Resnick 'Taxing the informality: Compliance and policy preferences in urban Zambia' (2021) 57 *The Journal of Development Studies* 1063.

106 M Gallien and others 'Taxing the informal economy is not a silver bullet for financing development – Or the COVID-19 recovery' Summary Brief 24, ICTD.

107 A Mbaye & N Benjamin 'Informality, growth and development in Africa' in C Monga & J Lin (eds) *The Oxford handbook of Africa and economics: Volume 1: Contexts and concepts* (2015) 620.

108 See A Bouet and others 'Informal cross-border trade in Africa: How much? Why? And what impact?' (2018) IFPRI Discussion Paper 01783 1.

improve tax revenues for the government, and make more resources available to finance socio-economic rights, the government has to be deliberate about ensuring that strategies to tax the informal economy are not counterproductive or totally ineffective.

#### **4.1.4 Complex tax laws and policies**

Nigeria's tax laws are complex and difficult for the average taxpayer to understand, and can even be challenging for literate officials.<sup>109</sup> Most individuals and businesses in the country find the process of paying taxes too cumbersome and bureaucratic, and this problem encourages tax non-compliance in the country. For example, some states in Nigeria still require taxpayers to file their tax returns and pay their taxes using paper forms (with the exception of Lagos and the FIRS where taxes can be paid online). This bureaucratic process may be too onerous for taxpayers and significantly contributes to the low level of compliance in Nigeria.<sup>110</sup> In addition to a lack of understanding and complex tax procedures, tax laws in Nigeria contain several ambiguities since the law is from time to time subjected to change. This problem is coupled with the fact that many taxpayers lack information as to the existence of tax laws and have no awareness of their tax obligations. Additionally, the lack of an efficient and comprehensive tax system in Nigeria has created a problem of multiplicity of taxes for taxpayers within the tax net.<sup>111</sup> The taxes, therefore, should be designed to meet the basic tenets of a good tax system.<sup>112</sup>

#### **4.1.5 Lack of transparency and accountability**

The lack of transparency and accountability represents another tax challenge that prevents the Nigerian government from achieving its minimum core obligations. The Nigerian tax system is laden with issues relating to the misuse of funds and taxpayers' monies, which generally affect the delivery of public services. This challenge has led to a high level of tax non-compliance in the country, as many taxpayers do not wish to pay taxes to an unaccountable government that

<sup>109</sup> Micah (n 83).

<sup>110</sup> F Eleanya 'Complex tax procedures drive Nigerian SMEs away from paying taxes – Taxmingo CEO' *Business Day* 21 January 2021, <https://businessday.ng/amp/interview/article/complex-tax-procedures-drive-nigerian-smes-away-from-paying-taxes-taxmingo-ceo/> (accessed 7 May 2022).

<sup>111</sup> E Nwaolisa 'The effect of poor implementation of tax policies on developing economies. A study of Nigerian economy (1999-2010)' (2012) 1 *Review of Public Administration and Management* 38.

<sup>112</sup> FY Mpofo & T Moloi 'Direct digital services taxes in Africa and the canons of taxation' (2022) 11 *Laws* 57, 60.

cannot account for the taxes that are paid.<sup>113</sup> The high level of moral decadence among government officials who aggrandise themselves by using tax revenues, while the rest of the populace suffer economic hardship, has created tax apathy among many Nigerians.<sup>114</sup> Nigeria presently has no effective transparency or accountability mechanism to protect itself against IFFs, the misappropriation of tax revenues by government officials, international tax evasion, and transfer mispricing.<sup>115</sup> Consequently, the country continues to suffer a loss of revenues and domestic resources, in turn affecting economic growth and hindering its achievement of minimum core obligations.

#### 4.2 The role of taxation in the fulfilment of human rights and minimum core obligations in Nigeria

Taxation plays an enormous role not only in the realisation of human rights, but also for the fulfilment of a state's minimum core obligations. Taxes have the potential of financing development, stimulating economic growth and providing sufficient resources needed for a state to meet the basic needs of its citizens.<sup>116</sup> The higher and more stable the tax revenues, the more a state is able to increase sustainable investment in public services and infrastructure and create long-term competitiveness of its economy.<sup>117</sup> States, therefore, have a duty to mobilise resources in such a way as to ensure that the resources are utilised by the government to fulfil their human rights obligations. There is no doubt that taxation is not the only source of revenue for governments, yet it remains the most sustainable source for the realisation of socio-economic and cultural rights and for financing development. It has been observed that domestic resource mobilisation from taxation is critical towards creating more 'responsive, accountable and capable states'.<sup>118</sup> According to the 2014 report of the UN Special Rapporteur on Extreme Poverty and Human Rights, taxation plays three primary

113 E Appah & KZA Appiah 'Fraud and development of sound financial institutions in Nigeria' (2010) 1 *Nigerian Journal for Development Research* 49.

114 E Igbeng and others 'Evaluation of public accountability and tax culture among tax payers in Nigeria' (2015) 1 *International Journal of Management Science and Business Administration* 7-13.

115 J Emejo & S Mayomi 'Nigeria: Experts – Transparent, accountable tax system will boost compliance, reset economy' 20 September 2021, <https://allafrica.com/stories/202109200475.html> (accessed 7 May 2022).

116 Report of the Special Rapporteur (n 65).

117 M Tuazon & M Stenlund 'The role of taxation in the fulfilment of human rights and sustainable development' 2019, <https://www.diva-portal.org/smash/get/diva2:1353116/FULLTEXT01.pdf> (accessed 7 May 2022).

118 Overseas Development Institute 'Supporting domestic revenue mobilisation: We must learn from the failures of the past' 16 March 2018, <https://odi.org/en/insights/supporting-domestic-revenue-mobilisation-we-must-learn-from-the-failures-of-the-past/> (accessed 7 May 2022).

functions: generating revenue for the realisation of human rights; achieving equality and tackling discrimination; and strengthening governance and accountability.<sup>119</sup> Indeed, states with a high tax-to-GDP ratio can use taxes to meet all these targets, while ensuring the sustainable realisation of their minimum core obligations.

In Nigeria, taxation is of strategic importance towards improving the country's economic performance, reducing poverty and achieving investments in areas such as food security, water, health and education. The quality and availability of these public services are dependent on the resources the Nigerian government is able to mobilise in order to fulfil human rights and achieve its minimum core obligations. According to the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the right to education can only be properly achieved if states strengthen their tax systems and tap their tax bases sufficiently in order to derive substantial revenue.<sup>120</sup>

In addition, tax policies have the potential of reducing income and wealth inequalities and shaping the transparency and accountability of the government. This is crucial because inequalities have been observed to pose devastating impacts on economies by heightening the pace of poverty, creating intergenerational poverty through uneven access to health and education, and increasing the vulnerability of states to economic downturns.<sup>121</sup> It therefore is necessary for Nigeria to use taxation as a means of redistributing wealth in society in order to address issues relating to discrimination (whether based on age, race, gender, disability or sexual orientation) and to spur progress towards substantive equality.<sup>122</sup> It is important to note that the more the Nigerian government can rely on domestic rather than external resource mobilisation for its financing, the more it will be able to realise human rights and achieve its minimum core obligations to meet the needs of the people.

It is argued in this article that all tiers of government in Nigeria have the obligation to ensure that they meet their minimum core obligations owed to the citizens with the tax revenues that come into

119 Report of the Special Rapporteur (n 65) para 36.

120 UNESCO '2013/4 Education for All Global Monitoring Report: Teaching and learning: Achieving quality for all' (2014) 116, <http://unesdoc.unesco.org/images/0022/002256/225660e.pdf> (accessed 7 May 2022).

121 See Department of Economic and Social Affairs 'Inequality matters: Report on the world social situation' 2013 66-68; Fiscal Policy and Income Inequality, IMF Policy Paper, 23 January 2014; Centre for Economic and Social Rights 'Challenging fiscal injustice through human rights' 25 November 2015, <https://www.cesr.org/human-rights-taxation/> (accessed 7 May 2022).

122 I Saiz 'Resourcing rights: Combating tax injustice from a human rights perspective' in A Nolan and others (eds) *Human rights and public finance* (2013) 77.

their coffers. This notwithstanding, it is important to take cognisance of the nuances of taxation in relation to Nigeria's federal system and the impact on the implementation of minimum core responsibilities by the different tiers of government under Nigeria's federal system. For context, in Nigeria, the division of taxing powers follows the separation of powers, meaning that each level of government can only impose taxes within its specified jurisdiction as outlined in the Constitution. In this sense, the federal government has the broadest taxing powers, with the power to tax of the state and local governments being significantly limited by the Constitution.<sup>123</sup> However, tax revenue generated is deposited into the federation account and distributed among the three levels of government in accordance with section 162(2) of the 1999 Constitution. Additionally, there are instances where, while the power to tax is vested in one level of government, the collection is entrusted to another level.<sup>124</sup>

Therefore, considering the existence of tax administration at various levels of government and the fact that revenues accruing to the federation account are divided across the various levels of government, it is possible to take actions aimed at fulfilling minimum core obligations at these respective levels.<sup>125</sup>

## 5 Conclusion and way forward

From the analysis undertaken in this article, it is clear that taxation plays a significant role in the fulfilment of human rights and the realisation of a state's minimum core obligations. This statement is not conjectural as it may also be proven by empirical evidence in Nordic countries such as Denmark, Finland and Norway. The common theme in these countries is that the distribution of their tax expenditure often is predominantly towards social welfarism, in business development and housing, social security and housing, and contributory pension schemes respectively.<sup>126</sup> In these countries,

<sup>123</sup> See D Olika 'Interrogating the constitutional foundations for local government financing in Nigeria' (2023) 6 *Unilag Law Review* 12.

<sup>124</sup> A Sanni 'Division of taxing powers under the 1999 Constitution', <https://ir.unilag.edu.ng/bitstreams/7ca9af50-eb55-4d4b-899f-f488162258a4/download#:~:text=The%20Federal%20Government%20has%20the,extent%20permitted%20by%20the%20Constitution> (accessed 2 October 2023). Eg, the personal income tax is imposed by the federal government but administered and collected by the state government.

<sup>125</sup> See O Fuo & A du Plessis 'In the face of judicial deference: Taking the "minimum core" of socio-economic rights to the local government sphere' (2015) 19 *Law, Democracy and Development* 1.

<sup>126</sup> M Jacobsen and others 'Tax expenditures in the Nordic countries: A report from a Nordic working group' presented at the Nordic Tax Economist Meeting in

the tax expenditures are annually reported to the government and these activities are geared towards ensuring efficiency, fairness and simplicity in tax and fiscal policy. In these Nordic countries, there are universal welfare systems, strong social safety nets and infrastructure development that safeguard the social and economic rights of their citizens.<sup>127</sup>

However, notwithstanding the numerous potentials of taxes, the Nigerian government continues to struggle in mobilising domestic resources needed to eradicate poverty, achieve economic growth and provide basic amenities such as education, health care, food security, clean water, electricity, and so forth. In order to realise its minimum core obligations towards the people, the Nigerian government must take active steps to increase tax revenues and address the numerous challenges facing its tax system. In particular, government must take strong measures towards tackling tax evasion and tax avoidance by individuals and businesses in the country. In light of the adverse economic implications of tax evasion and avoidance, preventing and punishing such conduct is essential if Nigeria is to comply with human rights principles and fulfil its minimum core obligations.<sup>128</sup>

Tax evasion and avoidance is most likely to reduce if tax laws in the country are properly enforced and tax defaulters and evaders prosecuted. The government, therefore, must invest heavily in the tax enforcement to position it to effectively combat tax avoidance and tax evasion. To further discourage non-compliance with tax laws, there is a need to put in place effective transparency and accountability mechanisms to ensure that all tax revenues payable to the government are paid directly to the government account and to ensure that tax officials cannot divert taxpayers' monies to enrich themselves.<sup>129</sup>

The government can also improve voluntary tax compliance by simplifying tax laws and procedures to ensure that the ordinary taxpayer understands their tax duties and obligations. Although the government has introduced several electronic channels to transform the tax compliance process away from the manual system, which is

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Oslo, June 2009, <https://www.ft.dk/samling/20091/almdel/sau/spm/106/svar/716635/847543.pdf> (accessed 2 October 2023).

127 L Herning 'Social policy and welfare', <https://www.norden.org/en/information/social-policy-and-welfare> (accessed 2 October 2023).

128 Report of the Special Rapporteur (n 65) para 60.

129 O Oladejo 'Strategy to close tax gaps created by tax avoidance and tax evasion in Nigeria: An overview' (2021) 9 *European Journal of Accounting, Auditing and Finance Research* 55.

cumbersome and bureaucratic,<sup>130</sup> some states are yet to adopt these platforms for tax payment and filing of returns. It is essential that these states simplify their tax procedures by using online channels to increase the level of voluntary payments, as well as to improve tax assessment, the filing of returns, debit and credit management, tax audit and investigation.

To further strengthen revenue raising to achieve minimum core obligations, it is essential for the Nigerian government to widen the tax base and improve tax collection efficiency. The informal economy is one sector that, if tapped, can contribute a fair share to the country's tax revenues since it makes up 50 per cent of the Nigerian GDP. It therefore is necessary for the government to adopt measures towards improving the taxation of the informal economy. In addition, policy interventions are to be made to address the numerous challenges faced by stakeholders in the informal sector, such as inadequacy of finance, technology and physical infrastructure<sup>131</sup> needed to drive their businesses and improve productivity.

Addressing IFFs is another way in which Nigeria can swiftly achieve its minimum core obligations and achieve sustainable economic growth. To successfully track IFFs, efforts must be made to reduce the bureaucracy involved in the repatriation of stolen funds through simplifying mutual legal assistance agreements between source and destination countries. The Nigerian government, therefore, needs to work towards closing loopholes in tax laws, strengthening regulatory enforcement and collecting better trade data in collaboration with other countries. Concerted international cooperation, therefore, is necessary in order for Nigeria to raise the maximum domestic resources needed to realise its minimum core obligations and ensure the progressive realisation of socio-economic and cultural rights.

These recommendations are important in light of the central argument of this article – that implicit in the Nigerian government minimum core obligation is the duty to ensure that it utilises the resources available for the protection of the essential and irreducible

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130 PwC 'FIRS introduces electronic filing of tax returns and online payment of taxes' February 2015, [https://pwc-nigeria.typepad.com/files/pwc-tax-alert\\_firs-introduces-electronic-tax-filing-2.pdf](https://pwc-nigeria.typepad.com/files/pwc-tax-alert_firs-introduces-electronic-tax-filing-2.pdf) (accessed 7 May 2022); Andersen 'FIRS introduces new online tax administration solution' 25 June 2021, <https://www.mondaq.com/nigeria/withholding-tax/1083942/firs-introduces-new-online-tax-administration-solution> (accessed 7 May 2022).

131 See Bank of Industry 'Economic development through the Nigerian informal sector: A BOI perspective' 17 May 2018 Working Paper Series 2, [https://www.boi.ng/wp-content/uploads/2018/05/BOI-Working-Paper-Series-No2\\_Economic-Development-through-the-Nigerian-Informal-Sector-A-BOI-perspective.pdf](https://www.boi.ng/wp-content/uploads/2018/05/BOI-Working-Paper-Series-No2_Economic-Development-through-the-Nigerian-Informal-Sector-A-BOI-perspective.pdf) (accessed 7 May 2022).

socio-economic rights of its citizens. For this to be possible, the government needs sufficient tax revenues. Thus, to improve the ability of the government to meet this obligation; the government would have to improve its tax regime to raise the maximum resources possible. The implication of this is that failing to take deliberate steps to improve its tax revenues only complicates the ability of the Nigerian government to meet its minimum core obligations in relation to socio-economic rights.