

# States' Human Rights Obligations to Finance Public Services



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## Introduction

The financing of public services in a fair, sustainable, and human rights-aligned manner is essential for the realisation of economic, social and cultural rights (ESCR), including the rights to education and health. Although international and regional human rights frameworks provide a solid legal foundation for the recognition and enforcement of these rights, the gap between commitments and outcomes remains significant. Around the world, the underfunding of public education and healthcare systems continues to impede access to quality services, disproportionately affecting children, women, marginalised communities and those living in poverty.

This legal brief outlines States' legal obligations under international and African human rights law to mobilise, allocate, and use the maximum available resources to guarantee economic, social and cultural rights (ESCR), particularly education and health. It highlights the principles of progressive realisation, use of maximum available resources and non-retrogression, while addressing the challenges posed by fiscal constraints, debt burdens, and regressive fiscal policy choices. Drawing from international and regional legal instruments and authoritative interpretations, including General Comments and guiding principles, it underscores the financing of public services as a core component of States' human rights obligations.

The brief also addresses the critical importance of domestic resource mobilisation and outlines concrete strategies for its implementation. Moreover, it highlights the role of international cooperation and assistance, transparency, and accountability in financing public services. It calls for urgent and transformative action to reverse austerity, address structural inequalities in public spending, and ensure that fiscal policies are designed and implemented in line with States' human rights obligations.



## States' Obligations Under International and African Human Rights Law Regarding the Rights to Education and Health

The obligation of States to respect, protect and fulfil economic, social and cultural (ESC) rights is firmly established under international human rights law. This tripartite obligation requires States to refrain from interfering with the enjoyment of ESC rights (respect), prevent third parties from interfering on rights (protect), and take proactive measures to ensure their full realisation (fulfil).<sup>1</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC), among other relevant international treaties, set out clear obligations for States to ensure the realisation of ESC rights. In particular, the ICESCR recognises the right to education<sup>2</sup> and the right to the highest attainable standard of health,<sup>3</sup> while the CRC reinforces these commitments by emphasising the special protection required for children's education<sup>4</sup> and health.<sup>5</sup> Once States have ratified the ICESCR or the CRC, they must take steps to progressively realise these rights.

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<sup>1</sup> Committee on Economic, Social and Cultural Rights (CESCR) (1999) *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)* E/C.12/1999/10, paras. 46-47.

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<sup>2</sup> *International Covenant on Economic, Social and Cultural Rights* (1966) art. 13.

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<sup>3</sup> *International Covenant on Economic, Social and Cultural Rights* (1966) art. 12.

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<sup>3</sup> *Convention on the Rights of the Child* (1989) art.28.

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<sup>4</sup> *Convention on the Rights of the Child* (1989) art. 28.

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<sup>5</sup> *Convention on the Rights of the Child* (1989) art. 24.

In addition to international frameworks, African states are also bound by regional human rights instruments that reinforce these commitments. The African Charter on Human and People's Rights ("African Charter") reaffirms the right to education<sup>6</sup> and the right to the best attainable state of physical and mental health.<sup>7</sup> Similarly, the African Charter on the Rights and Welfare of the Child (ACRWC) strengthens these obligations particularly through Article 11(1), which guarantees the right to education. These regional instruments complement international treaties, further reinforcing the duty of African states to ensure the realisation of ESCR.

For most ESC rights these instruments recognise obligations that are to be implemented immediately and others that should be implemented progressively to attain their full enjoyment. Regarding the right to education specifically, this includes the immediate obligation of non-discrimination and free and compulsory primary education, alongside progressively free secondary and higher education. This is explicitly mandated in ICESCR Article 13 and CRC Article 28.<sup>8</sup> CESCR's General Comment 13 further classifies the obligation to provide primary education as immediate, while the progressive realisation of free secondary and higher education requires immediate deliberate and concrete steps.<sup>9</sup> It is important to clarify that "[t]he realization of the right to education over time, that is "progressively", should not be interpreted as depriving States parties' obligations of all meaningful content. Progressive

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<sup>6</sup> *African Charter on Human and Peoples' Rights* (1986) art. 17 (1).

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<sup>7</sup> *African Charter on Human and Peoples' Rights* (1986) art. 16.

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<sup>8</sup> As explained by UNESCO and Right to Education Initiative: "Certain aspects of the right to education are subject to obligations of immediate effect which require States to take immediate action. However, this does not necessarily mean that the right will be immediately realized. Obligations of immediate effect require full action to make the right in question a reality whereas obligations related to progressive realization permit States to take incremental action towards the full realization of the right in question." United Nations Educational, Scientific and Cultural Organization (UNESCO) and Right to Education Initiative (2019) *Right to Education handbook*, p. 139.

Moreover, as specified by CESCR's *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, UN doc. E/C.12/1999/108, December 1999, para. 31: "The prohibition against discrimination enshrined in article 2 (2) of the Covenant is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination[...]."

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<sup>9</sup> Committee on Economic, Social and Cultural Rights (CESCR) (1999) *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)* E/C.12/1999/10, paras. 14 and 51.



realization means that States parties have a specific and continuing obligation “to move as expeditiously and effectively as possible” towards the full realization of article 13.”<sup>10</sup> The Committee has also emphasised that States must actively pursue the development of a system of schools at all levels, thus prioritising public education.<sup>11</sup>

At the African regional level, Article 11 (3) of the ACRWC requires State Parties to take all appropriate measures to fully realise the right to education by providing free and compulsory basic education and encouraging the progressive realisation of free and accessible secondary education in its different forms. General Comment 5 of the ACERWC emphasises that legislative measures are crucial for implementing education rights and policies.<sup>12</sup> It highlights that free education must be substantively free for socio-economically marginalised children, without indirect costs such as donations, additional payments to teachers, or levies, which would exclude them.<sup>13</sup> Furthermore, since secondary education must be progressively realised, States may need to adopt legislative measures –such as fee waivers linked to parental income bands– to ensure equitable access.<sup>14</sup> The Principles and Guidelines on the Implementation of Economic Social and Cultural Rights in the African Charter on Human and Peoples’ Rights highlight that the rights in article 17 of the African Charter impose, amongst others, the obligation for States to respect the minimum core obligation of ensuring that all children –especially those from vulnerable and disadvantaged groups– enjoy free and compulsory primary education.<sup>15</sup> This is to be coupled with

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

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<sup>11</sup> *International Covenant on Economic, Social and Cultural Rights* (1966) art. 13 (2) (e); Committee on Economic, Social and Cultural Rights (CESCR) (1999) *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)* E/C.12/1999/10, paras. 25, 48, 53.

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<sup>12</sup> African Committee of Experts on the Rights and Welfare of the Child (ACERWC) (2018) *General Comment No.5 on “State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection”*, part 5.3.3, p. 28.

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<sup>13</sup> Ibid., part 5.3.3.

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<sup>14</sup> Ibid.

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<sup>15</sup> African Commission on Human and Peoples’ Rights (ACHPR) (2011) *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights*, para. 71.

national plans and policies eliminating financial barriers such as school fees, transportation and learning materials.<sup>16</sup>

Moreover, ICESCR and CRC recognise everyone's right to the enjoyment of the highest attainable standard of health.<sup>17</sup> They outline the obligation of States to take necessary steps towards the realisation of this right, implying the need for investments in the provision of healthcare.<sup>18</sup> CESCR's General Comment 14 emphasises that these steps must be deliberate, concrete and targeted towards the full realisation of the right to health.<sup>19</sup> Moreover, within the framework of State obligations to respect, protect and fulfil, General Comment 14 highlights that the obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the realisation of the right to health.<sup>20</sup>

In the African context, Article 16 (1) of the African Charter echoes the language of Article 12 of the ICESCR, reinforcing the obligation of States to take necessary measures to protect and promote health. General Comment 5 of the ACERWC underscores that legislative measures are essential for implementing health-related obligations, particularly regarding children's health needs.<sup>21</sup> The obligation to provide access to primary healthcare, including reproductive health services, should be legally enshrined to ensure enforceability and prevent discretionary denial of services.<sup>22</sup> The Principles

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<sup>16</sup> Ibid.

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<sup>17</sup> *International Covenant on Economic, Social and Cultural Rights* (1966) art. 12 (1); *Convention on the Rights of the Child* (1989) art. 24 (1).

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<sup>18</sup> *International Covenant on Economic, Social and Cultural Rights* (1966) art. 12 (2); *Convention on the Rights of the Child* (1989) art. 24 (2).

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<sup>19</sup> Committee on Economic, Social and Cultural Rights (CESCR) (2000) *General Comment No. 14: The Right to the Highest Attainable Standard to Health (Art. 12 of the Covenant)* E/C.12/2000/4, para. 30; See also Committee on Economic, Social and Cultural Rights (CESCR) (1999) *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)* E/C.12/1999/10, para. 43.

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<sup>20</sup> Committee on Economic, Social and Cultural Rights (CESCR) (2000) *General Comment No. 14: The Right to the Highest Attainable Standard to Health (Art. 12 of the Covenant)* E/C.12/2000/4.

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<sup>21</sup> African Committee of Experts on the Rights and Welfare of the Child (ACERWC) (2018) *General Comment No. 5 on "State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection"*, part 5.3.4.

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<sup>22</sup> Ibid.



and Guidelines on ESCR in the African Charter provides that States' obligations regarding the right to health include ensuring non-discriminatory access to healthcare services, particularly for vulnerable and marginalised groups, providing essential medicines, and implementing disease prevention and control measures.<sup>23</sup> National plans and policies should integrate a human rights-based approach, including allocating adequate resources, ensuring equitable healthcare access across regions, and strengthening accountability mechanisms to improve health systems.<sup>24</sup> To promote equality and non-discrimination, States must prioritise vulnerable populations, adopt gender-sensitive policies, regulate harmful practices, and establish measures such as national health insurance and accessible mental health services to ensure comprehensive healthcare for all.<sup>25</sup>

Acknowledging what international treaties say about the right to education and healthcare, the following sections will dive into the key principles that guide the allocation of resources to realise these rights, including: the use of maximum available resources, progressive realisation, and non-retrogression.

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<sup>23</sup> African Commission on Human and Peoples' Rights (ACHPR) (2011) *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, para. 67.a.

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<sup>24</sup> Ibid., para. 67.g.

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<sup>25</sup> Ibid., para 67.b.

## A. THE PRINCIPLES OF MAXIMUM AVAILABLE RESOURCES AND PROGRESSIVE REALISATION

To meet their human rights obligations, States must make sure they mobilise the maximum available resources (MAR), through deliberate and concrete actions. In this sense, article 2 (1) of ICESCR specifies: “[e]ach State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” While article 4 of the CRC indicates: “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. Regarding economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

At the African level, States are required to recognise the rights, duties and freedoms enshrined within the African Charter, and to adopt legislative or other measures to give effect to them.<sup>26</sup> Those “measures include ensuring the protection and realisation of economic, social and cultural rights through constitutional rights and institutions, legislative, policy and budgetary measures, educational and public awareness measures and administrative action as well as ensuring appropriate administrative and judicial remedies for the violation of these rights.”<sup>27</sup>

Furthermore, any measures that limit the enjoyment of economic, social and cultural rights must be justified considering the totality of the rights provided for in the African Charter and in the context of the full use of the maximum

<sup>26</sup> *African Charter on Human and Peoples' Rights* (1986) CAB/LEG/67/3, art. 1.

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<sup>27</sup> African Commission on Human and Peoples' Rights (ACHPR) (2011) *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, para. 2.

available resources.<sup>28</sup> In this context, available resources refer to both the State's own resources and international assistance and cooperation.<sup>29</sup>

Under General Comment 5 of the ACERWC, States are obligated to dedicate resources to the realisation of economic, social, and cultural rights, including investment in public services such as health and education.<sup>30</sup> Additionally, the ACERWC considers that State parties should recognise that the implementation of the African Children's Charter rights will require dedicated additional resources, and should strive consciously to identify such resources, to the maximum extent feasible.<sup>31</sup>

The progressive realisation of economic, social and cultural rights, such as education and health, acknowledges the different resource constraints and capacities within each State.<sup>32</sup> However, this progressive realisation of human rights cannot justify inaction. Indeed, all countries have the immediate obligation to take deliberate, concrete and targeted measures to ensure the realisation ESC rights, including the right to education and the right to health.<sup>33</sup> Expounding on this obligation, the Committee on Economic, Social and Cultural Rights (CESCR) clarified through its General Comment 3:

*"The principal obligation of result reflected in article 2 (1) is to take steps "with a view to achieving progressively the full realization of the rights recognized" in the Covenant. The term "progressive realization" is often used to describe the intent of this phrase. The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be*

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<sup>28</sup> Ibid., para. 20.

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<sup>29</sup> Ibid.

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<sup>30</sup> African Committee of Experts on the Rights and Welfare of the Child (ACERWC) (2018) *General Comment No.5 on "State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection"*, part III, p. 7.

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<sup>31</sup> Ibid., part IV, p. 11.

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<sup>32</sup> Committee on Economic, Social and Cultural Rights (CESCR) (1999) *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)* E/C.12/1999/10, para. 43.

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<sup>33</sup> Ibid.

*achieved in a short period of time. [...] Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the raison d'être, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal."*<sup>34</sup> (Bold added).

At the regional level, while the African Charter does not explicitly mention the principle of progressive realisation, the concept has been widely accepted in the interpretation of economic, social and cultural rights. Articles 61 and 62 of the African Charter allow for the use of international human rights law in interpreting States' obligations, reinforcing the duty to continuously advance toward full realisation of these rights.<sup>35</sup> Similarly, these provisions have been recognised under General Comment 5 of the ACERWC.

Furthermore, General Comment 7 on the State Obligations Under the African Charter on Human and Peoples' Rights in the Context of Private Provision of Social Services (General Comment 7) highlights the misuse of the principle of progressive realisation by some States to justify inaction or policy failures. In the view of the African Commission on Human and Peoples' Rights (ACHPR), much of this slow progress is the result of a lack of will, rather than a lack of capacity.<sup>36</sup> These

<sup>34</sup> Committee on Economic, Social and Cultural Rights (CESCR) (1990) *General Comment No. 3: The Nature of States Parties' Obligations* (Art. 2, Para. 1, of the Covenant) E/1991/23, para. 9; See also Committee on Economic, Social and Cultural Rights (CESCR) (2000) *General Comment No. 14: The Right to the Highest Attainable Standard to Health* (Art. 12 of the Covenant) E/C.12/2000/4, para. 32.

<sup>35</sup> African Commission on Human and Peoples' Rights (ACHPR) (2011) *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, para. 13.

<sup>36</sup> African Commission on Human and Peoples' Rights (ACHPR) (2022) *General Comment 7. State Obligations Under the African Charter on Human and Peoples' Rights in the Context of Private Provision of Social Services*, para. 26.

unreasonable delays and the political inertia are incompatible with the States' obligations to progressively realise economic, social and cultural rights.<sup>37</sup> Progressive realisation does not allow States to implement their obligations with piecemeal improvements. Instead, States must take immediate, concrete steps with measurable benchmarks to ensure visible progress overtime.<sup>38</sup>

When invoking resource constraints, States must prove that they have used all resources at disposal to at least meet, as a matter of priority, the minimum core obligations.<sup>39</sup> These obligations persist even in times of economic hardship, with CESCR's General Comments 3 and 11 emphasising that states cannot justify inaction due to financial constraints.<sup>40</sup> General Comment 3 specifies:

**"The Committee wishes to emphasize, however, that even where the available resources are demonstrably inadequate, the obligation remains for a State Party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Moreover, the obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints. The Committee has already dealt with these issues in its general comment No. 1 (1989)."**<sup>41</sup> (Bold added).

Similarly, the Principles and Guidelines on Economic, Social and Cultural Rights in the African Charter reaffirm that when a State claims an inability to fulfil its minimum obligations, it

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<sup>37</sup> Ibid.

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<sup>38</sup> Ibid., para. 27.

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<sup>39</sup> Committee on Economic, Social and Cultural Rights (CESCR) (1990) *General Comment No. 3: The Nature of States Parties' Obligations* (Art. 2, Para. 1, of the Covenant) E/1991/23, para. 10.

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<sup>40</sup> Ibid., para. 11; Committee on Economic, Social and Cultural Rights (CESCR) (1999) *General Comment No. 11: Plans of Action for Primary Education* (Art. 14 of the Covenant) E/1992/23, para. 9.

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<sup>41</sup> Committee on Economic, Social and Cultural Rights (CESCR) (1990) *General Comment No. 3: The Nature of States Parties' Obligations* (Art. 2, Para. 1, of the Covenant) E/1991/23, para. 11.

must prove that all available resources have been allocated towards realising these rights, particularly their minimum core content.<sup>42</sup> Regarding education, Article 17 of the African Charter and the Principles and Guidelines on ESCR in the African Charter highlight the following as State Parties' minimum core obligations:

*a. "To ensure that all children enjoy their right to free and compulsory primary education. No children should be denied this right because of school fees or related costs of education. Special measures may be required to ensure that children belonging to disadvantaged or vulnerable groups receive free primary education. **To achieve this objective States are bound to progressively increase the amount of national resources allocated to education.**"<sup>43</sup> (Bold added)*

*b. "To implement policies to eliminate or reduce the costs of attending primary school which include the provision of stipends, providing free or subsidised uniforms (or lifting of uniform requirements), provision of free textbooks, provision of free or subsidised transportation or free school meals to encourage the attendance of poor children at school."<sup>44</sup>*

Regarding the right to health, the African Charter also requires States to ensure non-discriminatory access to healthcare services, with a particular focus on marginalised groups. The Principles and Guidelines on ESCR in the African Charter highlight that States must prioritise comprehensive public health strategies that guarantee universal primary health coverage, particularly in underserved areas.<sup>45</sup> Furthermore, the national health plans should prioritise comprehensive public health strategies, ensuring primary health coverage for all, especially in the marginalised areas, while allocating at 15%

<sup>42</sup> African Commission on Human and Peoples' Rights (ACHPR) (2011) *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, para. 17.

<sup>43</sup> Ibid., para. 71.

<sup>44</sup> Ibid.

<sup>45</sup> African Commission on Human and Peoples' Rights (ACHPR) (2011) *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, para. 67.



of the national budget to health sector improvement. All these plans must be guided by health, social and environmental impact assessments, and aligned with a human rights-based approach that includes monitoring and accountability.<sup>46</sup>

General Comment 5 of the ACEWRC also underscores that economic hardship does not exempt States from fulfilling their minimum core obligation. States should remove financial barriers that hinder children from accessing essential services by improving access to Universal Health Coverage and free quality pre-primary and primary education.<sup>47</sup> This can be done by ensuring financial security for all children through child sensitive protection approaches.<sup>48</sup>

Along these lines, the CESCR has emphasised its concern on the adverse impact of the “debt burden and of the relevant adjustment measures on the enjoyment of economic, social and cultural rights in many countries.”<sup>49</sup> As well as highlighted, that, even under austerity circumstances, it is of outmost importance to protect, at the very least, the most basic economic, social and cultural rights.<sup>50</sup> This has similarly been highlighted in the General Comment 5 of the ACERWC whereby it provides that “debt financing is another drain on available resources - generally, government spending in Africa has risen rapidly, but revenues have regressed, leading to growing deficits, resulting in debt financing, which prejudices what is available to fulfil children’s rights.”<sup>51</sup>

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<sup>46</sup> Ibid.

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<sup>47</sup> African Committee of Experts on the Rights and Welfare of the Child (ACERWC) (2018) *General Comment No.5 on “State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection”*, part 6.3.1, p. 41.

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<sup>48</sup> Ibid.

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<sup>49</sup> Committee on Economic, Social and Cultural Rights (CESCR) (1990) *General Comment No. 2: International technical assistance measures (Art. 22 of the Covenant)* E/1990/23, para. 9.

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<sup>50</sup> Ibid.

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<sup>51</sup> African Committee of Experts on the Rights and Welfare of the Child (ACERWC) (2018) *General Comment No.5 on “State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection”*, part 6.3.1, p. 40.

## B. THE PRINCIPLE OF NON-RETROGRESSION

Under international human rights law, States cannot take backwards steps that undermine the enjoyment of economic, social and cultural rights, including education and health.<sup>52</sup> Retrogression, defined as “actions that reduce the enjoyment of rights, are strongly presumed to be impermissible unless thoroughly justified under stringent criteria.”<sup>53</sup> One example of retrogressive measure would be the unjustified reduction of education and healthcare budgets year after year.

When retrogressive measures are taken, States must prove that they been introduced after “the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State Party’s maximum available resources.”<sup>54</sup> Thus, States cannot invoke a lack of resources when maximum available resources have not been mobilised.<sup>55</sup> CESCR has defined objective criteria to assess whether a State lacks resources, including the following:

*“(a) The country’s level of development;*

*(b) The severity of the alleged breach, in particular whether the situation concerned the enjoyment of the minimum core content of the Covenant;*

*(c) The country’s current economic situation, in particular whether the country was undergoing a period of economic recession;*

*(d) The existence of other serious claims on the State party’s limited resources; for example, resulting from a recent natural*

<sup>52</sup> Committee on Economic, Social and Cultural Rights (CESCR) (1999) *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)* E/C.12/1999/10, para. 45; See also Committee on Economic, Social and Cultural Rights (CESCR) (2000) *General Comment No. 14: The Right to the Highest Attainable Standard to Health (Art. 12 of the Covenant)* E/C.12/2000/4.

<sup>53</sup> Ron Balsera, M. (2025) *Guiding Principles 15, 16, 34-37, 39-41, 42-45: Resources and financing public education, governance and non-retrogression*, p. 7.

<sup>54</sup> Committee on Economic, Social and Cultural Rights (CESCR) (1999) *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)* E/C.12/1999/10, para. 45.

<sup>55</sup> United Nations Educational, Scientific and Cultural Organization (UNESCO) and Right to Education Initiative (2019) *Right to Education handbook*.

*disaster or from recent internal or international armed conflict;*

*(e) Whether the State party had sought to identify low-cost options; and*

*(f) Whether the State party had sought cooperation and assistance or rejected offers of resources from the international community for the purposes of implementing the provisions of the Covenant without sufficient reason.”<sup>56</sup>*

The Committee on the Rights of the Child goes on to clarify that even in the case of economic crisis, regressive measures may only be considered after exploring all other alternatives, ensuring that children, particularly those in vulnerable situations, are the last to be impacted.<sup>57</sup> The Guiding Principles on the Human Rights Obligations of States to Provide Public Education and to Regulate Private Involvement in Education (simply known as The Abidjan Principles)<sup>58</sup>, specify that “[l]ack of will is distinct from a lack of capacity, and cannot justify a State’s failure to provide free, quality, public education in accordance with its obligations under international human rights law.”<sup>59</sup>

In the African regional context, General Comment 7, discourages States from taking retrogressive measures and requires them to justify such actions under international human rights law.<sup>60</sup> States must demonstrate that their decisions comply with the totality of rights provided for in the African Charter and that they have met their immediate obligation to use their maximum

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<sup>56</sup> Committee on Economic, Social and Cultural Rights (CESCR) (2007) *Statement: An Evaluation of the Obligation to Take Steps to the “Maximum of Available Resources” Under an Optional Protocol to the Covenant* E/C.12/2007/1, para. 10.

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<sup>57</sup> Committee on the Rights of the Child (2016) *General comment No. 19 on public budgeting for the realization of children’s rights (art. 4)* CRC/C/GC/19, para. 31.

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<sup>58</sup> The Abidjan Principles compile and unpack existing provisions in international human rights law and provide guidance on how to put them into practice in the context of the rapid expansion of private sector involvement in education.

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<sup>59</sup> Abidjan Principles (2019) *Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*. Guiding Principle 44.

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<sup>60</sup> African Commission on Human and Peoples’ Rights (ACHPR) (2022) *General Comment 7. State Obligations Under the African Charter on Human and Peoples’ Rights in the Context of Private Provision of Social Services*, para. 28.

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<sup>61</sup> Ibid.

available resources to progressively realise economic, social and cultural rights.<sup>61</sup> Thus, a measure is retrogressive if it diminishes the enjoyment of a right's full normative content, including its availability, accessibility, acceptability, adaptability or quality.<sup>62</sup> General Comment 5 of the ACERWC reminds states that "any retrogressive measures, which dilute or cut back on rights already enjoyed, are regarded as being contrary to international law, unless, during times of significant recession or emergency, sound justification can be provided and the status quo ante-re-established as soon as circumstances permit"<sup>63</sup> (Bold added)

When and if retrogressive measures are taken, States must prove that they were temporary, necessary and proportionate, reasonable, non-discriminatory, pay particular attention to the rights of vulnerable individuals and groups, and are committed to restore affected rights as quickly as possible.<sup>64</sup> Additionally, States should ensure that affected groups are fully and effectively involved in the decision-making process around proposed measures and alternatives.<sup>65</sup> Yet, under no circumstance, even in times of economic constraints, retrogressive actions can compromise the fundamental and minimum core obligations, particularly when it comes to children's rights.<sup>66</sup>

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<sup>62</sup> Ibid.

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<sup>63</sup> African Committee of Experts on the Rights and Welfare of the Child (ACERWC) (2018) *General Comment No.5 on "State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection"*, part 3.10, p. 9.

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<sup>64</sup> Abidjan Principles (2019) *Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*. Guiding Principle 45; Committee on the Rights of the Child (2016) *General comment No. 19 on public budgeting for the realization of children's rights (art. 4)* CRC/C/GC/19, para. 31; African Commission on Human and Peoples' Rights (ACHPR) (2011) *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, paras. 16 and 20.

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<sup>65</sup> Abidjan Principles (2019) *Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*. Guiding Principle 45 (g); Committee on the Rights of the Child (2016) *General comment No. 19 on public budgeting for the realization of children's rights (art. 4)* CRC/C/GC/19, para. 31; Committee on Economic, Social and Cultural Rights (CESCR) (2007) *Statement: An Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" Under an Optional Protocol to the Covenant E/C.12/2007/1*, para. 11; African Commission on Human and Peoples' Rights (ACHPR) (2011) *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, para. 20.

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<sup>66</sup> Committee on the Rights of the Child (2016) *General comment No. 19 on public budgeting for the realization of children's rights (art. 4)* CRC/C/GC/19, para. 31.



## Financing Public Education and Health in Practice: A Human Rights Obligation

International benchmarks suggest that States should allocate at least 4-6% of gross domestic product (GDP) and/or at least 15-20% of total public expenditure to education.<sup>67</sup> Similarly, in the health sector the World Health Organisation (WHO) advises that States increase the proportion of combined public and compulsory insurance expenditure on health to approximately 5-6% of their GDP.<sup>68</sup> At the regional level the African Union and the Principles and Guidelines of ESCR in the African Charter call on States to allocate at least 15% of the national budget to healthcare.<sup>69</sup> Yet, even though the international legal framework provides clear obligations and benchmarks, there is a growing need to clarify how States can raise adequate resources to finance public services for the realisation of economic, social and cultural rights in practice.

This practical implementation must be understood within today's global context, where around the world several factors are depriving states of valuable resources to guarantee economic, social and cultural rights, including "low tax collection owing to high levels of evasion and avoidance, widespread tax incentives, exemptions and other legal loopholes, and the persistence of regressive tax systems – whereby those who have more do not necessarily pay proportionally more

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<sup>67</sup> *Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4* (2016) ED-2016/WS/28, para. 105.

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<sup>68</sup> World Health Organization (WHO) (2010) *The World Health Report, Health Systems Financing: The path to universal coverage*, p. 53.

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<sup>69</sup> Abuja Declaration on HIV/AIDs, Tuberculosis and Other Related Infectious Diseases (2001) OAU/SPS/ABUJA/3; See also African Commission on Human and Peoples' Rights (ACHPR) (2011) *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, para. 66 (g).

according to their contributive capacity.”<sup>70</sup> Illustrative examples show, for example, that “preventing cross-border tax abuse could enable 21 million children at primary level to attend school or hire 20 million new teachers for that school level.”<sup>71</sup>

These issues are further compounded by the response of governments around the world to economic crises without considering their human rights implications and obligations.<sup>72</sup> As explained in the Human Rights Principles in Fiscal Policy, “austerity measures are often systematically implemented due to conditions imposed directly or indirectly by international institutions. These measures result in unacceptable regression and exacerbate the existing barriers to the effective enjoyment of human rights without discrimination.”<sup>73</sup>

The following subsections will therefore outline the actions that States must take to ensure the mobilisation of maximum available resources to the greatest extent possible, both through domestic and international action, to fulfil their obligations regarding ESC rights, particularly education and health.

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<sup>70</sup>The Initiative for Human Rights Principles in Fiscal Policy (2021) *Principles for Human Rights in Fiscal Policy*, p.5.

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<sup>71</sup>Tax Justice Network (2024) *Stolen futures: The impacts of tax injustice on the Right to Education*, p. 9.

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<sup>72</sup>The Initiative for Human Rights Principles in Fiscal Policy (2021) *Principles for Human Rights in Fiscal Policy*.

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<sup>73</sup>Ibid., p. 5.



## A. ENSURING THE MOBILISATION OF MAXIMUM AVAILABLE DOMESTIC RESOURCES

The 2030 Agenda for Sustainable Development, Addis Ababa Action Agenda and the Transforming Education Summit Call to Action, among other existing frameworks on financing for development, have reaffirmed that States must mobilise resources and adapt their fiscal policies to achieve the Sustainable Development Goals (SDGs). As such, fiscal policy<sup>74</sup> is not merely a technical tool for managing public finances but a fundamental mechanism for ensuring human rights and addressing systemic inequalities in resource distribution.<sup>75</sup>

For instance, to have sufficient resources domestically, States must adopt tax systems that are “effective, adequate, progressive and socially just,”<sup>76</sup> eliminate illicit financial flows (IFFs), curb corruption, tackle tax abuses, evasion and avoidance, as well as limit wasteful tax incentives.<sup>77</sup> General Comment 5 of the ACERWC highlights that States must adopt measures to combat base erosion and profit shifting (BEPS), which deprives governments of much needed tax revenue. This includes closing legal loopholes, addressing aggressive tax planning and mispricing, and eliminating ‘treaty shopping’ that enable tax evasion.<sup>78</sup>

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<sup>74</sup> Fiscal policy is defined as: the “set of policies for managing public spending and revenue generation. It comprises all the measures whereby States acquire and allocate resources, including taxation, public debt, income from public companies, macro-fiscal planning and all the processes associated with the budgetary cycle.” The Initiative for Human Rights Principles in Fiscal Policy (2021) *Principles for Human Rights in Fiscal Policy*, p. 9.

<sup>75</sup> Committee on Economic, Social and Cultural Rights (2025) *Statement: Tax policy and the International Covenant on Economic, Social and Cultural Rights* E/C.12/2025/1; The Initiative for Human Rights Principles in Fiscal Policy (2021) *Principles for Human Rights in Fiscal Policy*.

<sup>76</sup> Committee on Economic, Social and Cultural Rights (2025) *Statement: Tax policy and the International Covenant on Economic, Social and Cultural Rights* E/C.12/2025/1.

<sup>77</sup> Committee on Economic, Social and Cultural Rights (CESCR) (1990) *General Comment No. 2: International technical assistance measures (Art. 22 of the Covenant)* E/1990/23, para. 9; Committee on the Rights of the Child (2016) *General comment No. 19 on public budgeting for the realization of children's rights (art. 4)* CRC/C/GC/19, para. 74; Abidjan Principles (2019) *Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*. Guiding Principle 16 (a); United Nations (2022) *UNESCO Transforming Education Summit Call to Action: Investing More, More Equitably and More Efficiently in Education*; African Committee of Experts on the Rights and Welfare of the Child (ACERWC) (2018) *General Comment No.5 on “State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection”*, part 6.3.2., p. 42.

<sup>78</sup> African Committee of Experts on the Rights and Welfare of the Child (ACERWC) (2018) *General Comment No.5 on “State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection”*, part 6.3.2., p. 42.

The Abidjan Principles highlight other strategies, including the “[...] expansion of the revenue base; reallocation of public expenditure; [...] the use of fiscal and foreign exchange reserves; the management of debt by borrowing or restructuring existing debt; the development and adoption of an accommodating macroeconomic framework.”<sup>79</sup> General Comment 7 of the ACHPR reiterates the obligation to provide public social services cannot be realised without sufficient resources being mobilised, allocated and spent in an accountable, effective, efficient, equitable, participatory, transparent and sustainable manner.<sup>80</sup>

It is crucial to acknowledge that it is not enough for States to demonstrate that they are mobilising existing resources to fulfil ESC rights, including education and health, it is key that States “take deliberate, concrete steps to expand their revenue base.”<sup>81</sup> In this matter, progressive tax reforms and coordinated international tax reforms could substantially boost countries’ tax-to-GDP ratios.<sup>82</sup> As shown by Tax Justice Network, “raising tax-to-GDP ratios by five percentage points could raise almost five times the necessary funds to achieve SDG4 by 2030” and “[t]his value would allow almost 236 million children to attend school at the primary level, which means all currently out-of-school children at primary school age would be able to attend school.”<sup>83</sup>

There are compelling examples from Kenya and Ghana showcasing the transformative potential of shifts in fiscal policy. For instance, between 2018 and 2020 Ghana lost \$901.1 million USD to tax incentives. Only 20% of this amount,

<sup>79</sup> Abidjan Principles (2019) *Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*. Guiding Principle 16 (a).

<sup>80</sup> African Commission on Human and Peoples’ Rights (ACHPR) (2022) *General Comment 7. State Obligations Under the African Charter on Human and Peoples’ Rights in the Context of Private Provision of Social Services*, para. 37.

<sup>81</sup> Ron Balsera, M. (2025) *Guiding Principles 15, 16, 34-37, 39-41, 42-45: Resources and financing public education, governance and non-retrogression*, p. 5.

<sup>82</sup> United Nations (2022) *UNESCO Transforming Education Summit Call to Action: Investing More, More Equitably and More Efficiently in Education*.

<sup>83</sup> Tax Justice Network (2024) *Stolen futures: The impacts of tax injustice on the Right to Education*, p. 26.

equivalent to \$180.2 million USD, could reduce the education funding gap by about 25 percent in a year.<sup>84</sup> Moreover, curbing IFFs, scrapping wasteful tax incentives and implementing progressive tax policies could allow Ghana to increase its tax-to-GDP ratio by 5 percentage points which would help the country raise an additional revenue of approximately \$3.82 billion.<sup>85</sup> If 20% of this amount were to be spent on education, it would cover 2.49 million extra pupils.<sup>86</sup> Similarly, if 15%<sup>87</sup> of this amount, equivalent to \$572 million USD, were to be spent on health, it would represent an increase of a little over 50% of the 2025 health budget. This would mean better pay for health workers, more hiring in the public health sector, more public health centres built and equipped across all regions, especially in the North.

Regarding Kenya, the estimated revenue losses from cross-border tax abuse in Kenya amount to \$189.8 million USD annually.<sup>88</sup> Estimates show that around 2.34% of Kenya's annual GDP, which is equivalent to \$1.06 billion USD, is lost to tax-related IFFs.<sup>89</sup> These losses significantly impair the size<sup>90</sup> and share<sup>91</sup> of the budget available, and thus, the capacity of the State to provide adequate public services. To illustrate the

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<sup>84</sup> ActionAid (2020) *Tax Incentives: What Tax Incentives Can Do for Basic Education in Ghana*.

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<sup>85</sup> From the combined reading of Gaspar, V. et al. (2019) *Fiscal Policy and Development: Human, Social, and Physical Investment for the SDGs*, p. 16, para. 15; ActionAid (2024) *Transforming Education Financing in Africa: A Strategic Agenda for the African Union Year of Education*, p. 7; Tax Justice Network (2024) *Stolen futures: The impacts of tax injustice on the Right to Education*, pp. 26 and 62.

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<sup>86</sup> Tax Justice Network (2024) *Stolen futures: The impacts of tax injustice on the Right to Education*, p. 26.

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<sup>87</sup> Calculations done applying the Abuja Declaration minimum threshold.

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<sup>88</sup> Tax Justice Network (2024) *Stolen futures: The impacts of tax injustice on the Right to Education*, p. 23.

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<sup>89</sup> *Ibid.*, p. 38.

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<sup>90</sup> The size of the budget is the total amount of money the government has available to spend, which depends on tax policies and the overall economic environment. A shift towards progressive tax systems, action on debt and austerity, and tackling IFFs, are necessary to increase the funds available for public services. ActionAid International (2023) *Transforming Education Financing: A toolkit for activists*.

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<sup>91</sup> The Share refers to the percentage of the total national budget allocated to key public services, with international benchmarks recommending at least 20% of the national budget (or 6% of GDP) be allocated to education. For health, the minimum threshold is 15% of the national budget.

scale, tax revenue lost in a single year due to tax-related IFFs matches the government's entire healthcare allocation in the 2023/2024 budget.<sup>92</sup> If 20% of the funds lost to tax abuse were allocated to education, over 124,082 children could be enrolled in primary schools in Kenya, with the number of teachers increasing by 16.7%.<sup>93</sup> This could also result in the construction of new schools, further expanding access to education for children across the country.

Just as for Ghana, increasing Kenya's tax-to-GDP ratio by 5 percentage points<sup>94</sup> would allow the country to expand the size and therefore the share of budget available for education and healthcare, and public services overall. This could generate an estimated additional revenue of \$5.37 billion USD.<sup>95</sup> If 20% of that amount were allocated to education, it could enable approximately 3.5 million students to access the education system.<sup>96</sup> Similarly, if 15%<sup>97</sup> of this amount –which would represent \$805 million USD– were allocated to healthcare, it would represent an increase of 76% of the 2025 health budget estimate which is proposed at Ksh 136.79 billion, equivalent to \$1,05 billion USD. This would also ensure that healthcare financing meets the Abuja Declaration 15% target, instead of the current percentage which ranged from 7% to 4.7% of the 2024 annual national budget and 3% for the estimated 2025 annual national budget.<sup>98</sup> Additional funds could be used to build new hospitals, train more healthcare professionals,

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<sup>92</sup> Thomson Reuters Foundation (2024) *Illicit Financial Flows in Kenya, Ghana, and Tanzania: Understanding the Law and Opportunities for Reform*. p. 38.

<sup>93</sup> Tax Justice Network (2024) *Stolen futures: The impacts of tax injustice on the Right to Education*.

<sup>94</sup> From the combined reading of Gaspar, V. et al. (2019) *Fiscal Policy and Development: Human, Social, and Physical Investment for the SDGs*, p. 16, para. 15; ActionAid (2024) *Transforming Education Financing in Africa: A Strategic Agenda for the African Union Year of Education*, p. 7; Tax Justice Network (2024) *Stolen futures: The impacts of tax injustice on the Right to Education*, pp. 26 and 62.

<sup>95</sup> Tax Justice Network (2024) *Stolen futures: The impacts of tax injustice on the Right to Education*, p. 63.

<sup>96</sup> Ibid.

<sup>97</sup> By applying the Abuja Declaration minimum threshold.

<sup>98</sup> Kenya Medical Practitioners Pharmacists and Dentists Union (KMPDU) and Centre for International Corporate Tax Accountability and Research (2024) *Kenya's Health Care Crisis: Where is the Money? A Corporate Case Study Reveals Broader Problems*; Mumbi, L. (2025) 'Kenya's health budget to rise by Sh14bn as govt boosts access and infrastructure'. *The Eastleigh Voice*.

ensure better pay, and, overall, improve access to healthcare for millions of Kenyans.

Moreover, the realisation of economic, social and cultural rights, such as education and health, is achieved through the implementation of laws, policies and programmes. Maximum available resources go beyond just mere financial resources. However, ESC rights cannot be accomplished without adequate resource mobilisation, budget allocation and spending.<sup>99</sup> Budgets and national strategies must be systematically planned, enacted and implemented.<sup>100</sup> And financial resources must be “mobilized, allocated and spent in an accountable, effective, efficient, equitable, participatory, transparent and sustainable manner.”<sup>101</sup>

An essential component of effective resource mobilisation is ensuring transparency and tackling corruption, both of which are key to preventing mismanagement of public funds. States therefore have an obligation to uphold transparency as a core governance principle.<sup>102</sup> As emphasised by the CRC, transparency enhances efficiency and combats corruption and mismanagement of public budgets, ultimately increasing the public resources available to advance children’s rights.<sup>103</sup>

Regarding the right to education in particular, national strategies must ensure adequate budget allocations to guarantee the provision of free, high-quality public education.<sup>104</sup> Education strategies must be transparent, inclusive, and accountable,

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<sup>99</sup> Committee on the Rights of the Child (2016) *General comment No. 19 on public budgeting for the realization of children’s rights (art. 4)* CRC/C/GC/19, para. 21.

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<sup>100</sup> Ibid.

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<sup>101</sup> Ibid., para. 11.

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<sup>102</sup> *United Nations Convention against Corruption* (2003) art. 9.2.

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<sup>103</sup> Committee on the Rights of the Child (2016) *General comment No. 19 on public budgeting for the realization of children’s rights (art. 4)* CRC/C/GC/19, paras. 62 and 76.

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<sup>104</sup> Abidjan Principles (2019) *Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*. Guiding Principle 35.

ensuring non-discrimination.<sup>105</sup> The accompanying indicators and benchmarks must be specific and concrete to ensure the progressive realisation of the right to education within a given timeframe.<sup>106</sup> Furthermore, even in contexts of resource constraints, States must prioritise the financing and provision of public education.<sup>107</sup>

For health in particular, national health strategies must allocate adequate financial resources to ensure universal access to high-quality, publicly funded healthcare services. To ensure this, health policies should be transparent, inclusive and accountable, ensuring non-discrimination in the delivery of preventative, curative and rehabilitative care.<sup>108</sup> Furthermore, States must take steps to adopt and implement a comprehensive national public health strategy that prioritises primary healthcare and ensures coverage for all age groups, especially in marginalised urban and rural areas.<sup>109</sup> To ensure progressive realisation, States must adopt concrete benchmarks and indicators that track improvements in healthcare access and outcomes,

<sup>105</sup> *International Covenant on Economic, Social and Cultural Rights* (1966) art. 2.1 and 14; Committee on Economic, Social and Cultural Rights (CESCR) (1999) *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)* E/1992/23.

<sup>106</sup> Abidjan Principles (2019) *Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*. Guiding Principle 35; Committee on Economic, Social and Cultural Rights (CESCR) (1999) *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)* E/C.12/1999/10, para. 52.

<sup>107</sup> *International Covenant on Economic, Social and Cultural Rights* (1966) art. 2.1; *Convention on the Rights of the Child* (1989) art. 4; Committee on Economic, Social and Cultural Rights (CESCR) (1990) *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)* E/1991/23; Committee on Economic, Social and Cultural Rights (CESCR) (1999) *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)* E/C.12/1999/10; Abidjan Principles (2019) *Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*. Guiding Principle 37.

<sup>108</sup> *International Covenant on Economic, Social and Cultural Rights* (1966) art. 12; *African Charter on Human and Peoples' Rights* (1986) art. 26; Committee on Economic, Social and Cultural Rights (CESCR) (2000) *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)* E/C.12/2000/4; *Constitution of the World Health Organization* (1946) art. 2.

<sup>109</sup> African Commission on Human and Peoples' Rights (ACHPR) (2011) *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, para. 67; *International Covenant on Economic, Social and Cultural Rights* (1966) art. 2.2; Committee on Economic, Social and Cultural Rights (CESCR) (2000) *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)* E/C.12/2000/4, para. 17.



with a focus on vulnerable populations.<sup>110</sup> Even in resource-constrained contexts, governments have an immediate obligation to maximise available resources to finance public healthcare, ensuring essential medicines, health services, and infrastructure remain affordable and accessible to all.<sup>111</sup>

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<sup>110</sup> UN General Assembly (2015) *Transforming our world: the 2030 Agenda for Sustainable Development* A/RES/70/1; African Commission on Human and Peoples' Rights (ACHPR) (2011) *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*.

<sup>111</sup> *International Covenant on Economic, Social and Cultural Rights* (1966) art. 2.1; *Abuja Declaration on HIV/AIDs, Tuberculosis and Other Related Infectious Diseases* (2001) OAU/SPS/ABUJA/3, para. 26.

## B. INTERNATIONAL ASSISTANCE AND COOPERATION

In addition to domestic resource mobilisation, international cooperation and assistance must also be considered for the realisation of ESC rights, particularly for States that lack the domestic resources to meet their human rights obligations. International cooperation and assistance should never replace but rather complement domestic resource mobilisation efforts. States unable to fully guarantee ESCR must actively seek international cooperation and assistance.<sup>112</sup>

In this regard, one must consider that globalisation has made the realisation of social, economic, and cultural rights increasingly interconnected. Decisions from powerful actors, such as international financial institutions and other States, may have a much more significant and profound impact on the realisation of socioeconomic rights than the territorial State's.<sup>113</sup> The Maastricht Principles on Extraterritorial Obligations (ETOs) which serve as the primary reference when it comes to ETOs on ESC rights are based on two key conceptual foundations.<sup>114</sup> First, international human rights law requires that States, when acting in ways that have “real and foreseeable impacts” on human rights beyond their borders, ensure that they respect and protect those rights and, in certain circumstances, even fulfil them extraterritorially.<sup>115</sup> Second, international law, particularly

<sup>112</sup> *International Covenant on Economic, Social and Cultural Rights* (1966) art. 2 (1), 22, and 23; *Convention on the Rights of the Child* (1989) arts. 4, 24 and 28 (3); Committee on the Rights of the Child (2016) *General comment No. 19 on public budgeting for the realization of children's rights* (art. 4) CRC/C/GC/19, paras. 35-37, 75; Committee on Economic, Social and Cultural Rights (CESCR) (1999) *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)* E/1992/23, para. 11; Committee on Economic, Social and Cultural Rights (CESCR) (1999) *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)* E/C.12/1999/10, para. 56.

<sup>113</sup> Vandenhoe, W. (2011) 'Beyond Territoriality: The Maastricht Principles on Extra-Territorial Obligations in the Area of Economic, Social and Cultural Rights', *Netherlands Quarterly of Human Rights*, 29(4), 429-433; Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) (2024) *Boosting Ambition Through International Obligations: The Added Value of Integrating Human Rights to the Climate Financing Discussion*.

<sup>114</sup> Salomon, M.E., and Seiderman, I. (2012) 'Human Rights Norms for a Globalized World: The Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights', *Global Policy*, 3(4), pp. 458-462; Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) (2024) *Boosting Ambition Through International Obligations: The Added Value of Integrating Human Rights to the Climate Financing Discussion*.

<sup>115</sup> Maastricht Principles Drafting Group (2013) *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, para. 8.

in ESC rights, prescribes that States must take action to realise rights extraterritorially by means of 'international assistance and cooperation.'<sup>116</sup>

As to the specific scope of these mandates, the Maastricht Principles clarify that States have ETOs according to three non-cumulative criteria:<sup>117</sup>

1. When States exercise authority or effective control over people or situations outside their territory;
2. When States engage in acts or omissions that have foreseeable effects on the enjoyment of ESCR, both within and outside their territory;
3. When States exercise decisive influence or take measures, either individually or jointly, through executive, legislative, or judicial branches, to realise ESCR.

In particular, the second criterion of "Foreseeable Effects" considers that a State may, through its conduct, influence the enjoyment of human rights outside its national territory, even in the absence of effective control or authority over a situation or a person.<sup>118</sup> The preservation of human rights is considered a global concern, with such obligations owed to the international community as a whole, a concept known as *erga omnes* obligations.<sup>119</sup> This global responsibility requires States to not only provide assistance and cooperate internationally but also ensure that their own actions or omissions do not negatively impact human rights in other States.<sup>120</sup>

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<sup>116</sup> Ibid.

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<sup>117</sup> Ibid., para. 9

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<sup>118</sup> De Schutter, et al. (2012) 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights', *Human Rights Quarterly*, 34,1084-1169; Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) (2024) *Boosting Ambition Through International Obligations: The Added Value of Integrating Human Rights to the Climate Financing Discussion*.

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<sup>119</sup> Ibid.

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<sup>120</sup> Ibid.

Donor States must contribute to the realisation of ESC rights in recipient countries.<sup>121</sup> This may imply particular financial and technical assistance –such as fulfilling the established benchmark of 0.7% of donor Gross National Income (GNI) for official development assistance (ODA).<sup>122</sup> International assistance and cooperation must prioritise the access and provision to public education and public healthcare, as well as ensure that own fiscal policies and those proposed through international financial rules and mechanisms do not hinder the realisation of ESC rights.

International fiscal collaboration plays a key role in ensuring equitable resource distribution for the fulfilment of ESC rights, including education and health. Effective cooperation on tax systems is particularly critical for addressing cross-border tax avoidance and evasion, preventing harmful tax competition, and reinforcing financial transparency.<sup>123</sup> As highlighted by CESCR in its 2025 Statement on Tax policy and the International Covenant on Economic, Social and Cultural Rights, international organisations—including financial institutions—are required to respect human rights and uphold their related obligations. This means it is essential not only to carry out human rights impact assessments of proposed tax reforms, but also to ensure that such reforms enhance States' ability to realise ESCR, especially in countries reliant on external financing.<sup>124</sup> This requires, among others, substantial reforms in the current international financial architecture.

Debt sustainability is another crucial aspect to acknowledge. Excessive debt burdens limit fiscal space, drive austerity measures and prevent States from adequately funding public services. The CRC emphasises that sustainable debt

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<sup>121</sup> Maastricht Principles Drafting Group (2013) *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, principle 32.

<sup>122</sup> United Nations (2022) *UNESCO Transforming Education Summit Call to Action: Investing More, More Equitably and More Efficiently in Education*

<sup>123</sup> The Initiative for Human Rights Principles in Fiscal Policy (2021) *Principles for Human Rights in Fiscal Policy*; Committee on Economic, Social and Cultural Rights (2025) *Statement: Tax policy and the International Covenant on Economic, Social and Cultural Rights* E/C.12/2025/1.

<sup>124</sup> Committee on Economic, Social and Cultural Rights (2025) *Statement: Tax policy and the International Covenant on Economic, Social and Cultural Rights* E/C.12/2025/1, par. 13.

management is key to ensuring resources for children's rights, urging States to implement transparent borrowing and lending policies.<sup>125</sup> Reforms in the international debt architecture, including action on debt relief, restructuring and cancellation are vital and must be structured to prioritise the fulfilment of ESC rights.<sup>126</sup> Additionally, international financial institutions such as the International Monetary Fund (IMF) must remove restrictive policy conditions—such as public sector wage caps—that prevent States from increasing investments in education and healthcare.<sup>127</sup>

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<sup>125</sup> Committee on the Rights of the Child (2016) *General comment No. 19 on public budgeting for the realization of children's rights (art. 4)* CRC/C/GC/19, para. 78.

<sup>126</sup> United Nations (2022) *UNESCO Transforming Education Summit Call to Action: Investing More, More Equitably and More Efficiently in Education*; *The Initiative for Human Rights Principles in Fiscal Policy* (2021) *Principles for Human Rights in Fiscal Policy*; Committee on the Rights of the Child (2016) *General comment No. 19 on public budgeting for the realization of children's rights (art. 4)* CRC/C/GC/19, para. 79; Committee on Economic, Social and Cultural Rights (CESCR) (1990) *General Comment No. 2: International technical assistance measures (Art. 22 of the Covenant)* E/1990/23, para.9.

<sup>127</sup> United Nations (2022) *UNESCO Transforming Education Summit Call to Action: Investing More, More Equitably and More Efficiently in Education*.



## Conclusions

The realisation of economic, social, and cultural rights, particularly the right to education and the right health, requires States to take deliberate, concrete, and targeted measures to mobilise the maximum available resources, both domestically and internationally. While progressive realisation acknowledges resource constraints, it does not justify inaction or retrogressive measures that undermine these human rights. States must implement equitable fiscal policies, ensure transparency in public financing, and prioritise investments in high-quality public education and healthcare.

International cooperation plays a crucial role in complementing domestic efforts by ensuring fair taxation, responsible and sustainable debt management, and alignment of financial policies with human rights principles. By fostering a transparent, just, and accountable global financial system, States can create the conditions necessary for all countries to guarantee public services and uphold their human rights obligations.

Against the backdrop of austerity measures, rising debt burdens, and persistent underinvestment in public services, a multi-country study is currently underway to examine the human rights implications of austerity in education and health. Focusing on Ghana, Nigeria, Kenya, and Zambia, the study seeks to identify practical consequences of regressive fiscal policies on the enjoyment of economic, social and cultural rights, while proposing concrete, rights-based alternatives for the sustainable financing of public services.

Anchored in international and African human rights law, this initiative aims to inform national policy debates, support advocacy, and provide evidence-based guidance for governments and institutions committed to upholding their human rights obligations. By highlighting both the barriers and the possibilities for financing public services in line with human rights standards, the study is a crucial next step in operationalising the principles outlined in this legal brief.



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# STATES' HUMAN RIGHTS OBLIGATIONS TO FINANCE PUBLIC SERVICES

A Focus on Education and Health

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