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Brasília, September 19, 2022.

In order to collaborate with the Report, the Department of Cooperation and International Relations (5511919) brought questions that address issues such as: cryptocurrencies, virtual assets, digital currencies, the metaverse and stakeholders active in the digital provision of financial services, transactions that often happen across borders. In addition, the links between international financial obligations, digital systems and human rights should be discussed.

In this sense, this National Human Rights Defenders' Office expresses its contribution as of the following answers.

**1. What are the challenges faced by regulating financial transactions within the digital economy at the national, regional, continental and international levels?**

At first, it is important to note that the digital economy is already a reality in much of the local, regional and global business transactions. The speed that such transactions occur in electronic media facilitates the circulation of goods and services, substantially increasing the production of wealth.

While reaping the benefits of financial transactions in the digital economy, society is also faced with moral dilemmas and tragic challenges. Much is currently being discussed about human rights and business. In other words, one of the great aspirations of the UN 2030 Agenda and the Sustainable Development Goals is to equate economic activity with respect for basic rights of every human person: clean water, eradication of hunger, zero hunger, health and well-being, quality education, gender equality, clean and affordable energy, decent work and economic growth, sustainable cities and communities, responsible production and consumption, climate change, peace, justice and effective institutions [\[1\]](#).

The ease of capital circulation through digital means and the absence of global regulation allows illegal activities or activities that do not comply with their social responsibility in the least, not to be repressed, and, worse, even stimulated.

International relations are essentially based on the independence of peoples and nations. For this reason, one country must respect the internal decisions of another. International obligations arising from International Treaties and other normative sources have mitigated this sovereign independence, aiming to achieve the protection of the planet, prosperity and peace.

The measures, however, are still insufficient to achieve the goals set out in 2030 Agenda. In the digital economy, the lack of international regulation of transactions with cryptocurrencies allows each country to act differently, encouraging illicit activities in places where legislation is more permissive regarding the control of the origin of resources.

However, one of the major challenges is the creation of a Central Bank or an International Institution that aims to regulate these transactions, requiring due diligence through compliance standards that prevent the circulation of digital financial assets, whose origins are suspected of violating human rights, such as arising from the exploitation of ores on indigenous lands without legal authorization, land-grabbing of public properties or traditional peoples areas, air, water and soil pollution outside permitted international standards, exploitation of labour analogous to slavery, exploitation of children and adolescents, active or passive corruption, money laundering...

It is necessary for all current assets in the digital economy to be integrated with traditional financial markets around the world, becoming a commodity of global pricing and control.

One of the major challenges ahead is the correct taxation of current assets in the digital economy: from who to collect? Where? How to collect taxes? In this sense, the fight against tax evasion is a problem to be faced, especially with regard to digital operations carried out through countries without any taxation, the so-called "tax havens".

## **2. What is the nature, scope and objective of an international consensus on taxation of the digital economy that promotes human rights?**

As already noted, the digital economy, beyond territorial borders, is already a fact present, if not totality, in almost all countries and tends to expand exponentially in the coming decades.

Large amounts, however, are lost by digital operations not taxed or unequally taxed between countries. International taxation is a *jus cogens* obligation, imperative for the promotion of human rights, to enable the equitable distribution of financial resources capable of ending poverty and extreme poverty in various regions of the globe. Moreover, economic inequality between raw material producing countries and other industrialized countries can also be mitigated through an international taxation system created in a fairer, more balanced way.

Nevertheless, the UN Guiding Principles on Human Rights and Business need to move forward, as categorical and imperative standards that require all organisations to comply with obligations to achieve the 2030 Agenda for Sustainable Development Goals, including the eradication of poverty, the protection of the environment and climate, and ensuring that people everywhere can enjoy peace and prosperity.

## **3. What are the advantages/disadvantages of regulating the financial elements of the digital economy and regulating the digital systems that support transactions for less developed countries?**

The regulation of financial elements of the digital economy allows, as already discussed in items 2 and 3, the correct and fair taxation of operations, making it possible to better distribute revenues to developing countries; it enables the fight against illegal activities and those that go against human rights.

The disadvantage is that, if regulation is not done equally for all countries, operations will tend to migrate to those countries where the rules are more flexible, that is, where the State has less taxation and supervision. The regulation of digital systems must observe macroeconomic standards, given their capacity to affect important indicators such as inflation, exchange and interest rate.

The shielding of a possible International Agency for the Regulation of the Digital Economy against geopolitical interference is a point to be observed. As an example, the indiscriminate inflow of external resources into a country, in a short period of time, through the relaxation of rules of the digital economy, by decision of the International Regulatory Agency, may stem from geopolitical interference from other countries. This fact can result in higher inflation and unemployment, less consumption and more poverty in certain countries.

The shielding of this Regulatory Agency against geopolitical interference is essential to maintain the balance and sustainability of countries, especially the poorest.

It is worth noting that El Salvador, in September 2021, adopted bitcoin as its official currency. The government of that country justified the use of digital currency because a large portion of its GDP is made up of international remittances of money from Salvadorans who live outside the country and had problems with the bureaucracy involved in the conventional process. In addition, the initiative aimed to expand the population's access to financial services and attract investments and foreign capital to the country [2].

As a possible positive effect, after the implementation of the Bitcoin Act, there was a 30% increase in excursions to El Salvador, according to the country's tourism minister.

On the other hand, contrary to what was desired, according to *Finch*, one of the largest

credit rating agencies in the world, the accelerated and, perhaps, mistaken implementation of cryptocurrencies as a currency in El Salvador, has increased the insecurity of investments in the country, reducing its credit risk rating, which translates, in the agency's analysis, into very little safety margin and real risk of insolvency [3].

The measure also brought problems to the country with the International Monetary Fund (IMF), which asked for the complete repeal of the so-called Bitcoin Law, on the grounds that a careful analysis of the macroeconomic, financial and legal developments of the measure is necessary.

From this perspective, it is possible to conclude, from the practical example of El Salvador, that the regulation of transactions in the digital economy must be in line with the global macroeconomic scenario in order to avoid commercial isolation and losses that may affect any country that makes irrational use of these tools, especially those that have pre-existing financial crises.

#### **4. What measures and mechanisms should be put in place to ensure that a global digital tax incorporates human rights principles both in the way it is collected and in the way the tax revenue generated is used?**

1 - Progressive rates for activities that do not meet international 'due diligence' standards for the protection of human rights.

2 - The distribution of tax collection by international transactions must take into account the countries involved in the operation, prioritizing the greater distribution of tax collection to countries exporting raw materials, as a rule, underdeveloped countries.

#### **5. Are there practices, legislation or policies at national or regional level that could serve as good examples? Are there case studies that could be considered for this report, with specific reference where possible to remittances, crypto currencies and e-commerce markets, as well as the taxation of companies involved in digital systems?**

The first regulation of the Brazilian legal system to establish a set of national guidelines on companies and human rights was the Decree No. 9,571, of November 21, 2018. The organization of its structure reveals the direct influence of the Guiding Principles, but, in addition, the document also brings good proposals for the implementation of these guidelines, such as the institution of a "Business and Human Rights" Seal for companies that voluntarily adhere to them, the publication of annual action plans and the establishment of a Follow-up and Monitoring Committee for the National Guidelines on Business and Human Rights.

The Report of the UN Business and Human Rights Working Group, published in 2016, as a result of a visit by a team of experts in the context of the Regional Consultation for Latin America and the Caribbean, included among its recommendations the need for the National Bank for Economic and Social Development (BNDES) to ensure that the projects financed by this bank includes safeguards against adverse impacts on human rights, in line with the Guiding Principles.

In 2020, the National Human Rights Council (CNDH) issued the Resolution No. 5, which deals with the topic of companies and human rights. It mentions multiple times the 3rd National Human Rights Programme, established by the Decree No. 7,037/2009, emphasizing, among the programmatic actions, the institution of a "code of conduct on Human Rights to be considered within the scope of the Government as a criterion for hiring and financing companies". (2020: 2, emphasis added).

The CNDH Resolution No. 5/2020 adopts as one of its principles the "centrality of the victim's suffering" (also called the centrality of the affected person) as a guide to the State's performance and as recipients of its agents and institutions, also mentioning the justice system, companies and financial institutions (article 1). This same Resolution states that, in the treatment and prevention of human rights violations (article 6, item IX), it is essential to determine "the immediate suspension of partnerships, public financing, tax incentives and subsidies of any kind or administrative contracts with companies that are involved in human rights violations arising directly or indirectly from their activity".

Currently, the Bill No. 572/2022 is being processed in the Chamber of Deputies - National Congress, still in its initial phase. It, as well as the CNDH Resolution No. 5/2020, inserts among

its addressees, besides agents and institutions of the State and companies, the justice system and financial institutions. Among the obligations of companies with regard to human rights, paragraph 1st, article 5, adds that the "responsibility for the violation is joint and extends throughout the production chain, including the controlling company, the controlled companies, as well as public and private investors,[...] and national economic and financial entities that participate by investing or benefiting from any stage of the production process". In item XV, article 9, presents as an obligation of the State to ensure that "the financing and investments made by the government respect the integrality of Human Rights, being prohibited subsidy policies for violating companies, especially the tax exemption".

It is noteworthy that the publication "Implementando os Princípios Orientadores sobre Empresas e Direitos Humanos da ONU: O dever do Estado de Proteger e a Obrigação das Empresas de Respeitar os Direitos Humanos (Implementing the UN Guiding Principles on Business and Human Rights: The Duty of the State to Protect and the Obligation of Companies to Respect Human Rights)", organized in 2017 by, at the time, Ministry of Human Rights (MDH), mentions that Brazil already had, even before the publication of the Guiding Principles, a diversity of state and non-state mechanisms for compensation and reparation for human rights violations caused by business activity. One of the non-state remedies is the mechanisms associated with financial and development institutions. More precisely, we can mention as one of the previous initiatives adopted in the country that can serve as a guide for the CERALC (Responsible Business Conduct in Latin America and the Caribbean) project, of the United Nations High Commissioner for Human Rights (OHCHR), the National Plan for the Eradication of Slave Labour.

The "dirty list" of slave labour, a measure of economic repression that uses cases in which violations of rights committed by companies have already been verified, is considered a reference in this sense. This is a naming and shaming instrument that consists of a register of employers who have been proven to use/have used slave labour. These companies are "prohibited from signing contracts with the government, have limited access to credit and public financing, and other companies are discouraged from doing business with them" (CONNECTAS, 2018: 175). The Plan also aimed to expand these economic restrictions: "(i) extend to the private banking sector the prohibition of access to credit; and (ii) seek the approval of legislation at federal, state and municipal levels, prohibiting participation in acquisition processes in the executive, legislative and judicial branch." (MDH, 2017:27)

Another action that deserves mention was the publication of guidelines for Major Infrastructure Projects in the Amazon, organized by the Getúlio Vargas Foundation (FGV) and the International Finance Corporation (IFC), the world's largest development institution focused on the private sector in emerging markets. Its objective is to "organize and highlight lessons learned and recommendations, both within the scope of public policies and in business practices, in order to establish a new type of relationship between large enterprises and the territories they target" (2018: 08). The idea spread at the time was that adherence/submission to the guidelines of this publication would be used by IFC as a condition for the financing of megaprojects in the Brazilian Amazon.

At the time of the analysis of the Bill No. 572/2022, this DPU presented a set of recommendations, some of which also fit in the present case. Here it follows:

- Institution of National Human Rights and Business Councils, sphere of management and monitoring of the implementation of National Policies, ensuring parity of representation between State bodies and entities, representatives of companies and civil society.
- Conducting regional and national conferences to gather proposals for actions on the area of human rights and companies.
- Preparation of National Action Plans on Human Rights and Companies (an instrument that will materialize said Policy), with a defined temporal scope (preferably medium-term), composed of thematic axes, objectives, strategic actions (including measures for the monitoring of productive chains with greater violating potential), goals, expected results and execution schedule.
- Creation of incentive mechanisms to incorporate respect and protection of human rights by companies, such as the "Company and Human Rights" seal, suggested by the Decree No. 9.571/2018.
- Elaboration of codes of conduct, as mentioned by the CNDH Resolution No. 5/2020, which can be led by both ministries and regulatory agencies of sectors such as electric power, oil, mining, transportation, etc., ensuring the broad participation of civil society, especially of the groups most

impacted by the performance of each of the sectors, among which are indigenous peoples, quilombolas and traditional communities; and

- Creation, following the example of the National Plan for the Eradication of Slave Labour and taking it as a reference, of a naming and shaming tool for human rights violating companies (“dirty list”).

## **6. How should States deal with interactions between tax transactions and the metaverse from a human rights perspective?**

The State needs economic means to satisfy its activities. For the fulfilment of its obligations, it makes use, primarily, of the taxation of private assets, and must direct the collection and the economy towards social welfare. In this perspective, it is important that States are able to fit into new digital market contexts such as the Metaverse.

According to Dr. Tathiane Piscitelli<sup>[4]</sup>, in an interview<sup>[5]</sup> given during the 1st International Congress of Tax Law of the Institute of Tax Application held in 2022, inside the Metaverse, there are two important instruments: cryptocurrencies and NFTs (Non-Fungible Tokens).

As for cryptocurrencies, the Brazilian State, through the Federal Revenue Service, has already positioned itself as to the legal nature of this good as a financial asset, thus affecting taxation on dispositions with profit.

It is important to highlight that cryptocurrencies are the main means of payment in economic transactions on Metaverse platforms.

The expansion of these digital universes brought with it the NFTs that are qualified as the result of an economic operation that reveals the ownership of a given digital good. These digital goods offer a greater challenge, in terms of taxation, due to their characteristics, since there is no unit of measurement for these tokens. The possibility of ICMS (Tax on Circulation of Goods and Services) taxation on NFTs is also discussed, since they are qualified as digital goods.

The fact is that, at first, the existing legislation in the most diverse areas of law (civil, consumer, tax, labour, economic) must be transferred to tax transactions in the metaverse. The fundamental and guiding principles that guide legal relations will be preserved, but specific rules will need to be created to adapt to the new reality. The definition of the legal nature of the financial assets present in the Metaverse is an exemplary case to, based on this, guide the tax collection of these environments to the promotion of human rights.

These regulations, however, should not be done in a hastily way, but with the maturing and experience of the new legal relations established.

In conclusion, States must have their own conditions to improve the mechanisms of taxation in the Metaverse, balancing the bonuses and burdens of the Fiscal State, making adjustments so that the Human Rights of taxpayers and society as a whole are fully respected.

## **7. What other issues should be addressed by the Special Rapporteur in this area, both for her report to the Human Rights Council and for other activities and initiatives that she may undertake in accordance with her mandate?**

Protection of personal data in the metaverse and in digital operations.

Protection of privacy against the provision of unwanted services in digital media.

Possibility of controlling algorithms that interfere with the choice of information that the user wishes to receive in digital media.

Public policies to protect mental health for people suffering from isolation and other pathologies resulting from excessive immersion in the digital world.

Economic inequality between countries from digital transactions.

In time, I renew my esteem and consideration.

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[1] Available at: <https://brasil.un.org/>. 16/09/2022

[2] Available at: <https://exame.com/future-of-money/como-tem-sido-o-uso-do-bitcoin-em-paises-com-a-economia-fragilizada/>. Accessed on 16/09/2022.

[3] Available at: <https://exame.com/future-of-money/el-salvador-tem-sua-nota-de-risco-de-credito-relegada-apos-lei-bitcoin/>. Accessed on 16/09/2022.

[4] PhD and Master in Law. Lecturer in undergraduate courses, professional master's degree and post-graduate lato sensu. Chief Judging Councilor of the First Chamber of the Municipal Council of Taxes of the City of São Paulo. Author

[5] Available at: <https://youtu.be/w-MpoXpe2F4>. Accessed on 19/09/2022.



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Document electronically signed by **André Ribeiro Porciuncula, National Human Rights Defender**, on 19/09/2022, at 4:55 p.m., according to paragraph 2 of article 10, of the Provisional Presidential Decree No. 2.200-2, of August 24, 2001.



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