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Fiscal Transparency: Global Norms, Domestic Laws, and the Politics of Budgets

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FISCAL TRANSPARENCY: GLOBAL NORMS, DOMESTIC LAWS, AND THE POLITICS OF BUDGETS

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INTRODUCTION

Since the early 1990s, the issue of fiscal transparency has attracted increasing attention from international institutions, governments, and nongovernment actors concerned with budgets and fiscal policy reform. The Organisation for Economic Co-operation and Development ("OECD") has described the budget as "[t]he single most important policy document of governments, where policy objectives are reconciled and implemented in concrete terms."[1] In the last decade, the OECD and International Monetary Fund ("IMF") have embarked on significant programs to develop standards and codes of conduct on budget transparency and to assess country practices in this area.[2] Nongovernmental organizations ("NGOs") have developed their own indices to measure and compare fiscal transparency internationally.[3] At the domestic level, where budgeting takes place, some governments have enacted legislation to formalize their commitments to fiscal disclosure.

This Article seeks to address two major questions that have received very limited attention from researchers: (1) What is fiscal transparency

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1. Org. for Econ. Co-operation & Dev., *OECD Best Practices for Budget Transparency*, 1(3) OECD J. ON BUDGETING 2001, at 7 [hereinafter *OECD Best Practices*].

2. *See id.*; INT'L MONETARY FUND, CODE OF GOOD PRACTICES ON FISCAL TRANSPARENCY (2007), *available at* http://www.imf.org/external/np/pp/2007/eng/051507c.pdf [hereinafter 2007 IMF CODE]. *See generally* INT'L MONETARY FUND, MANUAL ON FISCAL TRANSPARENCY (2001), *available at* http://www.imf.org/external/np/fad/trans/manual/manual.pdf [hereinafter 2001 IMF MANUAL]; INT'L MONETARY FUND, MANUAL ON FISCAL TRANSPARENCY (2007), *available at* http://www.imf.org/external/np/pp/2007/eng/101907m.pdf [hereinafter 2007 IMF MANUAL].

3. In the late 1990s the Institute for Democracy in South Africa ("IDASA") collaborated with the International Budget Project ("IBP"), based in Washington, D.C., to develop a survey questionnaire for evaluating budget transparency that was then applied to South Africa. *See* ALTA FÖLSCHER ET AL., TRANSPARENCY AND PARTICIPATION IN THE BUDGET PROCESS—SOUTH AFRICA: A COUNTRY REPORT (Dec. 2000). This methodology has been adapted for studies of several other countries. *See* Int'l Budget P'ship, *Index of Budget Transparency in Five Latin American Countries: Argentina, Brazil, Chile, Mexico and Peru*, Jan. 10, 2002, http://internationalbudget.org/resources/LAbudtrans.pdf [hereinafter *Index of Five Latin American Countries*]. The Center on Budget and Policy Priorities, a nongovernment organization based in Washington, D.C., launched its Open Budget Index in 2006 with the goal of scrutinizing fiscal transparency practices in different countries around the world. Open Budget Initiative, About the Open Budget Initiative, http://www.openbudgetindex.org/index.cfm?fa=about (last visited Apr. 8, 2009). For information on the history and goals of the Open Budget Index, see Int'l Budget P'ship, Transparency and Participation in the Budget Process: Why Focus on Budget Transparency and Participation, http://www.internationalbudget.org/themes/BudTrans/index.htm (last visited Apr. 20, 2009) [hereinafter Transparency and Participation in the Budget Process].

for? That is, what different meanings can be ascribed to this concept, and what political economic purposes does it advance? And, (2) what is the role of law and legal institutions in securing different visions of fiscal transparency?

On the first point, a central argument of this Article is that the concept of fiscal transparency is not a neutral public good, but one that is open to a range of definitions that serve different interests. As has frequently been said about taxation, the (re)distribution of benefits and burdens through budgeting or fiscal policy processes is inherently political.[4] Sustainable budgeting requires negotiation of a legitimate, fair, and relatively stable fiscal compact or bargain.[5]

This Article offers a critical analysis of the meaning and purposes of fiscal transparency in light of developing international norms. It is argued that fiscal transparency norms as they are currently promulgated by most governments and international institutions focus primarily on fiscal discipline and on providing information to establish credibility for financial markets, international lenders, and aid donors. While these aspects of transparency are obviously important, they tend to ignore the political nature of the budget in both domestic and international contexts. In particular, this Article examines whether and to what extent fiscal transparency norms enable distributive justice and democratic participation in budget decision making by legislative and civil society actors. We find that these dimensions of transparency have been widely neglected in the design of prevailing norms. As a result, we argue, the "best practices" that currently dominate this field will be of limited help in generating the political consensus needed to ensure equitable development. These distributional and democratic deficits should concern all of us, but may be especially problematic for developing countries, for which issues of poverty reduction and economic sovereignty are most pressing. This Article also examines some alternative definitions of fiscal transparency that address these issues in a more meaningful way.

Regarding our second key question, the role of law or legal institutions in securing different visions of fiscal transparency, we emphasize the

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4. U.N. DEP'T OF INT'L ECON. & SOC. AFFAIRS, WORLD ECONOMIC AND SOCIAL SURVEY 1997: TRENDS AND POLICIES IN THE WORLD ECONOMY, at 64–65, U.N. Doc. ST/ESA/256, U.N. Sales No. E/1997/50 (1997); Nicholas Kaldor, *Will Underdeveloped Countries Learn to Tax?*, 41 FOREIGN AFF. 410, 418 (1963).

5. MARGARET LEVI, OF RULE AND REVENUE 181 (1988). *See generally* SVEN STEINMO, TAXATION AND DEMOCRACY: SWEDISH, BRITISH, AND AMERICAN APPROACHES TO FINANCING THE MODERN STATE (1993); Mick Moore & Lise Rakner, *Introduction: The New Politics of Taxation and Accountability in Developing Countries*, 33 INST. OF DEV. STUD. BULL. 1 (2002).

potential importance of fiscal transparency norms in empowering citizens to participate in establishing a fair and legitimate fiscal policy in their country, both through their representatives in a democratic legislature and more broadly. Here, we draw on theories of deliberative democracy in which laws play the important role of establishing the rules of engagement in the decision-making process.[6] As we see the budget as central to political decision making about taxing and spending, we advocate for the expansion of budget transparency laws to fulfill this deliberative role, and we identify the shortcomings of current fiscal codes and norms in addressing transparency and accountability. We also inquire as to the practical role that law has played thus far in the spread and reform of budget transparency norms and in the establishment of "transparency" as an identifiable measure of good governance (however it be defined). This is a subset of a broader set of questions about the role of law in development.[7] We examine the importance of the "rule of law" and "good governance" in the fiscal context and consider what role budget transparency laws might play in a particular country's "development" process. We identify a wide diversity of laws and practices concerning fiscal transparency in national and international contexts and ask to what extent it matters whether budget norms are "hard law" compared to "soft law" norms, administrative practices, or market incentives.

The discussion of these overarching themes is organized into six Parts. In Part I, we analyze the reasons why fiscal transparency has surfaced so widely and insistently as a law reform issue at this particular juncture. Part II tracks the paths and networks by which these norms have been developed and transmitted globally, through initiatives at various international and domestic levels. Part III takes a closer look at the content of fiscal transparency, according to the dominant model associated principally with the IMF. Part IV examines how various fiscal transparency codes and statutes deal with (or ignore) issues of distributive impact and politics. Part V analyzes democratic participation in the budget process. Part VI concludes with a discussion of the implications of this analysis for the broader project of "ruling the world," including the role of law or norms and the implications for national and global governance. Recog-

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6. *See generally* Philip Pettit, *Depoliticizing Democracy*, 17 RATIO JURIS 52 (2004).

7. The relationship between law and development has begun to be critically analyzed by many scholars after nearly two decades of "law reform," which has frequently been unsuccessful. *See, e.g.*, Kevin Davis & Michael Trebilcock, *The Relationship Between Law and Development: Optimists Versus Skeptics*, 56 AM. J. COMP. L. 895 (2008); David Kennedy, *The 'Rule of Law' as Development*, *in* LAW AND DEVELOPMENT: FACING COMPLEXITY IN THE 21ST CENTURY 17, 22 (John Hatchard & Amanda Perry-Kassaris eds., 2003).

nizing that nation states remain the primary actors in formulating fiscal policy, we emphasize the need to design transnational fiscal norms that foster inclusive, democratic institutions at the country level, although we also identify the beginnings of an architecture that could provide an inclusionary framework for taxing and spending in the global context.

I. THE ROOTS OF FISCAL TRANSPARENCY DISCOURSE

Budgeting is a process for organizing government fiscal activities and, as such, it is as old as government taxing and spending. Prudence in fiscal management—in some commonsense way, matching expenditures to revenues—is the essence of budgeting. Just as budgeting has a long tradition, the basic principle of fiscal transparency, the notion that governmental fiscal activities should be subject to public scrutiny, is not new. In this context, a central purpose of budgeting has been to ensure a degree of transparency, and therefore accountability, regarding the nature and quantum of public spending and taxation.[8] The institutional and procedural framework for raising, appropriating, spending, and accounting for public funds is typically laid out in a country's constitution and financial management legislation, and supplemented by longstanding convention. In many developing countries, the "organic finance laws" are based on administrative practices that became entrenched during colonial times. They have generally been in place for several decades, though in practice these formal rules may not be fully implemented.[9]

In the last decade, the term "fiscal transparency" has obtained currency as the banner for a host of policy initiatives designed to regularize budgeting practices and mandate the disclosure of specific information by governments around the world. In this Part, we explore the roots of this discourse on fiscal transparency, which has emerged so forcefully since the mid-1990s. We suggest it is linked to two broader trends that have affected both developed and developing countries: (i) the neoliberal turn in economic policy, which emphasizes fiscal discipline, and (ii) the movement to reform institutions to promote good governance.

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8. *See* Aaron Wildavsky, *A Budget for All Seasons? Why the Traditional Budget Lasts*, 38 PUB. ADMIN. REV. 501, 502 (1978).

9. Mike Stevens, *Institutional and Incentive Issues in Public Financial Management Reform in Poor Countries* 5 (World Bank, Working Paper No. 35106, 2004), *available at* http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/027/000090341_20060207162350/Rendered/PDF/351060Institutional0issues.pdf.

A. Fiscal Transparency and Fiscal Discipline

As a defining aspect of the neoliberal turn in the 1980s, governments lost authority as economic decision makers and were subjected in various ways to more intensive forms of market discipline, in particular, reducing budget deficits.[10] This included the discipline of credit-rating agencies, which directly impacted the cost to governments of financing a deficit, and the discipline of market analysts, who influenced where mobile capital would be invested. In developing countries, such market pressures were reinforced by explicit conditions imposed on concessional lending and aid. A review of IMF-supported fiscal reforms during the 1990s indicates that their key elements were reducing government spending, downsizing the State, shifting expenditures from current to capital accounts, and some provisions on safety net expenditures.[11] In order to establish credibility with these increasingly powerful external audiences and allow them to assess investment risks, governments had to be more forthcoming with detailed information about country finances.

In developed countries, the constraints on government action in economic matters first became apparent in relation to monetary policy. Developed States have fashioned various methods of institutionalizing monetary policy in such a way that, at least to some extent, it is taken out of the hands of elected governments.[12] This is commonly done by delegating the determination of interest rates to an independent central bank, now also a key plank of IMF recommendations for developing countries, because it is seen as a vital way to control inflation.[13] Monetary policy also may be implemented through controls on exchange rates imposed in many developing countries (for example, countries may peg their curren-

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10. *See, e.g.*, Peter A. Hall, *Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain*, 25 COMP. POL. 275, 285 (1993) (identifying a "shift" in the "locus of authority over macroeconomic issues" away from the Treasury and Keynesian economics towards monetarism, cemented under Margaret Thatcher and institutionalized through the 1980s and 1990s). *See also* Carl Emmerson, Chris Frayne & Sarah Love, *Updating the U.K.'s Code for Fiscal Stability* (Inst. for Fiscal Studies, Working Paper No. 04/29, 2004).

11. Int'l Monetary Fund, *Fiscal Reforms in Low-Income Countries* 4, Occasional Paper No. 160, Mar. 31, 1998 (led by George T. Abed). *See also* Allen Schick, *The Role of Fiscal Rules in Budgeting*, 3(3) OECD J. ON BUDGETING 2003, at 7–8.

12. Emmerson, Frayne & Love , *supra* note 10, at 4.

13. The IMF monitors monetary transparency and practices as well as fiscal transparency. In 1999, it released the Code of Good Practices on Transparency in Monetary and Financial Policies: Declaration of Principles. INT'L MONETARY FUND, CODE OF GOOD PRACTICES ON TRANSPARENCY IN MONETARY AND FINANCIAL POLICIES: DECLARATION OF PRINCIPLES (1999), *available at* http://www.imf.org/external/np/mae/mft/code/ [hereinafter IMF PRINCIPLES].

cy to the U.S. dollar, or establish currency boards or capital import or export limits). Governments sought to establish the independence of this decision making, so as to credibly influence market expectations and thus "create conditions favorable to that level of inflation being realized."[14] For our purposes, what is most interesting about this institutional transformation is the need for governments to establish "credibility" with markets and their loss of authority as economic decision makers.[15]

New Zealand was a pioneer in legalizing central bank control over interest rates, during its massive economic liberalization in the 1980s. The Reserve Bank of New Zealand Act 1989 established an independent bank and a "transparent" process of implementing interest rates "without interference from Government, Treasury, or anybody else," which was claimed to have "no exact parallels anywhere else in the world."[16] Five years later, the same philosophy was applied to fiscal policy:

> [T]he key is transparency—indeed, chronologically it was the transparency in the Reserve Bank Act which inspired the idea of attempting something similar for fiscal policy. Government's hands are tied only by the need to make policy intentions absolutely unambiguous to the public—surely a fundamentally sound principle.[17]

Governments have not formally delegated their powers to set fiscal policy as they have for monetary policy. However, in the last decade, governments have placed a range of hard and soft law constraints on their own fiscal decision making. Why governments—in particular, elected governments—should agree to constrain themselves in this way is not obvious.[18] The evidence suggests that for fiscal policy, as for mon-

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14. *Id. See also* 2007 IMF MANUAL, *supra* note 2, at 26 (discussing monetary policy and central bank independence).

15. The financial crisis of 2008 and the global recession have shifted the balance of authority back to government decision makers in the short-term. However, we suggest that market mechanisms will remain dominant in the long-term.

16. Specifically, the goal of this Act was to "Muldoon-proof" monetary policy, a reference to the previous long-standing Prime Minister of New Zealand. Donald T. Brash, Governor of the Reserve Bank of N.Z., New Zealand's Remarkable Reforms, Address to the Fifth Annual Hayek Memorial Lecture at Institute of Economic Affairs, London (June 4, 1996) [hereinafter Brash Speech] (also discussing the New Zealand fiscal responsibility reforms in depth). Begun in 1955, the Institute of Economic Affairs bills itself as rightwing and as "the U.K.'s original free-market think-tank." Inst. of Econ. Affairs, About the IEA, http://www.iea.org.uk/record.jsp?type=page&ID=23 (last visited Apr. 8, 2009).

17. Brash Speech, *supra* note 16.

18. *See* Emmerson, Frayne & Love, *supra* note 10, at 4–6; Schick, *supra* note 11, at 8 (asking, "Why have democracies accepted or imposed fiscal limits on themselves, and

etary policy, the desire to strengthen credibility vis-à-vis external audiences has been the driving factor and credibility regarding deficit constraint a constant theme.[19] Trends to increase legislative control over budgeting, including the imposition of fiscal rules and other measures, have been identified as a reaction to concerns about "precarious" fiscal balances and about "losing the confidence of world credit markets."[20]

Schick claims that, prior to World War II, "virtually all democratic countries embraced the balanced budget rule, including some that often breached the rule or did not have any legal constraint on unbalanced budgets."[21] More recently, many States legislated fiscal caps that expressly require a balanced budget or place limits on permissible spending or borrowing, sometimes with schedules for deficit elimination. Examples include the expenditure ceilings introduced in many developed countries, such as Finland, Japan, Spain, Sweden, and Switzerland.[22] In the European Union, the Maastricht Stability and Growth Pact ("Pact") was established in order to stabilize and support the euro currency union.[23] It requires Member States to "avoid excessive government deficits" defined as planned or actual deficits above three percent of gross domestic product ("GDP") and government debt above sixty percent of GDP.[24] Article 104 of the Pact sets out the consequences for Member States that breach this requirement, which escalate in severity: completion of a confidential Commission report, a Council recommendation, publicity requirements, constraints on borrowing from the European Investment Bank, a required deposit with the Community, and fines.[25] A

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why should we expect these limits to be effective when they run counter to the preferences of voters and politicians?").

19. There have been a few suggestions to make fiscal policy "more like" monetary policy—a lever to be pulled in response to economic conditions—and thereby take some of the "politics" out of setting tax rates. *See* Nicholas Gruen, *Greater Independence for Fiscal Institutions*, 1(1) OECD J. ON BUDGETING 2001, at 89. So far, this path has not been taken up by either the international institutions or country governments.

20. Paul Posner & Chung-Keun Park, *Role of the Legislature in the Budget Process: Recent Trends and Innovations*, 7(3) OECD J. ON BUDGETING 2007, at 83; Schick, *supra* note 11.

21. Schick, *supra* note 11, at 15.

22. Isabelle Joumard et al., *Enhancing the Cost Effectiveness of Public Spending: Experience in OECD Countries*, 37 OECD ECON. STUD. 2004, at 120–23.

23. The Pact (establishing the European Community) creates a framework under which Member States "shall regard their economic policies as a matter of common concern" and hence submit themselves to "multilateral surveillance" by the European Commission and through it, by each other. Maastricht Treaty art. 103, Feb. 7, 1992, O.J. 1992 C191/6.

24. *Id.* art 104(c); Protocol annexed to the Pact, art. 1.

25. *Id.* art 104(c).

set of detailed procedural norms concerning data release and acquiescence to economic surveillance is laid down in resolutions, codes of conduct, and the conclusions and recommendations of the Economic and Financial Affairs Council.[26]

However, experience with hard fiscal caps during the 1990s was often negative. Many studies demonstrate that these numerical restraints were frequently too rigid and were ignored, or worse, that they encouraged gaming, as governments tried to hide noncompliance through accounting changes or off-budget spending.[27] The IMF has criticized the "perverse incentives" that such rules may generate if they are not backed by transparent reporting "such that non-compliance can be easily detected and addressed."[28]

The IMF Code does not advocate the adoption of substantive fiscal caps. Instead, the Code discusses such fiscal rules as one possible element of an overall policy of fiscal transparency, stating that this discussion "should not be taken as an endorsement of the practices themselves."[29]

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26. All of the resolutions and legal texts on the Stability and Growth Pact are available at European Commission, Economic and Financial Affairs, http://ec.europa.eu/economy_finance/other_pages/other_pages12638_en.htm (last visited May 7, 2009).

27. At least some of this research took place inside the IMF, whose preoccupation with budget deficits is indicated by Alberto Alesina and Roberto Perotti. *See* Alberto Alesina & Roberto Perotti, *Fiscal Discipline and the Budget Process*, 86 AM. ECON. REV. 401, 403 (1996); Alberto Alesina & Roberto Perotti, *The Political Economy of Budget Deficits* (Nat'l Bureau of Econ. Research, Working Paper No. 4637, 1994), *available at* http://www.nber.org/papers/w4637. *See also* James L. Chan, *Major Federal Budget Laws of the United States*, *in* BUDGET DEFICITS AND DEBT: A GLOBAL PERSPECTIVE 17 (Siamack Shojai ed., 1999); 2007 IMF MANUAL, *supra* note 2, at 40–42; INT'L MONETARY FUND, ANNUAL REPORT 1998, at 40 (1998) [hereinafter IMF 1998 ANNUAL REPORT]; Miguel Braun & Nicolás Gadano, *What Are Fiscal Rules for? A Critical Analysis of the Argentine Experience*, 91 CEPAL REV. 53 (2007); Org. for Econ. Co-operation & Dev., *Fiscal Sustainability: The Contribution of Fiscal Rules*, 72 OECD ECONOMIC OUTLOOK 117 (2002), *available at* http://www.oecd.org/dataoecd/6/2/2483962.pdf [hereinafter OECD, *Fiscal Sustainability*]; Lisa Philipps, *The Rise of Balanced Budget Laws in Canada: Legislating Fiscal (Ir)responsibility*, 34 OSGOODE HALL L.J. 681 (1996); Charles Wyplosz, *Fiscal Policy: Institutions Versus Rules*, 191 NAT'L INST. ECON. REV. 70, 74–76 (2005); Allan Drazen, Fiscal Rules from a Political Economy Perspective 13–17 (June 9, 2002) (Paper presented at the IMF World Bank Conference on Rules-Based Fiscal Policy in Emerging Market Economies, Oaxaca, Mexico, Feb. 14–16, 2002); George Kopits & Jon Craig, *Transparency in Government Operations* 2 (Int'l Monetary Fund, Occasional Paper No. 158, 1998).

28. 2007 IMF MANUAL, *supra* note 2, at 41. Similarly, the OECD suggests that more coercive fiscal rules, such as balanced budget laws or spending caps, may be ineffective unless accompanied by transparency rules that prevent governments from hiding certain expenditures off budget. Joumard et al., *supra* note 22.

29. 2007 IMF MANUAL, *supra* note 2, at 14–15.

Even the Pact's strict three-percent fiscal deficit rule is dominated in practice by the various "soft" procedures for enforcement; the Council of the European Union uses these procedures primarily to enforce increased transparency, medium-term budgeting frameworks, and expenditure management processes among Member States.[30] Information about national fiscal rules and institutions, including monitoring mechanisms and multi-annual fiscal frameworks, must be reported annually to the EU institutions.[31] The Council has "recall[ed] the importance of domestic ownership, including the appropriate involvement of national Parliaments," but the main audience for these significant "transparency" obligations seems to be the Commission and the Council; the finance ministers and economic policy makers of the other Member States; and financial markets.

The notion of transparency does not on its face commit governments to restrain spending or deficits. However, as we show in Part II below, the need to establish credibility in the eyes of financial markets, donors, and investors has been a key driver of transparency initiatives. As one IMF staff member explained when promoting fiscal transparency to an audience consisting largely of representatives from developing countries:

> In fiscal policy perhaps nothing matters quite so much these days as what the financial markets think you are doing and how well you are doing it, and to add to the financial markets I think you increasingly have to take into account the fact that the donors like to know what it is that a country is doing and how well it is doing it.[32]

While prudent fiscal management has a commonsense appeal, what is less obvious on the face of the transparency debate are the constraints on taxation which, when combined with the spending constraints, have the ideological goal of restricting the overall size of government. Although the analogy between government and household budgeting is often made, there is a key difference: a government's overall budget constraint is not set by any objective or external standard. What a government can raise in resources is limited only by its capacity and desire to do so. The budget constraint is itself a set of political choices, capabilities, and distributional goals. In developed countries, there has been a trend towards reduction

30. Press Release, Council of the European Union (Oct. 9, 2007), *available at* http://ec.europa.eu/economy_finance/about/activities/sgp/council-october-2007_en.pdf [hereinafter EU Press Release].

31. *Id.* at 10.

32. Barry Potter, Address at the Second Conference on the International Budget Project: The IMF Transparency Code (Feb. 23, 1999), *available at* http://www.internationalbudget.org/conference/2nd/imf.htm.

of taxes on capital and on mobile labor since the beginning of the 1980s, although overall revenue collections have remained high. In developing countries, the trend is more complex: it is accepted that tax collections in these countries need to be increased so as to enable proper provision by government, but a combination of economic globalization (especially the mobility of capital) and domestic distributional politics puts great pressure on the ability of States to do so. We have written about the focus on fiscal deficits and the politics of tax reform elsewhere;[33] however, it remains an essential part of the neoliberal turn to which fiscal transparency norms can, in part, be traced.

B. Fiscal Transparency and Good Governance

The second major impetus for the new discourse on fiscal transparency came from changing ideas about governance that affected developing and developed countries in different ways. In the late 1990s, development theorists and agencies began to emphasize the need to support institutional reforms or "good governance" in developing countries, as well as to strengthen initiatives to reduce poverty and address the social side of development. These ideas took hold in the wake of widespread dissatisfaction with the neoliberal model, particularly the economic and political failure of structural adjustment programs in many developing countries. The U.N. Millennium Declaration of 2000 reflected these shifting attitudes and laid out specific targets for reducing the number of people living in extreme poverty and other measurable improvements in human welfare.[34] The U.N. Financing for Development process examined how resources can be made available to achieve these goals.[35] In 2001, a high-level panel chaired by Ernesto Zedillo offered a series of Recommenda-

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33. *See* Lisa Philipps, *Discursive Deficits: A Feminist Perspective on the Power of Technical Knowledge in Fiscal Law and Policy*, 11 CAN. J. L. & SOC. 141 (1996) [hereinafter Philipps, *Discursive Defecits*]; Lisa Philipps, *Taxing the Market Citizen: Fiscal Policy and Inequality in an Age of Privatization*, 63 LAW & CONTEMP. PROBS. 111 (2000); Miranda Stewart, *Global Trajectories of Tax Reform: The Discourse of Tax Reform in Developing and Transition Countries*, 44 HARV. INT'L L.J. 139 (2003) [hereinafter Stewart, *Global Trajectories*]; Miranda Stewart & Sunita Jogarajan, *The International Monetary Fund and Tax Reform*, 2 BRIT. TAX REV. 146 (2004).

34. United Nations Millennium Declaration, G.A. Res. 55/2, U.N. Doc. A/Res/55/2 (Sept. 18, 2000). Notably, the Declaration states that creating "an environment . . . conducive to development and to the elimination of poverty . . . depends on []good governance within each country . . . at the international level" as well as on "transparency in the financial, monetary and trading systems." *Id.* art. III(12)–(13).

35. *See generally* International Conference on Financing for Development, Mar. 18–25, 2002, *Monterrey Consensus on Financing for Development*, U.N. Doc A/CONF.198/11 (June 22, 2002), *available at* http://www.un.org/esa/ffd/monterrey/MonterreyConsensus.pdf.

tions ("Zedillo Report").[36] The panel emphasized the need for public investments in education, health, nutrition, and other basic social programs:

> Financing an adequate level of social public expenditure while limiting budget deficits calls for substantial tax revenues. Most countries of the developing world must undertake significant tax reforms if they are to raise the additional revenue that they need.[37]

The Zedillo Report further stated that developing countries themselves bear the primary responsibility for achieving growth and equitable development, in part by "creating the conditions that make it possible to secure the needed financial resources for investment."[38] These conditions include "[f]irst and foremost . . . good governance that commands the consent of the governed, and effective and impartial rule of law—including relentless combat of corruption . . . ."[39] Budget transparency initiatives can be seen as part of this good governance agenda aimed at securing resources for development. As we discuss in Part V below, a second element of "governance" reform in both developing and developed countries has been an increase in consultation on policy reform and its implementation, a trend that can been seen as both a logical consequence of increased transparency or information sharing and that has also developed as part of broader efforts to improve expenditure and tax policy outcomes. In sum, fiscal transparency laws are part of the shift to governance in the global context of fiscal reform for development.

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36. U.N. High-Level Panel on Fin. for Dev., Report of the High-Level Panel on Fin. for Dev., Delivered to the General Assembly, U.N. Doc. A/55/1000 (2001), *available at* http://www.un.org/reports/financing/full_report.pdf [hereinafter Zedillo Report]. The Zedillo Report was followed by a major U.N. Conference on Financing for Development. *See* International Conference on Financing for Development, Monterrey, Mexico, Mar. 18–20, 2002, *Report of the International Conference on Financing for Development*, U.N. Doc A/CONF.198/11 (2002). The Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus was held in Doha, Qatar from November 29 to December 2, 2008. Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, Doha, Qatar, Nov. 29−Dec. 2, *Doha Declaration on Financing for Development*, U.N. Doc. A/CONF.212/L.1/Rev.1 (Dec. 2, 2008).

37. Zedillo Report, *supra* note 36, at 5.

38. *Id.* at 4.

39. *Id.*

II. THE GLOBAL SPREAD OF FISCAL TRANSPARENCY NORMS

A. International Initiatives

This Part tracks the emergence and spread of budget transparency norms since the mid-1990s through the interaction of transnational "soft law" with more conventional legal forms at the country level. While international economic agencies have played a major role in this process, we find that they in turn have been influenced by government practices in certain developed countries, notably New Zealand. The normative underpinning of international agency codes is often obscured by the apparently neutral, procedural language of fiscal transparency. We also draw attention to the efforts of certain NGOs to reformulate budget transparency norms in order to advance an alternative fiscal politics in which the values of social equality and democratic legitimacy are more heavily weighted.

1. The IMF

In previous work, Stewart has documented the rising influence of international financial institutions and their affiliated experts over domestic tax reform agendas, especially, but not only, in developing countries.[40] A similar pattern of transfer from the international to the domestic level is clearly evident in the spread of fiscal transparency norms, and the IMF has taken the lead role in this process.

The IMF's work on fiscal transparency evolved directly out of its efforts to promote budget discipline as a cornerstone of worldwide economic policy. By 1996, however, the IMF had begun to stress that reforms to promote good governance, the rule of law, and public sector accountability were also needed in many countries to create conditions for the success of its economic policy prescriptions.[41] At this early stage

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40. Stewart, *Global Trajectories*, *supra* note 33; Miranda Stewart, *Tax Policy Transfer to Developing Countries: Politics, Institutions and Experts*, *in* GLOBAL DEBATES ABOUT TAXATION 182 (Holger Nehring & Florian Schui eds., 2007) [hereinafter Stewart, *Tax Policy Transfers*]; Stewart & Jogarajan, *supra* note 33. *See also* Allison Christians, *Hard Law, Soft Law, and International Taxation*, 25 WIS. INT'L L.J. 325, 331 (2007) (on the OECD).

41. *See* Press Release, Int'l Monetary Fund, Communiqué of the Interim Committee of the Board of Governors of the Internationall Monetary Fund, No. 96/49 (Sept. 29, 1996), *available at* http://www.imf.org/external/np/sec/pr/1996/pr9649.htm [hereinafter IMF Press Release 96/49]; Int'l Monetary Fund, *Good Governance: The IMF's Role* 3−4 (Aug. 1997), *available at* http://www.imf.org/external/pubs/ft/exrp/govern/govern.pdf [hereinafter *The IMF's Role*] (identifying issues of budget process and management as central to the IMF's mandate and expertise).

of the governance revolution, the IMF advocated fiscal transparency primarily as a means of shoring up fiscal discipline and improving a country's credibility with private investors. A critical 1996 declaration restated the IMF's longstanding view that countries should aim for "budget balance and strengthened fiscal discipline in a multi-year framework" and added the following:

> Continued fiscal imbalances and excessive public indebtedness, and the upward pressures they put on global real interest rates, are threats to financial stability and durable growth. *It is essential to enhance the transparency of fiscal policy* by persevering with efforts to reduce off-budget transactions and quasi-fiscal deficits.[42]

The link between transparency and fiscal restraint was further emphasized in an influential study paper by two senior members of the IMF Fiscal Affairs Department:

> Timely publication of a clearly presented budget document makes it easier for the market to evaluate the government's intentions and allows the market itself to impose a constructive discipline on the government. Transparency increases the political risk of unsustainable policies, whereas the lack thereof means that fiscal profligacy can go undetected longer than it otherwise would.[43]

Initially the IMF sought to encourage fiscal transparency by incorporating governance concerns into its existing programs of country surveillance, technical advice, and loan conditionality.[44] In carrying out these long-standing functions, IMF staff were to impress upon country authorities the "potential risk that poor governance could adversely affect market confidence and, in turn, reduce private capital in-flows and investment."[45] In 1997, the IMF moved to formalize its guidance on fiscal transparency in a detailed set of standards. This decision flowed directly from the Asian financial crisis and the sense of urgency it created about restoring market confidence.[46] At a meeting in October 1997, executive directors debated the merits of having staff prepare a "brief manual of

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42. IMF Press Release 96/49, *supra* note 41 (emphasis added).

43. Kopits & Craig, *supra* note 27, at 2.

44. *The IMF's Role*, *supra* note 41, at 6–9.

45. *Id.* at 7.

46. This decision was the result of the Asian financial crisis and the sense of urgency it created about restoring market confidence. Murray Petrie, *The IMF Fiscal Transparency Code: A Potentially Powerful New Anti-Corruption Tool* 4 (paper presented at the 9th International Anti-Corruption Conference, Durban, Oct. 10–15, 1999) [hereinafter Petrie, *The IMF Fiscal Transparency Code*].

good practices for fiscal transparency."[47] While the report of this discussion indicates that some directors had reservations, the staff was instructed to proceed, and the IMF's first Code of Good Practices on Fiscal Transparency was approved in April 1998 ("Code").[48] Revised versions of the Code were published in 2001 and 2007, along with the extensive Manual on Fiscal Transparency ("Manual"), which provides detailed guidance to assist with "practical implementation."[49]

On publishing its first Code in 1998, the IMF stated the purposes of fiscal transparency more broadly than in earlier documents:

> The underlying rationale was that fiscal transparency could lead to better-informed public debate about the design and results of fiscal policy, make governments more accountable for the implementation of fiscal policy, and thereby promote good governance, strengthen credibility, and mobilize popular support for sound macroeconomic policies.[50]

The IMF's interest in promoting public debate must be read skeptically, we argue, in light of its fundamental policy orientation towards fiscal discipline. Its early discussions of transparency show that the driving purpose was not to facilitate more informed and inclusive political bargaining over budgetary decisions, but rather to help ensure that countries would stick to an IMF-approved set of fiscal policies, even in the face of domestic political protest.[51]

The resolution approving the Code noted that it "does not imply a legal obligation on members."[52] Nonetheless, the IMF has taken concerted

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47. IMF 1998 ANNUAL REPORT, *supra* note 27.

48. *Id.*; Press Release, Int'l Monetary Fund, Communiqué of the Interim Committee of the Board of Governors of the Internationall Monetary Fund, No. 98/14 (Apr. 16, 1998), *available at* http://www.imf.org/external/np/sec/pr/1998/pr9814.htm [hereinafter IMF Press Release 98/14].

49. Int'l Monetary Fund, Factsheet: How Does the IMF Encourage Greater Fiscal Transparency?, http://www.imf.org/external/np/exr/facts/fiscal.htm (last visited Apr. 8, 2009) [hereinafter IMF Factsheet]. *See also* 2007 IMF MANUAL, *supra* note 2; INT'L MONETARY FUND, FISCAL AFFAIRS DEP'T, GUIDE ON RESOURCE REVENUE TRANSPARENCY (2007), *available at* http://www.imf.org/external/np/pp/2007/eng/101907g.pdf.

50. IMF 1998 ANNUAL REPORT, *supra* note 27.

51. For example, in their leading paper on fiscal transparency, Kopits and Craig explained its role in quelling popular protest as follows:

> Although fiscal transparency cannot guarantee consensus, there have been episodes (including recent ones) where a failure to prepare the population, through adequate and candid explanation, for the removal of a critical subsidy or of a labor market regulation has led to major unrest and jeopardized the improved economic performance sought by those measures.

Kopits & Craig, *supra* note 27, at 2.

52. IMF Press Release 98/14, *supra* note 48.

steps to encourage compliance. As a result, the Code now exerts significant normative pressure on policy makers in many countries. The IMF's main implementation vehicle is the fiscal Report on the Observance of Standards and Codes ("fiscal ROSC"). This is a module on fiscal policy incorporated into the ROSC process which is applied generally by the IMF to evaluate country compliance with a range of norms and standard.[53] For example, in its 2001 fiscal ROSC on Brazil, the IMF commented favorably on the country's improved fiscal management and noted that "[t]he cornerstone of these achievements has been the enactment in May 2000 of the Fiscal Responsibility Law which sets out for all levels of government fiscal rules designed to ensure medium-term fiscal sustainability, and strict transparency requirements to underpin the effectiveness and credibility of such rules."[54] Formally, fiscal ROSCs are voluntary, as countries must request an assessment by the IMF, and they are published only by consent.[55] While many developed countries have undergone the process, participation has been especially strong among developing countries seeking better capital market access, in part because the IMF's published reports are used by credit-rating agencies and private analysts to gauge investment risk.[56] Moreover, the IMF indicated that it has sometimes incorporated the recommendations of fiscal ROSCs into loan conditionality for particular countries.[57] The decision to undergo or comply with the results of a fiscal ROSC cannot be seen as equally voluntary for all countries.

It is our view that, globally, the IMF Code is the dominant model and it has had pervasive influence via several channels. The norm-transmitting capacity of the Code has been magnified by the work of other transnational players in both the public and private sectors. This includes

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53. *See* 2007 IMF MANUAL, *supra* note 2, at 8–12.

54. Int'l Monetary Fund, Fiscal Affairs Dep't, *Brazil: Report on Observance of Standards and Codes (ROSC)—Fiscal Transparency Module* 1, IMF Country Report No. 01/217 (Dec. 2001).

55. By 2003, the IMF reported that "[fifty-four] fiscal ROSCs had been completed, of which [forty-eight] were published on the IMF website." INT'L MONETARY FUND, FISCAL AFFAIRS DEP'T, ASSESSING AND PROMOTING FISCAL TRANSPARENCY: A REPORT ON PROGRESS 4 (Mar. 5, 2003), *available at* http://imf.org/external/np/pdr/sac/2003/030503s2.pdf [hereinafter REPORT ON PROGRESS]. A more recent document indicates that "[a]s of March 2009, [eighty-eight] countries from all regions and levels of economic development had posted their fiscal transparency ROSCs on the IMF's Standards and Codes web page." IMF Factsheet, *supra* note 49.

56. REPORT ON PROGRESS, *supra* note 55, at 9, 17.

57. *Id.* at 12–13. One example is Argentina, where a new Fiscal Responsibility Law was enacted in 2004, as a direct response to IMF requirements for institutional reform. *See* Braun & Gadano, *supra* note 27, at 60–62.

the World Bank, which has sometimes collaborated with the IMF in completing fiscal ROSC reports and has relied on them in its own work, in particular in developing aid and loan expenditure accountability mechanisms.[58] The Code has also been promoted by the Financial Stability Forum ("FSF"), a group comprised of financial regulators from several developed countries, international financial institutions, and standard-setting bodies, including the IMF.[59] The FSF has urged "market practitioners to take further account, when making lending and investment decisions, of jurisdictions' observance of standards."[60] Private sector investment analysts do appear to use the Code in this manner, both by relying on IMF reports of country compliance and by applying the Code independently to evaluate fiscal transparency in countries for which no fiscal ROSC is available.[61] Furthermore, there is some evidence that the Code is influencing the way donor countries deliver foreign aid. For example, the United Kingdom's Department for International Development uses the Code along with other international standards to help it assess the risks of delivering aid directly through a government's central budget, as contrasted with aid tied to specific projects or administered by NGOs.[62] The prospect of securing less conditional forms of international

58. *See* World Bank, Poverty Reduction & Econ. Mgmt. Network & Int'l Monetary Fund, Fiscal Affairs Dep't, *Bank/Fund Collaboration on Public Expenditure Issues* 20, Board Report No. 25763 (Feb. 14, 2003), *available at* http://www1.worldbank.org/publicsector/pe/BankFundPERCollaboration.pdf. World Bank analysts have also used the 2007 IMF CODE, *supra* note 2, as a benchmark for evaluating budget processes in developed and developing countries. *See, e.g.*, Zhicheng Li Swift, *Managing the Effects of Tax Expenditures on National Budgets* 26–27 (World Bank Pol'y Research, Working Paper No. 3927, 2006). Note also the endorsement by G7 Finance Ministers in 1999. *See generally* World Bank & IMF, *Bank/Fund Collaboration on Public Expenditure Issues* 20, IBRD Report No. 25763 (Feb. 14, 2003), *available at* http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2003/04/25/000094946_03041604014622/Rendered/PDF/multi0page.pdf.

59. *See* Financial Stability Forum, History, http://www.fsforum.org/about/history.htm (last visited Apr. 8, 2009). *See also* FIN. STABILITY FORUM, UPDATE ON THE IMPLEMENTATION OF THE FSF'S RECOMMENDATIONS: REPORT BY THE FSF CHAIRMAN TO THE G8 FINANCE MINISTERS (2008), *available at* http://www.fsforum.org/publications/r_0806.pdf.

60. Fin. Stability Forum, *Follow-Up Group on Incentives to Foster Implementation of Standards*, Sept. 6, 2001, http://www.fsforum.org/publications/r_0109a.htm.

61. Murray Petrie, *Promoting Fiscal Transparency: The Complementary Roles of the IMF, Financial Markets, and Civil Society* 6–14 (Int'l Monetary Fund, Working Paper No. 03/199, 2003), *available at* http://www.imf.org/external/pubs/ft/wp/2003/wp03199.pdf [hereinafter Petrie, *Promoting Fiscal Transparency*].

62. *See* DEP'T FOR INT'L DEV., MANAGING FIDUCIARY RISK WHEN PROVIDING DIRECT BUDGET SUPPORT 8−10 (2002), *available at* http://www.dfid.gov.uk/pubs/files/pfma-fiduciaryrisk.pdf. *See also* Norwegian Agency for Dev. Cooperation, *Coordination of Budget Support Programs: Lessons from the Joint Macro-Financial Aid Program to Mozambique* 5,

aid thus provides another impetus for developing countries to adopt IMF-defined fiscal transparency norms in their domestic law and practice.

2. The OECD

Following the IMF's lead, the OECD began work in 1999 on a set of Best Practices for Budget Transparency ("OECD Best Practices"), gleaned from the experience of member countries.[63] The active involvement of both the IMF and the OECD indicates the global sweep of fiscal transparency norms, encompassing developed and developing nations alike. As explained in Part I, like the IMF, the OECD's interest in this subject is firmly rooted in its concerns about the prudence and sustainability of fiscal policy among its members. Though many OECD countries reduced their large deficits during the 1990s, budget balances are clearly at risk in the current financial crisis as well as because of the longer term spending pressures associated with demographic aging, such as health care and pensions.[64] The OECD has predicted that the fiscal consequences of aging populations will be "severe" in virtually all its member countries.[65] From its perspective, the main purpose of transparency measures is to encourage spending restraint by revealing "the true cost of government activities."[66]

The OECD Best Practices notes that some countries have legislated fiscal rules while others have merely adopted policies or guidelines.[67] It strikes a more skeptical tone than the IMF about the value of law reform *per se*, observing that "enforcing fiscal frameworks is a political economy issue as well as a technical one."[68] The OECD explains that its description of best practices "are not meant to constitute a formal 'standard' for budget transparency."[69] The OECD is not a funding body and does not have the same types of leverage over its members as the IMF, in the sense of imposing conditions on financial assistance. Nor does the OECD formally report on country compliance with the OECD Best Practices. Nonetheless, one of the purposes of the document is clearly to encourage reform and convergence at the country level: "[t]he Best Practices are designed as a reference tool for Member and non-member coun-

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NORAD Report No. 2001/1 (2001), *available at* http://www.norad.no/items/1128/38/2574038865/0101coordination%20of%20budget%20support.pdf.

63. *OECD Best Practices*, *supra* note 1.
64. OECD, *Fiscal Sustainability*, *supra* note 27, at 117.
65. Joumard et al., *supra* note 22, at 117–18.
66. *Id.* at 127.
67. OECD Best Practices, *supra* note 1, at 122–23.
68. Joumard et al., *supra* note 22, at 130.
69. OECD Best Practices, *supra* note 1, at 7.

tries to use in order to increase the degree of budget transparency in their respective countries."[70]

Since 2003, the OECD has also engaged in a major research endeavour to collect detailed information about budget practices in member and selected non-member countries, through a questionnaire which covers many of the aspects of transparency addressed in OECD Best Practices.[71] The findings of this research are made public as a free electronic database which has been used by academics to compare and rank the fiscal transparency of different countries.[72] While it is difficult to measure the extent to which domestic policy makers, investment analysts, or other players are influenced by these rankings, their existence suggests that the OECD functions as another informal regulator of budgeting norms, though it plays a less direct role than the IMF.

3. NGOs

The concept of "transparency" has a venerable history among NGOs, particularly with respect to their work on corruption. Several nongovernmental actors are making efforts at the international level to encourage and assess budget transparency in different countries. Perhaps the most prominent is the IBP of the Centre on Budget and Policy Priorities, based in Washington, D.C. In a study on who uses the IMF Code, Petrie reported that civil society organizations generally found it inadequate for their purposes and thus have developed their own modified standards.[73] For example, in the late 1990s, the IBP worked with the IDASA to formulate an alternative budget transparency questionnaire for use in South Africa and several other African countries.[74] The authors of the IBP report offered a rationale for the study: "in the context of widespread poverty in the developing world, citizens and civil society organizations are

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70. *Id.*

71. ORG. FOR ECON. CO-OPERATION & DEV., OECD BUDGET PRACTICES AND PROCEDURES SURVEY, *available at* http://www.oecd.org/dataoecd/30/45/39466141.pdf (the most recent version of the survey). Interestingly, while the survey includes questions about any substantive fiscal rules applicable in the jurisdiction (such as spending caps or balanced budget rules), it does not ask whether a country has enacted fiscal transparency legislation. *Id.* at 14.

72. The database was most recently updated in 2007, and can be accessed at http://webnet4.oecd.org/budgeting/Budgeting.aspx. For rankings based on the database, see, for example, JAMES E. ALT ET. AL., FISCAL TRANSPARENCY AND FISCAL POLICY OUTCOMES IN OECD COUNTRIES (2003); Francisco Bastida & Bernardino Benito, *Central Government Budget Practices and Transparency: An International Comparison*, 85 PUB. ADMIN. 667, 680, 684–85 (2007).

73. Petrie, *Promoting Fiscal Transparency*, *supra* note 61, at 20.

74. FÖLSCHER ET AL., *supra* note 3, at 3.

increasingly focusing on the budget and its effects on the distribution of resources, leading them to demand more and better budget information."[75] Contrasting this explanation with the IMF and OECD emphasis on fiscal discipline and credibility demonstrates the range of different meanings and goals that can be attached to the concept of fiscal transparency. These different visions are also reflected in the specific criteria used to measure transparency at the country level, the subject of Part III below.

The IBP also helped to initiate a comparative study of budget transparency in five Latin American countries.[76] The study was designed and carried out by civil society groups and academics based in Latin America, and it employed both a survey of expert participants in the budget process and a separate study of the legal framework for budgeting in each country. This methodology was chosen in order to assess "whether the lack of transparency is due to legal gaps or a deficient application of budget legislation."[77] Since the release of these regional studies, in 2006 the IBP launched its more ambitious Open Budget Index ("IBP Index"), which examines budgeting practices in a large number of countries through a detailed questionnaire used by independent academic or civil society researchers to assess performance in each country.[78] The most recent Open Budget Index, from 2008, surveyed eighty countries. In its final report, the IBP asserts that eighty percent of these countries fail to provide enough information to their citizens to ensure accountability, while fifty percent of these countries provide such minimal information that they can hide unpopular, wasteful, or corrupt spending.[79]

It would be a mistake to treat NGO work on fiscal transparency as entirely separate and distinct from that of the international financial institutions. Certainly, the NGO focus on empowering local civil society

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75. *Id.* at 3.

76. *See Index of Five Latin American Countries*, *supra* note 3.

77. *Id.* at 1. The researchers found that while laws regulating the budget process existed in the region, they did not include mechanisms to promote citizen participation. *Id.*

78. Open Budget Initiative, Country Date Archives, http://www.openbudgetindex.org/countryData/?fa=archive&pubdate=10/18/06 (last visited Apr. 8, 2009). For this report and many resources on budget transparency projects worldwide, see Internationall Budget Partnershipship, http://www.internationalbudget.org (last visited Apr. 8, 2009). The survey results were unveiled on October 18, 2006. The concept of such an index clearly takes inspiration from Transparency International's work on measuring corruption worldwide. *See* Transparency Internationall: The Global Coalition Against Corruption, www.transparency.org (last visited Apr. 8, 2009).

79. INT'L BUDGET P'SHIP, OPEN BUDGETS TRANSFORM LIVES: THE OPEN BUDGET SURVEY 2008, at 3 (2008), *available at* http://openbudgetindex.org/files/FinalFullReportEnglish1.pdf [hereinafter OPEN BUDGET SURVEY 2008].

groups to engage in the budget process means they are less preoccupied than the IMF or OECD with issues of economic stability and growth. However, the IBP does not present itself as opposing the IMF's fiscal transparency campaign, but rather supplementing it with research and activism. The IBP is eager to point out that a consensus in favor of transparency crosses a range of interests:

> [T]he idea of promoting open budgets is one that can gather support from a wide range of actors, leading to a coalition not available on other issues. Business interests often favor open budgets because they provide a better understood context in which to invest. International organizations support them because they feel open budgets are essential to good governance. Civil society organizations favor open budgets reflecting their general support of more open and democratic societies. Governments find them hard to oppose.[80]

Thus, the IBP and IDASA have lauded the IMF Code as "an important advance in efforts to promote fiscal transparency," while also asserting that "it is limited, particularly when it is examined from the perspective of promoting participation in the budget decision-making process."[81] The IMF staff has participated in conferences of the IBP, and its Code has served as a starting point for IBP work. On the other side, there is some evidence that IMF personnel have begun to place some stock in the IBP's findings about transparency for particular countries and to incorporate them into its analyses.[82] This interweaving complicates the pattern of norm development at the transnational level, as it suggests a significant degree of collaboration among different policy networks or epistemic communities.

4. Aid Donors

Budget transparency and accountability also concern governments and institutions in their capacity as aid donors. As identified recently by the OECD, donors and the World Bank have put significant effort into strengthening and managing accountability for aid and project expenditure and much less into budgeting in general, or tax policy and administration in countries receiving aid.[83] Several avenues have been developed

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80. Transparency and Participation in the Budget Process, *supra* note 3.

81. FÖLSCHER ET AL., *supra* note 3, at 6 n.4.

82. *See, e.g.*, Taryn Parry, *The Role of Fiscal Transparency in Sustaining Growth and Stability in Latin America* 22 (Int'l Monetary Fund, Working Paper No. 07/220, 2007) (including data from the Open Budget Index).

83. ORG. FOR ECON. CO-OPERATION & DEV., GOVERNANCE, TAXATION AND ACCOUNTABILITY: ISSUES AND PRACTICES 27 (2008), *available at* http://www.oecd.org/dataoecd/52/35/40210055.pdf [hereinafter OECD, GOVERNANCE].

by country donors to strengthen and help manage public finances and fiscal policy in aid-recipient countries.

First, the process outlined in the Poverty Reduction Strategy Paper ("PRSP") associated with conditional lending and debt relief comprises the central means by which the IMF and World Bank seek to consult with developing States, the poor, and other stakeholders with respect to expenditures, reforms, and general policy. As of March 2009, more than sixty-six countries have completed PRSPs since 2000.[84] They are lengthy documents, running to several hundred pages. As stated by the IMF, the key goals of PRSPs are to "strengthen country ownership" and "enhance the poverty focus" of reform programs and to "provide for stronger collaboration" among the institutions, recipient countries, and other development lenders and donors.[85]

Second, the OECD, jointly with the Development Assistance Committee ("DAC"), the peak body for donor countries, have begun to monitor aid effectiveness, and in 2005 they established a program to monitor the use of harmonized standards to assess public financial management in aid-recipient countries; to provide training and share experiences; and to establish harmonized accounting standards for aid-recipient countries reporting on external assistance.[86]

This monitoring process builds on the Public Expenditure and Financial Accountability ("PEFA") program established in 2001, and is jointly financed by the European Commission, France, the IMF, Norway, Switzerland, the United Kingdom (through its Department for International Development), and the World Bank (using its Development Grant Facility), , the United Kingdom (through its Department for International Development)[87] PEFA's goal is to strengthen both "recipient and donor

84. Int'l Monetary Fund, Poverty Reduction Strategy Papers, Mar. 9, 2009, http://www.imf.org/external/np/prsp/prsp.asp. Many countries have completed more than one PRSP. *Id.*

85. Int'l Monetary Fund, Indep. Evaluation Office, *Evaluation of the IMF's Role in Poverty Reduction Strategy Papers and the Poverty Reduction and Growth Facility* 14 (2004), *available at* http://www.imf.org/External/NP/ieo/2004/prspprgf/eng.index.htm.

86. Org. for Econ. Co-operation & Dev., *Paris Declaration on Aid Effectiveness: Ownership, Harmonization, Alignment, Results and Mutual Accountability* (Mar. 2, 2005), *available at* http://www.oecd.org/dataoecd/11/41/34428351.pdf [hereinafter *Paris Declaration*]. The Paris Declaration was an international agreement to which over one hundred ministers, heads of agencies, and other senior officials adhered and committed their countries and organizations in order to continue to increase efforts in harmonization, alignment, and managing aid. This resulted in a set of actions and indicators capable of being monitored.

87. Public Expenditure and Financial Accountability, About PEFA—PEFA Program, http://www.pefa.org/about_pefamn.php (last visited Apr. 27, 2009).

ability" in order to assess the condition of (presumably recipient) country public expenditure, and procurement and financial accountability systems, generally termed Public Financial Management ("PFM"), and to develop reforms and capacity building in this area.[88]

The PEFA framework replaces the previous Highly Indebted Poor Country framework for country financial assessment (so as to qualify countries for debt relief under that program) and is being used by the United Kingdom and some other States in their own donor assessments of countries.[89] PEFA claims strong support for its framework for assessing public financial management and suggests that the framework is likely to be sustainable into the future because of several factors, among others:

> (i) its wide support from international agencies (the members of the OECD DAC joint venture on PFM), (ii) its fast, global adoption, despite the decentralized (country based) decision-making on if and when to use the Framework, [and] (iii) the agreement to implement repeat assessments in many countries . . . .[90]

One concern that has been widely aired over the last decade about reforms implemented in donor and lender-dominated processes has been a lack of country "ownership" of the reform. Ten years ago, this was described in relation to conditionality-linked loan facilities of the IMF as follows:

> The one common theme that runs through perceptions of [the Enhanced Structural Adjustment Facility] . . . is a feeling of a loss of control over the policy content and the pace of implementation of reform . . . . [T]here is broad agreement that ownership is a necessary condition of successful policy reform.[91]

PEFA states that it aims for a significant level of "country ownership" of expenditure management policy and systems in order to reduce transaction costs for aid recipient and donor countries, and to increase donor harmonization (fragmentation of aid is described as a very significant

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88. Public Expenditure and Financial Accountability, About PEFA—PEFA Goals, http://www.pefa.org/about_pefamn.php (last visited Apr. 27, 2009).

89. ORG. FOR ECON. CO-OPERATION & DEV., BETTER AID: MANAGING DEVELOPMENT RESOURCES—THE USE OF COUNTRY SYSTEMS IN PUBLIC FINANCIAL MANAGEMENT 52–58 (2009).

90. Public Expenditure and Financial Accountability, Frequently Asked Questions, http://www.pefa.org/faqmn.php (last visited Apr. 8, 2009) [hereinafter PEFA FAQs].

91. INT'L MONETARY FUND, REPORT OF THE GROUP OF INDEPENDENT PERSONS APPOINTED TO CONDUCT AN EVALUATION OF CERTAIN ASPECTS OF THE ENHANCED STRUCTURAL ADJUSTMENT FACILITY (PART 2), at 20 (1998) (*prepared by* Kwesi Botchwey, Paul Collier, Jan Willem Gunning & Koichi Hamada), *available at* http://www.imf.org/external/pubs/ft/extev/esaf2.pdf.

complicating factor for recipient-country budget processes). While separate from the fiscal transparency and budget assessment processes, with a particular focus on expenditure and tracking of aid funds (and debt relief benefits), the PEFA framework has developed largely on account of increased attention to country ownership and the move to include aid funds in a government budget rather than off budget.[92]

Budget support requires donors to negotiate with a government about the overall budget expenditure process and administration through governmental mechanisms, in contrast to direct aid-to-project processes, which are administered and funded in communities by external agencies or nongovernment organizations. Most aid is provided directly on a project basis and hence is off budget. This presents real challenges for countries seeking to enhance budget transparency and accountability and also receiving large aid inflows, in particular, because these can be volatile and uncertain unless there is a mechanism for centrally tracking all aid disbursements. The World Bank has begun to take the view that a country's budget process is "the central institutional framework for exercising choices on where resources should be channeled and for holding governments accountable."[93] The European Commission and World Bank aim to provide thirty percent of aid through long-term budget support.[94]

Concerns associated with budget support as the mechanism for aid provision include fiduciary risk where financial management in a country is weak (especially, the risk that aid will be misappropriated), increased transaction costs for donors, and a strain on the capacity of the ministry of finance as the main coordinator of a variety of development priorities. However, the "emerging consensus among donors is that budget support is an approach better suited to countries with a good track record and . . . transparent budget management."[95]

The PEFA framework overlaps with the IMF fiscal ROSC process and with budget transparency norms. PEFA explains this as follows:

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92. BUDGET SUPPORT AS MORE EFFECTIVE AID? RECENT EXPERIENCES AND EMERGING LESSONS (Stefan Koeberle, Zoran Stavreski & Jan Walliser eds., 2006), *available at* http://www.wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2006/04/27/000090341_20060427100443/Rendered/PDF/359670Budget0Support01PUBLIC1.pdf.

93. *Id.* at 4.

94. *See id.* (providing a detailed discussion of recent experiences and issues).

95. *Id.* at 12. However, note that caution is required as the implementation of budget support can cause some perverse outcomes. *See* Philippa Venning, *Impact of Budget Support on Accountabilities at the Local Level in Indonesia*, 1 OECD J. ON BUDGETING 105 (2009).

> The mobilization and utilization of financial resources for the public is a most essential part of governance. Where transparency and accountability mechanisms are weak or lacking, poor people's needs are often marginalized and development outcomes suffer. Several PFM analytical tools can help to promote transparency through publication of their findings, including in a PFM Performance Report. However, monitoring is key to accountability . . . . The PEFA Framework can therefore provide an important part of a monitoring framework for governance.[96]

B. Country Initiatives

In this Section we shift the focus to the domestic level by charting the adoption of budget-related legislation in selected countries, seeking to uncover the historical process of norm creation and transfer.

1. Developed Countries: New Zealand, Australia, and the United Kingdom

The experience of these three countries is critical because it shows that ideas about fiscal transparency have migrated not only from the transnational to the domestic level, but also in the reverse direction. All three countries were ranked above average in a recent study of country compliance with OECD Best Practices, with New Zealand ranked "far and away" the best performing country.[97] As we shall see, this may be because the OECD Best Practices follow the New Zealand design. According to this study, Australia ranks high on integrity, control, and accountability, but less high on budget reports and specific disclosures, while the United Kingdom ranks high on disclosures and accountability, but very low on budget reports (a mark which brings its average down).[98] Both the United Kingdom and New Zealand also rank very high in the IBP Open Budget Survey 2008 (as does the United States); ironically, Australia is not included in that Index.[99]

As with monetary policy, New Zealand pioneered the design of budget transparency legislation with its Fiscal Responsibility Act 1994,[100] a move that predated all of the international fiscal transparency codes. This

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96. PEFA FAQs, *supra* note 90 (follow hyperlink to question 1.2).

97. Bastida & Benito, *supra* note 72, at 680, 684–85. We consider the results of this study (one of the few comparative studies made to date) to be interesting, but to have significant limitations, including that it is based on country self-reporting through the OECD questionnaire process; and that it does not examine actual practice but the legal and administrative procedures in place.

98. *Id.* at 684–85.

99. OPEN BUDGET SURVEY 2008, *supra* note 79, at 7.

100. Fiscal Responsibility Act 1994, 1994 S.N.Z. No. 18 (N.Z.).

Act was highly innovative in that it sought to tighten fiscal discipline not through hard fiscal caps, but through procedural rules that stressed transparency.[101] It caught the attention of fiscal policy analysts in the international agencies, and the New Zealand model quickly became a "benchmark" for defining fiscal transparency.[102]

Australia and the United Kingdom followed suit by enacting comparable statutes in 1998, the same year the IMF approved its first version of the Code.[103] All three governments eschewed strict numerical limits in favor of procedural rules that mandated disclosure of the government's fiscal policy agenda and actual results on an ongoing basis. The experience of these nations influenced the development and enforcement of fiscal transparency standards set by the IMF and OECD.

For example, Australia took an early leadership role by conducting a detailed analysis of its own compliance with the IMF Code shortly after its adoption in 1998. IMF staff participated as independent reviewers of the draft report. The stated purpose of the whole exercise was to "contribute to international financial reform" by "preparing a self-assessment report, providing a format and methodology that other countries may choose to follow."[104] Australia's Charter of Budget Honesty emphasizes the publication of fiscal strategies, outlook and performance reports, and a long-term intergenerational report.[105] Australia is said to have pioneered the medium term expenditure framework ("MTEF") using multi-year forward estimates as the starting point for considering governmental department bids for resources from the budget within the overall resource framework set by the government.[106] This requirement is not contained in detail in the Charter, although it does require fiscal objectives and forecasting on a rolling three-year time horizon—in substance, an MTEF.

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101. *See* Angela Barnes & Steve Leith, *Budget Management That Counts: Recent Approaches to Budget and Fiscal Management in New Zealand* 2 (N.Z. Treasury Dep't, Treasury Working Paper No. 01/24, 2001); Jon Janssen, *New Zealand's Fiscal Policy Framework: Experience and Evolution* 2 (N.Z. Treasury Dep't, Treasury Working Paper No. 01/25, 2001). *See also* GRAHAM C. SCOTT, GOVERNMENT REFORM IN NEW ZEALAND (1996); Marco Cangiano, *Accountability and Transparency in the Public Sector: The New Zealand Experience* (Int'l Monetary Fund, Working Paper No. 96/122, 1996).

102. *See* Kopits & Craig, *supra* note 27, at 37. The New Zealand legislation was highlighted as a novel approach in OECD, *Budgeting for the Future* 19–23 (OECD, Working Paper No. 95, 1997).

103. Charter of Budget Honesty Act, 1998, c. 22 (Austl.); Code for Fiscal Stability, 1998, c. 36, § 155 (Eng.).

104. COMMONWEALTH OF AUSTL., MAKING TRANSPARENCY TRANSPARENT: AN AUSTRALIAN ASSESSMENT at vi (1999), *available at* http://www.treasury.gov.au/documents/178/PDF/intro.pdf.

105. Charter of Budget Honesty Act, 1998.

106. Schick, *supra* note 11, at 18.

Overall, the budget is to be managed in accordance with "prudent" fiscal practice.[107]

The United Kingdom's Code for Fiscal Stability ("U.K. Code") was approved by the Parliament under Section 155(7) of the Finance Act 1998.[108] New Zealand's example and the IMF work on budget transparency both appear to have been important influences. However, perhaps most important was the goal of "signaling a commitment to sensible management of the public finances" by the new Labor government.[109] Chancellor Gordon Brown stated that the U.K. Code was intended to strengthen the openness, transparency, and "credibility" of fiscal policy.[110] The U.K. Code does not impose explicit fiscal caps, but operates together with two nonbinding, "conventional" budget principles outside the U.K. Code.[111] These principles are the "golden rule," which states that the current budget surplus must be at least zero, or rather, there should not be a deficit over an economic cycle, and the "sustainable investment" rule, which requires the net debt to be maintained below forty percent of GDP in an economic cycle.

The role of New Zealand especially suggests that fiscal transparency norms did not simply emerge from within the IMF, but were formed by a broader epistemic community that included policy makers from certain key developed countries. However, once a blueprint was codified at the international level, the IMF and OECD began using it to assess the budget institutions and practices of many other countries facing a wide range of different economic challenges. As Rodrik observes, the use of such blueprints may be beneficial in enabling an efficient process of reform, but also carries risks if it overshadows local political processes that ensure local ownership, and effective design and implementation of re-

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107. Charter of Budget Honesty Act, 1998, § 5.

108. The EU Stability and Growth Pact was also being developed at this time. *See* Resolution of the European Council on the Stability and Growth Pact, 1997 O.J. (C 236). Although the United Kingdom did not join the euro currency area (and hence is not required to adhere to the strict budgetary deficit rules established under the Maastricht Treaty), as a member of the EU, it monitors its compliance with the European Pact. European Commission, Economic and Financial Affairs—United Kingdom, http://ec.europa.eu/economy_finance/eu_economic_situation/member_state8622_en.htm (last visited Apr. 19, 2009).

109. *See* Emmerson, Frayne & Love, *supra* note 10, at 6. The Labour Party under Tony Blair and Gordon Brown was elected in a landslide victory in 1997. *Blair's Britain—Blair's Team Tackles Britain*, BBCNEWS.COM, Dec. 26, 1997, http://news.bbc.co.uk/2/hi/special_report/for_christmas/_new_year/blairs_britain/39177.stm.

110. Code for Fiscal Stability, 1998, c. 36, § 155 (Eng.); Her Majesty's Treasury, *Chancellor Proposes Code for Fiscal Stability* (Nov. 25, 1997), http://www.hm-treasury.gov.uk/prebud_pbr97_presshmt2.htm.

111. 2007 IMF MANUAL, *supra* note 2, at 53.

forms.[112] In particular, according to Stevens, attempts to reform the public financial management systems of developing countries by simply transplanting advanced-country best practices have often failed. Too often, such reforms do not jibe with the informal culture and traditions that have helped to stabilize the host State, or they require too much support from external consultants to be sustained over the long-term.[113]

2. Developing and Emerging Countries: Nigeria, Pakistan, India, and South Africa

During the last decade, developing and emerging countries have also begun moving towards establishing or reforming budget laws and fiscal frameworks. In adopting these laws, some countries were influenced by the policy directions of the IMF, either through conditionality-linked borrowing or as part of the general surveillance process carried out by the IMF, including a fiscal ROSC. In other countries, in particular emerging economies and strong democracies like South Africa and India, a different path has been taken towards establishing fiscal transparency laws, with some different outcomes in both the content and impact of these laws.

(a) Pakistan and Nigeria: IMF-Linked Reforms

In 2000, the IMF lamented in a review of Pakistan's fiscal regime that "[t]he current legal framework does not make specific provision for reporting on performance or reporting to parliament or the public beyond the annual budget and annual accounts presentations."[114] It recommended that Pakistan consider "developing a Public Finance Act . . . giving explicit emphasis to performance and fiscal transparency."[115] Three years later, following a technical advice mission to Pakistan, the IMF reported that the country had made progress on transparency through several steps, including "preparation of a draft fiscal responsibility law."[116] Pa-

112. DANI RODRIK, ONE ECONOMICS, MANY RECIPES: GLOBALIZATION, INSTITUTIONS, AND ECONOMIC GROWTH (2007), at 164–65.

113. Stevens, *supra* note 9, at 1–4.

114. INT'L MONETARY FUND, FISCAL AFFAIRS DEP'T, REPORT ON OBSERVANCE OF STANDARDS AND CODES: PAKISTAN—FISCAL TRANSPARENCY, ¶ 13, (Nov. 28, 2000), *available at* http://www.imf.org/external/np/rosc/pak/fiscal.htm.

115. *Id.* ¶ 38.

116. REPORT ON PROGRESS, *supra* note 55, at 13. Additionally, there are other reports urging or praising the adoption of fiscal transparency legislation at the country level. *See, e.g.*, Int'l Monetary Fund, Fiscal Affairs Dep't, *United States: Report on the Observance of Standards and Codes—Fiscal Transparency*, ¶ 1, IMF Country Report No. 03/243 (Aug. 2003), *available at* http://www.imf.org/external/pubs/ft/scr/2003/cr03243.pdf.

kistan's Parliament subsequently enacted the Fiscal Responsibility and Debt Limitation Act 2005, which includes both substantive fiscal targets and transparency provisions requiring the government to make regular reports to the National Assembly.[117] While domestic politics undoubtedly also played a role in bringing about this law reform, the IMF's involvement through its fiscal ROSC process is clearly evident. In this sense, Pakistan's legislation can be viewed as a hard law manifestation of soft law promulgated at the transnational level.

There is no published IMF fiscal ROSC available for Nigeria. Transparency and corruption have been and remain enormous problems in this country, particularly in relation to oil extraction. Although Nigeria has managed to pay down its international creditors and does not borrow from the IMF, domestic tensions about oil projects remain high. However, in the last few years, there have been some developments relating to transparency, including the Fiscal Responsibility Act, 2007.[118] First introduced in 2004 by Finance Minister Ngolzi Okonjo-Iweala, this Act imposes only soft limits on deficits and debt.[119] Its main focus is to improve transparency, for example, by requiring the government to set explicit fiscal targets over a three-year time horizon, and then to file quarterly reports on its own performance in reaching these objectives.[120]

Although Nigeria is not publicly engaged with the IMF, its massive oil wealth has finally led to significant attention to the transparency of resource revenues. The Nigeria Extractive Industries Transparency Initiative report, prepared by an international auditor, was published in April 2006,[121] and Nigeria entered into a policy support instrument with the IMF in October 2005 (which ended in 2007, around the same time that the Fiscal Responsibility Bill received approval in the National Assem-

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117. Fiscal Responsibility and Debt Limitation Act, Gazette of Pakistan, No. VI, June 13, 2005, at 115.

118. *Nigeria: Yar'Adua Signs Fiscal Responsibility Bill into Law*, THIS DAY, Nov. 8, 2007, http://allafrica.com/stories/200711090303.html.

119. Fiscal Responsibility Act, § 12(1) (restricting annual deficits to no more than three percent of gross domestic product "or any sustainable percentage as may be determined by the National Assembly for each financial year"); *id.* § 41(1)(c) (requiring the government to ensure that public debt "is held at a sustainable level as prescribed from time to time by the National Assembly on the advice of the Minister").

120. *Id.* pt. II (Medium-Term Expenditure Framework); *id.* § 30.

121. This report follows the IMF Extractive Industries Transparency Initiative, a process also complemented by Transparency International's recently established civil society/NGO project. Transparency Int'l, *Promoting Revenue Transparency Project: Project Description and Relationship with EITI*, http://www.transparency.org/policy_research/surveys_indices/promoting_revenue_transparency/in_english/eiti (click "English" for PDF) (last visited Apr. 26, 2008).

bly). The policy support instrument is described by the IMF as a purely voluntary process in which a member country signs up for "more frequent Fund assessments" of its economic and financial policies.[122] It promotes a "close policy dialogue" between the IMF and the country, with the primary goal of "deliver[ing] clear signals on the strength of these policies."[123] The IMF explains:

> "Signaling" refers to the information that Fund activities can indirectly provide about countries' performances and prospects. Such information can be used to inform the decisions of outsiders. Outsiders can include *private creditors*, including banks and bondholders, who are interested in information on the repayment prospects of loans; *official donors and creditors*, both bilateral and multilateral, who may be interested in reassurance about the countries they are supporting; and the public at large.[124]

In its concluding review of the policy support instrument with Nigeria, the IMF highlighted the passage of the Fiscal Responsibility Bill as one of the structural reforms contributing to improved economic governance in the country.[125] Nigeria's engagement with the IMF suggests that its transparency initiatives are largely directed at outside investors, creditors, and donors. Even so, the Nigerian Fiscal Responsibility Bill has been praised by Human Rights Watch[126] and the Nigerian Budget Monitoring Group.[127] While the new law may represent an important symbolic victory for those advocating fiscal governance reforms within the country, it remains to be seen whether this will translate into greater fiscal openness and integrity.

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122. Int'l Monetary Fund, *Factsheet—The Policy Support Instrument*, Nov. 2008, http://www.imf.org/external/np/exr/facts/psi.htm.

123. *Id.*

124. *Id.*

125. Int'l Monetary Fund, *Nigeria: Fourth Review Under the Policy Support Instrument—Staff Report 29*, IMF Country Report No. 07/353 7 (2007), *available at* http://www.imf.org/external/pubs/cat/longres.cfm?sk=21414.0.

126. HUMAN RIGHTS WATCH, CHOP FINE: THE HUMAN RIGHTS IMPACT OF LOCAL GOVERNMENT CORRUPTION AND MISMANAGEMENT IN RIVERS STATE, NIGERIA 94–98 (2007), *available at* http://www.hrw.org/sites/default/files/reports/nigeria0107%5B1%5D.pdf.

127. Nigeria Budget Monitoring Project, *Fiscal Responsibility Bill: Rising Hopes in the Horizon*, Feb. 26, 2007, http://www.budgetmonitoringng.org/Spotlights/2007/02/26/News11618/ [hereinafter *Rising Hopes*]; Vincent Nwanma, *Fiscal Responsibility: Don't Spend Money Unless You Have It*, NIG. BUDGET MONITORING PROJECT, http://www.budgetmonitoringng.org/Spotlights/2007/12/13/News12271/ (last visited Apr. 8, 2009).

(b) India and South Africa: Activism and NGOs Driving Reform

India, which does not borrow from the IMF, is an example of a more homegrown fiscal transparency reform process. In 2003, the Indian federal Parliament passed the Fiscal Reform and Budget Management Act.[128] This Act provides a substantive medium-term three-year fiscal target and imposes on the central government reporting requirements for strategies and outcomes.[129] Section 6 states that the central government "shall take suitable measures to ensure greater transparency in its fiscal operations in the public interest and minimize secrecy."[130] According to the IBP, the push for greater budget openness in India started with grass roots civil society organizations tracking misuse of funds by local governments.[131] Yet here, too, the IMF promoted reform of budget practices. In its 2001 fiscal ROSC on India, the IMF commented that the country had "achieved a reasonably high level of fiscal transparency," but that "[e]nacting the Fiscal Responsibility and Budget Management Bill would be a major step forward given the emphasis it places on achieving a high standard of fiscal transparency."[132]

According to one recent study, South Africa ranks above average, and indeed, above the United Kingdom, in its compliance with OECD Best Practices on fiscal transparency.[133] In particular, South Africa has a high ranking with respect to integrity, control, and accountability and a reasonable ranking for budget reports and disclosures.[134] South Africa has a substantial and informative budget website for its National Treasury, including guides to the national budget in Afrikaans, English, Tswana, Xhosa, and Zulu.[135] The website also sets out the core goals of the Treasury:

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128. Fiscal Responsibility and Budget Management Act, No. 39 of 2003, Gazette of India (2003).

129. *Id.* § 3.

130. *Id.* § 6.

131. *See* International Budget Partnership, Access to Budget Information Empowers Citizens in India, http://openbudgetindex.org/files/IndiaStoryEnglish.pdf (last visited Apr. 8, 2009). India has an active NGO sector in this area. *See, e.g.*, Press Release, Ctr. for Budget & Governance Accountability, Civil Society People's Charter on Union Budget 2008–09: People's Budget Initiative (Nov. 16, 2007), *available at* http://www.cbgaindia.org/press_releases.php?id=7.

132. Int'l Monetary Fund, Statistics Dep't, *India: Report on the Observance of Standards and Codes*, ¶ 29, IMF Country Report No. 04/96 (Apr. 2004), *available at* http://www.imf.org/external/np/rosc/ind/fiscal.htm.

133. Bastida & Benito, *supra* note 72, at 680.

134. *Id.*

135. *See* National Treasury, Republic of South Africa, www.treasury.gov.za (last visited May 8, 2009).

> Supporting efficient and sustainable public financial management is fundamental to the promotion of economic development, good governance, social progress and a rising standard of living for all South Africans. The Constitution of the Republic (Chapter 13) mandates the National Treasury to ensure transparency, accountability and sound financial controls in the management of public finances.
>
> . . . Over the current medium-term expenditure framework period (2007–2009) the National Treasury will focus on sustaining growth and macroeconomic stability, while accelerating development and the creation of employment opportunities.[136]

The high level of fiscal transparency in South Africa seems to have been largely a response to NGO or civil society action during the late 1990s (after establishment of the new State in 1994). The Budget Information Service of the Institute for Democracy in South Africa and the IBP produced a report on transparency and participation in South Africa's budget process, which was released in October 1999, and revised in 2000.[137] Around the same time, South Africa followed Australia's example and successfully introduced a medium-term expenditure framework that remains part of its budgetary process today.[138] We suggest that the reasons for the relatively successful implementation of this constraint include its connection with the local activist push for fiscal transparency.[139] South Africa's engagement in the IMF fiscal ROSC process in 2001 was not the key influence on South African reform. South Africa now appears to have satisfied the IMF on its transparency score—such that the IMF's most recent country report, from 2007, does not once mention transparency as an issue or goal for South Africa.[140]

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136. National Treasury, Republic of South Africa, The Role of the National Treasury, http://www.finance.gov.za/nt/info.aspx (last visited Apr. 30, 2009).

137. FÖLSCHER ET AL., *supra* note 3, at 3. The South African report is said to have influenced research in other countries in Eastern Europe, Africa, and Latin America. *Id.* at 4.

138. *See Foreword*, *in* NAT'L TREASURY DEP'T, REPUBLIC OF S. AFR., MEDIUM TERM BUDGET POLICY STATEMENT (1997), *available at* http://www.treasury.gov.za/documents/mtbps/1997/all.pdf. *See also* NAT'L TREASURY DEP'T, REPUBLIC OF S. AFR., MEDIUM TERM BUDGET POLICY STATEMENT AND ADJUSTED ESTIMATES OF NATIONAL EXPENDITURE (2008), *available at* http://www.treasury.gov.za/documents/mtbps/2008/mtbps/MTBPS%20full.pdf.

139. Matthew Andrews, *Creating Space for Effective Political Engagement in Development*, *in* GOVERNANCE REFORM UNDER REAL-WORLD CONDITIONS: CITIZENS, STAKEHOLDERS, AND VOICE 95 (Sina Odugbemi & Thomas Jacobson eds., 2008).

140. Int'l Monetary Fund, *South Africa: 2007 Article IV Consultation*, IMF Country Report No. 07/274 (Aug. 2007), *available at* http://www.imf.org/external/pubs/ft/scr/2007/cr07274.pdf.

III. THE CONTENT OF FISCAL TRANSPARENCY NORMS

Fiscal transparency is generally discussed as a neutral procedural norm that will produce better or more predictable fiscal policy. We argue that transparency standards have more normative content than their usual treatment suggests and may serve different constituencies and substantive policy ends depending on the types of disclosure and processes they require. Analysis of the IMF Code reveals a much larger "wish list" of desirable practices for governance, subsumed under the overall banner of fiscal transparency. While we will not set out exhaustively all of the elements of fiscal transparency as proposed by the various international codes and national laws and policies, it is useful to survey and discuss key elements of the IMF Code as the dominant model, as well as selected features of the OECD Best Practices.

A. Rule of Law and Structure of Government

The first section of the IMF Code (and accompanying Manual) emphasizes the "[r]oles and [r]esponsibilities" of government, in particular, establishing clear, public rules about the structure and fiscal powers and responsibilities of legislative, executive, and judicial branches of government; setting out the relationship between government and public corporations; and overseeing the relationship between government and private enterprise with respect to the public availability of contractual arrangements.[141] In addition, the Code requires governments to publish comprehensive, understandable budget, tax, and other public finance laws; set forth regulations and administrative procedures relating to the collection, commitment, and use of public funds; and provide the ability to appeal tax and nontax obligations, and an explicitly legal basis for the management of government assets and liabilities.[142]

The IMF appears, in this first section of the Code, to require member countries to establish a solid constitutional framework for government, together with property and contract rights, in a way that is recognizably "Western" in form. The Code steers clear of requiring "democracy," but it assumes a legislature and the separation of powers, including a legal basis for the power to tax; a legal basis for resource distribution and public-private contracting; a working judiciary and appeals system; and a clear legal definition of public property and public debt. The requirement for clear rules on taxation implicitly assumes private property (i.e., there must be something to tax). Thus, the "legal institutions" of property and contract are embedded in this part of the Code, and the necessity for a

141. 2007 IMF CODE, *supra* note 2, § 1.
142. *Id.* § 1.2.

clear demarcation of public and private realms inscribes the market into the very structure of the State.

This first section also makes clear that the IMF places considerable emphasis on the role of national laws in securing fiscal transparency. The Code states generally that "[t]he collection, commitment, and use of public funds should be governed by comprehensive budget, tax, and other public finance laws, regulations[,] and administrative procedures."[143] The Manual more clearly endorses the concept of fiscal transparency legislation or other legislated fiscal limits:

> These arrangements generally support fiscal transparency by providing a clear statement as to policy objectives and how these objectives will be achieved, including informing the public of fiscal risks. One function of these laws is to help build support for fiscal consolidation by strengthening the credibility of fiscal policies and by increasing accountability.[144]

Thus, the IMF evidences considerable faith in law as delivering the "governance" limb of development and in its use for the formalization of essentially political and economic processes.

A study by Isabelle Joumard and others for the OECD noted that some countries have legislated fiscal rules while others have merely adopted policies or guidelines.[145] The authors appear less persuaded than the IMF about the value of law reform per se in the absence of political will, observing that "enforcing fiscal frameworks is a political economy issue as well as a technical one."[146] Nonetheless, they identify how many countries have implemented fiscal transparency laws as a mechanism for improving fiscal discipline and policy outcomes, as seen in Part II.

B. Budget Process and Fiscal Objectives

The second key element of the IMF Code is a requirement for "open budget processes" that "follow an established timetable" and are "guided by well-defined macroeconomic and fiscal policy objectives."[147] In particular, the Code requires

- adequate time for a draft budget to be considered by the legislature;

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143. 2007 IMF CODE, *supra* note 2, § 1.2.1.
144. 2007 IMF MANUAL, *supra* note 2, at 52.
145. Joumard et. al, *supra* note 22, at 120.
146. *Id.* at 130.
147. 2007 IMF CODE, *supra* note 2, § 2.1.

- a "realistic" budget presented in a medium-term framework and an assessment of "fiscal sustainability" setting out the main assumptions and sensitivity analysis (for estimated errors);
- a clear statement of any fiscal targets or rules;
- a description of major expenditure and revenue measures lined to policy objectives and with estimates of impact on the budget and the economy;
- clear mechanisms for coordination of budget and off-budget activities; and
- an effective accounting system for monitoring and tracking revenues, commitments, liabilities, and assets, including a timely mid-year report and account auditing presented to the legislature and published within a year of the budget.[148]

These requirements for open and timely budget information are clearly essential for a legislature and for citizens to participate adequately in the budget process. Similarly, effective accounting of revenues and the setting out and costing of expenditure goals are crucial. Both of these elements support democratic participation in budgeting as well as donor or lender review of a government's fiscal position.

The concept of a "realistic" budget appears to relate primarily to the economic assumptions in the budget and assumptions about revenue projections and "targets" set out in multi-year development plans.[149] Revenue forecasting[150] is notoriously difficult even for developed countries, except for the rule of thumb that a good starting point for predicting revenues in a given year is the revenues achieved in the prior year. Treasuries of developed countries, including that of the United Kingdom, have been criticized for under-estimating tax revenues, in particular corporate tax revenues.[151] Developing countries may be too optimistic about revenue estimates, in particular where they are striving to increase "tax effort." Both of these tendencies may be based on politics as well as statistics.

Both the IMF and the OECD emphasize that the creation of formal procedures takes a substantial period of time. In addition to preparing the advance provision of draft budgets and policies (several months before the year commences), a government must plan a medium-term framework beyond the fiscal year and manage "sustainably" over the long-

148. *Id.* pt. II.
149. 2007 IMF MANUAL, *supra* note 2, at 37–38.
150. *Id.* at 49.
151. *See, e.g.*, Emmerson, Frayne & Love, *supra* note 10.

term—usually a time well beyond a normal democratic electoral cycle.[152] In particular, the MTEF (or the similar notion of a medium-term budget framework) has been most often proposed as an external "blueprint" for reform, and the IMF contends that it is essential for fiscal transparency.[153]

However, even the IMF acknowledges how difficult establishing a plausible and sustained MTEF can be. The IMF Manual points to successful implementation in Australia, Brazil, Chile, and the United Kingdom. Nonetheless, the IMF underlines the necessity for "stringent conditions"; "robust revenue forecasts"; "rigorous" connections between target expenditures and the expected economic prospects over time; and "clearly defined and fully costed policy proposals." It emphasizes that a medium-term framework is "most likely to be effective in the context of a real, stable, transparent, and well-publicized commitment to fiscal control."[154] These conditions are very challenging for developing countries with poor systems, under-staffing, and low government commitment.[155]

It is also interesting to note the mechanisms for coordinating "on-budget" and "off-budget" items. Clearly, if we see the budget as a central element of democratic governance, expenditures should be largely "on-budget." However, it is often the case that various items are "off-budget," such as pension entitlements and special purpose funds. Furthermore, as discussed above, most aid for developing countries is currently delivered off-budget. It is laudable that the IMF calls for "a strong interface between the government's national planning or development framework (e.g. Poverty Reduction Strategy Paper) and the medium-term budget."[156] If aid flows are also accounted for in this overall framework, it may improve management and coordination of aid and other revenues and spending. However, on the whole, the IMF Code as it is currently drafted cannot address the issue of accountability of aid flows; these issues are outside the scope of its fiscal transparency framework.

C. Public Budget Documentation

The third key element of the IMF Code is a requirement for timely publication of all budget documentation, especially of fiscal information.

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152. 2007 IMF CODE, *supra* note 2, § 2.1.2; 2007 IMF MANUAL, *supra* note 2, at 78.

153. 2007 IMF MANUAL, *supra* note 2, at 40–41.

154. *Id.*

155. A very recent IMF working paper acknowledges this and other difficulties in budget reform. Richard Allen, *The Challenge of Reforming Budgetary Institutions in Developing Countries* (Int'l Monetary Fund, Working Paper No.09/96, 2009).

156. *Id.* at 39.

Again, this is to be a "legal obligation" upon a government. In particular, the IMF looks for the following:

- the release of information in advance and the publication of outcomes for at least the two preceding years and forecasts for at least the two following years;
- tax expenditure statements and explanation of quasi-fiscal activity and other fiscal risks;
- reporting fiscal data on a gross basis, including separate identification of receipts from all revenue sources such as taxes, resource-related activities, foreign aid, information about expenditures and debt, other significant liabilities (e.g., pensions), and natural resource assets;
- reporting subnational government budgets and public corporation positions;
- a periodic report on long-term public finances;
- wide distribution of a "clear and simple summary guide" at the time of the annual budget;
- reporting overall balance (fiscal deficit or surplus) and gross debt of government for the period; and
- reporting on an annual basis results linked to objectives of major budget programs.[157]

Few would disagree that publicizing such information benefits a wide range of social interests. Indeed, the IBP argues that many governments could significantly improve fiscal transparency simply by making available to the public the budget information they already collect for donors or for internal government purposes.[158] However, some controversy surrounds the requirement to report on long-term finances, because of the virtual impossibility of making accurate cost or revenue predictions over a long horizon, which creates a risk that such reports will do more to mislead than to inform. Neil Buchanan, for instance, has argued that long-term forecasting, also known as "generational" accounting, tends to raise false fears that social programs are unaffordable over the long-term or will be excessively burdensome to future generations.[159] To this we would add that requiring such a report goes beyond simple disclosure. It also directs fiscal policy makers to gather, analyze, and consider particu-

157. 2007 IMF CODE, *supra* note 2, pt. III.

158. OPEN BUDGET SURVEY 2008, *supra* note 79.

159. *See* Neil H. Buchanan, *Social Security, Generational Justice and Long-Term Deficits*, 58 TAX L. REV. 275, 312 (2005).

lar kinds of information focused on the longer term, and tends to overemphasize the values of fiscal prudence and discipline. These values are further reinforced by the need to disclose aggregate budget balance and debt. In contrast, it is striking that neither the IMF Code nor the OECD Best Practices call for disclosure of any specific information about the distributive impact of the annual budget or fiscal policy for the *current* population. The content of tax expenditure reports, for example, is either left to governments to determine or weighted toward the types of information that will expose any risk of fiscal imbalance.

D. Integrity of Data and Bureaucracy

The fourth element of the IMF Code encompasses a number of different strands that concern the integrity of data and bureaucracy. The IMF calls for measures to secure the quality of fiscal data.[160] These include forecasts, indication of the cash or accrual accounting basis, and the application of "generally accepted accounting standards" for the public sector in a manner that is internally consistent and reconciled with other data sources.[161] The Code also proposes internal and external auditing of government activities and finances. These data and accounting criteria draw heavily on the establishment and dissemination of global accounting standards for both public and private bodies—integrating the "fiscal transparency" norm-development process into a wider network.

The IMF also calls for clear ethical standards for public servants and publication of their conditions of employment. And concerning procurement, it demands purchase and sale of public assets and major transactions; independence of the revenue authority from political direction; protection of taxpayer rights; and regular reporting to the public by the revenue authority.[162] Here, the IMF Code overlaps with the very considerable work that international institutions responding to corruption have undertaken in the last decade.

The reference to an independent revenue authority has a long history in the IMF and its reform recommendations for developing countries. The OECD has recently noted that the establishment of autonomous revenue authorities has been a "high-profile innovation, and a particular focus for donor support," and about thirty such authorities have now been established in developing countries, mostly in Africa and South America.[163] However, as the OECD has also observed, experience in successfully

160. 2007 IMF CODE, *supra* note 2, at 3.
161. *Id.*
162. *Id.* at 4.
163. OECD, GOVERNANCE, *supra* note 83, at 28.

establishing an "autonomous" agency independent of political interference has been mixed and "early gains have been hard to sustain."[164] As "tax collection cannot be entirely divorced from making tax and budget policy," reporting lines to the executive government must be carefully established.[165]

Even more recently, a new emphasis on taxpayer rights, as opposed to merely strengthening the revenue authority, is welcome, as this can help establish a sounder political basis for participation in taxing and spending.[166] This seems to be one way in which the IMF has (indirectly) acknowledged the need for active engagement and protection of taxpayers, albeit it proposes this in the quite limited context of engagement with the revenue authority, rather than the budget process more broadly.

In this Part, we have reviewed the main features of the IMF model and have pointed out that it does far more to promote values of fiscal prudence, discipline, and integrity than to support other possible goals of transparency, such as equity or democratic oversight. No one could seriously protest that prudence, discipline, and integrity are unimportant—they are clearly imperative to all citizens, including those concerned with improving the fairness and democratic oversight of budgets. This is reflected in the fact that independent watchdogs such as the IBP and IDASA have incorporated many of the IMF's budget transparency requirements. However, as discussed in the next Part, these groups have supplemented the IMF standards with their own criteria related to social equality and democracy.

IV. FISCAL TRANSPARENCY AND DISTRIBUTIVE JUSTICE

Distributive politics are at the heart of fiscal policy because they will often make or break the viability of a reform. For this pragmatic reason, if no other, the omission of distributive analysis from the dominant model of fiscal transparency is problematic. We also consider it to be troublesome, though, for the establishment of fairness in principle.

As already noted, there is no requirement in the IMF Code or OECD Best Practices for governments to report on how fiscal policy decisions impact different income groups or segments of the population. However, in the most recent version of the Manual that accompanies the IMF

164. *Id.* South Africa, as in so many other ways, is an exception.

165. *Id.*

166. Florens Luoga, *Taxpayers Rights in the Context of Democratic Governance: Tanzania*, 33 INST. OF DEV. STUD. BULL. 50 (2002).

Code, the IMF does briefly acknowledge that fiscal discipline may involve political tradeoffs that ideally should be disclosed:

> Reforms aimed at reducing fiscal deficits and improving macro stability, or at enhancing efficiency, may affect different income and social groups differently, and may hurt or benefit vulnerable and low-income groups more than others. It is important for transparency that some assessment of these impacts be included in the budget documentation . . . . Poverty and Social Impact Analysis refers to the analysis of the distributional impact of policies and policy reforms on the welfare of different groups, with a specific emphasis on the poor and vulnerable . . . . Good practice would require that budget documentation include at least a simple analysis of the differential impacts of new policies and measures.[167]

The addition of this commentary may reflect the IMF's sensitivity to criticisms of its structural adjustment programs and the need to acknowledge the turn in development discourse often found in its own policy advice. However, it is important to note that the Manual is 124 pages long (plus glossary and references), and these passages only briefly interrupt an otherwise unrelenting focus on fiscal discipline and integrity.[168] Nor do they impose more than a minimal obligation to include some basic analysis of distributional impact. Most importantly, these recommendations are not reflected in the Code itself. The reason may have to do with concerns that this type of information will increase the likelihood of political resistance to tough decisions about spending restraint or taxation, challenging the ability of governments to deliver on their promises of fiscal prudence. As Heald discusses, one view is that "'too much' transparency produces 'over-exposure,' leading to losses in effectiveness through high levels of transaction costs and excessive politicization."[169]

Unsurprisingly, NGOs involved with budget transparency have placed social equity issues higher on the agenda. In developing the IBP Index, the IBP states that IMF standards "do not go far enough to ensure that budgeting is responsive and accountable to citizens."[170] To redress this,

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167. 2007 IMF MANUAL, *supra* note 2, at 44. The Manual goes on to briefly describe various methods that can be used to carry out a Poverty and Social Impact Analysis. *Id.* at 45.

168. *See generally id.*

169. David Heald, *Fiscal Transparency: Concepts, Measurement and U.K. Practice*, 81 PUB. ADMIN. 723, 727 (2003). Similarly, Tanzi argues that "[t]rying to eliminate corruption altogether would be too costly, both in terms of resources and in other ways." Vito Tanzi, *Corruption Around the World*, 45 INT'L MONETARY FUND STAFF PAPERS 559, 586 (1998).

170. IBP INDEX, *supra* note 3, at 3.

the IBP's survey questionnaire includes the following questions, to be answered on a transparency scale of one to five:

> 55. Does the executive's budget or any supporting budget documentation present information on policies (both proposals and existing commitments) in at least the budget year that are intended to benefit directly the country's most impoverished populations? . . .
>
> . . . .
>
> 57. Does the executive make available to the public an analysis of the distribution of the tax burden? . . .
>
> . . . .
>
> 65. Are citizens able in practice to obtain non-financial information related to expenditures (for example, number of beneficiaries, number of persons employed by the program, etc.) for individual programs in a format that is more highly disaggregated than that which appears in the executive's budget proposal if they request it from a ministry or agency? . . .
>
> . . . .
>
> 109. Does the year-end report explain the difference between the enacted level of funds intended to benefit directly the country's most impoverished populations and the actual outcome? . . .[171]

In addition, the IBP asks numerous questions about availability of information to citizens and recommends that the right to obtain not only budget documents but also detailed information about particular program expenditures at the local level be established by legislation.[172]

An earlier 2001 study of budget transparency in Latin American countries also highlighted the connection of transparency to social equity, stating that "knowledge and analysis of the budget should be sufficient to make it possible for the external observers to verify whether the distribution of . . . resources and their application reflect social preferences and comply with the criteria of equality and justice."[173] Notably, however, this survey instrument did not include direct questions about the availability of distributive information related to budget policies. Instead, these

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171. INT'L BUDGET P'SHIP, OPEN BUDGET QUESTIONNAIRE: NEW ZEALAND (Sept. 28, 2007), *available at* http://openbudgetindex.org/files/IBPQuestionnaire2008NewZealand.pdf. The survey questionnaires with country responses are available online at http://www.openbudgetindex.org/countryData/ (last visited Apr. 30, 2009).

172. *See, e.g.*, INT'L BUDGET P'SHIP, KEY FINDINGS AND RECOMMENDATIONS (2008), *available at* http://openbudgetindex.org/files/KeyFindingsEnglish.pdf.

173. *Index of Five Latin American Countries*, *supra* note 3, at 12. This study was facilitated in part by the IBP, but conducted independently by the Latin American partners.

issues were addressed indirectly through numerous questions about citizen access to and influence over the budget process.[174] This approach has remained consistent in two follow-up studies, the most recent of which adopts a more politically neutral definition of transparency, but also states that "[a]pplied budget analysis . . . makes it possible to evaluate who wins and who loses with the distribution of public resources."[175]

In South Africa, the collaborative 1999 study by the IBP and IDASA concluded, among its many findings, that "analysis of tax incidence is lacking"[176] in South Africa's budget documentation. The report recommended that detailed information on spending allocations be provided to Parliament earlier in the budget process and cited the lack of consistent and detailed data as a barrier to oversight of budgets by civil society.[177] It also described the limited but growing role of civil society groups in meeting with parliamentary committees to discuss issues such as the priorities of low-income people and women, as well as sectionalized social welfare.[178]

Like the IMF and OECD, these NGOs have attempted to articulate global standards of fiscal transparency that can be applied to evaluate country practice and create pressure for reform. The NGOs have taken some modest steps to add a distributive lens to the assessment of fiscal transparency, while also confirming the importance of reliable information regarding the government's fiscal prudence and integrity. It must be acknowledged that analysis of distributional incidence of taxes and spending may be difficult, especially for countries with a low analytical capacity in government.[179] However, such difficulties also arise with revenue estimating, forecasting, and the establishment of credible medium-

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174. *See generally id.*

175. CENTRO DE ANÁLISIS E INVESTIGACIÓN, LATIN AMERICAN INDEX OF BUDGET TRANSPARENCY 2005: A COMPARISON OF 8 COUNTRIES, at 7 (2005), *available at* http://www.fundar.org.mx/indice2005/docs/Regional%20Transparency%20Report%202005.pdf [hereinafter BUDGET TRANSPARENCY 2005]; LATIN AMERICAN INDEX OF BUDGET TRANSPARENCY 2003: A COMPARISON OF 10 COUNTRIES, at 5 (2003), *available at* http://www.internationalbudget.org/themes/BudTrans/English.pdf [hereinafter BUDGET TRANSPARENCY 2003].

176. FÖLSCHER ET AL., *supra* note 3, at 21.

177. *Id.* at 46, 49–51.

178. *Id.* at 49–51. Note that this project led to a further study of budget transparency in several African countries. *See generally* INST. FOR DEMOCRACY & ACCOUNTABILITY IN S. AFR., BUDGET TRANSPARENCY AND PARTICIPATION: FIVE AFRICAN CASE STUDIES (Dec. 17, 2003), *available at* http://www.idasa.org.za/index.asp?page=output_details.asp%3FRID%3D511%26oplang%3Den%26TID%3D8%260TID%3D6.

179. Richard M. Bird & Eric M. Zolt, *Redistribution via Taxation: The Limited Role of the Personal Income Tax in Developing Countries*, 52 UCLA L. REV. 1627, 1639–44 (2005).

term budget frameworks, which are nonetheless explicitly included in the IMF Code.

Budget transparency legislation at the country level has tended to track the IMF and OECD approaches—it generally makes no explicit reference to social justice indicators. For example, the Australian Charter requires an assessment of distributional impact not for *current* generations, but for *future* ones alone. One exception is the U.K. Code for Fiscal Stability, which includes fairness as one of the principles that must govern fiscal policy. It defines "fairness" as follows: "[t]he principle of fairness means that, so far as reasonably practical, the Government shall seek to operate fiscal policy in a way that takes into account the financial effects on future generations, as well as its distributional impact on the current population."[180] The mandate to consider future generations relates back to the issue of discipline over current social spending. However, the reference to distributional impact on the current population at least creates an opening for scrutiny of the distributive impact of budgets. This potential is not realized in practice, because none of the requisite public reports under the Code must include a distributional analysis. According to a 2004 report, the U.K. Treasury has, on some occasions, provided information about the impact of its proposals on different income groups.[181] The report recommends making this mandatory:

> There is no reason why the Code . . . should not contain an explicit requirement that, where significant and possible, the distributional impact on the current population of new measures should be made publicly available. Similarly estimates of the impact on marginal deduction rates across the whole population should also be provided . . . . It is also desirable that indicative information be provided as early as possible in the consultation process rather than simply being provided when all of the details of the policy have been finalized.[182]

The obvious problem with giving governments discretion to publish such information selectively is that they will tend to do so only when it is politically convenient. Even if distributive analyses were required for all

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180. Code for Fiscal Stability, 1998, c. 36, § 2(7) (Eng.). The other principles governing fiscal policy are transparency, stability, responsibility, and efficiency. *See id.* c. 36, § 155. For example, "equity" features prominently among the principles governing fiscal policy in Ontario. *See* Fiscal Transparency and Accountability Act, 2004 S.O., ch. 27 (Can.). *See also* Mary Condon & Lisa Philipps, *Transnational Market Governance and Economic Citizenship: New Frontiers for Feminist Legal Theory*, 28 T. JEFFERSON L. REV. 105, 140–46 (2005) (discussing the U.K. and Ontario, Canada, legislation as well as the IMF's efforts to have countries adopt its Code).

181. Emmerson, Frayne & Love, *supra* note 10, at 29.

182. *Id.*

new policies, though, there is concern about how to ensure a degree of rigor and objectivity in the way such data is presented. This points to the need for effective oversight of the executive by legislative and civil society actors, which we discuss in the next Part.

In Pakistan, the transparency provisions of the Fiscal Responsibility and Debt Limitation Act of 2005 are based on the IMF Code and do not require disclosure of any distributional data.[183] However, equity issues are addressed in a different way. The statute's deficit and debt reduction targets are subject to an exception for "social and poverty alleviation related expenditures," which are not to fall below 4.5% of GDP in any given year.[184] The term "social and poverty related expenditure" is defined to include, *inter alia*, health, education, and "such other expenditures as may be specified in the National Poverty Reduction Strategy Paper from time to time."[185] The government must report on its compliance with these objectives in an annual fiscal policy statement; some account must be given as to the amount of budgetary spending that qualifies as "social and poverty related."[186] The IBP reported in 2008 that Pakistan's budget did include information "highlighting the impact of key policies intended to alleviate poverty, but some details are excluded."[187] However, the IBP report indicates that the Pakistani government does not publicize any analysis of the distribution of the tax burden.[188]

Tax expenditures are one aspect of fiscal policy that cries out for more open distributive analysis. The IMF Code recommends that tax expenditures be reported in the budget documents, but does not prescribe exactly what information should be reported.[189] It is common, particularly for

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183. eSTANDARDS FORUM, BEST PRACTICES REPORT: PAKISTAN 3 (2008), *available at* http://www.estandardsforum.org/servlet/PrintPDFReport?country_id=136&bpr=on (indicating that Pakistan merely expressed intent to adopt full disclosure practices, but the practice has yet to be implemented).

184. Pakistan Fiscal Responsibility and Debt Limitation Act, Gazette of Pakistan, No. VI, June 13, 2005, § 3(3)(c). This provision also states that education- and health-related expenditures should double as a percentage of GDP over ten years. *Id.* Section 9 of the Act protects social and poverty alleviation spending from any cuts that must be made to meet deficit and debt targets. *Id.* § 9(b).

185. *Id.* § 2(l).

186. *See id.* §§ 4, 6.

187. INT'L BUDGET P'SHIP, OPEN BUDGET QUESTIONNAIRE: PAKISTAN 42 (2008), *available at* http://openbudgetindex.org/files/IBPQuestionnaire2008Pakistan.pdf.

188. *Id.* at 43. In contrast to Pakistan, the U.K. government fully discloses "policies intended to alleviate poverty" and a "detailed analysis of the distribution of the tax burden." *See* INT'L BUDGET P'SHIP, OPEN BUDGET QUESTIONNAIRE: UNITED KINGDOM 44–45 (2007), *available at* http://openbudgetindex.org/files/IBPQuestionnaire2008UK.pdf.

189. 2007 IMF CODE, *supra* note 2, § 3.1.3. Since its establishment by Stanley Surrey in the United States during the 1960s, the concept of tax expenditures, which compares

developed countries, to provide some kind of report that compares tax expenditures to a defined, baseline, "normal" income or consumption tax. This is required, for example, in the Australian Charter.[190] However, the reports are frequently not well integrated into the budget process, include inadequate estimates of lost revenue, and contain little or no evidence about the distributive impact of particular tax concessions.[191] This weakens their usefulness in improving transparency.

Tax expenditure reporting could be strengthened significantly in developed and developing countries to illuminate the benefits received by different social groups and firms. India began releasing tax expenditure reports with its 2006–2007 budget, and in 2008–2009, it included a distributive analysis of corporate tax expenditures showing that the smallest firms were receiving the least benefits from these concessions.[192] The Nigerian Fiscal Responsibility Law 2007, Section 11(3)(c)(iii), calls for an "aggregate tax expenditure projection" on a rolling three-year time horizon.[193] Section 29(1) states that "[a]ny proposed tax expenditure shall be accompanied by an evaluation of its budgetary and financial implications in the year it becomes effective and in the three subsequent financial years," and in the event of unplanned revenue losses, such expenditure requires offsetting measures "such as tax rate raises and expansion of the

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the income tax law with a "benchmark" income tax said to be an ideal income tax system, has had a primarily political purpose, to draw legislators' attention to the many concessions, exemptions, and other incentives in the U.S. tax code and to the implicit "cost to revenue," or revenue foregone, as a result of these concessions. For all of the flaws that can be identified with respect to the tax expenditure concept, this is still its most valuable function, and it is thus best understood as a strategic intervention into the budget process.

190. Charter of Budget Honesty Act, 1998, pt. 5, div. 1, cl. 12(1)(d) (Austl.). We do not propose here to enter the debate about how to define the baseline for identifying and measuring tax expenditures, but instead, see tax expenditure reporting as an additional and useful tool for analyzing and debating the distributional burdens and benefits of fiscal policy.

191. HANA POLACKOVA BRIXI, CHRISTIAN VALENDUC & ZHICHENG LI SWIFT, TAX EXPENDITURES: SHEDDING LIGHT ON GOVERNMENT SPENDING THROUGH THE TAX SYSTEM—LESSONS FROM DEVELOPED AND TRANSITION ECONOMIES (2003); Mark Burton, *Making the Australian Tax Expenditures Statement an Effective Policy Instrument—From Fiscal Record to Transparent Report*, 8 J. OF AUSTRALIAN TAX'N 1 (2005).

192. *See* GOV'T OF INDIA, MINISTRY OF FIN., UNION BUDGET RECEIPTS BUDGET 2008–2009: REVENUE FOREGONE UNDER THE CENTRAL TAX SYSTEM: FINANCIAL YEARS 2006–07 AND 2007–08, at Annex 12, 45 (2008), *available at* http://indiabudget.nic.in/ub200809/rec/annex12.pdf; GOV'T OF INDIA, MINISTRY OF FIN., UNION BUDGET 2006–2007: TAX EXPENDITURE UNDER THE CENTRAL TAX SYSTEM: FINANCIAL YEAR 2004–2005, at Annex 12, 45 (2006), *available at* http://indiabudget.nic.in/ub2006-07/rec/annex12.pdf.

193. Fiscal Responsibility Act, Gazette of the Federal Republic of Nigeria, No. 126, Dec. 31, 2007, § 11(3)(c)(iii). *See also Rising Hopes*, *supra* note 127.

tax base."[194] This type of initiative could help build support for base-broadening reforms in developing countries, which have been identified as crucial for increasing the resources available for antipoverty and other types of development spending.

The strategy of using fiscal transparency and tax expenditure reporting to build domestic political support for base-broadening tax reforms could have some advantages over other strategies that focus on reducing tax competition through a more international coordination of tax policy. Many international tax scholars have criticized developing countries' use of investment tax incentives, pointing out their negative effects on corporate tax revenue and on the efficiency and fairness of tax systems.[195] The persistence of this form of tax competition has led some scholars to recommend changes in the way developed countries tax business income earned abroad by their resident multinationals. They have advocated eliminating any benefits from the host countries' tax incentives, thereby freeing these countries from pressure to engage in self-destructive tax competition.[196] Others have argued just the opposite, that developed countries should engage in more tax sparing to preserve the value of these incentives, on the basis that this may help developing countries attract much-needed investment and accord them greater autonomy over domestic tax policy.[197] Promoting more transparency at the country level with respect to the cost and distributive impact of tax expenditures could help to resolve this impasse by enabling a country's own citizens to challenge incentives that shift the burden of taxation onto local firms and individuals without achieving any clear benefits. Similarly, especially in developed countries, tax expenditures are a significant way for governments to deliver government spending programs.[198] Requiring govern-

194. Fiscal Responsibility Act § 29(1).

195. *See, e.g.*, Michael Keen & Alejandro Simone, *Tax Policy in Developing Countries: Some Lessons from the 1990s and Some Challenges Ahead*, *in* HELPING COUNTRIES DEVELOP: THE ROLE OF FISCAL POLICY 302 (Sanjeev Gupta, Benedict J. Clements & Gabriela Inchauste eds., 2004).

196. *See, e.g.*, Reuvan S. Avi-Yonah, *The OECD Harmful Tax Competition Report: A Retrospective After a Decade*, 34 BROOK. J. INT'L L. 783 (2009).

197. *See, e.g.*, Yoram Margalioth, *Tax Competition, Foreign Direct Investments and Growth: Using the Tax System to Promote Developing Countries*, 23 VA. TAX. REV. 161, 192–94 (2003). The traditional U.S. view against tax sparing was also questioned by Karen R. Brown, Book Review, *Harmful Tax Competition: The OECD View*, 32 GEO. WASH. J. INT'L L. & ECON. 311 (1999).

198. Burton, *supra* note 191. *See also* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO NO. 05-690, TAX EXPENDITURES REPRESENT A SUBSTANTIAL FEDERAL COMMITMENT AND NEED TO BE REEXAMINED 19–42 (2005); Zhicheng Li Swift, *Managing the Effects on National Budgets* (World Bank, Working Paper No. 3927, 2006).

ments to publicize with the budget an analysis of these effects would radically increase the overall transparency of fiscal policy.

The gender budgeting initiatives undertaken in several countries, including India and South Africa, provide yet another angle on distributive transparency.[199] The Platform of Action adopted at the 1995 U.N. Fourth World Conference on Women, in Beijing, called on governments to "facilitate, at appropriate levels, more open and transparent budget processes"[200] and mandated "the integration of a gender perspective in budgetary decisions on policies and programs."[201] In response, the United Nations and other international agencies organized to support many local gender budgeting projects at both the civil society and governmental level.[202] The basic starting point for these projects is the fact that even though fiscal policy often purports to be gender neutral on its face, its impact is seldom gender neutral because of the different economic status and roles of men and women. A variety of methods are used to reveal and analyze the differential impacts of taxes and spending on women and men, in terms of both the distribution of costs and benefits, and behavioral effects (for example, marginal choices between paid and unpaid labor, or the effectiveness of business incentives). In addition, many initiatives focus on increasing women's participation in budget processes as well as the capacity of civil society organizations to critically analyze budget documents from a gender perspective. Advocates of gender budgeting often use the language of transparency in describing its value. In

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199. *See generally* DEBBIE BUDLENDER & GUY HEWITT, GENDER BUDGETS MAKE MORE CENTS: COUNTRY STUDIES AND GOOD PRACTICE (2003); U.N. DEV. FUND FOR WOMEN, GENDER BUDGET INITIATIVES: STRATEGIES, CONCEPTS AND EXPERIENCE 113 (2001), *available at* http://www.bridge.ids.ac.uk/gender_budgets_cd/Budgets%20CD%20subsection%204.1/4.1c%20Gender%20budget%20initiatives%20UNIFEM%20link%20for%204.4f.pdf; Vibhuti Patel, Gender Budgeting in India, Paper presented at National Workshop on Gender Budgeting—An Effective Tool for Achieving Women's Empowerment (Apr. 15, 2007), *available at* http://www.gender-budgets.org/content/blogcategory/84/156/.

200. Fourth World Conference on Women, Sept. 4–15, 1995, *Report of the Fourth World Conference on Women*, ¶ 165(i), U.N. Doc. A/CONF.177/20/Rev.1 (1996) [hereinafter *Report of the Fourth World Conference on Women*].

201. *Id.* ¶ 345.

202. *See* Lisa Philipps, *Gender Budgets and Tax Policy-Making: Contrasting Canadian and Australian Experiences*, 24 LAW IN CONTEXT 143 (2006). *See also Report of the Fourth World Conference on Women*, *supra* note 200, ¶¶ 165(i), 345 (reporting that governments pledged to "[f]acilitate, at appropriate levels, more open and transparent budget processes" and emphasizing the need for "the integration of a gender perspective in budgetary decisions on policies and programs"); Janet Stotsky, *Gender Budgeting* (Int'l Monetary Fund, Working Paper No. 06/232, Oct. 2006), *available at* http://www.imf.org/external/pubs/ft/wp/2006/wp06232.pdf.

particular, the U.N. Financing for Development Conference has recently emphasized the importance of including a gender lens in the analysis of fiscal policy.[203] This is in stark contrast with the standards of transparency articulated by the IMF and OECD, which do not mention gender impact as a relevant fact to be reported by governments. With the exception of the IBP/IDASA report, gender also does not receive any explicit mention in the NGO-led budget transparency exercises.

V. FISCAL TRANSPARENCY AND DEMOCRATIC EMPOWERMENT

Our genealogy of fiscal transparency indicates that the interventions of the IMF and OECD are directed mostly at promoting fiscal discipline and capital market efficiency. The institutional codes and best practices pay little attention to the democratic accountability aspects of transparency in budgeting, an area of government policy making that, as we have demonstrated elsewhere, is already prone to ignore citizens in favor of economic expertise and markets.[204] While the IMF and OECD pay some lip service to citizen accountability, a detailed examination of the IMF Code and OECD Best Practices reveals a democratic deficit in relation to both the expected audience for fiscal transparency information and the overall understanding of the purpose and processes of budgeting. If the budget is, as the OECD suggests, the most important policy document of a government, the question of who receives information and is empowered to participate is crucial for the legitimacy, fairness, and sustainability of budget decisions.

The IMF Code itself does not state who the expected audience is for fiscal information. The accompanying Manual notes that transparency involves openness to "the public" about "the structure and functions of government, fiscal policy intentions, public sector accounts, and fiscal projections."[205] The "public," as explained by the Manual, incorporates four distinct audiences. First are governments themselves (past, current, and future), which should utilize budget analysis to improve economic decision making.[206] Second are "citizens" and the goal of fiscal transparency here is to "giv[e] them the information they need to hold their government accountable for its policy choices."[207] The third audience is "international capital markets," and the last is the IMF itself, in its role in

203. *Doha Declaration on Financing for Development*, *supra* note 36, at 3–6.

204. *See generally* Condon & Philipps, *supra* note 180; Philipps, *Discursive Deficits*, *supra* note 33; Stewart, *Global Trajectories*, *supra* note 33; Stewart & Jogarajan, *supra* note 33.

205. 2007 IMF MANUAL, *supra* note 2, at 6.

206. *Id.* at 1.

207. *Id.*

the economic "surveillance" of member countries "to assess economic vulnerabilities."[208] The explicit recognition of citizens in the IMF Code is a significant change from the first edition, released in 1998, which emphasized "surveillance of economic policies by country authorities, financial markets, and international institutions."[209] Indeed, according to a note in the 2001 edition of the Manual, "there is an issue as to the language(s) in which information should be made available," and this note even suggested that "it is unclear whether countries should routinely publish fiscal information, and economic information more generally, in a commonly-used language."[210] This note recognized, though, that "for countries seeking access to international capital markets, there is likely to be some benefit from translating key documents and reports for release simultaneously with national language versions."[211]

The OECD Best Practices also addresses the role of citizens, in particular, by requiring publication of reports and active promotion of citizens' and NGOs' understanding of the budget process.[212] Both the IMF Code and OECD Best Practices find that the most important way to achieve accountability to citizens is, unsurprisingly, through legislative review of an executive budget.[213] As explained in Part III, Section A, for such accountability to have any content, this approach implicitly requires a democratic legislature.

While the IBP and other organizations involved in budget assessment consider accountability to the legislature important, they have a different vision of democratic control over fiscal processes. The IBP Open Budget Initiative is explicitly oriented towards empowering relatively disadvantaged constituencies to engage with budgetary policy, though it is also concerned with exposing fiscal corruption or unrealistic and imprudent budgeting. NGO researchers in Latin America frame the issue as follows: "[p]articipation by the citizenry throughout the budget process is indispensable, not only to strengthen the democracy of a country, but also because it represents an effective way to ensure that the population's

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208. *Id*. at 1–2.

209. Int'l Monetary Fund, *Code of Good Practices on Fiscal Transparency—Declaration of Principles* (1998), *reprinted in* Int'l Monetary Fund, *Communiqué of the Interim Committee of the Board of Governors of the International Monetary Fund* (Apr. 16, 1998), *available at* http://www.imf.org/external/np/cm/1998/041698A.HTM.

210. INT'L MONETARY FUND, MANUAL ON FISCAL TRANSPARENCY pt. II, para. 57 n.49 (2001), *available at* http://www.imf.org/external/np/fad/trans/manual/manual.pdf.

211. *See id.*

212. *OECD Best Practices*, *supra* note 1, at 8, 14.

213. 2007 IMF CODE, *supra* note 2, §§ 2.1.1, 4.3.2; *OECD Best Practices*, *supra* note 1, at 14.

most pressing needs are covered within the government's budget."[214] In the index these researchers prepared, citizen participation received the lowest score of all its variables.[215]

Although fiscal transparency laws and codes acknowledge the role of the legislature in constraining the executive from undisciplined spending and taxation, other rules seek to constrain the legislature by institutionalizing stronger executive control over many budget decisions.[216] The common factor in these apparently contradictory checks and balances is not accountability as such, but fiscal discipline to establish credibility for the market.[217]

If the discussion is refocused towards the fundamental purpose of a budget, namely, to establish politically legitimate and sustainable distributional decisions for a country, the meaning and uses of fiscal transparency may be reexamined. Fiscal transparency norms have the potential to expand the political space for budget decision making, allowing citizens to participate in more than just elections for legislative representatives in a given electoral cycle. Effective fiscal transparency norms could operate to connect fiscal policy makers with existing networks of governmental departments, businesses, civil society, and local communities in order to more effectively design, assess, and implement fiscal decisions. Transparency norms and frameworks should seek to increase the knowledge of ordinary citizens and "civil society" about fiscal policy decisions and their impact on the distribution of benefits and burdens throughout society.

The use of fiscal transparency norms to increase participation in budgeting fits with a global trend to encourage public participation in policy making. As a broad principle, the United Nations has stated that "widespread participation in decision-making processes" is important in enabling "the creation of the critical mass of support needed to change institutions."[218] The second half of the 1990s saw a massive enhancement of

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214. BUDGET TRANSPARENCY 2005, *supra* note 175, at 16.

215. *Index of Five Latin American Countries*, *supra* note 3, at 2.

216. *See, e.g.*, Alesina & Perotti, *supra* note 27; 2007 IMF MANUAL, *supra* note 2, at 21–22.

217. Mario Marcel & Marcelo Tokman, *Building a Consensus for Fiscal Reform: The Chilean Case*, 2(3) OECD J. ON BUDGETING 2002, at 35, 37. This recent and insightful article about fiscal reform in Chile emphasizes the combined macroeconomic, managerial, and political role of budgets and the need, in the longer term, to establish a political consensus through increasing and strengthening the contributions of the Congress, in addition to a strong government leader and a strict fiscal rule. *Id.* at 37.

218. U.N., WORLD ECONOMIC AND SOCIAL SURVEY 2000: TRENDS AND POLICIES IN THE WORLD ECONOMY 211 (2000), *available at* http://www.un.org/esa/policy/wess/WESS%20since%201948/world%20economic%20and%20social%20survey%202000.pdf.

consultation on expenditure policies in PRSPs associated with conditional loans from the IMF, the World Bank, and aid donors. This has been called a "paradigm shift" for development policy.[219] A concept of "participatory development" has become the norm, at least as a matter of rhetoric, in the broader development discourse, whether carried out by multilateral development agencies or NGOs.[220] Using Bolivia, Burkina Faso, Cambodia, Tanzania, and Vietnam as case studies, a recent evaluation of PRSPs and their interaction with budget formation concluded that PRSPs have enhanced public education about government policies and expenditures and, to some extent, have increased citizen participation in budget processes.[221]

Despite this new emphasis on participation, some critics have suggested that citizen participation in economic and fiscal policymaking is not well-embedded in existing political structures, such as parliaments.[222] A recent study criticizes the PRSP process as being insufficiently linked to budget and government fiscal agencies.[223] It observes that the Ministry of Finance is not always given a lead role in the PRSP process, which is often established in a separate ministry.[224] This is likely to lead to a failure of the Ministry of Finance to "own" the PRSP process. Such a "weak link between the PRSP and the budgets" is identified as a crucial problem in many countries; the solution seems to be to establish an MTEF, but doing so successfully, as outlined above, is very challenging.[225] Problems also arise in ensuring that local governments participate in both PRSP formulation and budget decisions at a national level, although PRSPs are supposed to be driven by local-community consultation, and tax systems are increasingly decentralized. Furthermore, it is rare for consultation in a PRSP process to involve a discussion of taxation policy

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219. *See* Fantu Cheru, *Building and Supporting PRSPs in Africa: What Has Worked Well So Far? What Needs Changing?*, 27 THIRD WORLD Q. 355, 364 (2006). Regarding Australia, see Mark Burton, *Is Participatory Tax Transparency in Australia Achievable?*, 43 TAX NOTES INT'L 333 (2006) [hereinafter Burton, *Participatory Tax Transparency*].

220. *See, e.g.*, DEEPA NARAYAN & LYRA SRINIVASAN, WORLD BANK, PARTICIPATORY DEVELOPMENT TOOL KIT: MATERIALS TO FACILITATE COMMUNITY EMPOWERMENT (1994); Maia Green, *Participatory Development and the Appropriation of Agency in Southern Tanzania*, 20 CRITIQUE OF ANTHROPOLOGY 67–89 (2000).

221. Rosa Alonso et al., *PRSPs and Budgets: A Synthesis of Five Case Studies*, *in* BUDGET SUPPORT AS MORE EFFECTIVE AID? RECENT EXPERIENCES AND EMERGING LESSONS, *supra* note 92, at 155, 159.

222. *See* Condon & Philipps, *supra* note 180, at 128; Kevin M. Morrison & Mathew M. Singer, *Inequality and Deliberative Development: Revisiting Bolivia's Experience with the PRSP*, 25 DEV. POL'Y REV. 721 (2007).

223. Stevens, *supra* note 9, at 8–9.

224. *Id.*

225. *See* Cheru, *supra* note 219, at 362.

(as opposed to spending). Attention needs to be paid to identifying "mechanisms of accountability" that could incorporate the poor into the tax reform debate and "enhance their ability to articulate their interests and advance a progressive system of public finance, both in taxation and expenditures."[226] The disconnect between participation in the PRSP process and the budget process is an indication of the inadequacy of fiscal transparency norms, which have tended to focus heavily on prudence and discipline, rather than the legitimacy of budgetary policy.

Consultation mechanisms have also become popular in many countries as a means of securing political support for tax reform.[227] The IMF Code calls for adequate consultation in reform,[228] but surprisingly, the OECD Best Practices does not. In developed countries, consultation about technical or detailed policy elements of tax reform is frequently carried out with the private sector. The advantages of such consultation may include provision of an external expert eye to identify issues, uncertainties, or problems with the law, and to provide examples and information about taxpayer practices, accounting, and other compliance issues. The expert may also ensure professional or business support for tax legislation and its effective implementation, which is likely to be politically important. As Gordon and Thuronyi have noted, less attention has been paid to the process of designing and drafting tax legislation in developing countries.[229]

Consultation on aspects of policy, or the way a tax law or policy is implemented or administered, is usually carried out with business groups and professional tax advisors, rather than with a broad spectrum of taxpayers. However, consultation targeted to particular business sectors or taxpayers may collapse into a "thin" politics of taxation, which, as described by Moore and Rakner, is essentially special interest groups nego-

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226. *See* RICARDO SABATES & AARON SCHNEIDER, INST. OF DEV. STUD. AT THE UNIV. OF ESSEX, TAXATION, ACCOUNTABILITY AND THE POOR 5 (2003), *available at* http://www2.ids.ac.uk/gdr/cfs/pdfs/Tax%20account%20poor-final%20report.pdf. *See also* Alonso et al., *supra* note 221, at 162.

227. *See* CEDRIC SANDFORD, SUCCESSFUL TAX REFORM: LESSONS FROM AN ANALYSIS OF TAX REFORM IN SIX COUNTRIES (1993); Thomas E. McDonnell, *Toward Getting It Right: Reflections on 50 Years of the Tax Legislative Process in Canada*, 43 CAN. TAX. J. 1131, 1133 (1995). Miranda Stewart, *Consultation in Business Tax Reform: Towards an Effective Tax Policy Network*, *in* EXECUTING THE INCOME TAX 249 (Graeme Cooper ed., 2008) [hereinafter Stewart, *Consultation in Business Tax Reform*] (discussing the "tax policy network" with respect to taxation of the corporate sector in Australia).

228. 2007 IMF CODE, *supra* note 2, § 1.2.3.

229. *See* Richard K. Gordon & Victor Thuronyi, *Tax Legislative Process*, *in* TAX LAW DESIGN AND DRAFTING 1, 2 (Victor Thuronyi ed., 2000).

tiating behind closed doors.[230] The "tax policy network" identified by Stewart with respect to taxation of the corporate sector in Australia is not open to broader citizen engagement, although it appears to have contributed to some successful business tax reforms.[231] Ideally, a fiscal transparency law would build institutional procedures and mechanisms that would help ensure that consultation in policy formation is public to the greatest extent possible and that would enable a wide spectrum of taxpayers an opportunity to engage in the process.

A lack of consultation on tax reform often seems to go hand in hand with a failure to respect taxpayer rights and procedural or appellate processes concerning taxation, particularly in developing countries.[232] In this context, the IMF Code's incorporation of a requirement to ensure taxpayer rights and due process is likely to increase taxpayers' capacity to engage in tax reform processes, though this capacity is somewhat indirect. Business and taxpayer associations may not exist or may be poorly educated or resourced. There is also a need for "skilling up" both parliamentarians and the wider population in all countries, so as to enable them to participate in consultation about tax reforms that will affect them and the broader public interest.[233] Gordon and Thuronyi have also identified inadequate coordination between the legislative branch and tax policy makers in the treasury or executive branch. They argue that it is important to both educate and consult with members of parliament, perhaps via a parliamentary committee, and with parliamentary staff.[234] Formal interest groups and business associations may be weak or subject to cooption, thus creating an inadequate demand for broad consultation and hiding the influence of smaller groups.[235]

The claim in support of consultation in budget policy is that it enhances information sharing, accountability, institutional knowledge, and public understanding, which in turn strengthen the quality and legitimacy of the budget.[236] Often, however, there is an assumed dichotomy between

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230. Moore & Rakner, *supra* note 5, at 1. *See also* Avi Nov, *The 'Bidding War' to Attract Foreign Direct Investment: The Need for a Global Solution*, 25 VA. TAX. REV. 835, 847 (2006) (discussing foreign direct investment as an example of the dominant dynamic that corrupts tax policy in the developing world).

231. Stewart, *Consultation in Business Tax Reform*, *supra* note 227.

232. *See, e.g.*, Luoga, *supra* note 166 (referring to more than twelve studies of the Tanzanian tax system since 1990, none of which addressed the need for consultation or the legal framework for taxation).

233. *See* Burton, *Participatory Tax Transparency*, *supra* note 219, at 335.

234. *See* Gordon & Thuronyi, *supra* note 229, at 8.

235. Lise Rakner, *The Politics of Revenue Mobilization: Explaining Continuity in Namibian Tax Policies*, 28 F. FOR DEV. STUD. 125, 135 (2001).

236. *See* 2007 IMF MANUAL, *supra* note 2, at 5–6, 27.

content and *process* in fiscal policy reform. That is, it is assumed that consultation will not affect the *content of reforms* (which can be determined by reference to abstract or "ideal" technical policy choices), but will simply enable the refining of a policy and assure more effective implementation of that policy. This assumption is consistent with what has been termed the "technical idea" approach to a development intervention, an approach used across the broad field of development and according to which "effective political engagement is evidenced by receptivity to the technical idea and support of its implementation."[237] However, the serious implementation of process-oriented reforms is likely to lead to significant compromises in the ultimate content of tax and spending proposals. The discourse of transparency reflects an underlying tension between the drive for "best practice" policy and fiscal discipline, on the one hand, and the need to achieve a legitimate fiscal bargain among citizens, on the other.[238]

There is a striking contrast between the OECD's approach to fiscal transparency, which only marginally considers participation, and the considerable attention the OECD has paid in recent years to public participation in Member States' policy making more generally.[239] In a recent, substantial document on participatory policy making, the OECD identifies three different types of relationships, based on information, consultation, and active participation, respectively: "a one-way relationship in which government produces and delivers *information* for use by citizens"; "a two-way relationship in which citizens *provide feedback* to government" on a defined issue; and "a relation based on *partnership* with government, in which citizens actively engage in defining the process and content of policy-making."[240] It seems safe to say that most

237. Andrews, *supra* note 139.

238. *See, e.g.*, Stewart, *Tax Policy Transfers*, *supra* note 40.

239. *See* ORG. FOR ECON. CO-OPERATION & DEV., CITIZENS AS PARTNERS: INFORMATION, CONSULTATION AND PUBLIC PARTICIPATION IN POLICY-MAKING (2001) [hereinafter CITIZENS AS PARTNERS]; ORG. FOR ECON. CO-OPERATION & DEV., EVALUATING PUBLIC PARTICIPATION IN POLICY MAKING (2005).

240. CITIZENS AS PARTNERS, *supra* note 239, at 23 (emphasis added). Some commentators have called for increased and more widespread participation in tax policy making. *See* Mark Burton, *Democratic Tax Administration*, *in* FURTHER GLOBAL CHALLENGES IN TAX ADMINISTRATION (Margaret McKerchar & Michael Walpole eds., 2006); Burton, *Participatory Tax Transparency*, *supra* note 219. In contrast to the call for widespread "citizen" participation, Stewart has found that enhanced consultation in business tax policy making in Australia has certainly strengthened a "shared ownership" of the tax system between business and government, but within a closed and tightly held "network" of interdependence that does not incorporate citizens or civil society more broadly. Stewart, *Consultation in Business Tax Reform*, *supra* note 227.

efforts at engaging citizens in tax reform initiatives or budget processes do not rise to the third level of active participation, and many involve only the provision of *information* to those who already have the skills to understand and utilize it.

An alternative view of a successful development intervention by international experts or institutions is targeted towards local "ownership" and warns against the wholesale implementation of external technical ideas or blueprints without adequate local consideration. This view suggested by Andrews, involves the creation of "space in which the developing entity can identify, define, and solve its own problems."[241] The dominant fiscal transparency norms are not aimed at creating "space" for political negotiation or engagement concerning the budget.

The IBP and other fiscal policy NGOs form part of an emergent civil society network within States and in the international arena that aims to fill this democratic deficit, but currently operates with limited communication and coherence among the different participants. The importance of civil society or independent critique of budget policy has been noted in a variety of contexts, including tax expenditures and gender budgeting. Without external monitoring and pressure, governments are unlikely to engage in meaningful disclosure or self-criticism of their policies. However, also well-known are the challenges of developing a civil society network that is both socially diverse and well-informed about fiscal policy. The international codes fail not only to prioritize information or processes that would serve economically marginalized groups in the wider civil society, but also to foster critical analysis by those interested in problems of poverty and inequality.

Our call for "political space" and for increased citizen participation in fiscal policy (and other policy aimed at development) is grounded in a notion of "deliberative democracy."[242] Philip Pettit has argued that deliberative democracy should combine two dimensions: first, representative "contestatory institutions," and second, institutions that remove some decisions from the immediately political domain, but are designed to

241. Andrews, *supra* note 139, at 95.

242. Although it has a longer history in democratic theory, the theory around deliberative democracy is being made simultaneously with various experiments in participation and consultation taking place with respect to development and policy. *See, e.g.*, Joshua Cohen, *Deliberation and Democratic Legitimacy*, *in* THE GOOD POLITY: NORMATIVE ANALYSIS OF THE STATE 17 (Alan P. Hamlin & Phillip Petit eds., 2002); James D. Fearon, *Deliberation as Discussion*, *in* DELIBERATIVE DEMOCRACY 44, 44–45 (Jon Elster ed., 1998). In the development context, it has been termed "deliberative development." *See, e.g.*, Morrison & Singer, *supra* note 222.

empower participation.[243] Relevant to our discussion of budget transparency, "contestatory institutions" ensure that "the people" are "individually enabled to act as editors of the laws and policies that the representatives author—and author in their collective name."[244] On the other hand, the "depoliticizing" institutions "reduce" the "contestatory burden," including constitutional constraints and consultative procedures.[245]

At their best, fiscal transparency laws and other laws relating to budgeting would empower "contestation"—participation in fiscal decision making—by informing and enabling citizens, while at the same time providing adequate constraints and procedures to achieve "realistic" outcomes.[246] These constraints could include the use of an MTEF, and requirements to assess the achievement of development goals and to weigh distributive impact on both current and future generations. The Nigerian Fiscal Responsibility Act of 2007 includes a number of provisions that gesture in this direction, though their impact on the ground is yet to be determined. For example, the Act creates a Fiscal Responsibility Commission charged with implementing the statute and empowered to demand relevant information from any person.[247] The Commission has ten members, with one appointed to represent organized labor, and another to represent "[c]ivil [s]ociety engaged in causes relating to probity, transparency[,] and good governance."[248] The law also provides for timely and wide publication of its many reports, including via the Internet.[249] Most interestingly, it gives standing to ordinary citizens to seek prerogative orders or other remedies in the Federal High Court to enforce the law.[250]

We call on the international financial institutions ("IFIs") to turn their attention to fostering "contestatory" processes and networks both locally and internationally. What best practices could be identified at the country level for involving and providing resources to civil society? Could transparency be broadened by promoting more effective parliamentary over-

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243. Pettit, *supra* note 6, at 52–65.

244. *Id.* at 61.

245. *Id.* at 62–63.

246. *See* James E. Alt & David Dreyer Lassen, *Transparency, Political Polarization, and Political Budget Cycles in OECD Countries*, 50 AM. J. OF POL. SCI. 530, 531 (2006) (conducting a rigorous inquiry into the relationship between electoral politics and fiscal transparency).

247. Fiscal Responsibility Act, Gazette of the Federal Republic of Nigeria, No. 126, Dec. 31, 2007, pt. 1.

248. *Id.* § 5(1)(b).

249. *Id.* §§ 30(2), 44(5), 48(1).

250. *Id.* § 51.

sight of fiscal policy impacts, including the wider use of committees and local community consultations?

VI. FORMALISATION, META-INSTITUTIONS, AND GLOBAL NORMS

This Article has sought to analyze and critique budget transparency laws through the lens of social justice and democratic values. In this final Part, we discuss the role of law in the network of codes, standards, and regulators dealing with fiscal transparency and operating at both an international and national level. We also explore the import of fiscal transparency for the broader project of "ruling the world." Our analysis suggests that the international institutions, and even NGOs, put considerable faith in law as a vehicle for mandating transparency and accountability. However, scholars of law and development have expressed skepticism about the role of law in development and the ability of law reform to enhance or influence development.[251]

The IMF Code and OECD Best Practices are prime examples of the increasing role of "soft law" in transnational economic governance. Soft law can be defined as standards or norms developed by quasi-public international institutions, with a view to influencing policy development and practice at the state level so as to convince markets of sound economic policy-making.[252] They are just one element of a broader network of standards and codes at the international level aimed at establishing "good governance" norms so as to achieve "macroeconomic stability and high-quality growth."[253] Even the "hardest" set of global rules, the Maastricht fiscal rules for the euro area, operates in practice predominantly as a set of procedural and reporting requirements.[254]

The IMF Code and OECD Best Practices also seek to embed and legitimate other global norms or standards with respect to government fiscal, monetary, and investment policies. The IMF Manual notes that the Code is "one of [twelve] standards that have been recognized by the international community" (and endorsed by the IMF and the World Bank) in various guises.[255] The Code is also supported by private sector investors as one of twelve key international standards deserving of priority implementation by governments.[256] The OECD Best Practices forms an ele-

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251. Davis & Trebilcock, *supra* note 7.

252. *See* Christians, *supra* note 40; Schick, *supra* note 11 (discussing "hard rules" for fiscal restraint).

253. 2001 IMF MANUAL, *supra* note 2, at 1.

254. EU Press Release, *supra* note 30.

255. *Id.* at 1.

256. *See* Financial Stability Forum, 12 Key Standards for Sound Financial Systems, http://www.fsforum.org/cos/key_standards.htm (last visited Apr. 8, 2009).

ment of its overall Policy Framework for Investment. In addition to proposing ten policy "domains" that have the most impact on investment, and setting out questions or issues for governments to consider in each domain, the Framework seeks "to define the respective responsibilities of government, business and other stakeholders and to pinpoint where international co-operation can most effectively redress weaknesses in the investment environment."[257] Transparency in policy development and implementation is one of three core principles that underlie the Framework, together with "policy coherence" and regular evaluation of policies' impact.[258]

The expansion of efforts in monitoring aid and government expenditures is a part of the World Bank's efforts to monitor and implement "governance" reforms worldwide. These efforts are epitomized by the World Bank's Governance Indicators, which seeks to measure governance quality across six dimensions and 212 countries and territories.[259] Most of these dimensions could incorporate fiscal transparency, but it has not always been the subject of attention.[260] The Indicators draw on a range of institutional, governmental, nongovernmental, and academic sources for components of data, and these have recently begun to include monitoring of fiscal transparency.[261]

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257. ORG. FOR ECON. CO-OPERATION & DEV., POLICY FRAMEWORK FOR INVESTMENT 11 (2006), *available at* http://www.oecd.org/dataoecd/1/31/36671400.pdf. One question that arises is to what extent nongovernment actors, in particular transnational corporations (but also, increasingly, charities, NGOs, and the international institutions themselves), are also called upon to be "transparent." It is arguable that transnational corporations face much lower expectations of transparency despite their very significant impact on the economy and society, although it must be noted that transparency norms are also being urged on the corporate sector by the OECD and, of course, by national regulators.

258. *Id.*

259. Daniel Kaufmann et al., *Governance Matters VII: Aggregate and Individual Governance Indicators 1996–2007*, at 1 (World Bank Pol'y Res. Working Paper No. 4654, 2008), *available at* http://info.worldbank.org/governance/wgi/pdf/GovernanceMattersVII.pdf.

260. The "dimensions of governance" assessed by the Worldwide Governance Indicators are "Voice and Accountability," "Political Stability and Absence of Violence/Terrorism," "Government Effectiveness," "Regulatory Quality," "Rule of Law," and "Control of Corruption." World Bank, Governance and Anti-Corruption: Worldwide Governance Indicators 1996–2008 Interactive, http://info.worldbank.org/governance/wgi/index.asp (last visited Mar. 28, 2009).

261. For example, one data source for the Worldwide Governance Indicators is the Institutional Profiles Database, a project of the French Government examining eighty-five developed and developing countries. Commenced in 2006, this project includes an examination of the transparency of fiscal and tax policy, tax evasion, and regulatory quality. *See* Kaufmann et al., *supra* note 259, at 59, tbl.A21. The Indicators also draw on the IBP Index. *Id.* at 63, tbl.A25.

Together with a host of international regulators or observers led by the IFIs, these standards and codes create an international web of metaregulation (of States by States and nonstate actors) that has the primary goal of ensuring that governments are more fully subjected to the discipline of well-informed markets. As illustrated in this Article, this range of international standards can infiltrate local policy making in a variety of ways, including country surveillance by the IMF, creation of an OECD database then used by academic researchers to rank country performance, and incentives for developing countries to participate as a way of demonstrating good governance.

In particular countries, substantive fiscal transparency norms may be embedded in a legislative framework—that is, may assume a formal legal character—but they are more often built into "soft" procedural rules or codes that governments will adhere to because of political, rather than legal, constraints. Australia, New Zealand, and the United Kingdom have each chosen not to legislate hard fiscal targets or rules. Instead, they apply transparency requirements to impose fiscal discipline. Many of these requirements, such as medium-term frameworks, are not legislated, although all three countries legislate reporting, auditing, and institutional independence requirements.[262] By contrast, many developing countries have attempted to combine hard legal restrictions for deficits with a range of legal and nonlegal transparency obligations. Mike Stevens reminds us that it is important to look at the history of budgeting laws and processes in a country when analyzing and seeking to "modernize" the budgeting frameworks of many developing countries along the lines proposed by the IMF and OECD.[263] Some countries, like India and South Africa, provide a much more diverse set of reports and information than is required in their legal systems, largely in response to legislators' concerns and an active, vocal civil society and NGO sector. The effectiveness and content of fiscal transparency norms are both largely shaped by domestic politics and pre-existing institutions, not by formal laws.

In practice, country transparency laws and norms, even if strictly nonbinding, may have the effect of binding future governments in all but the most extreme circumstances: "in practice it is also the case that given that the [United Kingdom] now has a code in place it might be very difficult for a future government to remove or substantially loosen the code without significant loss to its economic credibility."[264] A future government may only succeed in removing a fiscal code in a time of crisis. The

262. 2007 IMF MANUAL, *supra* note 2, at 80.

263. Stevens, *supra* note 9, at 11.

264. Emmerson, Frayne & Love, *supra* note 10, at 39.

global financial crisis of 2008, in which governments have been required to spend unprecedented levels of public funds to support banks, mortgage institutions, and credit markets, as well to stimulate countries out of recession, may have given governments some flexibility to operate with significant fiscal deficits for a period of time. Whether governments generate adequate authority to raise taxes if required is yet to be seen.

Are global transparency norms, which seem to be the goal of the IMF and the OECD, desirable or useful, or are policies designed in one context simply being transplanted elsewhere without adequate attention to local visions of development? Would local development or experimentation—or grassroots action—be better? Rodrik argues that institutions are central to development, but the most successful institutions tend to be local and embedded.[265] We argue here that international transparency norms have positive potential but that more attention must be paid to local (or national) distributional and democratic implications of fiscal transparency. We have observed that the dominant institutional approaches to fiscal transparency tend to call for comprehensive and timely disclosure of certain kinds of "relevant" fiscal information, so that *external* parties, including lenders, institutions and markets, can assess the "performance" or "effectiveness" of government. Budget transparency norms with only this goal may ensure accountability of a government to lenders and donors, but a different sort of information and analysis is called for to ensure the "effectiveness" of government performance and accountability to local constituencies in a particular country. Regarding the "law and development" debate more generally, Kennedy has suggested that formalization itself may be of greater benefit to outsiders than to locals.[266] Discretionary or unformalized taxing and spending powers may operate predictably for local people, but not for external investors. There is, of course, a danger of relativism: discretionary powers are very likely to be applied for the benefit of only some local participants, in a way that discriminates against the less powerful and less well resourced in a national economy, such as a rural underclass, urban factory workers at the mercy of footloose industries, or women. Nonetheless, as noted by Kennedy, it is important to acknowledge squarely the politics embedded in apparently neutral standards and procedural norms.[267]

A related question is whether the transfer of such global transparency norms across borders challenges national control over economic policy. Fiscal policies are classically the domain of national governments, a core

265. *See* RODRIK, *supra* note 112.
266. Kennedy, *supra* note 7, at 22.
267. *Id.*

element of the sovereign State. In particular (but not only) for developing countries, however, tax and spending policies are increasingly formulated at a global level, utilizing expertise in international and regional institutions. In the era of globalization, the "fiscal compact" must be understood as traversing national boundaries. It concerns both the relationship between a national government (or other levels of government) and citizens in that country, and the relationship of the government and these citizens with other countries and organizations in the international sphere. In this broad sense, the "fiscal compact" encompasses all elements of a government budget, including taxes, spending, aid, debt, and the political and institutional arrangements necessary to sustain equitable development through the budget.

Recently, various commentators have begun to envisage what global governance might look like.[268] Tax scholars have envisaged various means of collecting and distributing tax revenues at the global level, either through the establishment of an international tax organization that would enable significantly enhanced cooperation and sharing among countries, or even through an international tax.[269] As discussed with respect to tax expenditures, above, international coordination is argued by many to be essential to stop harmful tax competition with respect to corporate tax incentives. International tax policy literature has debated the problem of how to increase multilateral coordination in a manner consistent with international equity.[270] As outlined above, there has also been a significant increase in cooperation regarding the delivery of aid and the implementation of lending—on one level, this is the "transfer" element of a nascent global tax system.

Increased fiscal transparency at a country level is likely to enhance a country's domestic political and social fiscal compact, which is negotiated at national, provincial, and local levels of government. At present, fiscal transparency rules and norms tend to enhance accountability of national governments, especially those of developing countries, to external lenders and donors rather than to the domestic polity. We argue that national budgets remain the centerpiece for establishing a sustainable

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268. RODRIK, *supra* note 112, at 211–12 (putting forth an idealistic vision of global fiscal federalism).

269. Avi-Yonah, *supra* note 196; Jinyan Li, *Global Profit Split: An Evolutionary Approach to International Income Allocation*, 50 CANADIAN TAX J. 823, 844 (2002); Vito Tanzi, *The Impact of Globalization on Taxation*, 52 BULL. FOR INT'L FISCAL DOCUMENTATION 338, 338–43 (1998).

270. *See* Reuven S. Avi-Yonah, *Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State*, 113 HARV. L. REV. 1573, 1648–51 (2000); Diane Ring, *International Tax Relations: Theory and Implications*, 60 TAX L. REV. 83, 89 (2007).

fiscal compact for development. New developments in international aid that link it to the budget process seek, however imperfectly, to integrate the global and national dimensions of the fiscal compact by engaging international agencies, donors, and recipients in budget policy making. This is promising because the budget process provides a space for contesting the distributive and other consequences of taxing and spending. One difficult question, though, is how a country's budget process can handle so many different policy goals and stakeholders in an effective manner.

In conclusion, we find that global norms of fiscal transparency have been developed through a complex interaction of international and domestic processes, public and private actors, and soft and hard legal forms. While there is an obvious pattern of norm transfer from international agencies to the domestic level, the reverse has also occurred. Certain developed countries have been especially influential in defining what constitutes best practice, and this points to a concern about the implications of simply transplanting these norms around the world without adequate attention to local priorities and stages of development. Furthermore, the distinction between soft and hard law is often blurry. Informal norms may have de facto enforcement mechanisms having to do with market credibility and access to loans, thus giving them some characteristics of hard law for developing countries. Conversely, domestic fiscal transparency legislation may take the form of hard law, but its power may be primarily symbolic and contingent on the strength of domestic institutions, making it similar to soft law.

Global fiscal transparency norms may be an important pillar in a global fiscal framework that links citizens, local and national governments, and international institutions. This pillar could comprise a first step in meta-regulation of a global fiscal federation.[271] It may also be combined with a move in many sectors, but pushed primarily by NGOs, towards establishing increased transparency and accountability in the international financial institutions and other agencies with respect to their policy prescriptions and funding choices.[272] The IMF and other organizations are increasingly engaging directly with civil society as well as with governments.[273] On one level, this engagement is aimed at improving the processes and outcomes of these agencies' activities; for example, a fair-

271. RODRIK, *supra* note 112, at 114, 148.

272. *See* MICHAEL BARNETT & MARTHA FINNEMORE, RULES FOR THE WORLD: INTERNATIONAL ORGANIZATIONS IN GLOBAL POLITICS 48–51 (2004).

273. *See, e.g.*, INT'L MONETARY FUND, GUIDE FOR STAFF RELATIONS WITH CIVIL SOCIETY ORGANIZATIONS (2003), *available at* http://www.sarpn.org.za/documents/d0002110/IMF_Civil-society_Oct2003.pdf.

ly widespread consultation took place with respect to the revision of the 2007 IMF Code. On another level, this engagement is aimed at increasing the legitimacy of the IFIs themselves in the face of public opposition to organizational policies. As Ben Thirkill-White explains, however, this involves agencies such as the IMF in an inevitably political process and therefore sits uneasily with their current technocratic function of managing global stability.[274]

This Article calls for carefully balancing these goals with the promotion of a meaningful and inclusive fiscal politics at the domestic level. Budgeting remains primarily an activity of nation states. A particular fiscal bargain between growth- and equity-promoting policies needs domestic support in order to gain traction. Our study draws attention to the equal importance of domestic budget processes and institutions in generating the political support needed for fiscal reforms, including any new forms of transnational cooperation.

274. Ben Thirkell-White, *The International Monetary Fund and Civil Society*, 9 NEW POL. ECON. 251 (2004).