



**SIXTH CONSULTATION ON THE SITUATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**UNITED STATES AND CANADA**

**ESCR UNIT, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR)**

Padilha Vidal Room

Headquarters of the IACHR

1889 F St NW, Washington DC 20006

*Fiscal policy and human rights in the United States*

Niko Lusiani, Center for Economic and Social Rights (CESR)

**Opening words for IACHR and ESCR Unit**

Thank you for the invitation, the Center for Economic and Social Rights is pleased to be part of this consultation of the ESCR Unit, which plays a critically important role for the enjoyment of *all* human rights in the Americas.

As evidenced in the [first-ever IACHR thematic audience on fiscal policy and human rights](#) held by the Commission this past October -- which we participated in together with various organizations from the region, fiscal policy—that is the raising and spending of public resources—is one of the most important of these structural policies which determines the degree to which a state can ensure human rights for all, without discrimination.

Who pays for what public services, and who truly benefits, are fundamental questions at the heart of any efforts to protect democracy and human rights.

**Why is tax and fiscal policy essential to realizing economic, social, cultural and environmental human rights (ESCR) in North America?**



At present, fiscal policies throughout the Americas (including in the US) are characterized by regressive tax policies with low revenue potential, widespread tax avoidance and highly inequitable spending patterns. These policies are not serving to correct the structural causes of poverty, inequality and human rights denial. On the contrary, tax and fiscal policies have in many cases deepened economic, social and gender inequalities while further impoverished populations already pushed to the brink – resulting in the types of structural patterns of violations to be witnessed in this consultation later this afternoon.

Tax and fiscal policies have the potential, however, to be vital human rights tools, in at least four ways:

1. By mobilizing sufficient domestic resources to finance essential public services, like access to quality education, healthcare;
2. By redistributing economic gains biased toward the wealthy to reduce socio-economic and gender inequality;
3. By ensuring a degree of accountability between the State and its people; and
4. By correcting market failures which drive violations of rights and protect common goods, including to a healthy environment.

Aligning tax and fiscal policy with human rights standards and principles can be a powerful corrective force to foster sufficient, equitable, and accountable public financing—the life blood of democracy.

## **Domestic human rights impacts of tax and fiscal policy in US**

So, briefly, how does fiscal policy affect ESCERs in the US?



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SOCIAL JUSTICE THROUGH HUMAN RIGHTS

Today, more than 46.7 million people – more than 1 in 7 – Americans live in poverty. That's 2.3 percent higher than before the Great Recession. The US is the fourth most economically unequal country in the OECD,<sup>1</sup> with very low inter-generational mobility, and gaping racial disparities in access to quality education, healthcare, housing, fair wages and wealth. A stunning 95 percent of income growth since 2009 has gone to the top 1% of income earners, making the 2009-2012 'recovery' the most lopsided in favor of the ultra rich in US history. The top 10% now hold 50% of the income in the country, and this trend is only increasing.<sup>2</sup>

Tax and fiscal policy is hardly disrupting the trends.<sup>3</sup> In fact, in many ways, they are entrenching poverty and inequality. For example, Federal income taxes are mildly progressive. Yet, astonishingly, state and local level taxes -- where most public services are provided for in the US – in every state in the country impose higher effective tax rates on poor families than on the richest taxpayers.<sup>4</sup> Some call it a "soak the poor" strategy, which pushes low-income families further into poverty and increases the likelihood that they will need to rely on social protection programs – which are themselves chronically under-funded.

Now, these abstract statistics don't paint the full picture of millions of individual human stories of economic and social rights abuse<sup>5</sup> in one of the richest countries in history – so many of

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<sup>1</sup> OECD, 'In It Together: Why Less Inequality Benefits All,' 2015 at <http://www.oecd.org/social/in-it-together-why-less-inequality-benefits-all-9789264235120-en.htm>

<sup>2</sup> Gilson, D. 'Survival of the Richest,' Mother Jones, 2015 at <http://www.motherjones.com/politics/2014/10/charts-income-inequality-recession-survival-richest>

<sup>3</sup> Sean Higgins, Nora Lustig, Whitney Ruble & Timothy Smeeding, "Comparing the incidence of taxes and social spending in Brazil and the United States," 2013, 316, ECINEQ, Society for the Study of Economic Inequality.

<sup>4</sup> A 2015 ITEP report, [Who Pays? A Distributional Analysis of the Tax Systems in All 50 States](#), found that the poorest twenty percent of Americans paid on average 10.9 percent of their incomes in state and local taxes. Middle-income taxpayers didn't fare much better, paying an average of 9.4 percent of their incomes toward those taxes. But when it comes to the wealthiest one percent, ITEP found they paid an average of just 5.4 percent of their incomes in state and local taxes.

<sup>5</sup> For more on many of these cases, see US Human Rights Network, 'Advancing Human Rights: A Report Card Assessing Human Rights in the US,' December 2015 at <http://www.ushrnetwork.org/resources-media/advancing-human-rights-report-card-assessing-human-rights-us>



which come back to failures and impunity in how the government raises and spends public resources.

- Children in Flint exposed by their own city government to toxic levels of lead poisoning – with lifelong effects on these kids’ health, cognition and social integration<sup>6</sup>
- Urban classrooms in Detroit plagued by rats, roaches, and mold, staffed by underpaid teachers, with huge education funding gaps based on race and economic status<sup>1</sup>
- Denials of indigenous rights adversely affected by extractive industries
- Disproportionate exposure of communities of color to toxic waste sites, with serious health impacts on children
- Enormous disparities in access to quality, affordable healthcare, based on race, income, gender, health and disability status – leading to disproportionate infant and maternal mortality rates, in particular in communities of color
- Complete absence of federally-protected support for childcare costs and domestic care work, done mostly by women
- Even a model right to health bill passed in Vermont’s legislature struck down by its governor

What connects all of these seemingly isolated incidents of basic human rights infringements in the US? In every case, the local, state or federal governments have sought to evade their human rights duties by claiming that the budget is too weak and public revenue too shallow to afford a life of dignity for its people.

As the ESCR situation in the US (and many countries in the region) illustrates, the human rights movement and its protection regime can no longer afford to stay silent about tax and fiscal policy. We must interrogate the scarcity claim and promote just and equitable tax alternatives.

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<sup>6</sup> US Human Rights Network, ‘Toward Best Practices for Fulfilling the Human rights to Water and Sanitation in the United States,’ 2016 at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn.\\_scuihrc.humanrightstowaterandsanitation\\_0.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn._scuihrc.humanrightstowaterandsanitation_0.pdf)



This would include, for example, the \$90 billion a year we lose in the US to corporate profit-shifting and other abusive tax planning practices.<sup>7</sup>

These and many other tax abuses are not victim-less practices. Every dollar in taxes that corporations and the super-wealthy avoid must be balanced with either deeper deficits, higher taxes on middle-income people, or cuts to essential public services necessary to realize ESC rights, especially of the most disadvantaged.

### **US undermining human rights-aligned fiscal policy throughout Latin America**

This systematic permissiveness of tax evasion and avoidance by US authorities not only affects people lives in the US. It undermines the fiscal space for human rights in countries across the Americas.

For example, the US has become—whether by design or by default—the world’s third most important financial secrecy jurisdiction.<sup>8</sup> As a result, the US now plays a central role in attracting illicit financial flows, enabling tax abuse and allowing economic elites and tax evaders to shield themselves from paying their tax dues in countries around the region.

These **tax haven-like policies and practices** in place in various US states<sup>9</sup>—such as the protection of anonymous shell corporations<sup>10</sup> and the failure to make fully transparent the profits US companies make overseas—represent a tremendous material cost on many governments in the Americas, undercutting their redistributive capacities to reverse growing

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<sup>7</sup> Clausing, Kimberly A., *The Revenue Effects of Multinational Firm Income Shifting*, 2011 at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2488860](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2488860)

<sup>8</sup> Tax Justice Network, *Financial Secrecy Index*, 2015.

<sup>9</sup> Institute on Taxation and Economic Policy, ‘Delaware: An Onshore Tax Haven,’ 2015 at [http://itep.org/itep\\_reports/2015/12/delaware-an-onshore-tax-haven.php](http://itep.org/itep_reports/2015/12/delaware-an-onshore-tax-haven.php)

<sup>10</sup> Global Witness, ‘The Great Rip-Off: Anonymous company owners and the threat to American values’, 2015 at <https://www.globalwitness.org/en/archive/report-reveals-threat-us-interests-anonymous-shell-company-owners/>



economic and gender inequalities. These tax abuses also deepen mistrust in how fiscal policy is governed and thus how effective it can be, especially for the most disadvantaged.

## **Human rights as guide to just fiscal policies in North America**

The good news is that human rights experts, advocates and practitioners have begun working alongside [economists](#) and [tax experts](#) to interrogate the largely-false scarcity claims of governments, and in doing so also promoting just financing alternatives.

Various human rights bodies at the global and regional levels—such as the [UN Special Rapporteur on extreme poverty and human rights](#), [UN ESCR Committee](#), the [Council of Europe’s Human Rights Commissioner](#) and various constitutional courts and NHRIs at the national level—have begun to apply human rights standards and principles into tax and fiscal policy. What is emerging is a compelling interpretation and application of the human rights normative framework and set of operational principles to guide the design, implementation and monitoring of tax and fiscal policy, including with regard its extraterritorial or spillover effects.

Enhanced monitoring by human rights mechanisms like the IACHR could help prevent the type of serious systemic violations of civil and political as well as economic and social rights which stem from ill-conceived fiscal policy. The current situation of “fiscal impunity” and ineffective scrutiny of fiscal policy has fissured the social compact in many countries across the Americas. A robust interrogation of the human rights consequences of tax and fiscal policy is imperative.

## **Proposals for the Inter-American Commission on Human Rights**



In the light of the factors described above, it is time that tax and fiscal policy moves from the margins to the center of efforts to realize human rights. In a report submitted to the Commission at its last period of sessions in October, CESR together with its partners called for the regional system of human rights to consolidate its scope of protection for human rights violations resulting from the impact of regressive and unfair tax and fiscal policies. In the context of this North America consultation, we would like to respectfully reiterate the following proposals to the Inter-American Commission on Human Rights to:

- 1) Organize a consultation and thematic report on fiscal policy and human rights in the Americas aimed at contextualizing and operationalizing human rights principles into fiscal policy within the framework of the Inter-American System, and consider including an analysis of how fiscal policy affects human rights in its other relevant thematic reports, such as on poverty
- 2) Formulate guidelines to States in the region on human rights-aligned fiscal policies, in particular promoting gender, equality and human rights impact assessments of tax and fiscal policies
- 3) Since corporate tax practices are fundamental to human rights, seek ways to bring these practices in line with the UN Guiding Principles on Business and Human Rights when advising Member States and supporting the integration of business and human rights standards into the work of the IACHR. (Various relevant proposals for implementing these concerns into the US National Action Plan on Responsible Business Conduct were submitted in the context of those consultations.<sup>11</sup>)
- 4) In order to assess compliance with the extraterritorial duties of states like US

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<sup>11</sup> CESR and Righting Finance, 'Framing Remarks, Consultation on the U.S. National Action Plan (NAP) on Responsible Business Conduct,' April 2015 at <http://cesr.org/downloads/USG-NAP-Consultation16April-final.pdf>



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and Canada, monitor the degree to these countries' tax and financial policies have negative spillover effects on domestic resource mobilization and ESCRs in other countries in the region.