HUMAN RIGHTS AND JUST TAXATION

feature

Thomas Pogge

Around half of the world's population is denied the right to an adequate standard of living. This will only be remedied if their governments can secure adequate tax revenues from large companies and wealthy individuals. Reform of the rules governing transnational financial flows turns out to be central to the cause of universal human rights.

Article 25 of the Universal Declaration "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control ... Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

The most widely underfulfilled human rights, by far, are social and economic ones, such as the right to a standard of living that is adequate for the health and well-being of oneself and one's family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond one's control.[1] About half of all human beings suffer serious deprivations of one such kind or another and have no access to the necessary social services that would protect them.

The first-line responsibility for these unfulfilled human rights lies with the governments of the countries in which the poorer half live. But these governments are also poor. While the industrialized states have annual revenues in the order of $20,000 to $50,000 per person, India has annual revenues of barely $200 per person and many other governments are poorer still. These large international discrepancies are due to two factors: the *per capita* gross domestic products of poor countries are much smaller; and they also raise a much smaller proportion of their GDPs as government revenues, typically under 20% as compared to an OECD average of well over 40%.

It is difficult for poor-country governments to raise income or consumption taxes from the poor majority of their population — such taxes are unpopular, costly to collect and aggravate the very human rights deficits they are supposed to alleviate. But such governments also encounter difficulties in imposing taxes on those who could pay. Through sophisticated efforts, wealthy citizens of these countries, and corporations operating within them, escape taxation to an extent that would be unthinkable in an affluent country with political clout and a highly sophisticated and well-funded tax administration. Boston Consulting Group estimates that 33.3% of all private financial wealth owned by people in Africa and the Middle East and 25.6% of such wealth owned by Latin Americans — some $2.6 trillion — is kept abroad; while the analogous estimates for North America and Europe are 1.8% and 7.9%, respectively.[2] To raise taxes on the income and capital gains produced by this wealth, poor countries must largely rely on the honesty of their taxpayers as they lack access to information about their citizens' overseas holdings.

Transnational corporations (TNCs) also massively escape taxation, typically by creating additional subsidiaries in tax havens and then instructing their poor-country subsidiaries to contract with their tax-haven subsidiaries into money-losing arrangements involving trade misinvoicing, abusive transfer prices as well as inflated consulting and trademark fees.[3] These arrangements diminish the taxed profits of the poor-country subsidiaries while increasing the untaxed profits of the tax-haven subsidiaries. Global Financial Integrity estimates that corporate tax abuse accounts for 80% of all illicit financial outflows from less developed countries, or about $4.7 trillion during the 2002–11 period and $760 billion in 2011 alone.[4] This is five or six times the sum total of all official development assistance flowing into these countries during the same periods.[5] Christian Aid calculates that, through these profit- and tax-diminishing capital outflows, governments of less developed countries have lost tax revenues in the order of $160 billion annually —

"The first-line responsibility for unfulfilled human rights lies with the governments of the countries in which the poorer half live. But these governments are also poor."

or about $2.5 trillion for the Millennium Development Goals period (2000–2015). "If that money was available to allocate according to current spending patterns, the amount going into health services could save the lives of 350,000 children under the age of five every year."[6]

Four groups of agents bear responsibility for the human rights deficit that results from poor countries' inability fully to collect reasonable taxes. First, the secrecy jurisdictions and tax haven countries (including Switzerland, Ireland, the UK and the US) which structure their tax and legal systems so as to encourage tax abuse and also typically protect bank secrecy against the tax authorities of less developed countries. Second, the individuals and corporations that erode the tax base of poor countries by using tax havens to hide their wealth and profits. Third, the bankers, lawyers, accountants and lobbyists who devise, implement and "legalize" these schemes. Fourth, powerful rich-country governments which facilitate the tax dodging of their TNCs abroad[7] and get tax havens to cooperate with their own tax enforcement efforts without ensuring that poor-country governments receive similar cooperation.[8]

The key to reducing the tax gap and consequent human rights deficit in the poor countries is global financial transparency: the abolition of shell companies and anonymous accounts, automatic exchange of tax information worldwide, and the requirement that, in their audited annual reports and tax returns, TNCs report their sales, profits and taxes paid country by country for each jurisdiction in which they operate. Such financial transparency would not merely advance tax justice but additionally protect human rights by also curtailing the activities of criminals such as terrorists, money-launderers, and traffickers in persons, drugs and weapons.

These changes must be implemented by the governments of tax havens and other rich countries, which will continue to move forward so long as there is sufficient pressure and support from their populations. Tax dodgers and their bankers, lawyers, accountants and lobbyists can help by not opposing or subverting the needed reforms and by collaborating toward the formulation and acceptance of ethical standards governing, for example, the conduct of TNCs or of international tax lawyers and accountants. A major break-through for financial transparency is now within reach. Let us ensure that the populations of the poor countries, whose basic human rights are at stake, participate fully.[9v]

Thomas Pogge is Leitner Professor of Philosophy and International Affairs and founding Director of the Global Justice Program at Yale, President of Academics Stand Against Poverty (ASAP) and of Incentives for Global Health. He chaired the International Bar Association's Human Rights Institute (IBAHRI) Task Force on Illicit Financial Flows, Poverty and Human Rights, which produced the report Tax Abuses, Poverty and Human Rights .

Endnotes

1. Universal Declaration of Human Rights, article 25.
2. Boston Consulting Group, Global Wealth 2013: Maintaining Momentum in a Complex World (2013), pp. 4 and 11. **www.bcg.de/documents/file135355.pdf**
3. Martin Hearson and Richard Brooks, "Calling Time" (Action Aid, 2010 [April 2012 Update]), available at: **www.actionaid.org.uk/doc_lib/calling_time_on_tax_avoidance.pdf.**
4. Dev Kar and Brian LeBlanc, Illicit Financial Flows from Developing Countries: 2002-2011 (Global Financial Integrity, December 2013), pp. iii, vii, x.
5. **http://iff.gfintegrity.org/iff2013/2013report.html. http://mdgs.un.org/unsd/mdg/SeriesDetail.aspx?srid=569&crid=**
6. Christian Aid, False Profits: Robbing the Poor to Keep the Rich Tax-Free (Christian Aid, March 2009), p. 3. **https://www.christianaid.org.uk/Images/false-profits.pdf.** There are many pressures toward improving current government spending patterns in poor countries, which are often distorted by corruption, bloated security apparatuses and indifference to the poor. Insofar as such efforts are succeeding, additional revenues would have an even larger human rights impact than Christian Aid is calculating.
7. An example are the "tax holidays" periodically granted by the US Congress, such as the American Jobs Creation Act of 2004, which enabled US-based TNCs to repatriate profits accumulated in tax havens at a discounted 5.25% (instead of the usual 35%) tax rate. Without the prospect of such tax holidays, US TNCs have little to gain from shifting their profits from poor countries into tax havens.
8. Even the OECD's new landmark model agreement on automatic exchange of financial information is likely to exclude many less developed countries from its benefits because they lack the resources to set up the data collection arrangements required to qualify as a reciprocating partner.
9. For more on human rights and tax justice, see International Bar Association's Human Rights Institute (IBAHRI) Task Force on Illicit Financial Flows, Tax Abuses, Poverty and Human Rights, **www.ibanet.org/Human_Rights_Institute/TaskForce_IllicitFinancialFlows_Poverty_HumanRights.aspx**

"The key to reducing the tax gap and consequent human rights deficit in the poor countries is global financial transparency"