



ADVANCING TAX JUSTICE THROUGH HUMAN RIGHTS –
INTERNATIONAL STRATEGY MEETING

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Why the tax justice movement should embrace human rights. And vice versa

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The history of economic and social rights in most countries can be discovered in their tax codes. Tax is at the core of the social contract between citizens and state and between businesses and the state. When powerful and wealthy citizens and businesses engage in abusive tax behaviour, by cheating on taxes or shaping tax policies in their favour, they undermine the social contract and deprive fellow citizens of the resources they need fulfil their democratic obligations.

Without tax revenues states are unable to deliver on their democratic mandates and human rights obligations.

Tax policies reflect political power relationships. When tax policies favour the rich, they almost always harm the well-being of poor people. When taxes are not used to redistribute wealth, inequality inevitably worsens – as Piketty has shown - and social conditions deteriorate accordingly, often leading to human rights abuses.

In a world of globalised capitalism, international cooperation is crucial to prevent tax havens from using beggar-my-neighbour tax and regulatory policies to poach revenue from other states. We do not call this political process tax competition. We call it tax wars – and it is almost always the poorest and most vulnerable citizens who suffer most from any type of warfare.

Much of our work in the past decade has focused on how tax havens use their sovereignty to create a legal and regulatory framework that is knowingly deployed, and purposefully adapted to allow people from other countries and transnational corporations to shift their wealth and profits, to hide their identities behind shell companies, and to generally engage in corrupt practices.

We have also focused on how powerful and politically well-connected companies – especially banks, accounting firms, law practices and others, knowingly and purposefully support their clients with shifting profits and tax cheating, even though they have a professional duty to serve public interests and in many instances are sworn officers of the courts of their country.

We have supported the actions of prominent whistleblowers who have helped to reveal the scale and nature of tax evasion; or the secretive deals agreed between tax havens like Luxembourg and PWC acting on behalf its transnational corporate clients; or the failure of major banks to comply with global anti-money laundering regulation, using tax havens to hide their client's activities behind layers of secrecy.

For many years the tax justice movement has sought to embrace the human rights community because we see powerful possibilities for reframing abusive tax practices in a stronger language. For decades the importance and scale of tax cheating has been trivialised, even to the extent of treating it as some kind of sport that rich people engage in: remember that famous throw-away line that “taxes are for the little people”? Framing tax cheating as a violation of human rights, which directly causes deaths because states cannot deliver effective health care to their poorest citizens, tells a more powerful and honest story.

We have also wanted to embrace the human rights community because, in the same way that we changed the geography of corruption by examining the role

of tax havens like Luxembourg, Switzerland, U.K. and U.S.A. as supply side enablers of high level corruption, we feel that the geography of human rights needs broadening to include the powerful countries of the global North who deliberately shape their tax policies to deprive other countries of much-needed revenue.

Tax havens do not come into being by accident. When governments provide special tax treatments to businesses that enable profits shifting from other countries they are deliberately and knowingly depriving those other countries of tax revenues, and in doing so they are blocking those countries from being able to both mobilise domestic resources for development and fulfil their human rights obligations.

We can take this argument further. When the governments of the most powerful nations in the world use their controlling influence within institutions like the Organisation for Economic Cooperation and Development and the International Monetary Fund to impose a framework of international tax rules that blatantly serve the interests of powerful transnational companies and wealthy elites, are they not also involved in undermining the ability of states to deliver on their human rights obligations?

Thomas Pogge at Yale argues that the citizens of powerful countries like the U.K. and U.S.A. which exert significant control over the OECD, which has become the de facto rule-maker in international taxation, have been complicit in the creation of an economic environment in which tax havens have flourished. In his words: *“we violate the human rights of billions of poor people by collaborating in the imposition of a supranational institutional scheme that foreseeably produces massive and reasonably avoidable human rights deficits”*.

Businesses must also accept they have a responsibility to pay taxes where they fall due, in the right amount and in the right time frame. They cannot claim that their duty to maximise returns to shareholders overrides their duty to exercise due diligence on the potential negative impacts of their tax planning strategies.

Since 2004, when TJN launched its campaign on tax and corporate social responsibility, we have argued that abusive practices such as trade mispricing present hidden risks to companies, not just because they undermine claims to

being a good corporate citizen, or could cause significant reputational damage, but above all because tax cheating infringes heavily on the ability of states to meet their human rights commitments. In 2012 the Human Rights Council unanimously approved the *Protect, Respect and Remedy* framework proposed by John Ruggie. The framework is voluntary but it has been incorporated into the OECD's Guidelines for Multinational Companies, and governments must now ensure that their laws and regulations set standards for corporate behaviour and transparency that are consistent with observance of human rights, and that companies perform due diligence both of their actions and the actions of suppliers right across their supply chain. Being transparent about tax planning needs to be a key component of corporate citizenship reporting under the Ruggie framework.

If this applies to the general business community, it applies in particular to the professional tax intermediaries like lawyers, accountants and bankers who are key players in the design and structuring of most tax avoidance schemes. As the Luxembourg Leaks scandal revealed last November, accounting firms often put profit ahead of public interest in ways that suggest an imbalance between their obligation to promote client interests while also respecting their obligation to respect the norms of democratic societies. Tax advisers need to recognise their role in undermining the human rights of billions of citizens around the world and should become a special focus for civil society monitoring of the UN Protect, Respect and Remedy reporting framework.

Mention of the LuxLeaks scandal also raises the issue of the treatment of whistleblowers. PriceWaterhouseCoopers, the accounting practice at the core of the scandal, have described the actions of one of the whistleblowers, Antoine Deltour, as "theft". M Deltour will be facing the Luxembourg court in the Autumn. We at TJN feel very strongly that this is an abuse of his human rights and we would like to see human rights organisations align with us to defend M Deltour and other whistleblowers.

The LuxLeaks revelations were undoubtedly in the public interest. To criminally prosecute the whistleblower for disclosing abusive tax practices should be treated as an infraction of that person's human rights, especially in light of the legal dictum that there is no confidentiality in iniquity. We therefore call on human rights activists to support M Deltour, maybe adopt

him as a prisoner of conscience, and to hit back at the banks and accounting firms who target whistleblowers to block investigation of their own corrupt activities.

From the tax justice campaigning point of view, we want to see an increased focus on how tax injustices impact human rights. Framing tax injustices as human rights violations would highlight the links between secrecy jurisdictions which harbour illicit financial flows and tax avoidance, and poorer countries that are deprived of revenue needed to deliver on human rights obligations. We also want to put increased pressure on the enablers of tax cheating – the lawyers, accountants, etc – to make more explicit their role in depriving poorer people of their human rights. In addition, we want to put increased pressure on the international institutions like the IMF, which following the failures of its previous tax policies is rethinking its fiscal strategy. The IMF's reflection in this area need to also consider how their tax policy recommendations might foreseeably impact on human rights and we should be engaging with IMF officials to discuss this gap in their analysis.

Finally, I would make an important caveat to these reflections. To achieve this transformative linking of international and national tax policy to human rights we need a transformation of thinking among human rights scholars and activists. Human rights have tangible form. Rights to shelter, improved water, security, education and health, to information and accountability, cost money. In most instances all or part of that money comes from tax. The human rights community needs to recognise that just tax policies are an essential pre-requisite of human rights in both theory and practice.

Thank you.

John Christensen

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