

ActionAid's submission to Ireland's Universal Periodic Review

Discourse on tax and human rights is somewhat recent, but has firmly established tax policy as a human rights issue with implications for citizen's enjoyment of these rights in both Ireland and developing countries. ActionAid have been campaigning on tax justice since 2011¹, having identified tax avoidance and harmful tax practices as a structural cause of poverty and a key inhibitor to the realisation of human rights.

Tax justice has been increasingly on the global agenda and despite Ireland's role as an international leader in the field of human rights, Ireland's tax regime has attracted significant criticism for enabling aggressive tax avoidance and potentially depriving developing countries of much-needed revenue to finance human rights.

Tax and human rights:

Tax is the most important, sustainable and reliable source of financing for all states. It enhances the accountability of governments to citizens and is a key lever to reduce income inequality in society. While official development assistance plays an important role - especially for the poorest countries – a well-functioning tax system is the most sustainable means of sufficiently and equitably resourcing human rights. It is through respecting, protecting and fulfilling civil, political, economic, social, cultural and environmental rights that the state earns its legitimacy to tax.

Taxation also plays a fundamental role in redistributing resources in ways that can prevent and redress gender, economic and other inequalities and reduce the disparities in human rights enjoyment that flow from them.

Tax policy has a strong relationship with gender equality and the realization of women's rights. Inequality and poverty have a greater impact on women's enjoyment of human rights as they make up a higher proportional percentage of the poorest people. Recent research proved that African countries with the lowest tax-to-GDP ratio had the highest maternal and child mortality indicating that the low level of resources raised through tax revenues has an indirect effect on healthcare provision for women and the most vulnerable populations.² As

¹ ActionAid works directly on tax in the Ireland, Zambia, Nigeria, Burundi, Ghana, Kenya, Malawi, Mozambique, Nigeria, Rwanda, Tanzania, Uganda, the United Kingdom, Denmark, the Netherlands, Sweden, Australia, USA, France, Bangladesh, Nepal, Pakistan, and Vietnam.

² Waris, Attiya, *Linking Taxation to the Realisation of the Millennium Development Goals in Africa, Rethinking Development in an Age of Scarcity and Uncertainty*, New Values and Alliances for Increased Resilience, University of York September 2011. <http://eadi.org/gc2011/waris-109.pdf>

such, forgone tax revenue in developing countries has a far greater impact on the fulfilment of women's rights and gender equality required by the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), as well as the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.

Equally, adequacy of healthcare, education and political participation are key for addressing gender inequality and highly dependent on financing and redistribution.

A progressive tax system plays a fundamental role in increasing accountability of a state to its people, improving governance, reducing inequality and financing public services.

Obligations under international law:

- Revenue from tax is essential in order for states to realize rights to the maximum available resources, as required by international human rights standards – most notably the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 2.1 of the ICESCR³ requires that states must devote the maximum available resources to ensure the progressive realisation of all economic, social and cultural rights as expeditiously and effectively as possible, even during times of severe resource constraints, whether caused by a process of adjustment, economic recession or other factors.⁴
- Article 4 of the United Nations Convention on the Rights of the Child⁵ states also affirms the requirement resource economic, social and cultural rights to the maximum available resources.
- Maastricht Guidelines on violations of economic social and cultural rights clarifies that a state is in violation of the Covenant if it fails to allocate the maximum of its available resources to realizing human rights.
- Former UN Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona's final report on the subject of taxation and human rights also noted that "while human rights obligations do not prescribe precise taxation policies, obligations under various international and regional treaties, as well as many constitutions do impose limits on the discretion of States in the formulation of fiscal policies. In order to ensure that States respect, protect and fulfil rights and to assist

³ Article 2.1, International Covenant on Economic, Social and Cultural Rights.

⁴ Official Records of the Economic and Social Council, 1991, Supplement No. 3 (E/1991/23), annex III, Committee on Economic, Social and Cultural Rights, general comment No. 3

⁵ "With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."

them in opening fiscal space towards the realization of human rights, fiscal policies must be guided by the obligations taken on by states under these treaties.”⁶

International cooperation on tax matters:

Tax is also an important feature of international cooperation towards the fulfilment of human rights and there is a clear international human rights dimension to Irish tax policy.

- Former UN Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, devoted her final annual report as Special Rapporteur to examining tax and fiscal policy as a major determinant of the enjoyment of human rights. She noted that “Providing an avenue for high-net-worth individuals and transnational corporations to evade tax liabilities...could be contrary to obligations of international assistance and cooperation, because it can directly undermine the ability of another State to mobilize the maximum available resources for the progressive realization of economic, social and cultural rights.”⁷ Sepúlveda’s comments highlight the international elements of Ireland’s human rights obligations, in the necessity to ensure that Ireland’s tax system does not undermine the ability of other states to resource human rights. ActionAid’s Sweet Nothings report⁸ highlighted tax avoidance of a staggering \$123 million (USD) by a single company, Zambia Sugar, a subsidiary of Associated British Foods. This was partly facilitated by the creation of an Irish sister company, that has no staff or presence in Ireland, but provided nearly \$2.6 million worth of management services each year. Large loans from South African and US commercial banks were also routed through Ireland which prevented the Zambian government from levying tax on interest payments. This case highlights the adverse and long-term consequences Ireland’s tax policy has had for Zambia. The impact of Irish tax policy on developing countries ability to raise revenue to fulfil citizens’ rights has also been the subject of Christian Aid reports - Death and Taxes⁹ in 2008, and Tax of Life¹⁰ in 2010. Sepulveda’s comments were echoed by the Irish Human Rights and Equality Commission in their submission to the UN Committee on Economic, Social and Cultural Rights earlier this year.¹¹

⁶ A report on the Christian Aid seminar on the human rights implications of tax and fiscal policy,

<http://www.christianaid.ie/images/christian-aid-tax-and-human-rights-conference-paper-july2015.pdf>

⁷ A/HRC/26/28, 2014 Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona on Taxation and Human Rights.

⁸ M. Lewis, *Sweet Nothings: The Human Cost of a British Sugar Giant Avoiding Taxes in Southern Africa* (London: ActionAid UK, 2013), http://www.actionaid.org.uk/sites/default/files/doc_lib/sweet_nothings.pdf

⁹ *Death and taxes: the true toll of tax dodging*, A Christian Aid report, 2008.

<http://www.christianaid.org.uk/images/deathandtaxes.pdf>

¹⁰ *Tax of Life: How Tax Dodging undermines Irish Support to Poor Nations*, A Christian Aid report, May 2010.

http://www.christianaid.org.uk/Images/Tax_of_Life_Report.pdf

¹¹ Submission to the UN Committee on Economic, Social and Cultural Rights, Irish Human Rights and Equality Commission, June 2015. <http://www.ihrec.ie/news/2015/06/04/ihrec-launch-submission-to-un-committee-on-economy/>

- Article 21 of the Maastricht principles prescribes that states refrain from engaging in activity that impairs the ability of other states to comply with their own human rights commitments.

Recommendations:

We welcome Ireland's progress on tax justice and its human rights obligations, marked by the commission of a Spillover Analysis, recent renegotiation of double taxation treaties with Zambia and Pakistan and commitments to introduce country by country reporting by 2017. However, we still have significant concerns about the impact Ireland's tax system has on developing countries ability to realize human rights and recommend:

- 1 .The development of tax and fiscal policy must be grounded in the principles of human rights. Greater coherence across government departments is needed to ensure fiscal policies comply with our human rights obligations under international law do not adversely affect developing countries ability to realize their human rights obligations.
2. A human rights impact assessment be carried out on all aspects of the budget measures. This was a recommendation contained in the official report by former UN Special Rapporteur on Extreme Poverty and Human Rights Magdalena Sepúlveda Carmona after her visit to Ireland in 2014. This analysis should be published together with the other budget documents (e.g. financial costing of measures) on the Department of Finance website at budget time to allow for the greatest possible level of public engagement.
3. All major changes to the Irish tax code (including the negotiation or renegotiation of double taxation treaties with developing countries) should always include an assessment of potential spillover impact on developing countries. These should be well-resourced, conducted independently, and should assess the revenue, distributive and governance consequences of Irish tax policy in developing countries. The impact assessments should consult with affected people and trigger concrete policy actions to remedy any negative impacts discovered.
4. All double taxation treaties negotiated with developing countries should include an anti-abuse clause and respect domestic taxation rates in order to ensure they cannot be used for non-taxation and tax avoidance. Draft double taxation treaties should be considered across government departments with specific consideration by the Department of Foreign Affairs and Trade and Department of Finance. Draft double taxation treaties should be open for public consultation as well as parliamentary discussion in advance of signing and ratification.
5. Fiscal policy should be subject to review for its human rights impact internationally and domestically after an agreed period – for example every four years.

