

INTERNATIONAL

Volume 25 Issue 1 2018

# union rights



## FOCUS ON Tax justice



- Why tax matters to workers
- Global unions tackle global corporate tax avoidance
- Protecting tax whistleblowers

# Canada signs key international bargaining and organising treaty

On 14 June 2017 Canada ratified ILO Convention 98, the key international treaty promoting collective bargaining and the right to organise.

*“ After 60 years, Canada has ratified ILO Convention 98. Canada now recognises why strong unions matter in creating a fair and inclusive country. We thank all those who have been fighting for this moment “*

Larry Brown, President of the National Union of Public and General Employees (NUPGE).

The Convention calls for:

- protection against acts of anti-union discrimination
- protection for unions against interference by employers
- machinery to develop and promote collective bargaining

Convention 98 has now been ratified by 165 countries, including Canada



[www.nupge.ca](http://www.nupge.ca)

# union rights

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- Centro Internacional para los Derechos Sindicales
- Centre International pour les Droits Syndicaux

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# Editorial:

## Corporate tax dodging is stealing from workers and must be stopped

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For decades wages have stagnated, public services have been squeezed and inequality has risen while workers struggle to understand why the riches of globalisation pass them by. This edition opens the lid on possibly the single largest scam in the globalisation riddle. And one of the central barriers to organised labour doing better for workers. It explains why nobody has noticed how capital and the richest in the world have hoarded and hidden the loot – because they shift it before they even declare it is made. Most importantly this edition provides a union perspective on these issues and outlines what is to be done.

Make no mistake, tax avoidance suppresses wages. Workers cannot bargain for profits that are not there – profits that have been shifted to jurisdictions specifically designed to hide the cash and defend the secrecy of the owners. Recent scandals have highlighted how the global system has been established to shift profits to avoid taxes. But little attention is paid to how shifting these profits allows companies to claim they have no money to pay workers, and is often used to justify job cuts. If the tax office can't find the money what chance do workers have?

Recently, a few unions have understood the problem and fought back. Jason Ward outlines how the International Transport Workers Federation (ITF) took on Chevron, one of the largest oil companies in the world, who are now required to pay 10 billion AUD more in taxes. Nick Allen and

Mary Joyce Carlson explain why a coalition of public and private sector unions led by the SEIU pursued McDonalds tax practices in the Fight For 15. Perhaps none is more chilling than Dick Forlands article on the massacre of mine workers at Marikana, South Africa – killed for demanding decent wages – and the tax avoidance and secrecy of the company.

In addition to suppressing wages, Peters Adeyemi from the Nigerian Labour Council, demonstrates how corporate tax avoidance undermines economic and social development. It drives up inequality, starves public services and shifts taxation to those least able to pay. Jose Antonio Ocampo, explains the details of corporate tax avoidance and what policy change is needed to stop it. In each case a conspiracy of secrecy is at the heart of the scam. The indefensible can only be defended if never discussed. The beneficiaries deliberately keep information from the public. They know that each time we learn more, the foundations of the system are weakened.

Ultimately tax is about power. There is barely more radical a project than taking from the wealthiest and most powerful on the planet for the benefit of workers. And without the collective power of workers organised into unions the project cannot succeed. Nadine Flood from the Australian CPSU, explains how unions have made corporate tax avoidance a popular issue and forced progressive and right-wing political parties to change tax policy. Dany Richard, Madeline Rodriguez and Sergio Hemsani argue that protecting workers from whistleblowing is a fundamental trade union right and essential for ensuring that secrecy and vested interests cannot continue to control the agenda.

Recent union campaigns, like Chevron and McDonalds, show how holding corporations to account for their tax practices can build union power beyond traditional union action. They make immediate gains for workers and simultaneously raise awareness of the broken tax system and how it must be fixed.

This edition is the first attempt to bring this knowledge together. A coalition of global unions has just launched an International Centre for Corporate Tax Research to help unions better understand tax avoidance and profit shifting in their industry and take action.

A global conference will be held in the second half of 2018 for public and private sector unions that want to learn more, and do more.

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Articles between 850 and 1800 words should be sent by email (mail@ictur.org) and accompanied by a photograph and short biographical note of the author. Please send by 5 June 2018 if they are to be considered for publication in the next issue of IUR.

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# Subsidising the rich: how workers pay the price for corporate tax dodging

For decades wages have stagnated, public services have been squeezed and inequality has risen as workers struggle to understand why the riches of globalisation seem to pass them by. Recent leaks and tax scandals make for great headlines and expose the missing piece of the globalisation riddle – where all the money has gone. But what is often overlooked is that workers are the biggest losers of tax dodging.

Those who benefit put great effort into keeping information about tax avoidance and evasion away from the public. They also relentlessly promote the myth that we cannot afford quality public services. For decades, we've been told that there simply isn't enough money available. We've seen privatisation, cuts to education, health and public housing, the introduction of user-pays and rising service charges. And we've seen wage freezes for essential frontline staff such as nurses.

When globalisation brings phenomenal riches but workers are repeatedly told there is no money for wage rises or public services they look for answers. Migrants, refugees, unemployed and welfare recipients become easy targets.

If we cannot provide bold alternatives to address inequality, ensure universal access to public services and require the wealthy to make a fair contribution, we risk ceding ground to the false promises and fear mongering of the far-right. Ending corporate tax dodging must be a central pillar to our alternative programme.

## How big is the problem?

Estimates put the total value of assets held offshore, beyond the reach of effective taxation, at \$32 trillion USD, equal to about a third of total global assets. Of this, it is estimated that about \$11 trillion is from the world's least developed economies. Jeffrey Sachs calculated the cost of ending global poverty would be a fraction of this amount: about \$3.5 trillion.

The biggest losses are due to corporate tax avoidance. The Tax Justice Network estimates that multinational corporate tax evasion in the USA costs \$188 billion USD annually. For Pakistan it's \$10 billion or 30 percent of total tax revenue and Chad lose \$1 billion a year, equivalent to 37 percent of total tax collection.

These are only estimates – the real amount remains unknown because of the secrecy which

shrouds the offshore system. The inability to get accurate information about the size, actors and exact methods of tax dodging is critical in undermining the fight against it.

## Tax dodging hurts workers

Make no mistake, tax avoidance suppresses wages. At the heart of these avoidance schemes is a simple concept. Companies shift their profits to low tax and high secrecy countries and away from the countries where the work is done or the sales are made. This is done to demonstrate to the tax office that there is no profit to be taxed. But it is also handy to show to workers and unions that there are no profits to pay wage rises – and is often used to justify job cuts. If the tax office can't find the money what chance do workers have?

## Starving Services hurts workers

The Paradise papers and other leaks make clear why our public services are underfunded: far from trickling down, we can see that wealth is flooding offshore. And workers pay the price. Perhaps the clearest example is healthcare. In many countries, the health budget is struggling to keep pace with an aging population and better, but more expensive, medical care. The gradual underfunding of health systems forces a simple but difficult choice. We either find funds for health care or we allow privatisation.

The basic flaws of private provision are shockingly simple: user pays creates a barrier to poorer people getting the care they need. As the US experience shows, highly private health systems not only drive crippling inequality but are also highly inefficient.

Research by the Institute of Medicine shows the US system wastes nearly one third of every medical dollar spent – almost \$750 billion a year<sup>1</sup>. That is more than the Pentagon budget and more than enough to care for every American who lacks health insurance. Most of the waste comes from unnecessary services (\$210 billion), excess administrative costs (\$190 billion) and inefficient delivery of care (\$130 billion).

National comparisons using OECD figures show the US system is not just wasteful – it is vastly more expensive<sup>2</sup>. France, renowned as one of the most comprehensive universal public health care systems in the world (with very low out of pocket expenses

Until recently even progressive political leaders internalised the thinking that tax rises to fund public services are economically and politically untenable

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But people are waking up to the massive fraud perpetrated against them. Fixing the global tax system is a project to take money from the rich and give it to the poor

The radical nature of the project means that we are threatening the most powerful interests in the world and we should never underestimate the forces we are up against: they spend a lot of energy and money trying to avoid even having a debate about tax

and some of the best health outcomes) spends 10.9 percent of GDP on health compared to 16.4 percent in the USA. Australia with a high quality universal system spends just 8.8 percent - slightly lower than the OECD average.

To achieve universal public healthcare, along with other vital services such as education, housing water and more, we need to ensure that our governments have the resources required. This cannot happen without everyone paying their fair share – corporations included.

### Supercharging inequality hurts workers

Public services like health, education, childcare and public housing have a strong redistributive effect by providing services to everyone. OECD figures show that public services add about 75 percent in kind, to disposable income for the poorest 20 percent<sup>3</sup>. Services such as child care, elder care and education also have a big impact on gender and ethnic equality. Public infrastructure like water, sanitation, electricity and roads increase equality because they make it possible for the poorest to improve livelihoods by using these services<sup>4</sup>.

When people are denied the right to essential services such as health care, it can lead to personal tragedy – but it often also leads to financial hardship. The WHO estimates that over 100 million people suffer financial catastrophe annually as a result of health bills<sup>5</sup>. When rich and large multinational corporations avoid tax, workers not only face cuts to vital services, but bear a double burden as rises in regressive taxes like goods and services taxes and income tax are needed to fund what services remain.

### Undermining Development hurts workers

Quality public services are vital to the economic development of least developed countries.

Economic development relies on the provision of critical public infrastructure. What is often forgotten is that the industrialisation of many of today's most developed countries occurred with government investment, public provision and substantial subsidies to infrastructure like water, ports, roads, rail, water, electricity and telecoms. Gaps in vital infrastructure, often caused by a lack of public finance, undermine productivity and hamper investment.

The main cause of illicit financial flows out of developing countries is neither corruption nor crime, but the tax dodging practices of large multinationals. Indeed, more money flows out of Africa because of tax dodging than the total inflow of foreign aid<sup>6</sup>. This not only harms economic and social development: it reinforces colonialism by removing the ability of countries to independently raise revenue for self-determined purposes, in favour of aid and loans which are often tied to foreign-imposed conditions.

Corporate tax avoidance is even more harmful in developing countries, which tend to rely more on

corporate tax revenue as a proportion of the tax base. This has been exacerbated by tariff cuts; a recent trend in neoliberal trade, which further undermines the tax base.

The sheer size of profit shifting out of developing countries is remarkable. These examples show the percentage of total government revenues lost from corporate profit shifting:

- Zimbabwe – 31 percent
- Congo 25 percent
- Cameroon 17 percent
- Ethiopia 16 percent
- Philippines 30 percent
- Malaysia 15 percent
- Costa Rica 22 percent

Contrary to the much-promoted myth, evidence shows that taxation does not undermine development. Developed countries have the highest tax rates – and they increase over time with development. Countries like USA and Europe have increased their tax rates as they developed<sup>7</sup>.

### The rhetoric is constructed by the enemies of workers

When universal public services do so much good and when tax dodging by large corporations and the very wealthy undermine the wellbeing of so many, it can be difficult to understand why more is not done to stop it.

The clumsy attempt by UK Prime Minister, Teresa May, during the election to respond to a nurse asking why she was undermining the NHS illustrates how confident the elites are that they will go unchallenged.

When asked why real wages for nurses had gone backwards in the last 5 years, May responded by saying she would like to help but that there is 'no magic money tree'.

In fact, the UK is one of the worst tax avoidance enablers in the world. It has built and defends the most comprehensive web of offshore tax havens – starting at the city of London, spreading out to the Jersey and Guernsey islands and reaching to Hong Kong, Singapore and the Caribbean. All designed to shift cash offshore. There is a magic money tree, and right-wing political parties have worked to protect it. Until recently even progressive political leaders internalised the thinking that tax rises to fund public services are economically and politically untenable.

But people are waking up to the massive fraud perpetrated against them. Like the nurse who confronted Teresa May. But it could have been a firefighter asking about job cuts in the fire brigade. Or a pensioner. Or a public housing tenant.

Corporate profits have soared, yet we still don't pay workers living wages or properly fund our schools, health, housing or infrastructure. Sometimes with tragic and disastrous consequences, like in Flint, USA or Grenfell, London or in Ebola affected West Africa...

But perhaps the most pernicious outcome of tax avoidance is the anti-democratic effects. The very point of the offshore system is to accumulate wealth and avoid scrutiny. These unprecedented levels of unaccountable wealth both concentrate power and remove its influence from public scrutiny - capturing decision making and hiding nefarious interests.

There is massive web of vested interests, fighting to maintain their stake. When the European Union ruled that Apple's tax arrangements in Ireland broke EU rules and ordered Apple to pay \$16 billion in taxes, the Irish Government appealed the ruling to preserve its status as a 'tax-friendly' jurisdiction.

The recent leaks expose these connections between the mega-rich, high-level politicians and global tax avoidance. The Panama and Paradise Papers, which come from just two companies, have implicated over a dozen current or former world leaders, as well as hundreds of government officials, family members and associates in countries such as China, the UK, Australia, Malaysia, Mexico Colombia, Liberia, Nigeria, Uganda, India, Indonesia, Japan, Kazakhstan, Pakistan, Austria, Montenegro, Jordan, Saudi Arabia, Turkey, Costa Rica, Argentina and Brazil. They also revealed the offshore actions of Facebook, Apple, Uber, Nike, Walmart, Allianz, Siemens, McDonalds, Yahoo, Glencore and subsidiaries of Kremlin-controlled GazProm.

And just in case you thought these tricks were the sole preserve of dodgy, far-away places and corrupt dictators, these leaks have also exposed Wilbur Ross, US Secretary of Commerce, Queen Elizabeth II, U2's Bono and three former Prime Ministers of Canada.

Ever feel like there is a party going on and you have not been invited?

## We must have an alternative

It is difficult to believe that our leaders do not understand the problem. More likely is that they do not want to act. We must mobilise but we must also have a credible alternative vision.

PSI and our affiliates have worked with civil society to identify the changes that must be made. We are a founding member of the Independent Commission on the Reform of International Corporate Taxation (ICRICT), which has brought together eminent thinkers, including Joseph Stiglitz, Eva Joly, Thomas Piketty and Magdalena Sepulveda, to develop and recommend policy solutions. Many country tax campaigns have adopted the ICRICT declarations as their policy platform, and we encourage trade unionists to read the ICRICT declarations to understand the full policy suite required.

Central to any solution is the rejection of the myth of tax competition - promoted to make it sound as if tax policy will be most efficient if it is designed as a race to the bottom. The reality is tax policy requires co-operation and co-ordination across national borders.

No solution is possible without challenging the outdated international rules, based on the myth that

subsidiary companies, in the same conglomerate, trade with each other as if they are unrelated. Multinational corporations must be taxed on a unitary basis. This one simple change would almost completely end corporations' ability to shift their profits to tax havens.

It is inexplicable that no global tax body exists to provide the needed global tax cooperation. We have global bodies for health, labour standards, trade, intellectual property and even football. But we have never had a global tax body. At the very least we require a global tax treaty that sets minimum standards and an agreed minimum effective corporate tax rate. The European Trade Union Confederation is advocating for 25 percent in Europe - a goal which needs to be advanced at the global level.

National governments require well-resourced tax agencies with well-trained staff. While the big four accounting firms employ more staff, and pay hugely better wages than the public sector, countries will struggle to enforce even the best laws. After the Government in the UK fired over 3000 tax workers, a parliamentary committee estimated there was over £10 in potential tax revenue lost for every £1 saved.

But you can't fight what you can't see.

Transparent, public country-by-country reporting should be adopted globally as well as automatic exchange of tax information between government tax bodies. There should be a global-assets register and full disclosure of beneficial ownership, including trusts.

## What to do

Fixing the global tax system is a project whose essential aim is to take money from the rich and give it to the poor. The radical nature of the project means that we are threatening the most powerful interests in the world and we should never underestimate the forces we are up against. The vested interests arrayed against us spend a lot of energy and money trying to avoid even having a debate about tax. They tell us there is no magic money tree, that we wouldn't understand the technicalities or that companies will always find a loophole.

Up against them is the wider public, who intuitively understand that something is very wrong, but often can't quite put their finger on what that is. Our primary task is to explain to workers what's going on and how it can be fixed. Where this has occurred in recent years we have been able to force politicians and political parties to change their tone - and change the rules. Each time we have the debate we win.

PSI, the Council for Global Unions and our affiliates recently launched a project to help unions anywhere in the world to examine corporate tax dodging in their industries. We also work with academics and groups of journalists such as Finance Uncovered. A global best practice conference will be held later this year.

- 1 'Best Care at Lower Cost' <http://iom.nation.alacademies.org/Reports/2012/Best-Care-at-Lower-Cost-The-Path-to-Continuously-Learning-Health-Care-in-America.aspx>
- 2 OECD 2015, page 167 [http://www.keeper.com/Digital-Asset-Management/oecd/social-issues-migration-health/health-at-a-glance-2015\\_health\\_glance-2015-en#page169](http://www.keeper.com/Digital-Asset-Management/oecd/social-issues-migration-health/health-at-a-glance-2015_health_glance-2015-en#page169)
- 3 (Verbist 2012).
- 4 (Hall D, Why We Need Public Spending, 2014, PSIRU)
- 5 <http://www.who.int/mediacentre/commentaries/2016/universal-health-coverage-challenges-solutions/en>
- 6 <https://www.taxjustice.net/2017/05/24/africa-subsidises-rest-world-40-billion-one-year-according-new-research>
- 7 (Hall D, P48, Why We Need Public Spending, 2014, PSIRU)

If your union is interested in doing something about tax dodging in your country, or your industry, or would like to attend the conference, please feel free to contact Jason Ward ([jasonward@igc.org](mailto:jasonward@igc.org)).



# Offshore Workers Challenge Chevron's Offshore Tax: A \$10B Win for Australia & Wins for Workers

Every dollar in tax avoided by multinationals is making inequality worse

An international coalition of unions recently established a new centre for corporate tax accountability. International research will help unions better campaign on corporate tax issues

To fight back against a frontal assault on labour standards in Australia, the ITF took on Chevron, the US-based global oil giant. The ITF's Chevron campaign has been a huge success and should be a lesson for global unions.

Unions need to avoid the temptation to bunker down and fight for a shrinking number of members. If unions are going to succeed in turning the tide against a weakening labour movement and growing corporate dominance, we need to adopt new strategies and new tactics that will also help organise and win for new members. The global trade union movement must expand our fight against capital and directly challenge corporate power beyond the shopfloor.

Every dollar in tax avoided by multinationals is making inequality worse. It is a theft from our children's schools, our hospitals, care and dignity for our elders, our communities and other essential public services that workers rely on everyday.

Along with actions by the Australian Tax Office (ATO), the ITF's efforts have helped the Australian government collect an estimated one billion in back taxes from Chevron. The Australian government has predicted that new tax rules -resulting from a major court victory by the ATO against Chevron- will bring in over \$10 billion in additional tax revenue from Chevron and other multinationals over the next decade.

The ITF has led the way globally in teaching one of the world's largest and most aggressive multinationals that attacking workers and ignoring unions can have serious and costly consequences far removed from any industrial disputes. As a consequence of the ITF's campaign, corporate tax dodging continues to be a major political and public issue in Australia and even the current conservative government has been forced to take action.

Jason Ward  
led the ITF's  
Chevron Tax campaign.



## Chevron, Offshore Labour Standards & Maritime Unions

Chevron and other companies have operated in Australia's offshore oil and gas industry for decades and have had positive working relationships with the Maritime Union of Australia (MUA) and other unions. In 2009, when Chevron began the

constructing the massive Gorgon project off the coast of Western Australia things changed.

Chevron and its contractors refused to engage in any meaningful dialogue with unions, employed exploited foreign workers and dramatically undercut existing wages and conditions. Several actions were taken by the MUA, culminating in a strike in 2012 which shut down the project for 2 days. Chevron took the union to court. In 2014, federal judges ruled that the strike action was illegal. Chevron pursued the union through the courts and sought \$20 million in damages<sup>1</sup>. The federal court proceedings over damages are still ongoing.

Meanwhile, the MUA won a landmark high court decision in mid-2016 which ruled that offshore workers must be covered by Australia's labour and immigration laws<sup>2</sup>. In mid-2017, Chevron reached a landmark settlement with the ATO to pay one billion in back taxes and will likely pay hundreds of millions in additional tax payments every year<sup>3</sup>. The huge tax payments should make Chevron and other multinationals think twice about taking on the MUA and other unions.

## The ITF: Stand Up, Fight Back!

The ITF determined that Chevron's refusal to engage with the union could not be left unchallenged and that traditional labour tactics alone would not be enough. In mid-2015, the ITF began work to share information about Chevron's tax affairs in Australia and more broadly challenge the global oil giant's social license to operate. Chevron had another large offshore gas project and several other offshore projects were being developed. If Chevron -when confronted with a strong militant, well organised union- could respond this way in Australia then workers' rights everywhere would be at risk. Other multinationals would be emboldened by Chevron's approach.

Through intensive research, strategic campaigning and working with a broad coalition, the ITF took the union fight where it could not be ignored by company executives; it became a boardroom issue. The ITF conducted intensive research into Chevron's complex global corporate structures. One of the first actions was the launch of an ITF report, "Chevron's tax schemes: piping profits out of Australia?" at the PSI sponsored Global Labour Tax Summit in Geneva in September 2015, which attracted global



media attention<sup>4</sup>. The report was largely based on a critical analysis of Chevron's global reports and the annual financial statements filed by the primary subsidiary in Australia.

Two factors contributed to the success of the campaign. Previous research and campaign work by other unions and the Tax Justice Network – Australia had resulted in the creation of a Senate Inquiry into Corporate Tax Avoidance in late 2014<sup>5</sup>. The Inquiry has been extended several times and is still ongoing. Senate hearings and submissions helped draw significant media attention and political action and the Chair of the relevant Senate committee ultimately labelled Chevron as Australia's largest tax dodger.

Secondly, the ATO had taken Chevron to court over the high interest rates charged on a previous and relatively small offshore related party loan. The court case helped the ITF put the tax question on the front page and publicly expose the new and much larger loan with much bigger implications. Both loans were from a Delaware subsidiary. Huge interest payments eliminated profit and income tax payments in Australia and generated tax-free interest income in Delaware.

Work by the ITF generated significant media coverage in Australia and eventually around the globe<sup>6</sup>. Chevron executives were forced to appear multiple times before the Australian Senate, required to provide additional information, and compelled to respond to ITF reports and questions raised by Senators.

## Others Take High Road Approach & Abandon Chevron

The next major new offshore gas project in Australia observed the ITF campaign on Chevron and opted to work collaboratively with the MUA, leading to thousands of new Australian maritime jobs<sup>7</sup>.

The ITF, working with the Tax Justice Network – Australia, also challenged the ineffective offshore royalty tax regime, of which Chevron is the largest beneficiary. The ITF's work again generated extensive media in Australia and globally<sup>8</sup>. Under public pressure, the government announced a special review of this tax regime in November 2016.

The government review, which concluded in April 2017, and further Senate hearings confirmed the ITF's analysis that as Australia becomes the world's largest exporter of Liquid Natural Gas (LNG) it is giving away these resources to Chevron and other multinationals for free. However, the current Australian government -after pressure from Chevron, Exxon and others- backed away from any serious reforms. Others in the oil and gas industry are well aware that the broader public scrutiny of offshore tax and royalty arrangements began as a direct result of Chevron's refusal to deal with unions.

Unions are working to ensure the next Australian government will change the rules to make sure that Australians get a fair share from offshore gas exports. Reasonable proposals put forward by the ITF and Tax

Justice Network – Australia could bring in \$3 billion per year in additional government revenues. These proposals are now part of the ACTU's broader tax policy recommendations. The ITF's work on Chevron's global tax affairs has been picked up by other unions and allies and additional campaign efforts may emerge. In Australia, a separate labour dispute with three unions has led to a focus on Exxon's tax affairs. Union-led efforts set the groundwork for an explosive March 2018 Senate hearing.

## Global Precedent on Transfer Pricing

When Chevron abandoned an appeal of the Australian federal court's landmark decision on transfer pricing and reached a settlement with the Australian Tax Office, it locked in the ATO's new guidelines on offshore related party debt. The new guidelines severely restrict the most common strategies used by multinationals to reduce tax payments Australia and are expected to bring in an additional \$10 billion in tax revenues from Chevron and other multinationals over the next decade.

Prior to the settlement, Chevron's global CFO and Vice President said in April 2017 in a quarterly conference call with analysts that 'the court ruling deviates substantially from recognised international transfer pricing guidelines. And in those guidelines, the courts are to treat related parties to a transaction as if they were standalone separate legal entities.' She went on to say that 'there's an awful lot at stake with this ruling, not just for Chevron but for any intercompany lending in Australia and more broadly, around the globe, because it fundamentally changes established transfer pricing guidelines and principles'.

The Australian federal court's decision was watched closely by multinationals and tax experts around the world. The decision makes a common sense -but significant- conclusion that transactions between separate legal entities of the same multinational are not -by definition- at 'arm's length'.

Transfer pricing, in various forms, is the most widely used tool in the tax avoidance toolbox of all multinational corporations. The Australian federal court's decision and the ATO's guidelines, offer global unions and civil society allies an important precedent.

## Global Unions Should Tackle Tax Dodging by Multinationals

Rather than relying solely on militant action and industrial tribunals, the ITF decided to directly challenge Chevron's social license to operate. The fight went far beyond the shopfloor and into the boardrooms, the Parliament and the court of public opinion. The ITF went on the offense and took the fight where Chevron was not expecting or prepared to be challenged.

If global unions are going to lead the way to reverse the corporate takeover of our society -of

The ITF took the fight where Chevron was not expecting or prepared to be challenged

... continued on Page 23 ...

# Why McDonald's Tax Practices Matter to the Global Labour Movement

Locating subsidiaries in tax jurisdictions that allow companies to pay essentially no taxes is nothing new

In 2009, McDonald's Corporation – the largest fast food company in the world and the planet's second-largest private-sector employer – decided to set up a subsidiary in Luxembourg to handle 'Intellectual Property' for all of its European operations. Every McDonald's store in Europe paid 5 percent of its revenue in exchange for the right to sell Big Macs and every other 'McProduct' – which presumably cost a great deal of money to intellectually develop – and these royalties were funnelled to this corporate entity in Luxembourg.

So this company in Luxemburg had an annual revenue of roughly \$800 million starting in 2009 and about \$1 billion each subsequent year until they closed it in 2016. What did they do there with all this money? Develop new products? Perhaps special sauces to help McDonald's sell more burgers?

Apparently not, as the company in Luxembourg was housed in a small, anonymous office complex, and it had a mere thirteen employees spread between its head office in Luxembourg and branches in Switzerland, the UK and in the USA. Seven billion dollars over seven years: not bad revenue for a company of thirteen people!

Of course, locating subsidiaries in tax jurisdictions within the EU that have accommodating tax agreements that allow companies to pay essentially no taxes is nothing new. It is a familiar strategy that many multinationals have been using in Europe. The effective rate of taxation in Luxembourg for this McDonald's subsidiary was 1.7 percent between 2009 and 2015.

What is particularly galling about the McDonald's case is that it is a brick-and-mortar company, not a digital entity that makes money in series of ones and zeroes. It is highly visible to consumers, who understand that the money they are paying for a very tangible product is effectively being funnelled out of the country in which they are eating their burger to executives' pockets in Illinois, where McDonald's is headquartered. Unlike consumers' paycheques, which are carefully and methodically taxed, corporate receipts apparently are subject to a different, more malleable set of rules.

Thus one of the major economic actors in Europe is not paying its share for the overstretched nurses, the exhausted fire-fighters, and the labouring sanitation workers who are meant to pick up the many McDonald's wrappers that litter the high streets of Europe. All this in a period of cutbacks and austerity that are stretching public budgets across Europe and leading to real cuts that affect people in real ways.

## Why McDonald's Matters

McDonald's practices in Europe are no exception to its conduct in the rest of the world. On the contrary, virtually everywhere McDonald's operates it uses its power and influence to avoid its legal obligations. In recent years, McDonald's has been accused of violating labour and tax laws in Brazil, committing antitrust violations in Asia, and illegally harassing and firing workers in the United States.

This pattern of behaviour around the world matters because the company exerts a super-sized impact on the global economy. In addition to being the second-largest private employer, McDonald's is the world's largest 'employer of employers' – small businesses – with 34,000 franchised stores in more than 120 countries. McDonald's is the world's biggest buyer of beef, chicken, lettuce, and tomatoes. And it is the world's largest food supplier, feeding 69 million people a day.

McDonald's influence is huge, but instead of using its global scale to support good jobs and lift standards in the service sector, it uses its enormous footprint for just the opposite.

In recent decades, companies like McDonald's have faced limited resistance to this way of doing business as corporate power has grown across the globe. But starting in 2012 – a few years after McDonald's in Europe set up its scheme in Luxembourg – fast-food workers in the US started a revolt that would grow into a global movement to hold the burger giant accountable.

## The 'Fight for \$15'

On Nov. 29, 2012, some 200 fast-food cooks and cashiers in New York City went on strike, in a dramatic and rare confrontation between precarious, low-wage workers who had historically never been organised in the United States, and some of the largest employers in the post-industrial US economy: fast food companies. The revolt quickly caught the attention of the media and spread across the country with the support of the Service Employees International Union (SEIU). Within six months workers walked off their jobs in six other major cities; within a year they were striking in 100 cities across the country. The 'Fight for \$15' was launched.

The sheer audacity of the demand – more than doubling the federal minimum wage of \$7.25 – blew away politicians and commentators who had been at the most ambitious end of the spectrum advocating a minimum wage of \$10.10 per hour. With workers themselves telling their stories about what it meant to try and survive on minimum wages, and

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explaining what it would mean to make a semi-decent wage of \$15 (about €12.10), the idea quickly gained traction.

## A Global Coalition

SEIU understood that to effectively advocate for changing the way McDonald's does business it was necessary to operate on a global scale. They knew their critique of the fast-food giant had to be broader than only worker issues in the United States. Researchers found that McDonald's was avoiding taxes in Europe on a large scale, around the same time that other multinationals – namely Apple, Google and Amazon – were coming under heavy scrutiny from the European Commission.

Through the IUF, the International Union of Food and Agriculture workers, a global union federation based in Geneva to which they are affiliated, the SEIU was able to meet with EFFAT, the European arm of the IUF, based in Brussels. EFFAT's job is to represent European unions in the Brussels arena through policy advocacy and campaigning. They were very supportive of advocating to change McDonald's behaviour in regards to working conditions.

While today Europe is a huge and lucrative market for McDonald's (40 percent of global profits), the company had not always been so successful there. Present in Europe since the 1970s, in many countries it had failed to catch on and in some it had been bogged down by controversy.

In the 1990s, a French farmer cum politician drove his tractor into a McDonald's, destroying it, to protest its industrial agricultural practices. In Denmark it suffered a crippling boycott for 2 years for refusing to sign on to the master collective bargaining agreement in the restaurant sector. In the UK, it was bedevilled by the 'Mc-Libel' case, in which some environmental activists were sued by the company for defamation, only to fight back and see the company repeatedly embarrassed by revelations about its practices.

By the 2000s McDonald's had engaged in a massive turnaround project, entrusting its European national franchises to savvy local actors who were given leeway to find ways to improve the company's image. In the UK, the current global CEO Steve Easterbrook came to the helm and engineered a marketing turnaround. In France the company put the bulldozer episode behind it by aggressively courting the farmers' lobby and attempting to assuage some of the labour unions by signing agreements that were slightly better than the national norm, at least for their corporate-operated stores (not for franchises). In Denmark, McDonald's signed on to a national agreement and became (and remains to this day) a decent employer in its roughly ninety Danish restaurants.

However, in many European countries McDonald's remains a low-road employer, seeking to undermine unions and keep wages low as much as possible. In the UK and Ireland, for example, McDonald's pioneered the use of 'zero-hour

contracts', leading to further casualisation of the economy. In Italy the company routinely resisted signing on to national agreements.

On a European scale, McDonald's has always avoided dealing with the trade union issue. The company was never willing to set up a legitimate European Works Council, for example, or engage with EFFAT or the IUF in a meaningful way to discuss raising standards for workers in the fast food industry. So EFFAT was quite willing to consider how to advocate for the company to change its practices through discussions with elected officials in Brussels.

Through PSI, the global union federation of public sector workers, to which SEIU is also affiliated, the union was able to meet with EPSU, the European Federation of Public Sector Workers, the European arm of PSI. PSI and EPSU had already been engaged in a long-standing campaign for tax justice, advocating for tax policies that would crack down on tax evasion by multinationals. They were interested in focusing on one particular actor, rather than only engaging in policy debates. Armed with the research on McDonald's that SEIU provided, EPSU and EFFAT felt like McDonald's would be the perfect poster-child for corporate misbehaviour in Europe, both for tax avoidance and its approach to labour rights.

The ad hoc 'McDonald's Coalition' – American fast food workers and SEIU, European food unions and European public sector unions – set out to wage a campaign to shine a light on McDonald's failure to live up to decent standards of corporate responsibility with regard to their workers. The coalition arranged to meet with an array of stakeholders in Brussels: members of the European Parliament from across the political spectrum, key staff at the relevant Commissioners' offices, and journalists.

One of the particularities of the campaign was to hire professional lobbyists, lawyers and communications people to assist. This was not common practice for the European federations, which saw lobbying, in particular, in a dim light as it is the tool of choice for their opponents, the multinationals driving a neo-liberal agenda. But the results of the combined actions were impressive, yielding high-level meetings in a matter of weeks and providing valuable know-how.

Politicians all expressed surprise and interest in the fact that the coalition was composed both of private and public-sector unions, that it included Americans, and that it sought to bring workers' voices to the fore of the discussion around tax evasion. The succession of meetings and press coverage sent McDonald's army of Brussels lobbyists and lawyers into overdrive damage control mode.

Research provided by the coalition led to two successive hearings of McDonald's at the European Parliament's Special Committees on Tax Rulings and the launching of a formal investigation into McDonald's tax practices in Luxembourg by the DG COMP, the investigative arm of the European

But this pattern of behaviour around the world matters when a company exerts a super-sized impact on the global economy

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# Tax avoidance hurts development – workers must fight back

Multinationals were responsible for over 65 percent of illicit financial flows, well ahead of organised crime (30 percent) and corrupt practices (5 percent)

For decades, the development debate has been dominated by the story of foreign aid, and how it helps developing countries, especially in Africa, to eradicate poverty and improve their populations' welfare. We have also been told that only by lowering taxes for foreign firms can we create development. But there is another story: that of illicit financial flows, and how they ensure developing countries lose more to rich countries than rich countries send in aid.

The UN High Level Panel on Illicit Financial Flows, chaired by former South African President Thabo Mbeki estimated that between USD \$30 billion and \$60 billion is siphoned off annually from the Continent, according to a report released in 2015. These estimates are still fairly conservative: latest data suggests that could be as high as USD \$80 billion. This is much more than Africa received in financial aid and foreign direct investment combined between 2003 and 2012<sup>1</sup>.

Trade unions and our civil society allies are working hard to tell the real story and make sure that developing countries, in Africa and across the world, can use all their resources to develop independently for the benefit of all.

## What is causing these outflows?

What does this haemorrhage that specialists call 'illicit financial flows (IFF)' consist of? While there are proceeds from crime, money laundering and corruption, Thabo Mbeki concluded in 2015, 'large commercial corporations are by far the biggest culprits of illicit outflows', through dodgy tax policies that shift wealth offshore.

Astonishingly, multinationals were responsible for over 65 percent of IFFs, well ahead of organised crime (30 percent) and corrupt practices (5 percent). Most of these flows occur when companies that are owned or controlled within the same group buy and sell to each other. Through the manipulation of the prices they ensure that profits are not made in the African country but instead in a tax haven where low taxes are paid.

The problem is particularly pronounced in extractive industries, important for developing countries, which are dominated by large multinationals that control global value chains. They take advantage of their complex ownership structures and universal presence to manipulate quantities, prices - or both - but also to disguise the destinations and sources of their trade.

Africa is full of examples. Zambia's national data show that Switzerland is the top buyer of its copper,

whereas Swiss trade statistics register no copper imports from the country at all. According to Nigerian authorities, the Netherlands is an important destination of its oil exports, but a substantial part of these sales does not appear in Dutch data. Timber production in Liberia and mineral production in the Democratic Republic of the Congo (DRC) and South Africa tell similar stories.

Illicit financial flows are not a recent phenomenon in Africa. It is estimated that the continent has lost over \$1 Trillion USD through capital flight since the 1970s<sup>2</sup>. But it is getting worse. In Africa, capital flight has tripled since 2001, making Africa a net creditor to the rest of the world. In total, the continent lost about USD \$850 billion between 1970 and 2008, with Nigeria, Egypt and South Africa accounting for 55 percent of illicit financial flows over this period.

## Lowering taxes does not increase investment

There are enormous pressures from foreign investors and foreign governments to extend further tax concessions such as tax holidays, tax-free zones, investment and tax treaties, and acceptance of corporate ownership structures that facilitate tax avoidance. Such concessions are often designed to favour foreign corporations over domestic firms, with little demonstrable benefit from increased investment.

In 2010, the United Nations Industrial Development Organisation (UNIDO) conducted a business survey of 7000 companies in 19 sub-Saharan African countries. The results suggest that tax incentive packages ranked 11th out of 12 in importance for investment decisions; and this importance has fallen over time.

But the damage to the economy of the outflow is real. Africa is the most vulnerable region in the world when illicit outflows are compared to GDP. The average annual GDP loss of 5.7 percent has an outsized impact on the continent, according to Washington based Think-tank Global Finance Integrity (GFI). This money could be used for productive infrastructure or investment in formal jobs in business or quality public services.

## The current model starves the public purse

There is an apparent paradox; capital flight from Africa is increasing, while the rest of the world seems to be investing more in the Continent. This is because foreign investment has grown, but corporate tax revenues have not kept up.

### Peters Adeyemi

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Tax revenues are already very low in Africa, averaging 17 percent of GDP, compared to about 35 percent of in rich countries. Tax authorities lack adequate resources to keep up with the increasingly sophisticated and aggressive strategies of multinationals to evade or avoid taxes, not to mention the corruption that buys the complacency of some local decision-makers. When taxes are not collected it has a big impact on the provision of public services vital for social development.

Public Services International (PSI) research shows that multinational tax dodging has massive effects on developing country revenue. Transfer pricing alone, represents a 25 percent loss of government revenue in the DRC or Mali - and the percentage climbs to 31 percent in Zimbabwe. Other continents are not spared: the shortfall represents 22 percent of government revenue in Costa Rica and 30 percent in Philippines. This happens because developing countries rely on corporate tax revenue for a significantly higher share of their total tax revenues (around 16 percent), compared to 8 percent in developed countries, according to the International Monetary Fund (IMF).

### **Multinational tax avoidance effects people's lives**

Although this could all seem technical and far removed from people's lives, the human impact is devastatingly real.

Across the continent, public services remain critically underfunded, forcing women to spend hours collecting water and children to go without adequate schooling. When crises such as the Ebola Epidemic strike, underfunded health systems are unable to respond sufficiently, leading to severe danger for frontline health workers and the wider public.

Although many governments are still turning to public-private partnerships (PPPs) in the hope that the private sector will finance public infrastructure and public services, experience in both rich and poor countries shows that these partnerships are expensive and inefficient. For the citizens, it means more debt and higher taxes in the future, since PPPs usually conceal public borrowing, forcing prices higher in the long term as well as driving down access and quality.

Private companies, on the other hand, benefit from long-term state guarantees - and there is no guarantee that the profits will stay in the country given the huge corporate flows out of the continent. Even the European Court of Auditors decided recently that 'EU co-financed Public Private Partnerships (PPPs) cannot be regarded as an economically viable option for delivering public infrastructure'.

### **Tax avoidance hurts infrastructure investment**

When multinationals do not pay the taxes that they owe in Africa, they also curb the domestic savings needed to reduce the continent's annual

USD \$31 billion infrastructure financing gap. It means fewer resources to invest in infrastructure for economic development and in public services, such as education, health care, drinking water, sanitation and environmental protection.

As a result, tax avoidance by multinationals is contributing to the fiscal constraints preventing countries in Africa from attaining the United Nations Sustainable Development Goals (SDGs) by 2030.

For example, according to a GFI report, at the current rate it would take Cameroon 135 years to reach Millennium Development Goal 4 on reducing infant and child mortality. If illicit financial flows were eliminated, Cameroon would be able to achieve this in just 35 years. In the case of Mauritania, the period needed to reach this target would go from 198 to 19 years and from 218 to 45 years in the Central African Republic.

### **Tax avoidance hurts women and the most vulnerable**

Furthermore, when governments revenues are undermined - due to multinationals not paying the tax they owe - they are forced to increase taxes on workers, families and small and medium-sized businesses - generally by increasing sales taxes such as VAT and income taxes. The failure to tackle tax abuse shifts taxation from wealthy individuals and multinationals to those least able to afford it.

The implications are even more direct for women's human rights and gender justice as women tend to take on a larger share of unpaid care work when social services are cut. Around 75 percent of the world's total unpaid care work is performed by women, including cleaning and cooking, water and firewood collection, and caring for people such as children and the elderly. The resulting dearth of adequate and accessible health care, crèches, schools and basic infrastructure means that women and girls have to fill the gap by working for no pay. Closing a nursery school might force a woman to leave her job to take care of her children, undermining her economic and social empowerment.

Further, cuts to public services exacerbates access to decent employment for women as public-sector jobs are one of the key paths to formal work for them. UN Women affirms that 75 percent of women's work in Asia and Africa is in the informal sector, without access to a living wage, maternity or paid leave or pensions. When a State freezes salaries in highly feminised sectors such as hospitals and schools, it hurts women workers and is a direct contributor to the gender wage gap.

### **Tax avoidance perpetuates dependence and colonialism**

Illicit financial flows perpetuate Africa's economic dependence on other countries through external aid. Indeed, the official development assistance numbers for some countries amount to 70 percent of total

Tax authorities lack adequate resources to keep up with the sophisticated and aggressive strategies of multinationals. When taxes are not collected it has a big impact on public services

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# The Marikana Massacre: wages as the blind spot in the tax evasion debate

Unions who  
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corporation's  
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This is where  
excess profits  
are made  
invisible to union  
organisers,  
weakening their  
hand in  
bargaining

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No doubt, workers across the world were shocked as striking mine workers at the South African town of Marikana were shot to death during their strike for higher wages in 2012 at Lonmin Plc, the third largest platinum mining company in the world. Thirty four workers were massacred by police on 16 August. Ten had already been killed in the days before. Most of them when a police General ordered tear gas and shock grenades against a peaceful march<sup>1</sup>. Among the ten were also two police officers and a security guard.

The Marikana death toll is in fact above 50 today, due to suicides in directly affected families. As for injured and traumatised workers and family members, they can be counted in hundreds.

Most of the victims were rock drill operators (RDOs). The RDOs were paid a basic wage of about 5000 South African Rand per month (corresponding to \$600 at that time). They demanded a basic wage of 12,500 rand per month (\$1500 USD). In September after the massacre close to 200,000 mine workers in all kinds of mines were on strike for R12,500.

To workers in South Africa, also outside mining, the 'R12500' became a symbol for having a life. In the eyes of established South Africa, however, the mine workers were ignorant of the realities in the mining industry. The workers effectively demanded an increase of the basic wage by 150 percent! This was considered outrageous and completely utopian.

## 'Wage evasion' as one deadly factor

In 2014, the power of the Marikana Commission of Inquiry (MCI) gave two researchers from AIDC access to the financial statements of Lonmin's subsidiaries in South Africa. One question was, if the R12,500 demand was at all 'affordable', because Lonmin had refused to negotiate. This was a small part of the Commission's task to give a background to the catastrophe.

The financials of daughter companies are confidential. Only the annual reports of a mother company that sell its shares on the stock market are public. This is the legal situation in South Africa, and in most countries.

Still, it is the local subsidiaries that pay taxes to the government and wages to the workers. As a rule, they employ the whole productive workforce. Lonmin Plc is based in Britain. In 2012 it employed some 50 managers. Lonmin's largest South African subsidiary Western Platinum Ltd (WPL) employed 25,000 of Lonmin's workers in 2012 (with another 3000 employed by the subsidiary Eastern PL).

The confidential financial statements showed that WPL every year had transferred an average R245

million in 'sales commission' to a letter box company in Bermuda. But there was no one in Bermuda selling anything. The company receiving these millions had the exact same address as Appleby Services – the law firm at the heart of the Paradise Papers.

When this went public, Lonmin argued that the transfers were shifted to its South African head office affiliate Lonmin Mining Services (LMS) in 2008. The audited financial statements of WPL showed however that the transfers to Bermuda continued right up until 2012.

If the R245 million sent to Bermuda were divided by 4000, the number of RDO workers, this alone covered a wage increase of about 100 percent, or R5000 per month.

Another R200 million per year was sent from WPL to LMS in 'management fees'. This helped to pay huge salaries to forty managers. From 2010-2012, they also received share based payments bonuses, costing WPL R100 million per year. That alone corresponded to an additional R2000 wage increase per RDO worker. On top of this, a net payment of R758 million was made from WPL to London in 2006. Lonmin Plc sold a South African mine to its own subsidiary WPL. This selling of a mine to oneself, as it were, was advantageous because of the double tax agreement with South Africa. Lonmin does not pay taxes in the UK, only in South Africa.

## An unexamined perspective

For public sector workers, corporate tax dodging represents a threat not just to their labour conditions and livelihoods but to the essential services they deliver to their communities every day. The public sector is financed by taxes. Their unions should be campaigning against both legal tax avoidance and illegal tax evasion.

For private sector workers, the issue can seem more abstract. Still, profit shifting moves much more money away from them than from governments. If the tax on profit is 28 percent in a country, a transnational corporation (TNC) has to move \$100 million to a secret and zero tax jurisdiction (a 'tax haven') if it wants to evade a tax expense of \$28 million. Thus, the government lost \$28 million. But who lost the remaining \$72 million that also went off shore?

You will look very long look to find activists, academics or government officials to even ask this question. Profit shifting is posed as a problem for indebted governments, struggling to deliver quality public services and investment. That general tax payers must pick up the bill when the tax base is



eroded can also be mentioned. The MCI went further, to social investments. It pointed to Lonmin's profit shifting when asking why Lonmin had built only three (3) mine worker houses over five years, when it was legally obliged to hold a promise to build 5500. But if rock drill wages could be much higher, was something that could not be asked, as it were.

It is the unions that have to bring the perspective of wage earners to the table, explaining that profits pumped offshore are a key factor in keeping all our wages low.

## Corporate Profits - The missing trillion

The Organisation for Economic Coordination and Development (OECD) has, for decades, been setting the agenda for economic policy issues, and led the international project to crack down on tax havens, transfer mispricing and corporate profit shifting. Yet for over twenty years the amount sitting offshore has skyrocketed.

In 2015 the OECD launched a new programme called the Base Erosion Profit Shifting (BEPS) project.

'BEPS affects everyone. It harms governments because it reduces their tax revenues and raises the cost of ensuring compliance. It harms people because, when some MNEs pay low or no tax, individual taxpayers must shoulder a greater share of the tax burden. And finally it harms businesses themselves'<sup>2</sup>.

In the dominant discourse, that covers 'everyone'. Business is harmed, OECD argues because BEPS gives TNCs a 'bad reputation', and it gives domestic companies without offshore bank accounts a competitive disadvantage.

As usual, the OECD project only examines the size of tax losses. But OECD's numbers also indicates how much workers are losing in potential wages. The BEPS policy brief states that tax 'revenue losses from BEPS are conservatively estimated between \$100 Billion and \$240 billion annually'.

If we consider that this only represents the missing tax amount, we realise that the problem is at least five times bigger. It depends on the effective corporate tax rate in the country. At an average effective corporate tax rate of around 22 percent, \$100 Billion in tax revenue loss means a total of \$454 Billion pumped off shore. Using OECD's higher, albeit 'conservative', estimate, \$240 Billion in evaded corporate tax means \$1090 Billion or over a trillion dollars in profits shifted out of sight every year<sup>3</sup>.

That is enough to give more than a \$300 end of year bonus to every single worker on earth.

This is clearly not only a tax issue. If this flow of profits could be stopped from flooding offshore, the money could be more widely redistributed. Part of the money no longer profit-shifted would go to the government. A much larger part could go to ordinary households in the form of significantly higher wages.

But who would be the agent of such a change?

The key lesson from 'The Bermuda Connection' was that unions who organise workers in TNCs must demand access to the financials of the

corporation's subsidiaries. As a rule they are the formal employer. This is where tax planning takes place and where BEPS practices makes excess profits invisible to union organisers, significantly weakening their hand in wage bargaining.

Both public and private sector unions would massively benefit if profit shifting is brought to an end. Public services could be improved and extended, making nurses, teachers and firefighters lives easier and their wages higher. If the veils of secrecy are lifted, the private unions could enter negotiations with a truer picture of the company's structure and economy. Wage demands described as irresponsible or outrageous would suddenly appear as perfectly reasonable when the missing millions are brought back into the picture.

## Unions must fight Corporate Wage Evasion

Public and private sector unions that work together can stop this wage theft. Public sector unions should have the tax expertise and alliances. Private sector unions have a direct interest in finding to where the employer is sending excess profits. When unions expose such cases we would boost the fight to once and for all fix the broken tax rules.

Unions can win by strengthening involvement at the company level, demanding to see the books of the TNC's subsidiaries. Unions can call for an end to cross border payments of 'sales commissions', 'management fees' to offshore letter box companies. Dodgy corporate tax structures should be disclosed to rally the general public.

Recent advances such as mandatory country by country reporting of tax payments give a better idea of where companies make their profits and where they are taxed. If they are public, they can be used for the benefit of union members. Furthermore, all unions need to increase their capacity to analyse the opaque world of corporate financial statements. 'Tax planning analysis' should be a part of our mainstream research, and be confident in our ability to call out corporate tax dodgers.

Currently, governments replace missing corporate tax revenues by higher taxes on wages and on consumption, such as VAT. Union members are picking up the bill for corporate tax greed. As for VAT it affects even the poorest of the poor.

When wages are stagnating across the world, recapturing these shifted profits is an obvious way to both bolster working class households and provide the means to boost local economic development and public services.

The Lonmin RDOs were told that their demands were outrageous. When the books of all Lonmin's companies were opened, this was revealed as untrue. Unions ignore this lesson at our own cost. Public and private sector unions must step forward. The space for higher wages for all workers is huge. Unions can claim this space and together we can win.

Public sector unions have tax expertise, private sector unions have a direct interest in finding to where the employer is sending excess profits

Unions can win by strengthening involvement at the company level, demanding to see the books of the TNC's subsidiaries. Unions can call for an end to cross border payments of 'sales commissions', 'management fees' to offshore letter box companies. Dodgy corporate tax structures should be disclosed to rally the general public

## Algeria

On 3 December 2017 the Ministry of Labour announced – without any basis – that the independent SNATEGS trade union had decided to dissolve itself. On 20 January 2018, police forcibly broke up a demonstration in Algiers organised by SNATEGS. Union members and leaders have reported further legal harassment:

- SNATEGS President Raouf Mellal faces a number of lawsuits as a result of his trade union activities, in particular for whistleblowing on practices at the state-owned utility company Sonelgaz. In December - January Mellal was repeatedly sentenced to a further three months' imprisonment and fined in a series of hearings in absentia.
- The general secretary of SNATEGS, Mr Abdelkader Kawafi also faced trial on 6 February 2018 on charges of defamation.
- Also on 6 February, Kaddour Chouicha, national coordinator of the teachers' union (Syndicat des enseignants du supérieur solidaires, SESS) faced trial - along with five other human rights activists - on charges of 'incitement to unarmed assembly, attack on a body corporate and failure to comply with an administrative decision'.
- Also facing trial on 8 February was Benzine Slimane president of SNATEGS security guards and protection union, accused by Sonelgaz of defamation further to comments regarding precarious work at the company and the situation of sexual harassment of female workers.

*ICTUR wrote to remind the government that Algeria has ratified all eight of the fundamental International Labour Organisation Conventions. The criminalisation of trade unionists for activities related to the defence of the interests of those they*

*represent constitutes a grave violation of workers' rights. ICTUR noted that where it concerns the arrest, detention or sentencing of a trade union official, the ILO's Committee has declared that it is 'incumbent upon the government to show that the measures it had taken were in no way occasioned by the trade union activities of the individual concerned' (ILO Digest, paras. 92 and 94).*

## Bangladesh

Workers at Ashiana Garment Ind., Dhaka, have faced harassment and arrests following attempts to establish a union at the factory. The workers formed a trade union in May 2017, associated with the Garments Workers' Trade Union Centre (GWTUC), but the authorities refused its registration and since then the union organisers have faced sustained attacks and dismissals. The GWTUC has filed several complaints regarding this matter with the Labour Ministry. On 29 January 2018, a protest was held following the unfair dismissal of a worker. On the next day, the owners closed down the factory, resulting in further worker protest.

- On 31 January, workers and GWTUC leaders went to a tripartite meeting with the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and the authorities, organised to resolve the dispute. It is understood that the trade unionists began a peaceful protest outside the BGMEA building, after they were informed that the meeting was cancelled. They were then set upon by a group armed with iron rods and sticks. This attack left some thirty-seven workers with injuries described as 'serious' and requiring treatment at Dhaka Medical College Hospital. GWTUC believes that these attacks were designed to derail negotiations.
- It is further understood that while

the violence against the workers has not been investigated, the BGMEA subsequently filed complaints with the police against the GWTUC leadership and over 150 workers. Some of those charged maintain that they were not even present at the incident. Two workers from the factory were taken into custody on 4 February, the night before a meeting arranged by the Department of Inspection for Factories and Establishments to negotiate the crisis. A further thirty workers were dismissed on 7 February. The other factory workers and GWTUC leaders fear that they will be arrested or dismissed.

*ICTUR urged the government to take steps to ensure compliance with international labour standards – which requires that the charges against the workers and GWTUC leaders be dropped, that any workers still detained be released, that the dismissed workers be reinstated, and further that the dispute with the BGMEA be resolved without harassment, threats, intimidation or arbitrary detention of workers or their representatives. ICTUR called on the government to promptly investigate the circumstances around these attacks, including the failure of the police to defend the fundamental human rights of the victims.*

## Cambodia

**A series of legal actions have been instigated in the last few months in the following cases:**

- On 12 and 13 February 2018, four trade union leaders, Chhean Vannak, Moeun Chhit, Lok Neang and Phan Sary, members of the Workers Friendship Union Federation, from the Cosmo Textile factory in Snuol district, Kandal province, were arrested after the company claimed they had led an illegal strike.
- Workers at the Gawon Apparel factory in Kandal province's

Takhmao city have been on strike several times in the last year to protest unpaid salaries. In January 2018 the company began legal action against the Coalition of Cambodian Apparel Workers' Democratic Union accusing the union of incitement and threatening workers, which the union denies.

- Workers from the Meng Da footwear factory in Phnom Penh's Por Senchey district have been on strike to demand annual bonuses, unpaid since 2010. It is understood that in December the Prime Minister criticised the strikers' action as 'illegal' due to obstruction of traffic.
- In December a criminal complaint was filed to the Phnom Penh Municipal Court against Chea Mony, former president of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC). It is alleged that in a radio interview in December, Mony appealed to the European Union to stop importing clothing from Cambodia to protest the dissolution of the Cambodia National Rescue Party last November. He is charged with incitement, under Art. 495 of the Cambodian Criminal Code. The charges purport to hold Mony responsible for any damage done by the loss of trade preferences with the EU or the US and include a claim for USD \$1million in compensation. On 18 December 2017 – the day the case was filed – a group of unidentified men broke into Mony's house and attempted to kidnap him. Mony has reported that officials from the Ministry of Interior and from the court warned him that unless he leaves Cambodia, he will face the same fate as his brother, Chea Vichea, the founder of the FTUWKC who was assassinated in 2004.
- On 18 January 2018, prosecutors brought criminal charges and an order for pre-trial detention against Moeun Tola – Executive Director of the Center for the Alliance of Labor

and Human Rights (CENTRAL) – and two other civil society activists (Pa Nguon Teang and But Buntenh). They are charged with breach of trust over their handling of funeral funds, allegations they have denied.

*ICTUR wrote to remind the authorities of Cambodia's obligations under the ILO Fundamental Conventions, all eight of which the country has ratified. The prosecution against Chea Mony is the most peculiar of these cases: ICTUR is informed that this prosecution was initiated by lawyers representing 120 different unions and federations, including – but not limited to – unions politically close to the government. A significant number of 'independent' unions also supported the case. While ICTUR respects that all trade unions must have recourse to their respective countries' legal systems, it is quite clear that the burden of responsibility for a country's access to preferential trade arrangements cannot reasonably be attributed to a single individual. Any decision by the EU or the US to suspend Cambodia's access to preferential trade schemes will not hinge on the basis of one individual's comments and any harm done to the Cambodian economy as a result of the loss of such preferences cannot be reasonably attributed to Mony. It is precisely the persecution of Mony, Tola and other trade unionists, as well as the failure to respect freedom of association, freedom of assembly and freedom of speech that ultimately makes Cambodia's loss of such preferences more likely.*

## Greece

On December 2017, amendments were tabled in parliament – under a bill of the Ministry of Digital Policy – to raise the quorum for a valid strike ballot from 20 percent to 50 percent. Due to the protests of trade unions the amendment was withdrawn, only to be re-scheduled – and passed – on 15

January. This change to Greece's strike laws blatantly contradicts the recommendations of the Expert Group for the Review of Greek Labour Market Institutions (see IUR 24.1, pp11-13).

*ICTUR called on the Greek government to implement the 2016 recommendations of the Expert Group. These recommendations were based on ILO Conventions which Greece has ratified and which are binding on Greece under international law; these were based on the provisions of the Greek Constitution (Arts. 22 § 2, 23 § 1 and 23 § 2); and on Article 28 of the EU Charter of Fundamental Rights (Art. 28). ICTUR recalls that workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.*

## Kenya

On 13 December 2017, Phyllis Kandie – Cabinet Secretary, Ministry of East African Community (EAC), Labour and Social Protection – ordered the resignation of eleven individuals from their positions of trade union office. On the 15 December, this order was nullified by the courts. However there are concerns that the measure was designed to target union leaders – in particular the Secretary General of the Kenya National Union of Teachers (KNUT) Wilson Sossion, who was nominated to become a member of parliament representing workers in August last year

*ICTUR wrote to remind the government of its obligations under international law with respect to freedom of association, as enshrined in the 1998 ILO Declaration on Fundamental Principles and Rights at Work, as well as in the Kenyan Constitution*

*(Arts. 36 and 41). According to the ILO's Committee on Freedom of Association, 'the determination of conditions of eligibility for union membership or union office is a matter that should be left to the discretion of union by-laws and the public authorities should refrain from any intervention which might impair the exercise of this right by trade union organisations' (Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth Edition, para. 405). ICTUR took the opportunity to encourage Kenya to ratify ILO Convention 87.*

## Mexico

On 24 January 2018 Quintin Salgado – a labour activist – was killed by a group of armed men. A week prior to his murder, it is reported that Salgado was threatened and beaten while on his way to meet strikers from Torex Gold's Media Luna mine, where approximately 600 workers have been on strike since November 2017 to demand their right to join the union Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúrgicos y Similares de la República Mexicana (SNTMMSSRM). Two striking workers (Víctor and Marcelino Sahuanitla Peña) were murdered on 18 November.

ICTUR called on the government to investigate the circumstances around these killings, and to ensure that all necessary measures are taken by the authorities to protect the fundamental freedoms of workers to join and form unions and to take action in defence of their interests. ICTUR took the opportunity of the imminent examination of the case of Mexico before the United Nations' Human Rights Council under the Universal Periodic Review machinery to communicate the details of these cases to the UPR review. ICTUR also raised concerns about the repression of labour protests by

teachers in 2016, and the murder of a leader of the CROC union in 2014 (the previous UPR review of Mexico took place in 2013).

## Philippines

ICTUR is gravely concerned by a serious deterioration in the condition of trade union rights in the Philippines, including a number of murders, arrests, and statements issued by the President placing trade unionists at heightened risk:

- On 18 September 2017, Reneboy Magayano, the leader of a local plantation workers' association, was killed
- In October 2017 the PISTON transport workers' union launched a two-day jeepney strike. Immediately, there followed a series of extremely serious violations which have been recorded against the leaders of that union, including:
- PISTON and the national trade union centre to which it belongs, the Kilusang Mayo Uno (KMU), were 'labelled' as legal fronts of the Communist Party of the Philippines, and the allegation – without evidence – that these groups were guilty of the crime of 'rebellion', which was made by President Duterte in public speeches and interviews, quoted widely in local media;
- George San Mateo, the leader of the PISTON transport workers' union, reported threats and harassment since the strike and in the wake of President Duterte's response. In December, Sa Mateo was arrested;
- On 25 October 2017, Edwin Pura, the leader of a local chapter of PISTON, was shot dead in Gubat, Sorsogon.
- in December 2017 the President threatened to use the military and 'rubber bullets' to end the PISTON strike;

*ICTUR wrote to remind the government of the Philippines of its obligations under international law and noting that the rights of*



workers can only be 'exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organisations, and it is for governments to ensure that this principle is respected'. (Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth Edition, 2006, paras. 42-45). ICTUR emphasised that the arrest of trade unionists for participating in strike action is contrary to ILO principles (ILO Digest, para. 672), and recalled that the Committee has expressed 'deep concern' at 'stigmatisation and intimidation' by the State (Committee on Freedom of Association of the ILO, Interim Report - Report No 374, March 2015, Case No. 2254).

trade union leaders, noting that in October 2017, the ILO Committee on Freedom of Association explicitly requested that the Government 'take any measures in its power for the release of Mr Han and all other trade unionists, if any, still in detention for the organisation of the 14 November 2015 demonstration or peaceful participation therein... [and] to provide detailed information on the charges for which the arrest warrant against Ms Young-joo Lee has been issued'. (Report No 383, October 2017, para. 301(d) - Case No 3238 / Complaint date: 30 Aug 16). ICTUR further observed that in April 2017, the UN Working Group on Arbitrary Detention found the situation of Sang-gyun Han 'contravened at least six Articles of binding international human rights instruments ratified by South Korea.

covering 130,000 workers. The government previously banned workers from striking during negotiations with MESS in 2015 and 2017.

ICTUR urged the Turkish authorities to immediately and unconditionally release all those who have been detained for activities carried out in their capacities as trade unionists, and to undertake all necessary measures to ensure the fundamental freedoms of workers to join and form unions and to take action in defence of their interests. ICTUR observed that these latest incidents add to the catalogue of concerns around the Turkish government's serious, widespread and on-going violations of freedom of association.

## South Korea

In December 2017, Lee Young-joo, former general secretary of the Korean Confederation of Trade Unions (KCTU) was arrested after leaving the headquarters of the ruling Democratic Party, where she had been on a ten-day hunger strike to protest working time regulations. For the two years up until December, Lee had been staying in the refuge of the KCTU office in order to continue her activity as general secretary, after police issued an unlimited arrest warrant for her role in organising a mass demonstration on 14 November 2015. It is reported that Lee was arrested on 27 December 2017 after ending her hunger strike, and taken to hospital, where she was questioned by police. On 30 December, at the request of the prosecutor, a detention order was issued, and she was moved to a detention centre. Han Sang-gyun, the president of the KCTU, has been held in detention since December 2015, serving a three-year sentence for leading 'illegal demonstrations' in 2015.

ICTUR wrote to the authorities to call for the release of the arrested

## Turkey

- On 6 February, Turkish anti-terrorism police raided the house of Ms Elif Cuhadar, in Ankara. Ms Cuhadar is an executive committee member of the trade union KESK (Kamu Emekçileri Sendikaları Konfederasyonu). She was arrested and taken into custody, charged with offences related to her participation in a public panel discussion in İzmir in 2014. It is understood that other participants who had been present at the event in İzmir have also been arrested. It is further understood that several members of the Turkey's Medical Association were arrested in January on the grounds that they criticised Turkish military operations in Syria.
- On spurious 'national security' grounds, the government again banned a strike organised by workers in the metal industry in January. According to the metalworkers' union Birleşik Metal İş, this is the sixth strike to be banned during the state of emergency. It comes in the middle of an on-going collective negotiation between the union and the Turkey Metal Industrialists' Union (MESS),



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# Why unions in Australia are looking to tax justice campaigns

As in a Shakespearian play, we are witnessing the demise of an old king whose rule has been based on lies, deceit and misery. Those seeking to bring about changes are rushing to undermine the crumbling foundations of the King's stronghold. They know they don't have the power required for direct confrontation, having suffered decades of being besieged. But they do have the skills, experience and strategy to win. Provided they act in time. There are signs the stronghold's walls are cracking, but the King's allies are rallying ready to rebuild.

In 2016, according to [businessinsider.com.au](http://businessinsider.com.au), Joseph Stiglitz stated that neoliberalism was on its last legs, the consensus surrounding it having come to an end<sup>1</sup>. The events leading to this apparent weakness are well documented; the global financial crises (GFC) exposed the deceit and precariousness of neoliberalism and created the stage upon which the actors entered. The waves of austerity that followed the GFC have been matched by the relentless exposure of growing inequity<sup>2</sup>.

For public sector unions the effects of neoliberalism have been close to devastating. This free market ideology, driven through trade and investment agreements and deregulation, have resulted in the privatisation of services and infrastructure whilst austerity measures have resulted in the loss of job security, positions, wage suppression and the loss of entitlements. Tax settings favourable to corporations were meant to 'trickle down' into more jobs and wealth for the community, but they never have. Instead we're left with an eroded tax base that makes it hard to provide decent public services, and job insecurity and inequality are rising. For decades public sector unions have been speaking out about the effects of neoliberalism, however their arguments often failed to gain traction.

With the growing exposure of inequity, and increasing transparency of business practises, however, there is now a growing audience for an alternative to neoliberalism. Indeed, there is a growing audience for an alternative to capitalism<sup>3,4</sup>. The analogy of neoliberalism as an old king is instructive given the evolution of the fight for gender equality has positively decreased the tolerance for sexism. Reports identify that the impact of privatisation is greatest on women<sup>5</sup> and that the majority of public sector workers in Australia are women<sup>6</sup>.

Within these contexts there is a corresponding re-awakening of the need for, and the need to protect, publically owned and run services and infrastructure.

Some public services and infrastructure in Australia are world renowned, such as the public health system backed by Medicare, our universal health insurance system used to ensure affordable, if not free, access to services. A government approach to pharmaceuticals (the PBS and PAB) ensures a collective affordability of effective and efficient medicines. Primary and secondary school education is technically free.

But even in these examples user co-pays and commercialisation, are seeing affordability slipping.

Indeed, privatisation and commercialisation in Australia have seen many services and infrastructure go to the private sector or accessed through a commercial basis. Whilst the privatisation front was opened by a Labor government, conservative governments have pursued it with vigour.

Privatisation examples include the sale of the Commonwealth Bank, Qantas, Telstra (telecommunications), shipping, and energy generation and distribution. There have been major service-delivery privatisations which have caused huge issues for vulnerable communities, such as the privatisation of the Commonwealth Employment Service and the fracturing of services to job-seekers. Commercialisation has seen free tertiary education convert to AUD\$100,000 degrees paid through student loans. Our post-GFC world has seen privatisation back on the agenda. To use a colloquialism; we've just about sold off the farm.

Between 2016 and 2017 a group of public sector unions in Australia funded a public inquiry into the effects of privatisation. The aim of the inquiry was to look at the impact of privatisation on communities.

The report, *Taking Back Control*<sup>7</sup>, found that, for our communities, there is decreased access to public services and a decrease in quality when services are obtained. Our communities are struggling to enact effective accountability when services fail whilst at the same time those most vulnerable within our societies are repeatedly, and wrongly, demonised for being the cause of societal woes.

For public sector workers, it is seeing job losses and loss of job security, a decrease in the buying power of their wages, and increased workplace stress as more is demanded from less. For some of their unions this means fewer members and a potential decreasing capacity to fight.

Governments are selling revenue-making services, further decreasing their capacity, and have a decreasing ability to maintain effective regulatory processes. It seems that governments have lost the knowledge to formulate policy and direction without

Governments are selling revenue-making services, decreasing their capacity and the ability to maintain effective regulatory processes

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Unions are shifting the tax debate in Australia such that radical tax reform proposals are becoming part of mainstream discussion

the assistance of external private providers. This problem is worsened by years of job cuts in the Australian Tax Office itself, which further undermines our ability to collect taxes and make tax policy. Ironically, some of the multinational companies who've collected outsourced jobs may themselves have paid very little tax on their operations in Australia.

Government budgets are tight, with many running deficits. It is easy, though perhaps lazy, to therefore make the analogous reference to family budgets and belt tightening, particularly in post-GFC economies. The metaphor quickly breaks down in the face of the evidentiary inequality and inequity, both globally and locally. It is now clear that the current economic circumstances, and therefore the socio-economic well being of our communities, are a product of political choice, not of inevitability.

Public Sector unions have spent decades attempting to respond to the effects of neo-liberal policies. They have fought, sometimes successfully, sometimes not, wave after wave of privatisation, job losses, casualisation, wage restraint and work intensification.

A constant refrain from communities who have been fed the neoliberal ideology since the 1980's, and for apologists alike, is that as a society we can't afford quality public services; Governments are in debt, there's no money available and we need to pay for it somehow. Privatisation is not supported in Australia<sup>8</sup>, but it seems to be tolerated in the absence of a viable option.

One of the key factors that are changing the view that there is no option is the growing exposure of tax avoidance.

In 2014 Australia played host to the G20 at a time when the world was increasing its focus on tax avoidance. This period saw the first timely, albeit independent, actions of some unions and civil society organisations in addition to strong leadership from trade union leaders such as Sharan Burrow, General Secretary of the ITUC. This ranged from a group of Christians staging a mock tax haven<sup>9</sup>, Oxfam having world leaders portrayed in 'budgie smugglers'<sup>10</sup>, and a group of nurses promoting the *Robin Hood Tax*<sup>11</sup>. The action to arguably have the greatest impact was a report by United Voice, a predominately female, hospitality and services union, and the Tax Justice Network - Australia; *Who pays for our common wealth?*<sup>12</sup>

The report questioned the tax practices of the Australian Stock Exchange's Top 200 companies (ASX200). Key findings revealed that despite the headline corporate tax rate in Australia being 30 percent, the average paid by the ASX200 over a decade was 23 percent, equating to a staggering AUD\$8.4billion lost revenue each year. A large number of companies appear to have paid no tax on profits. High profile Twentieth Century Fox was reported to have an effective tax rate of 1 percent with an estimated AUD\$1.6billion in foregone taxes annually and was found to have a high number of

subsidiaries in secrecy jurisdictions. They alone represented 19 percent of foregone revenue.

Their work is publically reinforced on a regular basis. Federal legislation now requires the Australian Taxation Office to publish an annual report on the taxes paid by public and foreign owned entities with total income of \$100million or more and private Australian companies with total income of \$200million or more. The report creates the space for tax campaigners to repeatedly highlight that average Australians pay more tax than some companies. Increasingly the correlation between this forgone revenue and public services is being highlighted.

Public sector unions in particular have seen the importance of tax reform to maintaining the revenue base that our industries rely on. Campaigning by unions such as the Community and Public Sector Union (CPSU) working in collaboration with think tanks and civil society organisations have seen ideas such as the so-called 'Buffett Rule' brought into the realm of the politically possible (receiving cautious endorsement even from the conservative press). In 2015, the CPSU escalated its efforts to increase the public debate around the Buffett rule in the lead-up to the national conference of Australia's major progressive party, the Australian Labor Party (ALP), resulting in a change to the party's policy platform. And although the Buffett rule has not yet been implemented, the ALP has shifted its policy to more progressive taxation policies such that when next the government changes there will certainly be progress made on tax.

This work has been supported through the global exposure of tax havens and secrecy jurisdictions. Both the Panama Papers and the Paradise Papers received significant coverage in Australia<sup>13,14,15</sup> increasing the pressure on politicians and government agencies to act.

A campaign designed to question the tax practices of Chevron in Australia, instigated by a labour dispute with the Maritime Union of Australia (MUA) and led by the International Transport Workers' Federation (ITF), generated community outrage, parliamentary hearings, changes to legislation and a significant tax bill for Chevron. The campaigning drew attention to the deficits in resource rent taxes, comparing Australian revenue outcomes with that of Qatar, and the structures of some companies within the extractive industry; thin capitalisation, profits allocated to off shore subsidiaries and arm's length loans. This campaign and the resultant community awareness has allowed progressive political parties in Australia to develop progressive tax policies.

These efforts are collectively shifting the tax debate in Australia, and tax policy reforms previously considered too radical to be realistic are becoming part of mainstream discussion.

But in the face of all of this, the old king's allies are rallying. Corporate Australia is demanding that the Federal government follow through on its

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# The World Needs To Revamp International Tax Cooperation

The international system of taxing companies, which was designed in the early twentieth century by the developed world, has become obsolete in our current globalised world. These days, almost half of world trade takes place between parent companies and subsidiaries of multinational companies and the service sector represents the lion share of global GDP. But the system of international corporate taxes still follows rules that were set a century ago. Since 2015, the Independent Commission for the Reform of International Corporate Taxation (ICRICT) has promoting major changes of these rules.

Established by a broad coalition of civil society and consisting of members from all continents and diverse backgrounds, the Commission aims to foster the corporate tax reform debate at the international level, and to promote institutions appropriate for this cause.

Contrary to the high levels of international integration we have reached, the international corporate tax system is based on the *separate entity principle*, according to which every firm that is part of a multinational group, whether it be parent company or subsidiary, is treated as an independent legal entity when it comes to paying taxes. This generates important problems in accounting and taxation, given that the price at which a business transaction between two companies from the same group is valued, known as the *transfer price*, may be very different from the value of a business transaction between non-related companies, a fully competitive price known as the *arm's length price*.

In theory, the transfer prices should be similar to the arm's length prices. However, it is difficult, or even impossible, to guarantee this fact. Moreover, the importance of this problem has increased due to the growing proportion of intangible assets companies have, including their intellectual property – patents, royalties, brand names, registered trademarks –, their management system and their business networks.

When transactions within the same group involve these intangible assets, the principle of the arm's length price does not work, since these transactions are not comparable to others on the market. This structure creates huge opportunities for tax abuses.

To this we need to add the loans between parent companies and subsidiaries and the way they distribute the fixed costs of the administration of the multinational group. The more complex the network of companies tied to the same group is, the easier it is, therefore, to avoid paying taxes.

On top of that, it is difficult for tax authorities, even the most efficient ones, to call such transactions and transfers into question. What this implies is that

the present focus on separate legal entities and its system of transfer pricing is inconsistent with an economy that is globalised and knowledge-based.

The abusive tax practices of many multinationals have arisen indignation in the public eye and led various governments and parliaments to investigate many of the most emblematic corporations in the world. The inquiries are bringing to light the aggressive tax engineering employed by the large multinationals, as well as the tax competition countries enter into to attract investment.

Even more, in many cases the tax benefits multinationals take advantage of 'tax holidays', customs-free zones, investment agreements, or the acceptance of complex corporate ownership structures. All of these practices stem from lobbying by corporations, and from competition between governments to attract investments. The symbols of tax competition are the classic tax haven, offering low or zero tax rates, and the extensive networks of special economic zones with generous exemptions from direct taxation as well as various other tax advantages.

The benefits are accompanied by secrecy to protect owners and prevent financial and regulatory authorities from other countries from checking these companies' balance sheets. The irony of all this is that these offshore centres only exist because they are tolerated by the major developed countries or even created by them.

The leaking of the 'Panama Papers', the 'Bahama Leaks' and, most recently, the 'Paradise Papers' have revealed the global scope of these networks, which are enabled and supported by a chain of banks, accounting firms and legal advisers. When tax secrecy is combined with special exemptions, this may attract and facilitates money laundering and a broad range of illicit activities, as the 'Panama Papers' have shown.

In addition, as the leaks from Luxembourg and the European debates about the tax benefits awarded by Ireland have revealed, the tax authorities of destination countries can adopt norms that facilitate the shrouding of earnings and corporate structures in secrecy.

Corporate income tax exists in every country, in large part as a mechanism to tax earnings that are difficult to capture at the individual level, as a large number of major shareholders are residents abroad or have their property registered in trusts or offshore centres. The combination of conservative tax policies, the growing mobility of capital and the competition between countries to attract investment (and retain that of their own companies) has led to lower rates and numerous other benefits.

If multinationals paid taxes as single, unified companies, transfer prices would disappear, because their global assets would be consolidated and they would not be able to gain or lose through internal transactions

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The OECD is made up first and foremost of developed countries. For that reason, the main responsibility for the issue of tax cooperation must lie with the United Nations, as the only legitimate arena for this discussion

According to World Bank data, the revenue from corporate income tax makes up around 8 percent of tax revenues in developed countries and 16 percent in developing ones, which implies this tax is of particular importance for the developing world. Since the 1980s, the statutory corporate income tax rate has gone down from a typical level of 45 percent to 25-30 percent. Furthermore, as a consequence of the variety of exemptions awarded, the effective tax rates are much lower than the statutory ones. On a global level, the average corporate income tax burden is calculated to be close to 14 percent of all declared earnings.

According to conservative calculations by the Organisation for Economic Cooperation and Development (OECD), the erosion of the tax base and the transfer of benefits generate losses of between USD 100 and 240 billion per year worldwide, equivalent to between 4 percent and 10 percent of global revenue from corporate income taxes. Estimates by International Monetary Fund (IMF) researchers produce even higher amounts: a revenue loss close to USD 200 billion, or 1.3 percent of GDP, for developing countries, and between USD 400 and 500 billion, or 1 percent of GDP, for OECD countries.

When corporations do not pay the taxes they owe, governments can see themselves obligated to cut essential services to the public or raise regressive taxes, such as VAT, leading to growing inequality in income distribution. Moreover, the tax abuses of multinational corporations produce unfair competition with national companies, many of which are small and medium-sized enterprises which generate a great deal of employment.

ICRICT, which I chair, has an alternative proposal to this defective system and expounded in our 2015 Declaration and in a recent report. If multinationals paid taxes as single, unified companies, transfer prices would disappear, because their global assets would be consolidated and they would not be able to gain or lose through internal transactions. In turn, all countries would obtain fiscal revenues from the multinational group in proportion to the activities carried out in them – that is, to the real economic activities that take place in each territory.

This system would require reaching an agreement on how to divide taxes levied from these companies among the countries where they operate. Factors such as sales, employment and resources used could be used to bring this about. The experience of federal countries using similar systems at the national level would be useful to agree on what are the best rules in this regard.

In this system, countries could still enter into competition with each other by lowering corporate taxes rates to encourage investment or reallocating activities, just as they do now. For this reason, our proposal is also for countries to establish a minimum corporate tax rate of between 15 percent and 25 percent.

What will probably generate a fiery debate is what level to set the minimum effective tax rate at, as several countries (including the USA) have adopted

or announced much lower percentages or even more generous reductions in the tax base. To reach a global agreement on a minimum effective tax rate, it will probably be necessary to have an overarching global tax body in place.

However, minimum effective tax rates could be established in some regions in the short term, as a first step towards a global convergence. If countries such as the USA – or the members of the EU – set a minimum tax rate affecting companies operating (producing or selling) inside their territories, it would de facto imply the introduction of a minimum global tax rate. In turn, developing countries could use the system currently implemented in Brazil, in which local subsidiaries are subject to minimum amounts of taxable revenue based on the gross margins of the transactions they engage in.

So far, the international organisation that has contributed the most to tax cooperation among its members is the OECD, whose activities have been reinforced by recent support from the G20. Its 'Base Erosion and Profit Shifting' (BEPS) Action Plan was approved in 2013, and its first agreements were announced in 2015. This has been an important step in the right direction, as it initiated a country-by-country report on the profits and tax payments of the largest multinationals, as well as facilitated the exchange of information between countries. Unfortunately, this norm will only apply to very large multinationals and their reports will not be publicly available, contrary to the essential transparency we need. Furthermore, the plan failed to address the root of the problem: the transfer price system. It still allows companies to move their profits to wherever they like to take advantage of the jurisdictions with the lowest taxes. Global regulations continue working against developing nations.

These efforts also leave the basic question of global governance wide open, and particularly the lack of equal, effective and timely participation of developing countries. The OECD is not a global organisation, as it is made up first and foremost of developed countries. For that reason, the main responsibility for the issue of tax cooperation must lie with the United Nations, by turning the current Committee of Experts on International Cooperation in Tax Matters into a truly global *intergovernmental* organisation, and allocating adequate resources for it to promote and improve global tax cooperation. ICRICT has also proposed that UN member states initiate negotiations to draft a UN convention to combat abusive tax practices.

The Group of 77 and China presented a proposal to upgrade the UN Committee to the Third International Conference on Financing for Development, held in Addis Ababa in July 2015, but major developed countries blocked this proposal. Nevertheless, the project continues, as the UN is the only legitimate arena for this discussion. And to achieve that goal, civil society, and in particular labour unions, need to press their governments to move in that direction.

# The case for tax justice as a whistleblower protection issue

With the revelations of the Panama Papers and Paradise Papers, tax justice has become a hot topic for governments, media and NGOs. Trade unionists should use this emerging issue as an opportunity to remind governments of the impact tax exploitation has on the average workers; the integral role workers, especially in the judiciary, tax, and customs sectors, play in exposing tax exploitation; and the way in which this is inextricably tied to the need for improved whistleblower protections.

Tax exploitation, including evasion and avoidance, increases the tax burden on average citizens, exacerbates income inequality and erodes resources needed to fund essential public services and fight poverty. When large multinational organisations and the ultra-rich use complex tax avoidance schemes or techniques such as tax loopholes and shell corporations to avoid paying their fair share of taxes, they are doing so at the expense of the average worker. This is no longer a surprise for anybody but it is unusual that those harmed by these practices (99 percent of the population) do not actively react to the way in which these practices undermine basic public services and reduce the resources available for public policies. Tax exploitation drains the pool of resources governments draw on to fund public services such as transit, infrastructure, highways, schools and healthcare. Tax abusers take advantage of public services without contributing back their fair share, eroding the quality and accessibility of these services. The burden for supporting public services is then shifted to the shoulders of the average worker.

## The vital role of whistleblowers

Tax justice is also tied to another emerging labour issue: whistleblower protection. Due to their position within institutions, workers, specifically those in the judiciary, tax, and customs sectors, are uniquely placed to uncover and expose tax abuses, fraud and corruption. In fact, a recent Global Fraud Report found that whistleblowers were the single most effective way to uncover fraud. In 32 percent of cases where fraud was uncovered, an employee had blown the whistle to provide information that facilitated an investigation. In cases where a senior or middle manager was implicated, that number increased to 41 percent.

Workers are on the frontline for uncovering tax exploitation, fraud and corruption. But coming forward to expose wrongdoing can come at a cost. Whistleblowers can suffer professional reprisals including demotion or dismissal, as well as isolation, character defamation, imposition of hardship or disgrace, exclusion and harassment in their

workplace. Workers' fear of these consequences and their fear that they will not be protected by existing legislation can have a significant chilling effect on their willingness to expose wrongdoing. In fact, research has shown that fear of reprisal is the number one deterrent to workers blowing the whistle.

Unfortunately, this fear is well-founded: a recent survey of over 10,000 workers in the public, private and non-for-profit sectors across 13 countries found that 36 percent of workers who observed and then reported misconduct suffered formal retaliation.

An example of the direct tie between tax justice and the need for strong whistleblower protections can be found in the recent issues surrounding the Canada Revenue Agency, the federal agency that administers tax laws for the Government of Canada. Starting in 2013, the government implemented sweeping austerity measures including a \$250-million budget cut to the Canada Revenue Agency over four years, resulting in a massive loss of capacity and institutional knowledge. The connection between austerity and declining tax revenue couldn't be more clear: austerity begets cuts, which emboldens tax evaders, which leads to more cuts.

Around the same time, employees disclosed to the tax justice organisation Canadians for Tax Fairness that they were aware of corporate and political lobbying at the higher levels of the CRA and of an unofficial quota of cases they were expected to resolve. The combined result of these two factors was that employees were encouraged to target simpler, less time-consuming cases and to avoid complex investigations into large-scale tax fraud.

Some CRA employees were concerned about the pressure on employees to move away from large-scale, high-profile investigations. However, out of fear for their position, they were only able to disclose their concerns to Canadians For Tax Fairness under the condition of total anonymity and could not come forward to publicly disclose the wrongdoing they observed.

After the revelations of the Panama Papers and Paradise Papers, governments around the world have declared their intentions to crack down on tax evasion and aggressive tax avoidance. Trade unionists must remind their governments that, if they are truly serious about ending tax exploitation, they must also strengthen whistleblower protections. Financial control workers, like those at CRA, who uncover tax exploitation must feel empowered to come forward and safe in the knowledge that they and their jobs will be protected.

Workers are on the frontline for uncovering tax exploitation, fraud and corruption. But coming forward to expose wrongdoing can come at a cost

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## Protections we deserve

The specific form whistleblower protection legislation takes will vary from jurisdiction to jurisdiction, but there are some several best practices all trade unionists should advocate for: income protection; reverse onus of the burden of proof in cases of reprisal and a broad definition of the term whistleblower.

As discussed above, workers take a significant risk when they agree to come forward and disclose wrongdoing. A concrete, meaningful step legislators can take to alleviate that stress and suffering is to ensure workers receive interim relief (sometimes referred to as ‘income protection’). Interim relief ensures that a whistleblower does not suffer further financial distress as a result of job loss, demotion or other punitive measures. It protects whistleblower’s income as they await a new position, a transfer to a new department or the outcome of a reprisal case.

Interim relief is a widely-accepted whistleblower protection measures cited as a best practice by several global institutions and experts, including Transparency International and The Council of Europe’s Parliamentary Assembly Resolution on Whistleblower Protection. Currently whistleblower protection regimes in countries such as United States, South Korea and South Africa include interim relief protections.

Another way to protect workers who make a disclosure of wrongdoing and to counter the chilling effect of fear of reprisal is to institute a reverse onus of the burden of proof in cases of reprisal. Despite the prevalence of reprisal in cases of whistleblowing, it can be incredibly difficult to establish proof of reprisal so long as the employer does not explicitly mention whistleblowing. Reverse onus of burden of proof of reprisals requires that it is the respondent’s responsibility to prove that measures taken against a whistleblower are unrelated to their disclosure.

Reverse onus of proof is a whistleblower protection mechanism with broad support from anti-corruption institutions and experts and with legal precedents in legislation across the world. Reports prepared for Public Services International (PSI) and Transparency International (TI) call for reverse onus of proof of reprisals, as does the G-20’s Anti-Corruption Action Plan for the Protection of Whistleblowers.

Finally, trade unionists should advocate for a broad definition of the term whistleblower that extends both the protections and the implications of the legislation beyond current, permanent, full-time employees.

Comparisons of whistleblower protection from around the world show that protections which apply only to disclosures made by permanent employees fall far short of the ideal. Legislators are cautioned against ‘loopholes’ in whistleblower legislation that would exclude contracted, term employees and former employees and would not allow the mandate of enforcement bodies to extend to these individuals.

The standard definition of the term whistleblowing cited in a report published by Public Services International - is ‘the disclosure by organisation members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organisations that may be able to effect action’<sup>1</sup>. It is important to note that the all-encompassing term ‘member’ (rather than ‘employee’) is used, and according to this definition, former organisational members are also to be understood as whistleblowers. The G-20 Anti-Corruption Action Plan for Protection of Whistleblowers has also argued in favour of ‘no loopholes’ to whistleblower protection that includes contractors, temporary employees, former employees and volunteers.

A broad definition of whistleblower would extend not only the protections but the force and implications of whistleblower legislation. This would prevent contractors, former employees and others from stymying and refusing to participate in investigations.

## Unions must engage

Both tax exploitation and whistleblower protections are integral labour issues. Tax exploitation by large multinational corporations and the super rich erodes the quality and availability of public services and shifts the burden for supporting these services to the average worker. When tax exploitation does occur, workers in the tax, judiciary and customs sectors are often at the frontline for uncovering and exposing it, and they do so at great risk to themselves. If governments are truly serious about addressing tax exploitation, they must provide robust and wide-ranging whistleblower protections. Labour activists and trade unionist must remind governments of the importance of whistleblower protections and hold them to account to ensure that these protections are wide-ranging and effective.

For instance, PSI, together with the International Union of Control Bodies’ Workers (UITOC), the Control Bodies Workers’ Network of Argentina (UEJN, APOC and AEFIP), and the Association of Canadian Financial Officers (ACFO), among others, have been working for many years now in this direction. PSI organised, with the support of the FES, an international *Symposium on the Protection of Whistleblowers*, in Geneva, Switzerland, in 2017. The symposium dealt with the complexities of the whistleblower situation and protection measures. It has become very clear that whistleblowers have a crucial role in the fight against corruption but that they also run risks. Participants expressed their dismay at the situation of workers who have lost their jobs and, in some cases, their lives, after denouncing corrupt practices at their workplace. The symposium’s main message focused on the importance of introducing wide-ranging and uniform legislation that provides equal protection to all informers. This will

Trade unionists must remind their governments that, if they are truly serious about ending tax exploitation, they must also strengthen whistleblower protections

only be possible if there is an international framework for the effective protection of whistleblowers<sup>2</sup>.

After the Symposium, it was agreed that the PSI, together with affiliates and partners, will work proactively for the adoption of instruments and other ways to protect whistleblowers and, particularly, for the adoption of an international instrument for the protection of whistleblowers, especially those employed by independent regulatory agencies. There is a petition and there have been contacts with the International Labour Organisation (ILO) to request for a labour standard that protects whistleblowers, so they can work with independence.

In addition, PSI and affiliates are forming an international alliance to defend whistleblowers, especially workers in the tax, judicial and custom sectors, with the aim of bringing together trade unions, civil society organisations and other social actors, to fight corruption and promote tax equity from a common platform of objectives and Action Plan coordinated by the PSI and that includes these workers as well as others in the private sector.

We aim to promote the efficient management of public policies through timely, efficient and socially useful regulation; provide quality public services funded by fair, equitable and progressive taxation; fight tax evasion and avoidance as well as tax havens; maintain institutional quality with an impartial judiciary that is not subject to pressures or influences; and defend labour and trade union rights and decent working conditions.

Both public and private sector trade unions, NGOs and civil society organisations must work together for this challenge and coordinate at global level to reach different international agencies, such as the ILO, the UN, the OECD and others. Decent working conditions, the economy and the quality of life of all citizens depends on this.

## Notes

- 1 *Checkmate to corruption: Making the case for a wide-ranging initiative on whistleblower protection*, available at <http://www.world-psi.org/en/checkmate-corruption-making-case-wide-ranging-initiative-whistleblower-protection>
- 2 [http://www.world-psi.org/sites/default/files/en\\_psi\\_spw\\_conclusions\\_final.pdf](http://www.world-psi.org/sites/default/files/en_psi_spw_conclusions_final.pdf)

Madeline Rodriguez



Dany Richard



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which the rollback of union rights and power is a symptom- we must expand the terrain of our fights. Unions need to build broader alliances to directly challenge corporate power. Unions need to expand our fights to encompass broader ways that corporations impact peoples' lives. In the case of Chevron, the ITF's campaign garnered huge public and political support that would not have been there if the focus had remained strictly on labour issues.

Tax is a vulnerability for many multinationals. The ability for multinationals to avoid taxes -while workers and small businesses continue to pay their share- is also one of the clearest examples of corporate power and increasing global inequality. Campaigning on specific cases of multinational tax avoidance can build solidarity between unions and with broader social movements that also see the need to take on corporate power.

Unions must organise in larger numbers and continue to fight more effectively in the workplace, but we also need to be more creative and more aggressive and take our fights into corporate boardrooms. The growing global dominance of corporate power cannot be addressed on the shopfloor alone. Tax campaigns are one approach.

## Notes

- 1 Andrew Burrell, 16 August 2014, *The Australian*, "Maritime Union slapped with \$20m claim by Chevron". <https://www.theaustralian.com.au/national-affairs/industrial-relations/maritime-union-slapped-with-20m-claim-by-chevron/news-story/411eebcd0ff4fc12ee534ea9ebd575e1>
- 2 Babs McHugh, 1 September 2016, *ABC Rural*, "Maritime unions in High Court win over foreign oil and gas worker visas". <http://www.abc.net.au/news/rural/2016-09-01/maritime-unions-in-high-court-win-over-work-visas/7805128>
- 3 Jamie Smyth, 18 August 2017, *Financial Times*, "Chevron settles landmark Australia case on transfer pricing: Court victory could see country claiming back A\$10bn in tax from multinationals". <https://www.ft.com/content/813fb836-83cf-11e7-a4ce-15b2513cb3ff>
- 4 <http://www.world-psi.org/en/chevrons-tax-schemes-piping-profits-out-australia>
- 5 [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Corporate\\_Tax\\_Avoidance](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Corporate_Tax_Avoidance)
- 6 Reports produced and the media coverage generated can be found here: <http://www.chevrontax.info>
- 7 David Marin-Guzman, 2 March 2017, *Australian Financial Review*, "Inpex strikes landmark union deal for Aussie jobs' in return for industrial peace". <http://www.afr.com/news/policy/industrial-relations/inpex-strikes-landmark-union-deal-for-aussie-jobs-in-return-for-industrial-peace-20170302-guotz6>. MUA Media Release, 3 March 2017, "2000 Australian Jobs Boost After Maritime Unions Sign Historic Work Arrangement with INPEX". [http://www.mua.org.au/2000\\_australian\\_jobs\\_boost](http://www.mua.org.au/2000_australian_jobs_boost)
- 8 A specific ITF campaign website has been removed, but some of the reports and media coverage specific to the Petroleum Resource Rent Tax (PRRT) issue can be found here: <http://www.taxjustice.org.au/prrt>

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promise to drop the corporate tax rate to 25 percent. This includes advertising from the Business Council of Australia targeting cross bench politicians who are key for getting the vote passed in the Senate. In the face of repeated public criticism of the tax cut<sup>17</sup>, the Government and their allies are clinging to the neoliberal mantra of trickle-down economics. One such criticism appeared as an opinion piece by the government owned ABC's Chief Economics Reporter. The piece was controversially pulled by the ABC for being factually incorrect, breaching editorial guidelines. Public outrage at the piece being pulled saw it re-posted; without any notable changes<sup>18</sup>. A policy approach that just a decade ago would have faced little opposition is now a talisman for the future, with a growing number of champions.

Times are changing. There is now a growing counter trend as private and public-sector trade unions, and their members, in partnership with civil society organisations, turn their attention to the cause of austerity and inequity rather than the symptoms. It is within this context that a group of Australian public-sector unions, through their global union federation, Public Services International, are working together to undermine the tenants of neo-liberalism. They continue to criticise free trade agreements and de-regulation. The *People's Inquiry into Privatisation*, and the resulting report *Taking Back Control*, were the first response.

One of the key recommendations in that report was that companies involved in tax avoidance measures, should be exempted from tendering to run, or buy, government services. And so, tax justice campaigning is the next front. They recognise that real change in this context requires local change with a global view. They will focus on obtaining changes to Australian taxation laws and target the global loopholes that allow billions of dollars in forgone revenue. They will be doing so with a strong message for the need for quality public services, and the affordability of a better world.

It will take a combination of work. If Stiglitz is to be proven correct about the old king being on his last

legs. Unions and their members have a key role to play in partnership with civil society organisations. Together they will need to generate and maintain the social movement that pressures progressive politicians to implement tax justice measures. To paraphrase John E. Lewis; if not us then who, if not now...

## Notes

- 1 Read more at <https://www.businessinsider.com/joseph-stiglitz-says-neoliberalism-is-dead-2016-8#UrXjKsQVkj4sh6Yw.99>
- 2 <https://www.oxfam.org.au/what-we-do/inequality>
- 3 <https://www.nytimes.com/2017/06/16/opinion/sunday/sanders-corbyn-socialists.html>
- 4 <https://www.theguardian.com/us-news/2017/sep/02/socialism-young-americans-bernie-sanders>
- 5 <http://www.actionaid.org/australia/privatisation-womens-rights>
- 6 <https://www.theaustralian.com.au/news/inquirer/census-2016-where-the-private-and-public-sector-towns-are/news-story/e8721845ac32bef39155dfcd9828cee3>
- 7 <http://www.world-psi.org/en/taking-back-control>
- 8 <http://www.essentialvision.com.au/tag/opinion-of-privatisation>
- 9 <http://www.micahaustralia.org/blog/n/christians-create-mock-tax-haven-in-brisbane-prior-to-g20-141111>
- 10 <https://www.theguardian.com/world/video/2014/nov/14/protesters-world-leaders-lifesaver-protest-oxfam-g20>
- 11 <https://thesourcenews.com/2014/11/15/nurses-take-to-the-water-to-call-for-robin-hood-tax/>
- 12 <http://pandora.nla.gov.au/pan/148721/20141007-0940/taxjustice.org.au/wp-content/uploads/2014/09/Who-Pays-ASX-200-Full-Report.pdf>
- 13 <https://www.smh.com.au/business/the-economy/australians-identified-in-panama-papers-could-be-up-for-criminal-charges-ato-20160511-goskti.html>
- 14 [https://www.huffingtonpost.com.au/2017/11/05/the-australians-embroiled-in-the-paradise-papers-tax-haven-leak\\_a\\_23267530](https://www.huffingtonpost.com.au/2017/11/05/the-australians-embroiled-in-the-paradise-papers-tax-haven-leak_a_23267530)
- 15 <http://www.abc.net.au/news/2017-11-11/what-did-we-learn-from-the-paradise-papers/9138790>
- 16 <https://www.smh.com.au/politics/federal/government-targets-one-nation-on-company-tax-20180318-p4z4xr.html>
- 17 <https://www.theguardian.com/business/grogonomics/2017/sep/10/tax-cuts-for-the-rich-dont-help-the-rest-dont-take-my-word-for-it-ask-the-imf>
- 18 <http://www.abc.net.au/news/2018-02-22/more-to-jobs-and-growth-than-a-corporate-tax-cut/9471856>



## Trade handbook

ICTUR's Researcher Ciaran Cross has written a new discussion paper, *Legitimising an unsustainable approach to trade*, which examines the incorporation of labour, environmental and sustainable development provisions in the EU's free trade agreements (FTA). The paper has been co-published with German NGO Powershift and several other partners, and is available to download from the Transnational Institute website ([www.tni.org](http://www.tni.org)).

The paper examines whether the overall objectives of these FTAs are truly compatible with a meaningful approach to labour rights, environmental protection and sustainable development? And if not, what are these provisions actually doing? Often the inclusion of labour clauses in particular seems designed for little more than promoting the 'buy-in' of trade unions to agreements that threaten not only jobs, but also public goods and the environment.



# Universal Periodic Review

In 2015-16 ICTUR agreed to place renewed emphasis on engagement with the UN, seeking to make effective use of the Universal Periodic Review and the Special Rapporteur on Freedom of Assembly and Association. ICTUR submitted three papers to the UN's Universal Periodic Review in 2017 on Japan, the Republic of Korea, and Guatemala. In 2018, ICTUR has submitted papers on labour and trade union rights in Saudi Arabia, Mexico and Nigeria:

## Saudi Arabia: summary of ICTUR submission to UPR

ICTUR raised the following as key concerns for labour and trade union rights in Saudi Arabia: absolute barriers to freedom of association and trade union rights, the limited application of labour rights to migrant workers, and the situation of domestic workers.

ICTUR noted that only a highly restricted form of workers' organisations exist in the country, in the form of 'workers' committees', which can only exist in larger workplaces, and which are legally required to give copies of their minutes of meetings to management and to the Labour Ministers. In practice very few such associations exist. ICTUR noted recent reforms for migrant workers and domestic workers but argued that the situation in practice remained very poor and that practical efforts to improve the rights of these workers remained an urgent priority for Saudi Arabia's human rights compliance.

Following the publication of a new Model Labour Chapter by the Friedrich Ebert Stiftung last year, the paper looks at the pitfalls of piecemeal attempts to attach 'model' provisions to FTAs.

It concludes by proposing a more radical understanding of how trade union rights can be linked to FTA negotiations, which puts workers' fundamental rights at the forefront of this debate.

## Mexico: summary of ICTUR submission to UPR

Concerned in particular by the series of recent killings reported at the Media Luna mine, ICTUR submitted a paper to the UPR process concerning: the killing of trade unionists; the repression of protests; and a seriously flawed collective bargaining recognition system, which underlies much anti-union violence. ICTUR highlighted the killing of at least 12 people since 2014:

- Victor and Marcelino Sahuanitla, two striking miners who were killed on 18 November 2017 at the Peña Torex Gold's Media Luna mine, while participating in a recognition dispute at the mine.
- Quintin Salgado, a labour activist and former miner who was involved in the recognition dispute at the Media Luna mine, who was killed on 24 January.
- The killing of eight people on 16 June 2016 during protests over educational reforms organised by the Coordinadora Nacional de Trabajadores de la Educación (CNTE). The CNTE demonstrations were fiercely repressed, resulting in violence, many arrests, and eight deaths.
- Jorge Zarco Reyes, a local leader of the Vanguardia Obrera section within the CROC

national trade union body, who was shot and killed in Tierra Blanca on 15 November 2014.

- Claudio Castillo Peña, a teacher who died after a violent beating by police officers on 25 February 2014.

ICTUR raised the problem of Mexico's trade union recognition system, under which thousands of small and medium sized local level unions are said to exist only on paper, a phenomenon known as 'ghost' unions. Since only one union can be recognised at each workplace, and since bargaining over pay and conditions takes place at workplace level, there is an incentive for employers to make agreements with these 'ghost' unions in order to lock-down a trade union contract at workplaces and thus bar the possible entry of more militant or representative unions. Large numbers of workplaces are believed to have agreements with unions that barely exist or that would be unable to demonstrate majority worker support. A crucial argument put forward by ICTUR was that Mexico must reform its collective bargaining system and honour promises it made in 2015 to ratify ILO Convention No. 98 on the Right to Organise and Collective Bargaining (1949).

## Nigeria: summary of ICTUR submission to UPR

ICTUR also drafted a submission to the UPR process examining human rights in Nigeria. ICTUR's paper emphasised concern for the killing of at least four trade unionists since 2016 - including:

- Okaye Igali (2018) of the local government union NULGE in Bayalea State, who on 9 February was killed in the street during the daytime in an apparent targeted assassination.
- Mallam Abdulmini Yakubu (2017), Chairman of the Kogi State branch of the Non-Academic Staff Union of Secondary Schools (NASU) at the Science and Technology Education Board (STEB), who was killed at his home by a gunman on 1 November 2017, while was involved in negotiations with the Kogi government regarding strike action of non-academic university staff in the state.
- Aliyu Abdullahi Ubugadu and Rabiu Mohammad Hamza, both members of the Nigerian Labour Congress (NLC), who were shot dead by police outside the gates of

Nasarawa State Government House, while participating in a protest against an arbitrary 50 percent pay cut and threats to dismiss and replace striking workers.

ICTUR also raised cases of arrests of trade unionists, impunity in these proceedings, and failure to investigate or respond to serious violations. ICTUR also called for an investigation into the death of another trade unionist, and noted several barriers to the exercise of trade union rights, including sectoral and other bans on organising, and bans on strike action. ICTUR also submitted concerns about legal restrictions to trade union rights and freedom of association and called for greater efforts to sensitise police to international principles on the use of force and firearms and on the policing of trade union demonstrations generally.



## Bangladesh Accord

Over 100 fashion brands have signed up to the 2018 Transition Accord on Fire and Building Safety in Bangladesh, which will come into effect when the 2013 agreement expires in May this year. The original Accord was developed in the aftermath of the 2013 Rana Plaza disaster in which over 1,100 workers were killed. The arbitration framework requires signatory brands to address worker safety issues in supplier factories; it covers some 2 million workers in over 1200 factories in Bangladesh's garment industry.

In 2017, Industriall and UNI initiated arbitration proceedings under the Accord against two unnamed brands. Both cases resulted in settlements providing substantial funds to remedy hazards identified in factories. The details of the first settlement – reached in December – were not publicly disclosed. In the second, agreed in January, the brand accepted to pay US\$2 million towards remediation of hazards in more than 150 factories, as well as US\$300,000 to Industriall and UNI's Supply Chain Worker Support Fund.

## Defamation law: Andy Hall case

In March, a Bangkok court ruled against Andy Hall in a civil defamation suit concerning allegations of labour rights violations at a pineapple canning company, Natural Fruit. The court ordered Hall pay the company 10 million baht (euro 260,000). The ruling was announced just days prior to a pre-planned visit to Thailand by the United Nations Working Group on Business and Human Rights, which noted, at the conclusion of its mission, that: 'more must be done to protect civic space, including protecting human rights defenders against civil and criminal defamation law suits filed by companies to silence those who stand up for the victims of abuse'.

## European Labour Authority

In March the EU Commission presented a legislative proposal for a European Labour Authority (ELA), which should be established by 2019 and fully operational by 2023. The ELA aims to facilitate access to

information, support cooperation between EU countries, and mediate in cases of cross-border disputes between national authorities or labour market disruptions. The European Trade Union movement cautiously welcomed the proposal, insisting that the ELA must tackle social dumping in the EU. In a statement, Luca Visentini, the General Secretary of the European Trade Union Confederation (ETUC) commented: 'A European Labour Authority is clearly needed to combat cross-border social fraud. It must be about protecting workers - not be yet another internal market tool - and respect national industrial relations systems'.

## Iceland

In January Iceland passed legislation requiring employers of more than 25 people to take pro-active steps to demonstrate that they are achieving pay equality. Companies that fail to demonstrate they are meeting this objective will be fined. This approach takes responsibility for enforcing pay equality away from the worker and places it into the employer to operate a fair pay system.

## ILO

On 22 March 2018, the ILO Governing Body adopted a pay cut for the ILO's professional staff. The pay cut for UN staff was put forward by the International Civil Service Commission (ICSS) in a proposal that was widely criticised for being based on a flawed methodology, developed without any consultation with staff or unions. ILO staff went on strike on 22 and 23 March. In an open letter to the international trade union movement, PSI General Secretary Rosa Pavanelli said that the fact that the Chairperson of the ILO Workers' Group supported the Governing Body's decision to adopt the ICSS proposal was 'troubling and unacceptable': 'For those who participated in the [Governing Body], it was clear that preventing or deferring the implementation of the pay cut was possible. An alternative text was discussed, which did take into consideration the concerns and demands of ILO staff... The method and content of the actions of the Workers' Group leadership is the latest episode revealing a structural lack of cooperation, solidarity and democracy

among the global trade unions. We regret to say that with this action PSI has lost confidence and trust in the Workers' Group leadership... [we] believe that an urgent discussion to address these issues well in advance of the ILC 2018 and the next ILO Governing Body is now required.'

## Indonesia

As reported in IUR Vol. 24.4, 2017 witnessed mass terminations in retaliation for strike action at Freeport's Grasberg mine in West Papua – the second largest copper mine in the world. In February 2018, Lokataru, an Indonesian law firm specialising in human rights, produced a damning report on the conduct of the company and the government during the strike. The report concludes that manifold rights violations have been committed and recommends the establishment of a special committee to help reach a settlement in the dispute, and investigations into the blocking of strikers' access to their health and banking services, as well as into allegations of police torture. The report – Freeport's Workers In Limbo – can be downloaded from Industriall's website: [www.industriall-union.org](http://www.industriall-union.org)

## International Women's Day 2018

On 8 March, protests and strikes around the world were held to celebrate International Women's Day (IWD). Some five million workers took to the streets in Spain to join a nationwide 'feminist strike' intended to highlight sexual discrimination, domestic violence, the gender wage gap and the disproportionate amount of domestic and care work carried out by women. The Spanish union confederations Comisiones Obreras (CCOO) and Unión General de Trabajadores (UGT) described it as 'an unprecedented strike in our country's trade union movement'.

The WFTU marked IWD with a three-day World Working Women's Congress in Panama. Hosted by the Central Nacional de Trabajadores de Panama (CNTP), the Congress was attended by dozens of delegates from around the world, including Vietnam, Peru, South Africa, Cuba and Palestine.

This year in June the International Labour Conference will discuss a landmark international labour standard on 'violence and harassment against women and men in the world of work'.

## Iran

Workers at the Haft Tapeh sugar company who have been campaigning for wages unpaid since July 2017, succeeded in securing the payment of wage arrears in February. ICTUR reported on their case last year. According to the IUF, the company has still not recognised the union, but the payments represent an important success for their campaign, following consistent harassment by the employer and the authorities.

## South Korea

The civil servant's trade union affiliated to the KCTU has finally been recognised by the authorities as a lawful organisation – after more than a decade during which its registration has been repeatedly rejected. During the years in which the Korean Government Employees Union (KGEU) operated without registration several of its leaders were arrested and the union suffered a series of violent raids by the authorities who forced entry into the union's premises and confiscated trade union property. The authorities long claimed that the union has violated Korean law requiring civil servants to remain politically neutral, while labour law provisions barred the union from affiliating dismissed and former officials. IUR will report in more detail on the decision to register the KGEU and its implications for trade union rights in Korea in a future edition.

## Thailand

Human Rights Watch have published a new report, *Hidden Chains: Forced Labor and Rights Abuses in Thailand's Fishing Industry*. Based on interviews between 2015 and 2017 with nearly 250 current and former workers – largely from Myanmar and Cambodia – the report details how migrant workers are not protected by Thai labour law and do not have the rights to unionise. Under international pressure, Thailand has in recent years introduced reforms in the fishing industry ostensibly to improve labour regulation. The report alleges that abuses are still ongoing,

due to failures to properly implement the reforms, the lack of any effective or systematic inspection, and resistance from the industry.

## United States

A legal case with potentially huge implications for organised labour is pending in the US Supreme Court: *Janus v ACSFME*, which will determine whether or not public sector workers will continue to be required to pay an agency fee to unions than represent them in bargaining. If the status quo (agency fees are currently enforceable, since a 1970s ruling) is overturned workers will be able to enjoy the benefits but not the costs of union representation, enjoying a so-called 'free rider' status. This situation is already familiar to many in Europe, where several States have no tradition of agency fees, while the European Court of Human Rights ruled against 'closed shop' rules that played a similar role in other EU States. But in the US agency shop traditions are more deeply embedded, and public sector trade unionists to fear a major impact on their funding, stability, and membership. The Janus case is the third major US court challenge in recent years to agency fees in the public sector, however, there is serious concern that this time the court may rule against the unions.

In New York State, a legal challenge to the exclusion of farmworkers from the State Employment Relations Act, which protects the rights to organise and collective bargaining, was dismissed in January. The case was filed in 2016 after a worker at one of New York's largest dairies was fired for meeting with co-workers and a union organiser (after hours and in a worker's home) to discuss workplace conditions. The claimants – represented by the New York Civil Liberties Union – argued that the statutory exclusion of farmworkers was racially discriminatory and contravened the state Constitution. The state Supreme Court ruled that the state legislature must decide on any changes to the 80-year old statute. Rebecca Fuentes, lead organiser at the Workers' Center of Central New York, commented: 'it's a shame that the judge has decided to continue the Jim Crow era exclusion of farmworkers

from the protected right to organise'. Workers and activists are now campaigning for a Farmworker Fair Labor Practices Act, which would extend standard workplace protections to farmworkers in the state.

## Venezuela: ILO Inquiry

The ILO's Governing Body has decided to appoint a Commission of Inquiry into long-running allegations of 'interference, aggression, and stigmatisation' directed against FEDECAMERAS, the Venezuelan employers' association. IUR's readers will recall that a former leader of this organisation was installed as head of the coup government following the attempted overthrow of the democratically elected president Hugo Chavez in 2002 – and may be surprised to contrast this with the ILO's failure to take any such action against neighbouring Colombia during the 2000s, during the worst anti-union violence anywhere, ever, when hundreds of trade unionists were being murdered every year.

## Working Time

Unions in Germany and the Czech Republic have been renegotiating working arrangements with an increased interest in reducing working time as a collective bargaining goal, backed by workers. In February, IG Metall secured workers' the right to reduce their working time by 20 percent for two years, with a temporary wage reduction. The Czech and Moravian Confederation of Trade Unions (CMKOS) are also planning to put forward demands for a collective reduction of the working week (by 2.5 hours, with no reduction in pay) in the Czech Republic in the next few years. The European Trade Union Institute recently published a guide, *The why and how of working time reduction*, by researchers Agnieszka Piasna and Stan De Spiegelaere.

In advance of the 2018 International Labour Conference, the ILO has also prepared a *General Survey concerning working-time instruments: Ensuring decent working time for the future*.





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Commissioner for Competition, Margrethe Vestager (the 'Iron Lady' of Denmark, who had already made her mark pursuing Apple and Google). At the time of writing this investigation was still on-going. Ultimately the outcome will hopefully be a sanction for Luxembourg's overly generous treatment of McDonald's European intellectual property subsidiary.

We can't predict the outcome of reviews by regulatory bodies, but the campaign to expose McDonald's tax practices and behaviour towards workers in Europe has already made its mark, sending a clear signal that no matter how big and powerful multinationals may be, the labour movement can fight to hold them accountable by forging ties across borders.

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## Notes

- 1 This incident on 13 August is the only case opened against South African police after the Marikana events.
- 2 OECD, October 2015, Policy Brief No 3 on BEPS. Visit URL: <http://www.oecd.org/ctp/policy-brief-beps-2015.pdf> (2018-03-21).
- 3 The 22 percent average effective global tax rate is a conservative assumption. Profit shifting from developing countries takes place where statutory and therefore effective tax rates are lower. See: [http://businessroundtable.org/sites/default/files/Effective\\_Tax\\_Rate\\_Study.pdf](http://businessroundtable.org/sites/default/files/Effective_Tax_Rate_Study.pdf) (a study by Price Waterhouse Coopers) or <https://www.pgpf.org/blog/2017/11/what-is-the-difference-between-the-statutory-tax-rate-and-the-effective-tax-rate>, based on a report from the US Congress. (2018-03-31)

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government revenue and its rising. In 2011, for instance, total official development assistance inflows into Africa amounted to USD \$50 billion, compared to \$17.4 billion in 2002.

Low-income countries are reduced to a cycle of external borrowing and debt service payments. It means less capacity to increase public expenditure as well as the loss of political autonomy, as aid and international loans often come with strings attached, such as austerity measures and neoliberal conditions. This often leads to lower wages as well as cuts to and privatisation of necessary public services.

## Fighting back

This is why unions are taking up the fight for tax justice in Africa and other developing countries. In Africa and across the globe PSI and local unions are establishing national tax platforms with civil society to fight for tax justice.

In Nigeria, the Nigeria Labour Congress established a national platform with PSI to mobilise unions, both in the private and public sectors, and citizens to take action against illicit financial flows and tax dodging. They have led rallies to the Ministry of Finance, demanding that the issue of IFFs receive urgent attention while multinational headquarters have been occupied by protesters demanding they pay their fair share.

In 2015, six pan-African organisations, launched a unified African campaign platform on Illicit Financial Flows named 'Stop The Bleeding'. In 2017, PSI and our partners launched a Global Week of Action in the lead up to Public services day. Tanzanian unions organised young workers to demand the Tanzanian revenue authority raise the funds for public services and in Zimbabwe unions raised awareness in the community and demanded more transparency in tax paid by extractives.

In Latin America trade unions from twelve countries have formed a union network to partner with civil society to campaign for tax justice with young workers in Brazil joining the campaign and mass distributing tax justice information directly to the public. They have trained hundreds of union activists, distributed movies, podcasts and online videos showing how tax dodging hurts us all, organised days of action and lobbied governments and the UN.

As the campaign continues to grow, it's up to unions across the world to support these calls.

## Notes

- 1 African Economic Outlook report.
- 2 As Léonce Ndikumana, Director of the African Development Policy Program at the University of Massachusetts showed in a recent study.



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President: Hans-Olof Nilsson



## Public Services International

PSI is a global trade union federation representing 20 million working women and men who deliver vital public services in more than 150 countries.

PSI works with our members and allies to campaign for social and economic justice, and efficient, accessible public services around the world. We believe these services play a vital role in supporting families, creating healthy communities, and building strong, equitable democracies.

Our priorities include global campaigns for water, energy and health services. PSI promotes gender equality, workers' rights, trade union capacity-building, equity and diversity. PSI is also active in trade and development debates.

PSI welcomes the opportunity to work co-operatively with those who share these concerns.

Visit our website [www.world-psi.org](http://www.world-psi.org)

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