



## Rethinking **Macro Economic Strategies** from a Human Rights Perspective

(Why **MES** with Human Rights II)



RADHIKA BALAKRISHNAN, DIANE ELSON, AND RAJ PATEL



# **Rethinking Macro Economic Strategies from a Human Rights Perspective**

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## PREFACE

Revolutionary is one of those words that through misuse has lost some of its original meaning – “markedly new,” or “introducing radical change” – but revolutionary is the only word that can describe the contribution that Radhika Balakrishnan, Diane Elson and Raj Patel are making to the field of human rights with this publication. Human rights activists in the field of economic, social and cultural rights have long waited for an instrument that would present both a clear theoretical framework that integrates human rights and economic concepts and a practical guide for applying that framework to real-life conditions. *Rethinking Macro Economic Strategies from a Human Rights Perspective (Why MES with Human Rights II)* is that tool.

As we grapple with the new realities that the financial collapse of 2008 has created, *Why MES II* provides the basis for the political agenda that must be advanced in order to ensure that the fundamental rights and interests of the “sufferers” are protected and expanded even in the midst of the crisis.

As an intellectual work characterized by exemplary research, this will become the foundation piece in the developing field of human rights and macroeconomic analysis. And as a primer for activists, it has no peer.

**Ajamu Baraka**

Director, US Human Rights Network

## PREFACE

For decades macroeconomic policies have been exempt from any scrutiny concerning their effects on the well being of the people. Since the 1970s, it has been accepted as dogma that the design and function of macroeconomic policies aimed to maintain basic economic balance with the goal of creating a favorable environment so that the thriving market might adequately appoint resources and distribute profits.

Thus, macroeconomic policies stopped being used as tools to guide the evolution of economies toward the most equitable distribution of profits among people and classes, and full employment of the population ceased to be their fundamental goal.

Nevertheless, the deepening gap of inequality inside countries and between countries; the growing proportion of people drowning in poverty; the lack of equity between races, ethnic groups, genders, physical handicaps, sexual orientation, among other factors; the flow of immigrants from poor countries to rich ones; the increase in class violence and illicit schemes to make money and get rich prove that the rules governing the management of macroeconomic policies, and the role of the market in a better distribution of resources and profits in a globalized world, should be subject to evaluation and revision.

Recognizing that perfect competition does not exist, that the markets have inherent flaws that lead to the amassing of wealth and profit in very few hands, and thus impoverish millions, demands, at least, the development of methodologies that allow us to review the effects of macroeconomic strategies on inequality, inequity and exclusivity.

This document, proposes a novel focus and methodology that allows us to evaluate macroeconomic policies from the perspective of the progressive realization of the people's economic and social human rights, and the States' compliance with their minimal, basic responsibilities to their people.

The conceptual framework of human rights has been broadly developed since World War II, when the world experienced some of the greatest atrocities in history as a result of an

abusive exercise in State power. As a consequence, the international community came together to put human dignity in the forefront of world development.

Articles 22 through 27 of The Universal Declaration of Human Rights, approved in 1948 in the United Nations, incorporated a new body of so-called second-generation human rights. In 1966, these articles were elaborated in the International Covenant on Economic, Social and Cultural Rights. This body of laws expresses the values of equality, solidarity and non-discrimination, and is considered indivisible from and interdependent with civil and political rights. In the Preamble of the Declaration it is referred to as an extension of the principle of liberty in its proposal to “promote social progress and better standards of life and larger freedoms.”

The report proposes a systematic examination of macroeconomic strategies followed by the States, by starting with the conceptual framework and the underlying commitments of the Human Rights Treaties – and the norms, standards, responsibilities and procedures that have been developed around them – and by using analytical and developmental tools of progressive economic policy.

This work's usefulness will be obvious to everyone in academic circles and civil society organizations who has searched for methodological tools that would allow him/her to review macroeconomic policies in light of their effect on the well being of the people.

This report is a valuable tool for people and organizations that recognize that the objective of all societies and every State should be to promote, respect and protect the dignity of all human beings. It aims to rescue the humanitarian sense of economic policy, and is a seminal work.

**Clara Judisman**

Honorary President

Iniciativa Ciudadana y Desarrollo Social INCIDE Social, A.C.

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Rethinking Macro Economic Strategies from a Human Rights Perspective (Why MES with Human Rights II) draws from two years of collaborative work undertaken in the United States and Mexico. Many people and organizations have been involved in this project and this report is just one of the products to emerge from the efforts of this diverse group of participants.

The Ford Foundation has provided invaluable support at multiple levels since the very inception of this project. I am indebted to Mario Bronfman and David Myhre who facilitated the identification and selection of Mexico-based partners, provided financial assistance as well as substantive input over the past two years. Jael Silliman and Monette Zard at Ford in New York have been champions of this work, committing both resources and important advice.

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I would also like to thank the advisory committee for this project who embodied the cross-fertilization between economist and human rights advocates that this project advances. They have provided important insight and counsel at many stages of the project. Their input helped clarify the conceptualization and direction of the work. In particular I would like to acknowledge the contributions of Clara Jusidman, who made important introductions and substantive input into the work. In addition I would like to thank Cathy Albisa, Ann Blyberg, James Heintz and Manuel Montes for their comments on a draft of this report. (See Appendix II). I would like to thank Nursel Aydiner-Avsar who is part of the US team and provided an enormous amount of help in getting this report ready for publication.

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*Cover photos, Top: A demonstration against demolitions of public housing, held at City Hall in December 2008 in New Orleans, Louisiana. Photo by Janvieve Williams, © US Human Rights Network.*

*Bottom: For several months in early 2000, police and protesters clashed in Cochabamba, Bolivia, following the privatization of the water system and the passage of a new water law. The privatization and new water law resulted in large increases in rates for water services and raised concerns among farmers and owners of private wells, who had never before paid for the use of natural water sources, that they would now be charged for water. Photo by Tom Kruse.*

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# Rethinking Macro-Economic Strategies from a Human Rights Perspective (Why MES with Human Rights II)

Radhika Balakrishnan, Diane Elson and Raj Patel

## 1. INTRODUCTION

**1.0. The current global economic crisis is evidence that the neo-liberal economic policies that have been followed for almost three decades have not worked.** The devastation that the crisis has already wrought on the most vulnerable households in the Global North and Global South is a reminder that the formulation of economic policy and the realization of human rights (economic and social rights, as well as political, civil and cultural rights) have, for too long, been divorced from one another. Over the past three decades, economic policy has been geared toward achieving economic growth, underwritten by assumptions about the virtues of the market. Efficiency rather than ethics has been the focus of concern. When attention has been paid to human rights, economic policy making has proceeded with the assertion that economic growth, no matter how skewed in favor of a few, will ultimately benefit all by providing resources for the realization of human rights. Yet, the means adopted to achieve economic growth have been responsible for undermining goals in the domain of human rights. It is clearly time to assess economic policy using the ethical lens of the human rights standards that all governments have agreed upon. This project has piloted a process of analysis that can help rethink macro-economic strategies from a human rights perspective, with a focus on economic and social rights. Such a process requires the bringing together of two groups that are seldom in communication with each other: progressive economists and human rights advocates. This report is the second stage of such a dialogue. (A report of the first stage, entitled *Why MES with Human Rights: Integrating Macro-Economic Strategies with Human Rights*, by Radhika Balakrishnan, was published in 2005). Through its analysis of human rights and economic policy in Mexico and the United States, our report shows how and why progressive economists and human rights advocates can work together. It demonstrates that the concerns of these two separate groups should, and can, be integrated.

**1.1 Human rights advocates and progressive economists share common concerns.** In the human rights community, there has been an increasing interest in economic and social rights, including the equal enjoyment of such rights: concerns that have often been overlooked by the dominant traditions of economics. But, neo-classical economists do not

represent the entirety of the discipline; there have always been progressive, critical economists, committed to the creation of socially just economies, yet skeptical of the realization of such economies through neo-liberal economic policies. These heterodox economists present diverse alternatives to the neo-liberal orthodoxy. Heterodox economists and human rights advocates share an ultimate goal: to promote human flourishing, and to protect human beings from the vulnerabilities and insecurities to which the current global economy has exposed them. Human rights have significant economic implications, since promoting, protecting and fulfilling them require resources and involve costs. In turn, economic policies have significant impacts on human rights; they shape the nature of the threats to the economic and social rights of different groups of people, and can both harm and assist the realization of human rights. Progressive economists are already aware of the problems of neo-classical economics, and distinguish themselves by offering alternative approaches to economics. Both progressive economists and human rights advocates challenge a vision of economic development that claims that remaining internationally competitive must be the key objective, despite growing inequality and increasing risk. There is an urgent need for an informed understanding of the ways that economic policies conducive to people-centered development can support the realization of human rights, and the ways that a human rights focus can support progressive economic policies.

**1.2 Human Rights advocates have much to gain.** Human rights activism and advocacy focus on the violations and deprivations suffered by individuals and social groups, without necessarily understanding the economic policies that help generate such problems. Strategies for the realization of equitable enjoyment of economic and social rights often fail to grapple with the potential constraints, posed by the current structures of the global economy, on the achievement of those rights. Without an understanding of the ways that neo-liberal economic policies, at national and international levels, contribute to the violation of human rights, human rights activism may be reduced to uphill battles to defend minimal protections. Without an understanding of the alternatives to neo-liberal economic policies, human rights advocates may be left without adequate strategies to change the environment that leads to human rights violations. A better understanding of economic policies and processes is particularly relevant to struggles to achieve equal economic and social rights for all. Such an analysis can help identify and clarify the sites of negotiation and struggle needed to bring about improvements in economic and social rights, especially for those who are most deprived. This analysis is the stock in trade of heterodox economists.

**1.3 Progressive economists also have much to gain.** Heterodox economists are sometimes hampered in their efforts by their unfamiliarity with the language of ethics and values in discussions of economic processes and policies. In most societies, ethics and values are widely understood as pertaining mainly to ways that individuals lead their personal lives

and not to the ways that economies function. To surrender this language before discussing economic questions is to limit the scope of social change, thus rendering political decisions as merely technical ones. The norms and standards of human rights offer progressive economists a widely accepted ethical language in which to pose economic questions without reducing them to simple questions of economic calculus. The legal and quasi-legal processes of international human rights reporting and adjudicating offer other arenas in which to contest the hegemony of neo-liberal economic policies. Progressive economists are often concerned that ideas of solidarity and collective action cannot be accommodated in a human rights framework that emphasizes individual rights. It is important for progressive economists to explore these concerns with human rights advocates, and for the two communities to identify ways in which solidarity, collective action, and individual and collective rights claims can be mutually supportive.

- 1.4 This document can help.** The purpose of this document is to show how a conversation between economists and human rights advocates can happen, based on a specific pilot study that examined human rights and macro-economic policies in Mexico and the United States. The pilot project begins to elaborate a process of analysis, development of policy recommendations, and capacity building that promotes the realization of economic and social rights at the country level, with particular attention to the ending of disadvantage associated with gender, class, race, ethnicity and citizenship status. In developing this process of analysis, we aimed to look at human rights violations not only as an individual problem, but as a systemic process, because a micro- or individual-level analysis can fail to capture the macro processes contributing to the violation. Our goals in the pilot project are
- to bring together and develop synergies between different approaches to realizing economic and social rights – especially human rights approaches and progressive political economy approaches.
  - to develop a method for auditing economic policy from a human rights perspective. Our entry point was government obligations for economic and social rights (as specified in the international human rights system) and the extent to which macro-economic policy has complied with these obligations.
  - to develop the capacities of civil society and government organizations to draw upon human rights norms, standards, obligations and procedures, and the analytical and policy development tools of progressive political economy.

In this document, we illustrate a method of providing human rights guidelines to macro-economic policy, and macro-economic guidelines to human rights policy, in order to make an effective challenge to the existing economic policy paradigms. This document brings together, in an accessible way, the lessons we have learned and recommendations we have

for any future group who wants to hold this conversation, for other economic policies, or in different countries.

The document is divided into five sections. After this introduction, in the second section, we provide a brief overview of some key concepts of human rights for economists who may be unfamiliar with them. In the third section, we summarize the key analytical terms involved in macro-economic analysis for the benefit of human rights advocates. The fourth section sets out the methodology that we have developed to answer questions about the intersection of human rights and economic concerns; and some empirical examples that demonstrate how the methodology may be applied. We conclude with lessons learned through the pilot project, and suggestions for the future use of this analysis.

## 2. AN INTRODUCTION TO HUMAN RIGHTS OBLIGATIONS FOR ECONOMISTS

While talk of human rights is familiar to almost everyone, human rights obligations are subtle and often poorly understood. This section is a primer on human rights obligations for economists. Those familiar with these concepts may consider skipping ahead to section 3.

**2.1 Human Rights have specific definitions.** The foundational document is the Universal Declaration of Human Rights,<sup>1</sup> accepted by all the states that are UN members. The Universal Declaration covers a range of rights including the following economic and social rights:

1. The right to work (Article 23):

“(1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.”

2. The right to rest and leisure (Article 24):

“Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.”

3. The right to an adequate standard of living (Article 25):

“(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”

4. The right to education (Article 26):

“(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to

the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.”

**2.2 The rights are further codified by a range of subsequent international treaties, that spell out the obligations of states that are party to them.**

The Universal Declaration was followed by a series of international treaties (variously named Covenants or Conventions) that flesh out the precise contours of what rights all human beings can claim and for which governments have obligations. The most important treaties for our project are the 1995 Convention on the Elimination of All Forms of Racial Discrimination (CERD); the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both dating from 1966; and the 1979 the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The extent to which states have met their obligations under these treaties is monitored by the relevant UN treaty body: for the ICESCR, the relevant treaty body is the Committee on Economic, Social and Cultural Rights (CESCR).

**2.3 Not all countries have ratified these treaties.** In our research, we discovered that Mexico is party to all of these treaties; but the U.S., while having ratified the treaties relating to eliminating racial discrimination and guaranteeing civil and political rights, has not officially committed to the economic, social, or cultural rights set out in ICESCR, nor to the rights of women set out in CEDAW.

**2.4 Nonetheless, all states have committed to the fundamental tenets of human rights law.**

Even if the U.S. has not ratified all of the appropriate treaties, they carry a normative force in international conduct. The Universal Declaration of Human Rights retains a privileged position within international law; and any government that violates these tenets, does so at the risk of domestic and international outcry.

**2.5 Human rights obligations entail three specific duties with respect to economic and social rights.**

There are three key duties that a state has to undertake with respect to human rights (as elaborated by the UN Committee on Economic, Social, and Cultural Rights, based on the *Maastricht Guidelines of 1997*:<sup>2</sup>

These are

1. the obligation to respect
2. the obligation to protect
3. the obligation to fulfill

**2.6 The obligation to respect rights.** The obligation to *respect* requires states to refrain from interfering with the enjoyment of economic and social rights. So, for example, the State will have failed to comply with its obligation to respect the right to housing if it engages in arbitrary forced evictions.

**2.7 The obligation to protect rights.** The obligation to *protect* requires States to prevent violations of such rights by third parties. Therefore, a State's failure to ensure that private employers comply with basic labor standards may amount to a failure to meet its obligations to protect the right to work or the right to just and favorable conditions of work.

**2.8 The obligation to fulfill rights.** The obligation to *fulfill* is generally recognized as being comprised of three elements – to facilitate, provide, and promote rights. It requires States to take appropriate legislative, administrative, budgetary, judicial and other measures toward the full realization of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation. The obligation to fulfill is particularly central to our project.

**2.9 Each of these obligations has two dimensions: conduct and result.<sup>3</sup>**

The obligation of *conduct*: A government is obliged to behave in a way that reasonably can be expected to realize the enjoyment of a particular right.

The obligation of *result*: A government is obliged to achieve outcomes that enhance the enjoyment of a specific right or rights.

**2.10 Guidelines for governments in meeting their economic and social rights obligations.**

States enjoy a margin of discretion in selecting the means to carry out their obligations for economic and social rights, but they must pay regard to the following key points:<sup>4</sup>

- the requirement for progressive realization
- the use of maximum available resources
- the avoidance of retrogression
- the satisfaction of minimum essential levels of economic and social rights
- equality and non-discrimination
- participation, transparency, and accountability

**2.10.1 Progressive Realization acknowledges that the full enjoyment of human rights will not come in a day, but demands that, every day, it comes a little closer.<sup>5</sup>** This obligation recognizes that the resources at the disposition of a government are limited; nevertheless, a government must take specific steps to ensure that people's enjoyment of economic and social rights improves over time.

**2.10.2 The criterion of *Maximum Available Resources* means that governments cannot shrug off human rights obligations on the grounds of lack of resources.**<sup>6</sup> Governments must show that they are making the maximum use of available resources toward realizing human rights. Resource availability does not just depend on the level of output of an economy, its rate of growth, and the level and growth of inflows of resources from other economies. It also depends on how the state mobilizes resources from the people living under its jurisdiction to fund its obligation to fulfill human rights. For instance, if a government generates very little tax revenue, it will be able to provide only limited public services. The key role of taxation has been noted by some of the UN Special Rapporteurs on human rights. For instance, the Special Rapporteur on the Right to Education has noted, “It is hard to imagine how any state would raise the revenue to finance health, education, water, and sanitation, or assistance for those too young or too old to work, were it not for taxation.”<sup>7</sup>

**2.10.3 *Non-Retrogression* means that once a particular level of enjoyment of rights has been realized, it should be maintained.**<sup>8</sup> Non-Retrogression means that governments should not, for instance, meet one of the conditions of the right to education by making free primary-school education available to everyone, and then subsequently introduce fees for primary school; nor should governments cut taxes that are critical for funding those services. If such retrogressive measures are introduced, then the Committee on Economic, Social and Cultural Rights has specified that the state has to show that they have been introduced after consideration of all alternatives and are fully justifiable by reference to totality of rights provided for in the Covenant and in context of the full use of the maximum of available resources.

**2.10.4 *Minimum Core Obligations/Minimum Essential Levels* means that there is a threshold that States must comply with.**<sup>9</sup> The government of a country in which a significant number of persons is deprived of essential foodstuffs, of essential primary health care, etc. is *prima facie* failing to meet its core obligations. The purpose of this stipulation is to prioritize the delivery of vital goods and services so that in all circumstances people have, at least, a basic level of enjoyment of economic and social rights.

**2.10.5 *Non-discrimination and equality criteria* are central to the universality of human rights.**<sup>10</sup> Governments have immediate obligations for ensuring non-discrimination and equality in the enjoyment of human rights; which means that while a government may plead that it does not yet have the resources to meet the burdens of fulfilling all human rights, non-discrimination and equality cannot be similarly postponed. The Universal Declaration defines equality in this way:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, color, sex, language, religion, politi-

cal or other opinion, national or social origin, property, birth or other status.”

An often-ignored consequence of these rights is that the ownership of property cannot be grounds for discrimination. As one US commentator clarifies, this means that:

“...everyone has an equal right to an education and that no distinctions based on ‘property’ status are to be made in the implementation of this right. In some countries of the world the children of the very poor receive no education at all...including the United States. The quality of the child’s elementary and secondary education is often directly related to the ‘property’ status of his or her parents or guardians. All such differences are in violation of the Declaration.”<sup>11</sup>

**2.10.6 Accountability, Participation and Transparency mean that governments are obliged to provide mechanisms through which people can hold the state accountable, can participate in policy making, and can access the information required to do so.**<sup>12</sup> Article 19 of the Universal Declaration of Human Rights refers to the right to receive and impart information. This is further elaborated in Article 19 of ICCPR. The Committee on Economic, Social and Cultural Rights has drawn attention to the significance of the right to information for economic and social rights. Accountability and participation are emphasized by the Limburg Principles, drawn up in 1986 by a Human Rights Expert Group. A recent report of the Inter-American Commission on Human Rights notes, “adequate access to public information is a key tool for citizen participation in public policies.”

This concludes the introduction of human rights for economists, which has introduced the key concepts of:

- the obligation to respect,
- the obligation to protect
- the obligation to fulfill

and the guidelines that should govern the discharge of human rights obligations:

- the requirement for progressive realization
- the use of maximum available resources
- the avoidance of retrogression
- the satisfaction of minimum essential levels of economic and social rights
- equality and non-discrimination
- participation, transparency and accountability.

### 3. ECONOMICS FOR HUMAN RIGHTS ADVOCATES

This section provides a brief introduction to economics for human rights advocates.

**3.1 Not all economists are the same.** Heterodox economists have developed varieties of economics that challenges the prevailing orthodoxy. They are termed “heterodox economists,” precisely because they do not share any single party line. Nevertheless, they tend to be politically progressive, and skeptical about the possibility of value-free social science. Heterodox economists claim the broad continuum that stretches from Keynesianism to Marxism to feminist economics to ecological economics and beyond.

**3.2 Heterodox economists have received acclaim within the discipline, and are actively engaged in international organizations and NGOs around the world.** While neo-classical economics is dominant, it is not the only show in town. Heterodox economists such as Amartya Sen and Joe Stiglitz have won the Nobel Prize for economics. The United Nations has provided a venue for progressive economics in publications like the annual *UNDP Human Development Report*. Progressive economics had also been used to inform the work of UN Human Rights Special Rapporteurs charged with investigating topics, ranging from the Right to Food to Extreme Poverty to the Effects of Economic Reform Policies and Foreign Debt on Human Rights. Progressive economists also work in international, national NGOs like Focus on the Global South, Third World Network, the Center for Popular Economics, the Economic Policy Institute, Political Economy Research Institute and INCIDE to name a few.

**3.3 There is vigorous debate in economics around the most appropriate level of analysis, the role of the market, and the value of competition.** Whereas neo-classical economists start from the idea that economies consist of micro-level interactions of individuals trying to maximize their own gains, heterodox economists start from the idea that economies are macro-level structures that help to shape the objectives and interactions of individuals. Whether individuals try to maximize their own gains is influenced by macro-level economic structures, and a wide range of behavior is possible.

The default position of neo-classical economists is that if people and businesses interact in competitive markets, then the most efficient outcome will be achieved. Neo-classical economics does not claim that competition will achieve equitable outcomes, but argues that there will be enough gains for winners to compensate losers, should society want this. The main purpose of government policy should be to create a level playing field for competition. The default position of heterodox economists is an empirically based skepticism over competitive markets’ ability to use resources efficiently, and an appreciation that

competition can sometimes be wasteful. These debates have gained currency lately; discussions over the causes of the ongoing global economic crisis, for example, have centered on the weaknesses of poorly regulated financial markets, and the consequences for society when markets systematically fail.

- Keynesian economists stress that competitive markets cannot be relied upon to achieve full employment, in the form of decent jobs for all who want them. There is waste of human capacities, reflected in unemployment, underemployment, and exploitative employment.
- Feminist economists stress that competitive markets cannot be relied upon to achieve sufficient provision of good quality care for all who need it; nor for an appropriate balance between paid work, unpaid work, and leisure for care providers. The result is a waste of human capacities, reflected in both neglect of some who need care, and over-work for some who provide it.
- Ecological economists stress that competitive markets cannot be relied upon to achieve sustainable economies. There is waste of natural resources, reflected in environmental degradation.

Besides being wasteful, competition can be also inequitable. An important dimension in the way that people and businesses compete is to secure and protect unfair advantages, tilting the playing field and evading the promise to compensate those who lose out through competition. Progressive economists argue that competition needs to be regulated and that the State needs to use economic policy pro-actively to reshape the economy. In particular, macro-economic policies need to be used pro-actively to shape the conditions for interaction between people and businesses, for production, distribution and consumption, in ways that avoid waste and inequality.

**3.4 Some heterodox economists have introduced new concepts of well-being to help formulate the goals of economic policy.** One of the fundamental axioms of neo-liberal economic policy is the assumption that economic policy should aim to maximize the satisfaction of individual preferences. Heterodox economists challenge this. Amartya Sen, for instance, suggests that instead of preferences, the starting point should be “capabilities” i.e. what people are actually able to do and be. The goal of enlarging capabilities underpins the concept of human development, which informs the United Nations Development Programme’s Human Development Index.

**3.5 The concept of the macro-economy is a way of talking about the entire workings of the national economy.** Macro-economic policies affect the operation of the economy as a whole, shaping the availability and the distribution of resources. There are several types of

macro-economic policy instruments, and neo-classical and heterodox economists have different views about how they should be used.<sup>13</sup> Below we introduce some of the most important policy instruments.

**3.5.1 Fiscal Policy and Monetary Policy.** Fiscal policy is the omnibus term that covers both public revenue and public expenditure, and the relationship between them, as expressed in the government budget and its surplus or deficit. Fiscal policy is the responsibility of the Ministry of Finance or the Treasury. Regarding budget size and deficit/surplus, neo-classical economists tend to argue for small budgets (with low levels of revenue and expenditure) and balanced budgets (in which revenue matches expenditure). Heterodox economists advocate for larger budgets (with higher levels of revenue and expenditure) and make the case for budget deficits in periods when the economy is failing to provide full employment.

Monetary policy includes policy on interest rates, exchange rates and money supply, and the regulation of the financial sector. Monetary policy is the responsibility of the Central Bank, which is now most often an independent body, appointed by and operating under guidelines from the Ministry of Finance. In the 1950s and '60s, full employment was a goal of central banks, alongside low rates of inflation; in the last three decades, most Central Banks focused almost exclusively on the control of inflation.

Neo-classical economists argue that monetary policy has no ability to bring about increases in production and employment, and can only have an impact on monetary variables, such as the price level. Neo-classical economists tend to think that the best way to achieve full employment is to keep the rate at which the general level of prices rise (i.e. the rate of inflation) as low as possible. Heterodox economics suggests that while very high rate of inflation may damage production and employment, the best rate of inflation is not necessarily zero. There is such a thing as a rate of inflation that is too low. Very low rates of inflation require high rates of interest, and this is a disincentive to investment, and leads to high unemployment, underemployment, and a lack of decent work. Over the last decade, countries have adopted monetary policies that focus on lowering inflation with little regard to the impact on real factors such as poverty, employment, and investment. Such policies prioritize the interests of the banks, other financial businesses, and holders of large amounts of financial assets over the interests of farmers, workers, and businesses in manufacturing and non-financial services.

**3.5.2 Revenue policy.** Revenue is raised through a variety of ways, including taxation, profits of publically owned enterprises, royalties for the use of mining rights, and inflows of foreign-aid grants. Taxation is particularly important for long-run sustainability of revenues. Neo-classical economics tends to regard taxation as distorting competition and creating

disincentives for people and businesses by reducing their financial rewards. Neo-classical economists often argue for tax cuts. Heterodox economics tend to view taxation as capable of creating incentives for people and businesses by financing the services and infrastructure they need to earn a living. Heterodox economists often argue for higher, yet more just taxation.

**3.5.3 Expenditure policy.** Government expenditure provides public services, infrastructure, and income transfers. Neo-classical economics regards public expenditure as competing with private investment and using up resources that could be used more productively in the private sector; therefore, public expenditure should be kept to a minimum. Heterodox economics views much public expenditure as complementing private investment, by providing public facilities that enhance the productivity of private investment. However, heterodox economists are also concerned with how public expenditure affects human well being, and are generally critical of large expenditure on defense at the expense of services such as education, health and welfare.

**3.5.4 Trade Policy.** Trade policy includes import taxes (otherwise known as tariffs); import quotas (quantitative restrictions on the amount of good that can be imported); and export taxes and export subsidies. It is generally organized through trade agreements with other countries (which may be regional or global). Tariffs, quotas, and subsidies are used to protect domestic industries.

Neo-liberal economists have long argued that trade liberalization (opening domestic markets to international competition by reducing import tariffs and quotas) raises the general standard of living within a country, by giving incentives to produce more efficiently. The impact, however, depends on the existence of mechanisms that keep imports and exports in balance. Progressive economists point to the absence of such mechanisms, and give evidence that trade liberalization in poor countries has been followed by trade deficits (which mean that imports exceed exports). They also argue that successful export expansion is not based on cutting tariffs; rather it is based on prior policies of public and private investment.

Both groups of economists agree that trade liberalization produces losers and winners, and that the gains from trade are not equally shared, neither within nor between countries. The gains consist of cheaper goods (if imports are cheaper than home production) and more employment in production of exports (if exports expand). The losses consist of loss of employment in production that can no longer compete with imports, and loss of tax revenue to fund public services, since trade liberalization implies cutting taxes on trade (i.e. import tariffs). Neo-liberal economists tend to argue that trade liberalization will produce sufficient gains to enable the losers to be compensated. Heterodox economists tend to be

more pessimistic about the size of the gains, and about such compensation taking place.

In the last ten to fifteen years, trade agreements have come to include a wider set of trade-related policies. For example, the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) entered into force in 1995. Such agreements are seen by neo-classical economists as attempts to create level playing fields for international competition. But, heterodox economists see them as strengthening the competitive advantage of powerful multi-national corporations.

**3.5.5 Regulation of markets and property rights.** All markets and property rights are regulated to some extent. People and businesses have to be able to enter into legally enforceable contracts for markets to operate and property to be bought and sold. The question is how the regulations are designed and enforced. Neo-liberal economists tend to argue that markets and property should be regulated in ways that promote flexibility and make it easier for businesses to invest and make profits (this is often called “deregulation,” but might more appropriately be called “profit-lead regulation”). Heterodox economists tend to argue that markets need to be regulated in ways that serve social goals, thus recognizing people as more than just inputs to production processes, or outlets for sales.

This concludes the introduction to some basic concepts of economics. The next section deals with the application of the concepts introduced in this and the previous section, to concrete examples in the United States and Mexico.

## 4. AUDITING ECONOMIC POLICY FOR COMPLIANCE WITH HUMAN RIGHTS OBLIGATIONS: EXAMPLES FROM USA AND MEXICO

This section shows how we conducted our analysis, which we describe as an audit. The key features of our method are as follows:

“We draw a distinction between an audit and a study of policy impact. The latter purports to establish a causal link between economic policies and the degree of substantive enjoyment of economic and social rights (‘results’). Impact studies require the use of quite complex mathematical models and econometric techniques, combined with assumptions about ‘counter-factuals’ (i.e. what would have happened if different economic policies had been used). The technical apparatus of studies that purport to examine impact often obscure the nature of the ‘guesstimates’ that have been made in constructing the ‘counter-factuals’. Moreover, no impact study can definitely establish causation; it can only establish correlation and suggest plausible reasons for interpreting this as evidence of causation. An audit has a less ambitious aim: to examine how policy has been conducted – whether it has consisted of action ‘reasonably calculated to realize the enjoyment of a particular right’, selecting rights which might reasonably be thought to have a strong relation to the policy instrument. Such an audit can use both quantitative indicators and a qualitative examination of relevant legislation and policy processes...

Where appropriate, the analysis of conduct can be cross-checked with a quantitative and qualitative analysis of relevant ‘results’ for some relevant rights. The data on ‘results’ may reinforce or challenge the conclusions about the conduct of policy. For example, in considering public expenditure, we may examine whether public expenditure on health might be considered to be ‘action reasonably calculated to realize’ the right to health in a way that complies with obligations for non-discrimination and equality. If we find that public expenditure is very unequally distributed between different social groups, this suggests a prima facie case of failure to meet obligation of conduct. We can cross check this with data on the health status of different social groups (which measure some dimension of how far they enjoy particular levels of the right to health). If we find the health status of the group with the lowest share of expenditure is worse than those groups with higher shares of expenditure, this suggests that the government is indeed in violation of its obligations of conduct. But if the social group with the lowest share of public expenditure has the highest health status, then this suggest that the needs for public health services of this group are lower, and thus the government may be justified in the conduct of health expenditure. None of this implies that health expenditure is the only form of public expenditure that has an impact on the right

to health, or that public expenditure is the only economic policy instrument that has an impact on the right to health. The enjoyment of the right to health is the outcome of numerous factors, and the audit does not seek to establish what those factors are. It has the more modest goal of investigating whether policy on public expenditure appears to be in compliance with obligations on the right to health.”<sup>14</sup>

Below we provide examples of the kind of data and analysis that may be used to audit macro-economic policies from the perspective of economic and social rights.. They are not exhaustive; our full analysis will be published in book-length form. Here we aim simply to give some pointers about the kind of analysis that can be done, using examples from Mexico and the U.S.

#### 4.1 Public Expenditure<sup>15</sup>

It bears restating that governments should not spend money in ways that violate the obligation to respect human rights; they should spend money in ways that promote and fulfill human rights. Indeed, the obligation to fulfill human rights specifically requires states to take appropriate budgetary measures (see 2.9), and expenditure is a vital budgetary measure. But what expenditure policies are appropriate? Progressive economists can help human rights advocates answer this question in two ways: by providing a conceptual framework to understand how public expenditure might make an impact on the fulfillment of economic and social rights; and by identifying relevant indicators and empirical evidence.

The conceptual framework provided by progressive economists is particularly valuable in addressing the argument that the best way to fulfill economic and social rights is to promote private-sector-led economic growth, and that this can be best done by minimizing public expenditure.<sup>16</sup> Progressive economists can show that economic growth does not necessarily benefit everyone, and to spread its benefits to all requires redistributive public expenditure. They can also show that it is not the case that there is a necessary trade off between public expenditure and economic growth. Contrary to what neo-classical economists often suggest, public expenditure can be complementary to private investment, rather than competitive. Thus the starting point should not be the minimization of public expenditure, in the hope of fulfilling economic and social rights through private-sector-led economic growth; rather it should be the expansion of well-designed public expenditure, that can fulfill economic and social rights through direct means (through delivery of public services, income transfers, and infrastructures) and indirect means (through supporting human rights compliant patterns of economic growth).

The indicators and empirical evidence that progressive economists suggest include both

macro-level data on public expenditure and micro level data on how individuals access public services, income transfers and infrastructure, and their levels of well being. In our study, we use the latter to cross-check the former, to consider whether the public expenditure can be reasonably judged as being used in a way that is supportive of human rights; but not as a way of trying to measure the extent of impact. Here, we identify – and illustrate with examples from our study – some of the kinds of evidence that are relevant for investigating different aspects of compliance with human rights obligations in relation to public expenditure.

#### 4.1.1 Progressive realization and non-retrogression

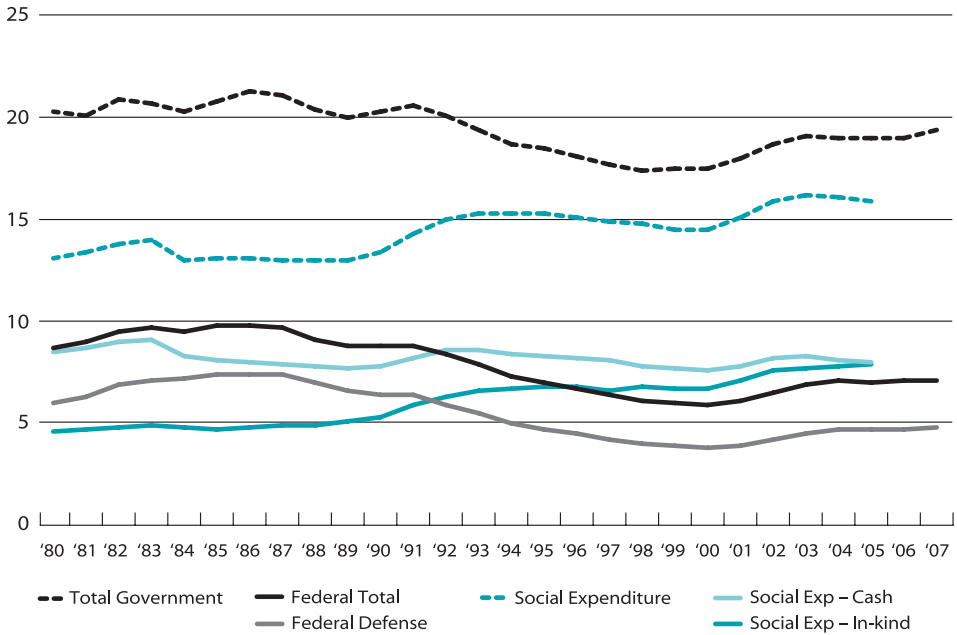
Given the government's obligation to achieve economic and social rights progressively, the question, here, becomes: Is the government managing public expenditures in a way that ensures the progressive realization of (and non-retrogression with regard to) social and economic rights?

##### *Obligation of conduct*

There is a range of indicators that show the level and trends in total public expenditure as a share of GDP. It is important to ask a range of questions of these indicators, including whether the share of total public expenditure is rising or falling, whether the different components of public expenditure are changing at the same rate, or whether some are expanding (or contracting) faster than others. Social expenditure (usually defined to include services like health and education, and social welfare income transfers) is particularly relevant for fulfillment of economic and social rights. We may further interrogate the data by looking at the share of public expenditure to GDP compared to similar countries. Through such a comparison, it is possible to ask whether a country is spending less or more than comparable countries; both in total and in relation to the amounts allocated to programs directly related to specific economic and social rights, such as health and education. (On the next page) (Below) are a few examples from the data that we have collected for the U.S.

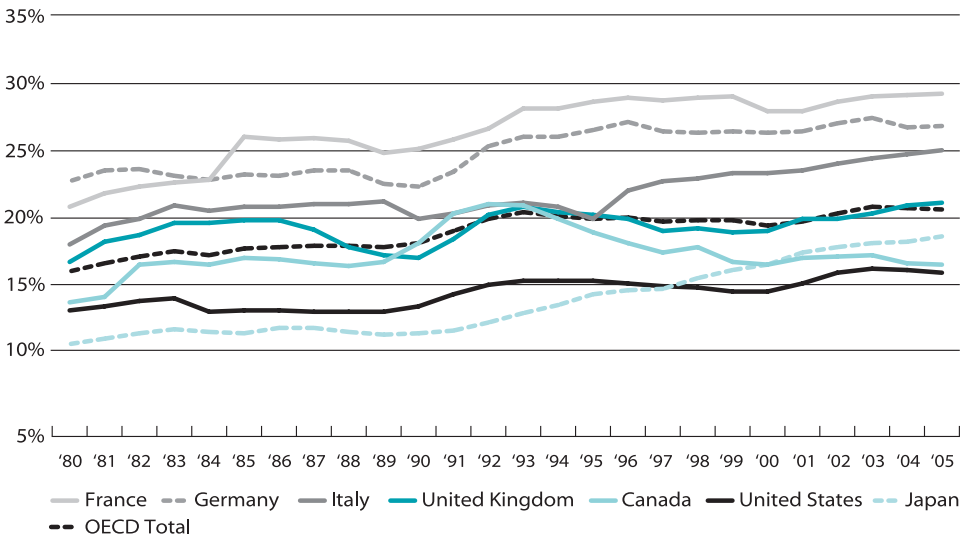
We can see in Figure 1 that public expenditure as a share of GDP fell in the 1990s in the U.S. from the levels reached in the 1980s. It has increased since 2000, but in 2007 was still below the share in 1980. Expenditure on national defense has followed a similar path; whereas, social expenditure has increased in relation to GDP, and in 2004 was above its share in 1980. These data suggest that that the conduct of public expenditure has been broadly consistent with progressive realization over the 25-year period, though more resources would have been available for social expenditure if the decrease in the share of military spending had been sustained. But has the U.S. been doing as well as comparable countries? (A country may be expanding social expenditure, but at a slower rate and from

**Figure 1** Total public expenditure, expenditure on national defense and social expenditure as share of GDP. U.S.



Source: BEA (2008) and OECD (2008a)

**Figure 2** Public social expenditure in selected OECD countries, as a percentage of GDP, 1980–2005. U.S.



Source: OECD (2008a)

a lower level than comparable countries). Figure 2 provides the relevant data. It shows that in most countries, there has been an upward trend, and that the U.S. has a lower share than Canada, France, Germany, Italy, and the UK in the period 1980-2005, and, since 1997, has also fallen below Japan. The share of public social expenditure in the U.S. is well below the aggregate share of OECD as a whole. This suggests that the countries comparable to the U.S. have been making more effort in mobilizing expenditure for social and economic rights. The upward trend in the U.S. has been from a low base.

It is useful to examine data on particular services that may be specifically associated with the fulfillment of particular rights, such as expenditure on health which is one of the factors that will facilitate the realization of the right to health. The right to health is defined in Article 12 of ICESCR as follows:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve full realization of this right shall include those necessary for:
  - (a) The provision for the reduction of the still-birth rate and of infant mortality and for the healthy development of the child;
  - (b) The improvement of all aspects of environmental and industrial hygiene;
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Table 1 provides data for 1999 and 2003 for the U.S. and a number of comparable countries on the shares of the public and private sectors in health expenditure. If we include private and public expenditure, the U.S. has the highest share of GDP that goes to health in both 1999 and 2003. However, the majority of the health expenditure comes from private sources (55.4%) in contrast to other industrialized countries where government expenditure constitutes a high share of total expenditure on health (ranging between 62.4% and 85.2%). The U.S. health system is unique among the developed OECD countries, because it does not have a national health insurance program, and relies heavily on the private sector. The government of the U.S. is placing much greater reliance on the private sector to fulfill the right to health than are governments of comparable countries.

**Table 1** Major Health Expenditure Indicators in Selected OECD Countries

	Total expenditure on health as % of gross domestic product		General government expenditure on health as % of total expenditure on health		General government expenditure on health as % of total government expenditure		Social security expenditure on health as % of general government expenditure on health		Private expenditure on health as % of total expenditure on health		Out-of-pocket expenditure as % of private expenditure on health	
	1999	2003	1999	2003	1999	2003	1999	2003	1999	2003	1999	2003
Australia	8.7	9.5	69.5	67.5	16.9	17.7	0.0	0.0	30.5	32.5	62.5	67.8
Canada	9.0	9.9	70.3	69.9	14.6	16.7	1.9	2.1	29.7	30.1	55.0	49.6
France	9.3	10.1	76.0	76.3	13.3	14.2	96.7	96.7	24.0	23.7	43.0	42.2
Germany	10.6	11.1	78.5	78.2	17.1	17.6	87.2	87.4	21.5	21.8	50.8	47.9
Japan	7.4	7.9	81.1	81.0	15.9	16.8	81.2	80.5	18.9	19.0	90.6	90.1
Italy	7.7	8.4	72.0	75.1	11.4	12.8	0.1	0.2	28.0	24.9	86.7	83.3
Netherlands	8.4	9.8	62.7	62.4	11.2	12.4	93.8	93.0	37.3	37.6	24.1	20.8
New Zealand	7.7	8.1	77.5	78.3	14.9	17.2	0.0	0.0	22.5	21.7	70.7	72.1
Norway	9.4	10.3	82.6	83.7	16.1	17.6	16.5	17.9	17.4	16.3	95.4	95.4
Spain	7.5	7.7	72.0	71.3	13.4	13.7	41.1	7.0	28.0	28.7	83.3	82.0
Sweden	8.4	9.4	85.7	85.2	12.0	13.6	0.0	0.0	14.3	14.8	93.8	92.1
Switzerland	10.5	11.5	55.3	58.5	16.7	19.4	72.1	69.3	44.7	41.5	74.5	76.0
UK	7.2	8.0	80.6	85.7	14.5	15.8	0.0	0.0	19.4	14.3	55.2	76.7
US	13.1	15.2	43.8	44.6	16.7	18.5	33.1	28.4	56.2	55.4	27.0	24.3

Source: The World Health Organization (2006) Annex Table 2

We can look at indicators of health status to see which approach is associated with better results.

### *Obligation of result*

Comparative data on health outcomes in U.S. and other rich countries is provided in Table 2, which also shows the rankings of countries on the Human Development Index (HDI). The U.S. has the lowest life expectancy among major developed nations. American children are more likely to die before age five than children in other developed countries. American men and women are more likely to die between ages fifteen and sixty. Whereas the probability of not surviving to age sixty is 11.6% for Americans, it is 6.9% for Japanese. Thus, an American is almost twice more likely to die before the age of sixty than is a Japanese. While only 79.4% of American men are likely to survive to age sixty five (as compared to 86.2% of Australian men), only 87% of American women survive to age sixty five (as compared to 93.8% of Japanese women and 93.5% of Spanish women). It is clear that the U.S. is far behind in all of the basic health indicators relative to comparable nations.

**Table 2** Major Health Outcomes Indicators

	HDI Rank	Life Expectancy at Birth-Years 2004	Probability of dying under age 5 (per 1000 live births) 2004	Probability of dying between 15 and 60 years – Male (per 1000) 2004	Probability of dying between 15 and 60 years – Female (per 1000) 2004	Probability at birth of not surviving to age 40 (% of cohort) 2000-2005	Probability at birth of not surviving to age 60 (% of cohort) 2000-2005	Probability at birth of surviving to age 65, female (% of cohort) 2000-2005	Probability at birth of surviving to age 65, male (% of cohort) 2000-2005
Australia	3	81	5	86	50	2.3	7.3	92.2	86.2
Canada	4	80	6	91	57	2.3	8.1	91	84.9
France	11	80		132	60	2.4	8.9	92.2	82.1
Germany	22	79	5	112	58	2	8.6	91	82.9
Japan	8	82	4	92	45	1.7	6.9	93.8	86.1
Italy	20	81	5	91	47	2.3	7.7	92.5	84.6
Netherlands	9	79	5	89	63	2.1	8.3	90.4	84.4
New Zealand	19	80	6	95	62	2.4	8.3	90	84.9
Norway	2	80	4	93	57	2.3	7.9	91.7	85.1
Spain	13	80	5	113	45	2.2	7.7	93.5	83.9
Sweden	6	80	4	82	51	1.6	6.7	92.3	87
Switzerland	7	81	5	87	49	2.2	7.2	92.6	86.1
UK	16	79	6	102	63	2.2	8.7	89.6	83.7
US	12	78	8	137	81	3.5	11.6	87	79.4

Source: World Health Organization (2006) Annex Table 1 and UNDP (2007)

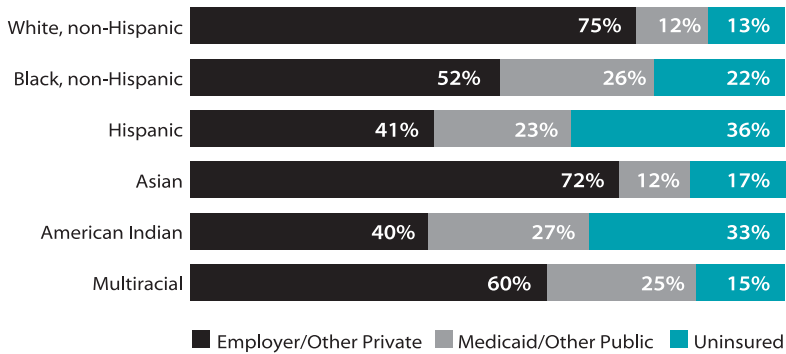
#### 4.1.2 Non-discrimination and equality

##### *Obligation of conduct*

To assess the obligation of conduct in relation to non-discrimination and equality in public expenditure, it is vital to have information on the distribution of public expenditure by different social groups, such as race, ethnicity, sex, income, employment, and citizenship.

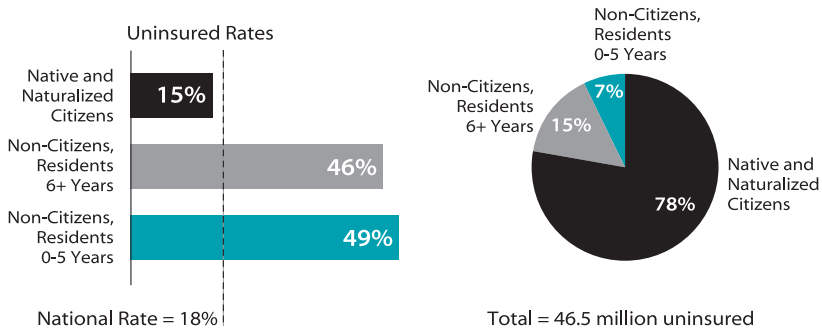
We illustrate this in relation to health insurance in the U.S. There are two major health programs in the U.S. run by the government: Medicare and Medicaid. Medicare was enacted in 1965 as the federal health insurance program for all people at or over the age of sixty five, regardless of their income or medical history, and expanded in 1972 to include people with permanent disabilities under the age of sixty five. In 2006, 13.7% of Americans, corresponding to roughly 43 million people, received Medicare Benefits. Of those, 15% of the people on Medicare were under age sixty five and permanently disabled; 17% were African-American or Hispanic; and 47% had incomes below 200% of poverty level of income.<sup>17</sup> Medicaid was established in 1965 to provide insurance to low-income Americans. Medicaid is a joint

**Figure 3** Insurance Coverage by Race/Ethnicity. U.S., 2006



Source: CMS and HHR (2007). Data may not add up to 100% due to rounding.

**Figure 4** Insurance Coverage by Citizenship Status. U.S., 2006

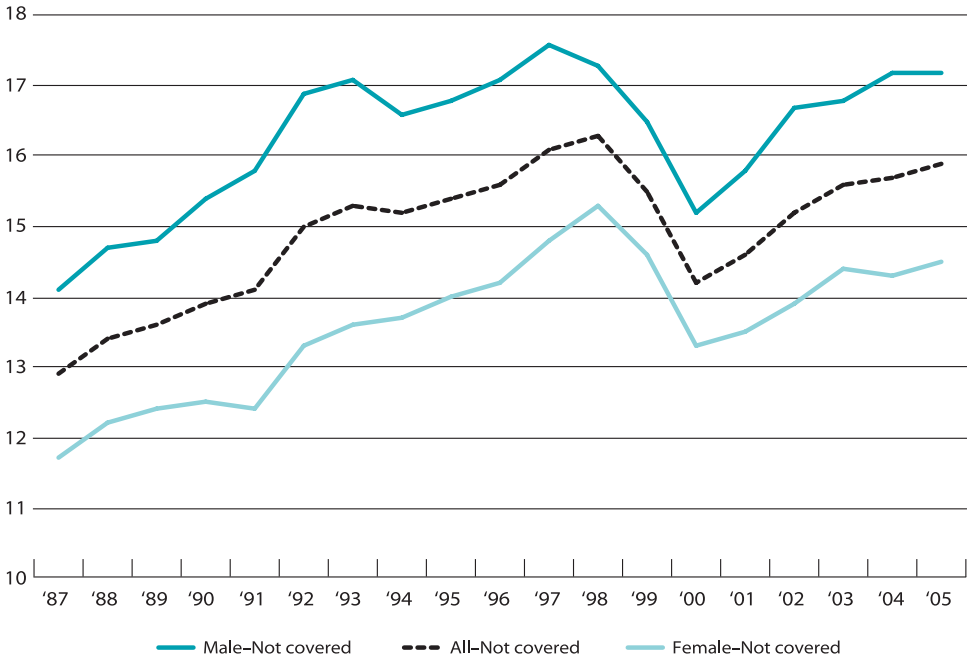


Source: CMS and HHR (2007)

program that is financed by the federal and state government. People that do not fall into the social groups eligible for Medicare and Medicaid must rely on private health insurance, which is too expensive for many people. In the U.S., there is not a system that guarantees that everyone has health insurance.

The Figures 3, 4 and 5 show the state of health insurance coverage among Americans and the incidence of being uninsured for different groups in the U.S. – disaggregating by race, ethnicity, gender, citizenship and income groups. As it is clear from the figures for 2006, Hispanics, American Indians and non-Hispanic Blacks have disproportionately higher rates of being uninsured. Uninsurance rates are significantly higher for non-citizens, with almost half of the non-citizens being uninsured, whereas the rate is 15% for citizens. Women have lower rates of being uninsured than men. It is clear from the evidence that the government

**Figure 5** Insurance Coverage by Gender. U.S.



Source: US Census Bureau (2008a)

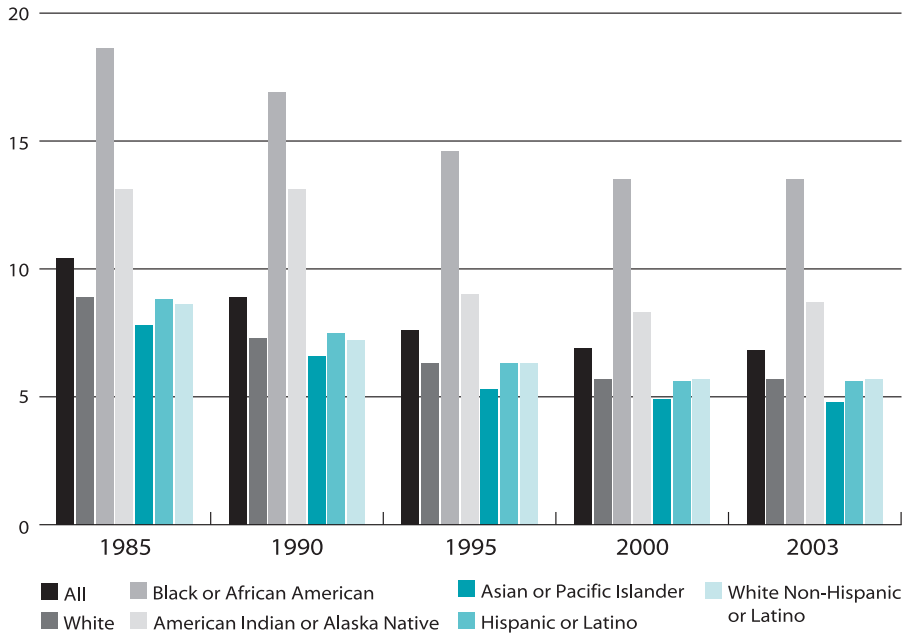
does not insure equal access to health insurance and is not in compliance with the obligation to conduct policy in a non-discriminatory and equal way.

***Obligation of result***

We might imagine that disproportionate spending in favor of one group could result in reduction in inequality, for example, if that group were historically under-served. This is why it is important to cross-check findings on conduct with data on outcomes, and to ask whether the gaps between groups are falling or rising over time. To assess this requires relevant well-being indicators which are similarly disaggregated by, for instance, sex, race, ethnicity, income group, and citizenship status.

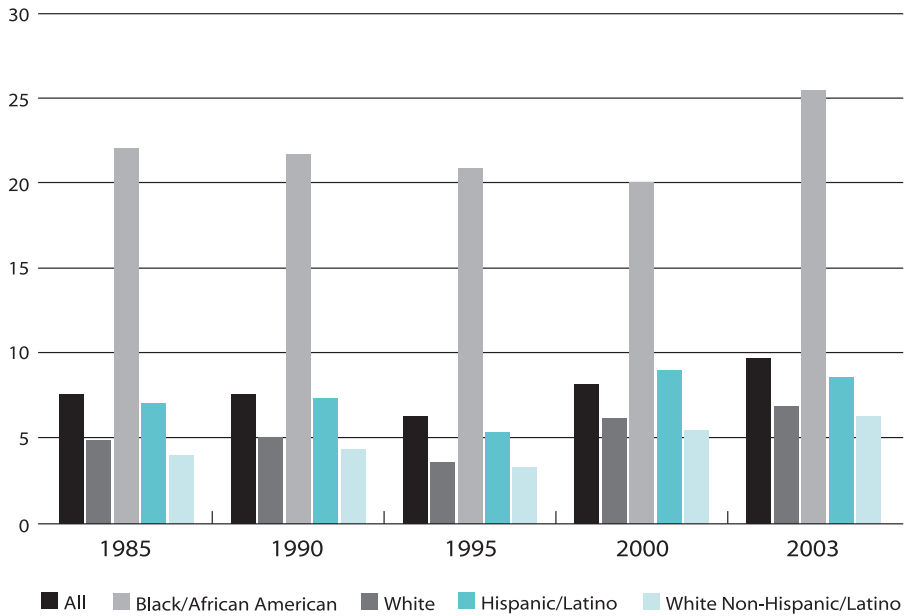
Here we illustrate with data on health status in the USA. Figures 6 and 7 show infant and maternal mortality rates by race and ethnicity over time. The rates are higher for ethnic minorities than for white Americans in each of the years shown. Although there is decline over time for most of the groups, the gap across racial and ethnic groups does not close. It is particularly noteworthy that maternal mortality among African Americans rose between 1995 and 2003.

**Figure 6** Infant Mortality Rate by Race and Ethnicity. U.S.



Source: NCHS (2006), Table 19

**Figure 7** Maternal Mortality Rates by Race and Ethnicity. U.S.



Source: NCHS (2006), Table 43

### 4.1.3 Minimum core obligations

#### *Obligation of conduct*

Resource allocation and structure of entitlements must be designed with the aim of guaranteeing the population the enjoyment of minimum essential levels of economic and social rights. Important questions here include whether the government has introduced benchmarks for a minimum core (such as a poverty line), how adequate these benchmarks are,<sup>18</sup> and whether there is a legal entitlement to the minimum essential level of food, clothing and housing (specified as rights in Article 11 of ICESCR).

Here we illustrate with respect to food in the U.S. The major public program designed to provide access to minimum levels of food in the U.S. is the Food Stamps Program which almost eliminated hunger in the United States in the 1970s.<sup>19</sup> Despite a subsequent decline in the quality of the food stamp program, manifested by the increasing difficulty of attaining and using food stamps, there were 26.5 million people living in 11.8 million households who received food stamps in the United States each month in fiscal year 2007: 49% were children, 29% were working-age women, 14% were working-age men and 9% were elderly adults.<sup>20</sup> Legal immigrants who are children or disabled can get food stamps, as can immigrants who have legally resided in the United States for at least 5 years. Other legal immigrants and any undocumented immigrants are ineligible for food stamp benefits. However, Food Stamps do not reach all those who need them, and are insufficient to provide for all the food needs of those who do access them. As the NGO Advocates for Human Rights points out, “the Food Stamp Program... falls short in providing comprehensive food assistance to the hungry. For example, the average benefit of the Food Stamp program is equivalent to 99 cents per person per meal. The United States Department of Agriculture estimates that only six in ten of those eligible under current rules are participating in the program.”<sup>21</sup> This evidence suggests that the Food Stamps program is not adequate to comply with the obligation of conduct to ensure access to minimum levels of food.

#### *Obligation of result*

Information on the obligation of conduct can be cross-checked with information related to fulfillment of rights to food, housing and adequate standard of living, using indicators such as proportion of population with incomes below official poverty lines, proportion of population subject to food insecurity, and proportion of population who are homeless. Here we focus on food security.

Data on the prevalence of food insecurity in the USA confirm that the Food Stamps program has not eliminated food insecurity. The US Department of Agriculture defines a food-secure household as one with access, at all times, to enough food for an active, healthy life.

Food-insecure households do not have access to enough food to meet basic needs at all times. Food-insecure households are further classified based on the severity of their circumstances into low food security (food insecurity without hunger) and very low food security (food insecurity with hunger). Adults in food-insecure households are so limited in resources to buy food that they are running out of food, reducing the quality of food their family eats, feeding their children unbalanced diets, skipping meals so their children can eat, or taking other steps that impair the adequacy of the family's diet. Households with very low food security are those in which adults have decreased the quality and quantity of food they consume, because of a lack of financial resources, to the point at which they are likely to go hungry, at times; or those in which children's intake has been reduced, due to a lack of family financial resources, to the point at which children are likely to go hungry, at times.

The data collected through CPS food security surveys for the years 1995-2007 makes sobering reading. Food insecurity increased from 10.1% in 1999 to 11.9% in 2004, declined to 11% in 2005, was almost the same at 10.9% (12.6 million households) in 2006, and increased to 11.1 percent (13 million households) in 2007. The prevalence of very low food security (food insecurity with hunger) increased from 3% in 1999 to 3.9% in 2005. It was essentially unchanged in 2006 from 2005 with 4.0% of all U.S. households having very low food security (4.6 million households), and slightly increased to 4.1% (4.7 million households) in 2007.<sup>22</sup> Early estimates for 2008 suggest that the incidence of food insecurity will be substantially higher.

The persistence of food insecurity means that obligations of conduct are not being met. At the very least, action should be taken to eliminate barriers to participation in the Food Stamps program, and to increase the value of the stamps. But there is a range of other actions that present themselves to further food security, particularly, for the poorest families.

#### **4.1.4 Accountability, Participation and Transparency**

##### ***Obligation of conduct***

Governments have the obligation to ensure that procedures for the allocation of public expenditure are transparent and accountable, and that there are opportunities for citizens to participate in public discussion. Governments should make information on public expenditure available in a format that can be easily understood and relates to ultimate policy objectives. Furthermore, they should have a good audit process – and legislative scrutiny – and scope for public participation in decision making on public expenditure in forums that are fully inclusive (and not merely accessible to lobbyists).

The International Budget Project has produced an Open Budget Index, the first initiative

that offers an independent view of budget transparency. U.S. ranked sixth, with a score of 81, following France, U.K., New Zealand, South Africa and Slovenia. This group is categorized as providing extensive information to citizens and performing well in terms of ensuring the accountability of a government to its citizens. U.S. procedures are limited in that they do not produce a pre-budget statement or a citizen's budget statement. A pre-budget statement enables public discussion and consultation before a detailed budget is sent to the legislature. France, New Zealand, Sweden and U.K. all provide a pre-budget statement. A citizens' budget statement explains the budget in terms a non-expert can readily grasp, thus it helps the ordinary people understand the budget process. France, U.K. and Sweden produce and distribute such a statement. "A Citizens Guide to Federal Budget" was published in the U.S. for a number of years until 2003.

### ***Obligation of result***

The key issue here is whether citizens are able to use their right to information about public expenditure. Ordinary people should be able to hold the government accountable, and have opportunities to participate in expenditure decisions, and in monitoring and evaluating outcomes. In the case of the U.S., many documents on budget are made available on the internet. Furthermore, there is a law providing for a right to information. There are, however, some problems regarding its implementation, as revealed in the "Open Budget Project questionnaire on the United States":<sup>23</sup>

"Although the right has been codified into law, it is sometimes not possible for citizens in practice to obtain access to government information, including budget information. The citizen has access to all the information the government publishes on the budget. However, internal memos detailing assumptions used in preparing estimates, detailed proposals used to prepare the budget and internal decision making memos and information are considered pre-decisional and not available to the public or to the congressional overseers. The detailed *Justification of Estimates* presented by agencies to appropriations committees are also not uniformly available to the public, although this has improved in recent years."

### **CONCLUSION**

In the face of the data we have presented, a strong case can be made that, on balance, the U.S. government has been delinquent in its human rights obligations, in the way that it has allocated public expenditure. This conclusion is made all the more robust by the use of data that shows how the U.S. compares with other developed countries across a range of metrics, and, by disaggregating national figures, shows that the discrimination faced by the poor, people of color and the elderly has not been eliminated. The level and distribution of public expenditure is the result not of inevitable and necessary economic choices, but of mutable and contingent ones. Equipped with this knowledge, advocates and

economists might be in a better political position to demand compliance with existing human rights regulations.

## 4.2 Taxation<sup>24</sup>

Taxation is another important budgetary measure. It is vital to the realization of human rights because it enables governments to finance public expenditure in a long-term sustainable way. (Public expenditure can also be financed through other revenue sources and through government borrowing, but there are limits to the long-term sustainability of these sources of finance).

Clearly governments should not raise taxes in ways that violate the obligation to respect human rights; they should raise them in ways that enable fulfillment of human rights. But what tax measures are appropriate? Progressive economists can help human rights advocates assess this in two ways: by providing a conceptual framework to understand how taxation might impact on the fulfillment of economic and social rights; and by identifying relevant indicators and empirical evidence.

The conceptual framework provided by progressive economists is particularly valuable in addressing the argument that the best way to fulfill economic and social rights is to promote private-sector-led economic growth, and that this can be best done by minimizing taxation, so as not to reduce incentives to engage in paid work, to save, and to invest. Heterodox economists point to the variety of motives for engaging in paid work, saving and investing, and argue that a well-designed and fair tax system is unlikely to have a substantial disincentive effect.

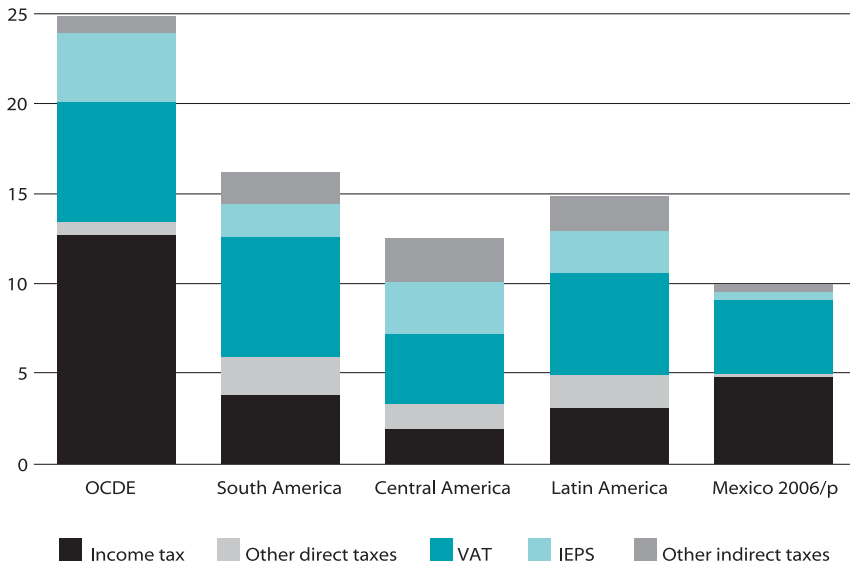
Taxation is appropriately judged in terms of obligation of conduct rather than of result, because its implications for the realization of specific economic and social rights take place primarily through the public expenditure it finances.

Here we identify some of the kinds of evidence relevant to investigate the different aspects of compliance with human rights obligations in relation to taxation, and illustrate with examples from both the U.S. and Mexico.

### 4.2.1 Maximum available resources

First we consider how far tax policy is in compliance with the obligation to use maximum available resources to realize economic and social rights. One important indicator is the trend in the ratio of tax revenue to GDP over time and in comparison to other countries.

**Figure 8** Tax Revenue in OECD Countries, America and Mexico, 2004 (% of GDP). Mexico.



Source: Ministry of Finance (2007) Mexico

Other indicators that can be used are share of tax revenue generated by different taxes, e.g. direct vs. indirect taxes; and taxes on people vs. taxes on business corporations. Figure 8 shows revenue from different taxes as a share of GDP in Mexico and the average for other Latin American countries. Mexico's tax-to-GDP ratio is very low compared to other countries, and has fallen below the level achieved in 1980 as shown in Table 3.

It is true that the government of Mexico derives a substantial proportion of its revenue from oil, but this revenue fluctuates in the short run with the price of oil, and in the long run will diminish, as oil reserves decline. Thus for sustainability, tax revenue needs to rise.

Figures 9 and 10 show the situation in the USA.

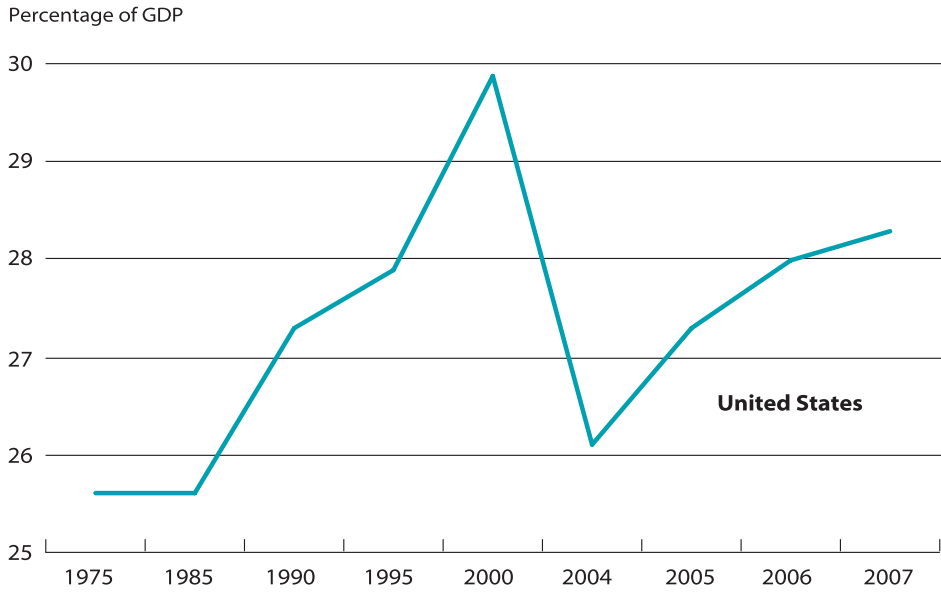
**Table 3** Mexico's Tax revenue as % of GDP\*

1980	1985	1990	1995	2000	2005	2007
13.3%	9.4%	11.3%	9.3%	10.6%	9.7%	10.3%

\*This figure does not include oil revenue

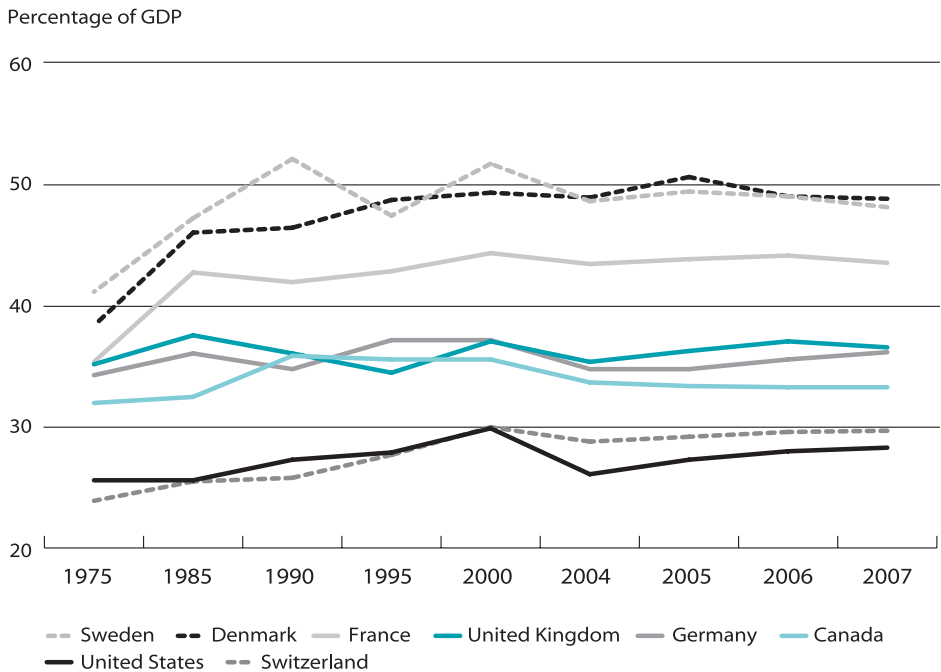
Source: Ministry of Finance (2007)

**Figure 9** Total Tax Revenue as Percentage of GDP: United States. U.S.



Source: OECD (2008b)

**Figure 10** Total Tax Revenue as Percentage of GDP, 1975-2007: Country Comparison. U.S.



Source: OECD (2008b)

As Figure 9 above shows, between 2000 and 2004, total tax revenue as a percentage of GDP plummeted from nearly 30% to around 25%. This means that in a mere four-year period, tax revenues fell to almost a 30-year low. Since then, there has been some recovery in tax revenue as a percentage of GDP, mainly due to increased revenue from taxes on corporations, due to the growth of corporate profit, but this has only served to restore the ratio to the level of 1995. As Figure 10 above shows, many comparable countries also saw a decline in tax revenues beginning in 2000. However, the decline in the U.S. is much sharper than in other countries, and the percentage of total tax revenue to GDP in the U.S. was already significantly lower than that of other OECD countries (the U.S. percentage was 28 in 2006 compared to 49.1 in Sweden).

In both Mexico and the U.S., the data suggest that taxation has not been used effectively to mobilize maximum available resources, and that there has been retrogression in the amount of tax revenue generated over time.

#### 4.2.2 Non-discrimination and equality

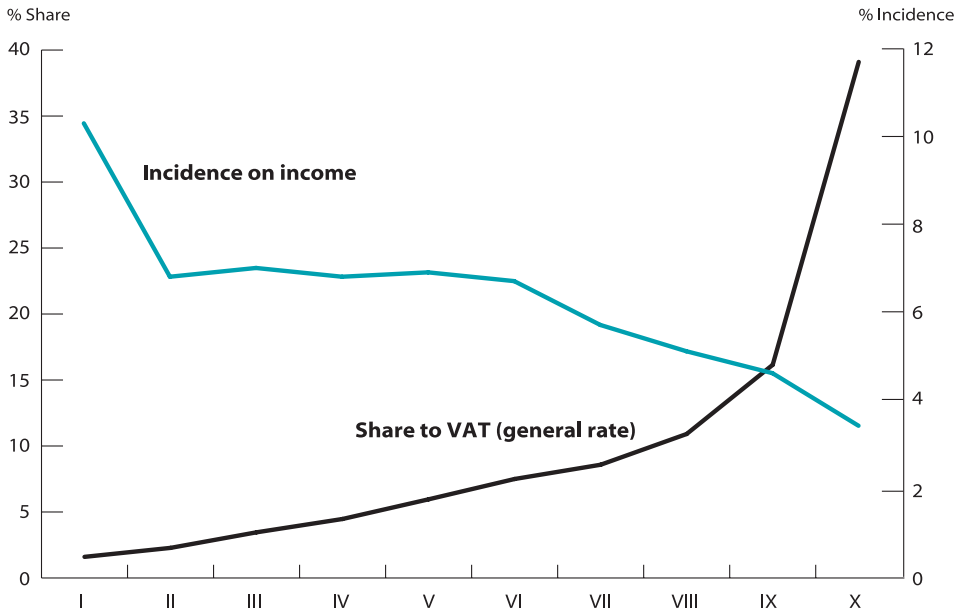
The obligation of conduct is to ensure that tax laws and collection measures do not discriminate, either explicitly or implicitly, on the basis of gender, race, sexual orientation, property ownership, citizenship, and civil status. Relevant indicators include: whether or not all social groups are treated equally in the design and implementation of tax policies; whether or not tax laws create incentives or disincentives for equality-promoting behavior (such as equal sharing of unpaid work and labor-force participation by household members); and the degree to which the tax structure is progressive or regressive in terms of shares of household income that rich and poor households pay in taxes.

On the next page is some data from Mexico and the U.S. that show the incidence of taxes on different income groups (i.e. the share of their household income that rich and poor pay as the tax).

As we see in Figure 11, the incidence of Value Added Tax (VAT) in relation to household income is inversely related to the levels of income. Households in lower income groups pay a higher share of their income in VAT. (Not surprisingly, the share of total VAT revenue paid by the lowest income groups is lower than the share paid by rich, due to the lower level of consumption expenditure of poor households.)

In the U.S., sales taxes are applied at the state and local level, but not at the federal level. In general, in the U.S., state and local taxes, sales taxes, and excise taxes are regressive. An Institute on Taxation and Economic Policy (ITEP) study was conducted that looked at the

**Figure 11** Value Added Tax. Mexico.



Source: Ministry of Finance (2003) Mexico

tax incidence in all fifty of the United States and found that in 2002, “the average state and local tax rate on the best-off one percent of families is 7.3 percent before accounting for the tax savings from federal itemized deductions. After the federal offset, the effective tax rate on the best off one percent is a mere 5.2 percent. The average tax rate on families in the middle 20 percent of the income spectrum is 9.9 percent before the federal offset and 9.6 percent after – almost twice the effective tax rate the richest pay. The average tax rate on the poorest 20 percent of families is the highest of all. At 11.4 percent, it is more than double the effective rate on the very wealthy.”<sup>25</sup>

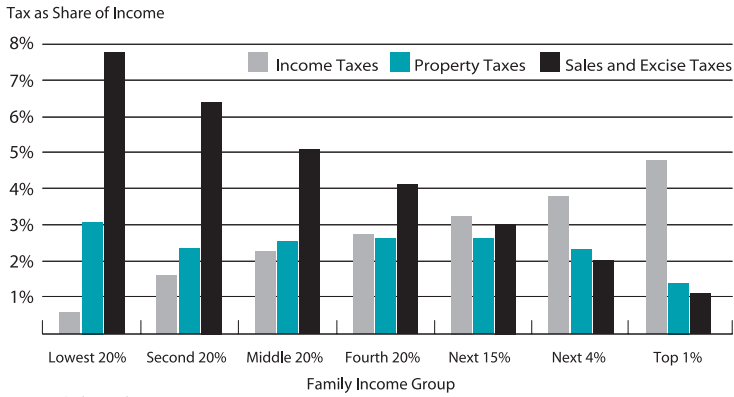
The data on the right clearly indicate the regressive nature of state and local taxes. Those with the least wealth, and thus lowest economic status, pay a bigger share of their income in these taxes than do those with the most wealth and highest economic status. The lowest income families are disproportionately from ethnic minorities and/or headed by women. Thus there is implicit discrimination by race and sex, as well as by property.

#### 4.2.3 Accountability, Participation and Transparency

##### *Obligation of conduct*

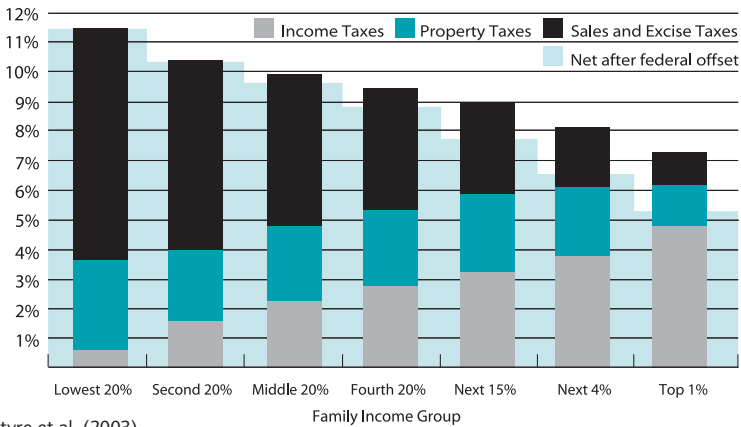
The obligation of conduct is to ensure that tax codes are transparent, tax administration is accountable, and opportunities are provided for broad participation in public discussion

**Figure 12** Comparing Types of Taxes: Averages for All States (before federal offset). U.S.



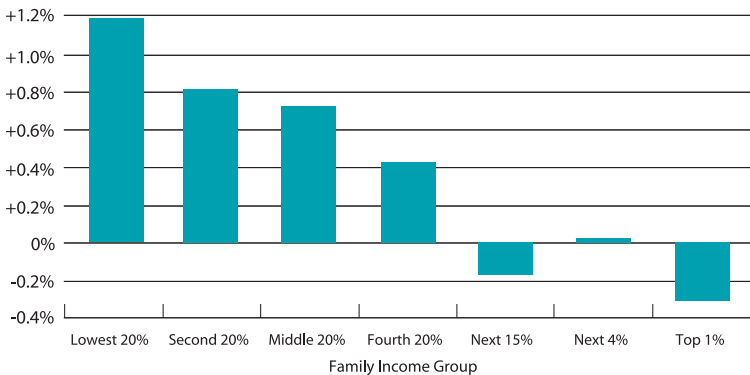
Source: McIntyre et al. (2003)

**Figure 13** State and Local Taxes in 2002, All States: State and Local Taxes Imposed on Own Residents as Shares of Income. U.S.



Source: McIntyre et al. (2003)

**Figure 14** Average Changes in State and Local Taxes as Shares of Income: All States, 1982-2002 (After Federal Offset). U.S.



Source: McIntyre et al. (2003)

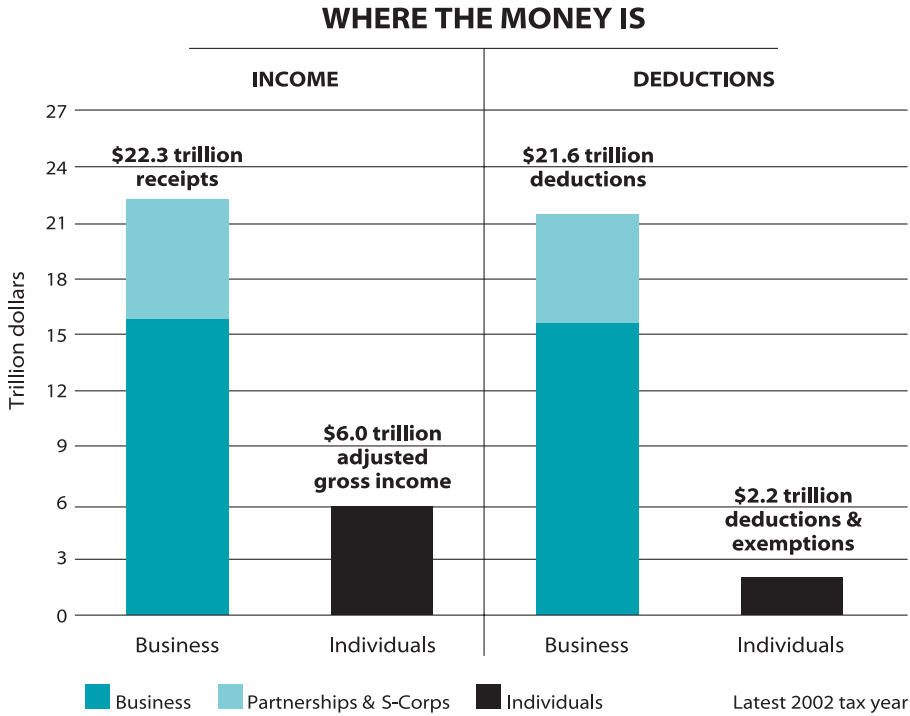
about appropriate tax policy. Relevant indicators relate to the provision of information on, scope of consultation about, and implementation of tax law. Ordinary citizens must be able to realize their right to information about and voice in tax policy. We may ask if the tax code is transparent and easy to understand so that everyone can easily claim the tax allowance due to him/her; or is it so complex that it is necessary to hire a specialist tax accountant or lawyer.

In the U.S., Congress and the executive branch are jointly charged with setting tax policy. The Internal Revenue Service (IRS), according to the *Freedom of Information Act*, is charged with providing information about that tax policy to the public. The Congressional Budget Office (CBO) and the IRS together produce annual statistics, particularly on tax progressivity, that are available to the public, but do not include information about corporate income tax, the estate tax, or the payroll tax. There is also an IRS Oversight Board, as well as a National Taxpayer Advocate, an independent federal agency that acts as a watchdog over the IRS. The Advocate reports to Congress twice a year. In her most recent report the National Taxpayer Advocate, Nina Olson focused on issues of transparency. In addressing the complexity and opaque nature of U.S. tax codes, Olson juxtaposed the difficulty of ordinary tax payers in navigating tax provisions with the ease with which those who are able to afford accountants – particularly corporations – are able to reduce their tax contributions. Olson noted that:

“The complexity of the tax code is a driver of noncompliance because it creates loopholes that aggressive taxpayers can exploit. Corporate tax shelters and abusive schemes pursued by individual taxpayers exist largely because of ambiguities in the law. Tax-law or procedural complexity is also responsible for the significant majority of taxpayer reporting errors. For taxpayers seeking to exploit loopholes, complexity presents countless opportunities. Many law firms, accounting firms, and investment banking firms have made tens of millions of dollars by scouring the Code for ambiguities and then advising taxpayers to enter into transactions, with differing levels of business purpose or economic substance, to take advantage of those ambiguities. The IRS devotes significant resources to identifying these transactions and challenging them, where appropriate, but many are legitimate under existing law and many more fall into a grey area. A simpler tax code could reduce these administrative challenges enormously. Moreover, traditional economic analysis focuses on the goals of equity and efficiency in writing the tax laws. To those, I would add transparency. To the extent we can revise the Code to provide greater transparency of payments of income without imposing undue burden on taxpayers, the higher compliance rates associated with third-party information reporting can be more readily achieved in a broader array of transactions.”<sup>26</sup>

The graph in Figure 15 clearly shows that businesses have a greater ability than individuals to obtain tax deductions.

**Figure 15** Corporate Share of Federal Income Tax Collections. 2007. U.S.



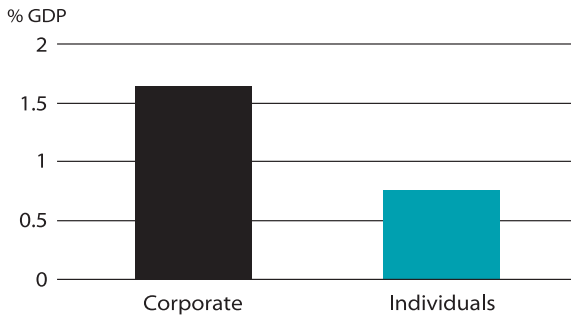
Source: TRAC IRS (2005)

Moreover, the numbers of IRS audits of corporations has fallen dramatically over time, and there has been a decrease in the penalties levied against corporations for negligence and fraud.

One problem in securing greater accountability and participation in tax policy is that the data and reports that are made available by the IRS are often very complex and extremely difficult for the non-specialist to comprehend. There are several civil-society tax-justice groups and policy think tanks that present tax reports in plain language, but they are limited by their meager funding.

In the most recent studies of tax collection in Mexico,<sup>27</sup> the authors emphasize the importance of differentiating between fiscal evasion – which is considered a crime because the individual or entity evades paying their tax obligations – and fiscal avoidance – which, in the strictest sense, consists of taking advantage of the legal loopholes to reduce the tax burden paid. These studies establish that the complexity of tax legislation and the presence of exceptions in the treatment of tax obligations by sector can create incentives for contributors to fail to meet their fiscal obligations.

**Figure 16** Tax Evasion and Avoidance in Mexico (2003). Mexico.



Sources: Catalá, Sempere & Sobarzo (2005); Bergman, Carreón & Hernández-Trillo (2006)

Given the particular characteristics of these fiscal omissions, it is most likely that individuals engage in evasion while corporations engage in avoidance. The response by the tax authorities to both types of failures to meet tax obligations is also differentiated. Indeed, the damage to the public purse estimated as a result of corporate avoidance is greater than that for individual evasion (see Figure 16): corporate avoidance is estimated at 1.5% of GDP, whereas individual evasion is estimated at a little over 0.5% of GDP in 2003.

Despite the contradictions, the behavior of the tax authority in Mexico is similar to the IRS in the U.S. in terms of the attention to and treatment of tax evasion. It is worthwhile to consider that evasion is a problem related to the efficiency of the agency responsible for tax policy, but that avoidance is a problem of the consistency of the tax code and legislation.<sup>28</sup>

### **CONCLUSION**

The tax code might not seem at first sight an appropriate or fruitful domain to apply economics and human rights analysis, but the discussion above suggests that – as with government expenditure – in the U.S. and Mexico, the collection of resources with which to provide social services is discriminatory. It provides systematically different and more favorable taxation benefits to the rich than the poor, to men than women, and to corporations than to individuals. This is, in no small part, because of the deficit of transparency within the tax code – the difficulty in understanding the tax code is more than just a once-yearly headache; it is an example not only of a direct violation of the principle of accountability and transparency, but also the means through which other human rights principles are violated. Again, by bringing the analysis together in this fashion, it is possible to make links between seemingly disparate areas of inquiry to provide a stronger footing for policy advocacy and change.

### 4.3 Fiscal and Monetary Policy: Macroeconomic Dimensions<sup>29</sup>

Fiscal policy and monetary policy have an important impact on the fulfillment of economic and social rights through their impact on overall demand and supply, affecting the level of production of goods and services and the quantity and quality of paid employment. Governments are obliged to conduct these policies in a way that is appropriate to fulfill economic and social rights. Progressive economists consider that capitalist economies have a built-in tendency to create less aggregate demand than is required to use all the productive capacity in an economy. This leads to unemployment or underemployment and results in a lack of decent paid work and a failure to realize the right to work. Many progressive economists argue that fiscal policy can be used to counteract this tendency. Here we introduce the principles of their argument for those who are not familiar with them.

Public expenditure affects the level of aggregate demand in the economy because it puts money in people's hands through payment of wages and salaries, materials and equipment, and income transfers, such as pensions or child benefits. This spending has a multiplier effect, creating demand for goods and services from businesses, as government employees, suppliers and beneficiaries spend their money on the goods and services that these businesses provide. At the same time, the government takes money out of individuals' and businesses' hands through taxation and other revenue-generating methods (e.g. fees for services, sales taxes, licensing fees etc).

The net effect on aggregate demand in the economy depends on the relation between total expenditure and revenue. If there is a budget deficit, the effect on aggregate demand will be expansionary.<sup>30</sup> If there is a budget surplus, the effect on aggregate demand will be contractionary.<sup>31</sup> If the budget is balanced, the effect on aggregate demand will not be neutral; it will be expansionary. Even if expenditure is equal to revenue, there is still a positive multiplier effect on aggregate demand because the government will tend to spend all of its income, whereas many businesses and households will tend to save some of their income. But the smaller the total public expenditure, the smaller this effect will be.

The budget also has an impact on the aggregate supply in an economy.<sup>32</sup> Some of the spending creates physical and human resources (such as transportation infrastructure and a trained and healthy labor force) that increase the productive capacity of an economy. The revenue side of the budget may also have an impact on aggregate supply through the impact of taxation on incentives to produce. If high levels of income tax and profits tax discourage people from producing, aggregate supply will be reduced. Neoliberal economics emphasizes this potential effect. However, this negative effect is likely to be small in relation to the positive effect that public investment has on aggregate supply. Progressive economists

argue that the bigger problem is deflationary bias in fiscal policy, which happens when fiscal policy focuses on achieving budgetary objectives such as a balanced budget or a budget surplus, without regard to employment levels.

In countries that do not have unemployment benefits or other forms of social security, usually only better-off people can afford to be openly unemployed. Poor people, conversely, have to find some way to survive through informal employment, even though this informal employment may be very poorly paid and insecure. This situation fails to meet the minimum elements of the right to work and the right to an adequate standard of living as defined in ICESCR, which include: non-discrimination in access to employment; equal pay for equal work; freedom of association; prohibition on arbitrary dismissal; adequate minimum wage; freedom from compulsory or forced labor; equal opportunity for promotion or advancement; and the right to rest and leisure.

The level of aggregate demand, and hence the level of output and employment, and the standard of living are also affected by monetary policy. Monetary policy includes the macro-economic policies adopted by a country's Central Bank on interest rates, exchange rates and money supply. It is the duty of Central Banks to safeguard the operation of the banking system by acting as a last-resort lender, providing sufficient credit for the commercial banks to continue lending to businesses and households; and regulating the banking system to avoid financial crisis. Currently, many Central Banks focus entirely on the control of inflation and ignore employment and the provision of an adequate standard of living, though this was not the case in the past. Although hyperinflation makes it impossible to realize economic and social rights, this does not mean that the best rate of inflation is zero. There is such a thing as a rate of inflation that is *too low* because very low rates of inflation come at the cost of high unemployment and a lack of decent work. Countries have, over the last decade, adopted monetary policies that focus on lowering inflation with little regard to the impact of real factors such as poverty, employment, investment or even economic growth. In many cases, this policy has generated significant costs such as slow growth, sluggish employment generation and high real interest rates, with little or no benefits.<sup>33</sup> Central Banks also have led the liberalization of financial markets, making it easier for finance to be moved across national borders, and for foreign banks to take over local banks. This means that fiscal and monetary policy has been conducted with an eye to how it will affect a government's reputation in international financial markets, and little attention has been paid to the impact on the right to work.

It is also important to note that monetary and fiscal policy criterion are not always under the control of national governments and are set by International Financial Institutions such as the International Monetary Fund. Balanced budgets, inflation targets and opening up of the financial sector are conditions that are imposed on countries as a part of a loan agreement.

**The right to work – ICESCR Article 6<sup>34</sup>**

- “1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”

**The right to an adequate standard of living – ICESCR Article 11**

- “1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
  - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
  - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

**ILO Fundamental Principles and Rights at Work:<sup>35</sup>**

- “(a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) elimination of all forms of forced or compulsory labour;
- (c) effective abolition of child labour; and
- (d) elimination of discrimination in respect of employment and occupation.”

**Table 4** Macroeconomic Strategies in Mexico (1958-2007) *See Page 42*

<b>Stabilizing Development Period (1958 – 1982)</b>	
<b>Fiscal Policy</b>	<p>Increasing expenditures on public investment to increase access to basic infrastructure and social services.</p> <p>Price subsidies for public goods and services in order to benefit private enterprise and the general population.</p> <p>Shift towards a moderate public deficit that should be compatible with the ability to bear and finance debt in such a way as not to contribute to inflationary pressure.</p>
<b>Tax Policy</b>	<p>Regressive in character. Focused primarily on consumption in such a way that the tax burden, exemptions and subsidies favored firms and wealthier segments of the population.</p> <p>1970s: Increasing dependence on oil revenues in the public purse. “Petrolization” of the public finances.</p>
<b>Financing Strategies</b>	<p>Internal public debt (emission of bonds and regulated deposits by the Central Bank).</p> <p>1970s onwards: Inflationary financing, oil-backed currency instruments and growing external debt.</p> <p>1978: Creation of CETES bonds for financing through Open Market Operations.</p>
<b>Monetary Policy</b>	<p>Restrictive monetary policy oriented towards the free convertibility of the peso at a fixed parity with the US dollar (until the decade of the 70s).</p> <p>Legal reserve requirements<sup>36</sup> are the focus of monetary policy: the goal is to control liquidity in the economy through the quantity and not the price (interest rate) of money in circulation.</p> <p>Active and passive interest rates are set in accordance with liquidity requirements.</p>
<b>Banking Policy</b>	<p>Selective credit policy through reserve requirements in order to channel resources directly or through funds that are dedicated to expand certain strategic sectors (agriculture, manufacturing exports, tourism infrastructure, small and medium industry).</p> <p>This policy made it possible for at risk sectors (such as agriculture) to gain access to credit.</p> <p>Development Bank (a national financial institution) is set up as a financial agency for the Federal Government.</p>
<b>Role of the state</b>	<p>A strong state.</p>

**Table 4** Macroeconomic Strategies in Mexico (1958-2007), *continued*, See Page 42

<b>Neo-liberal Period (1983 – 2007)</b>	
<b>Fiscal Policy</b>	<p>Targeted social expenditure and reduction in public expenditure.</p> <p>Shift towards a balanced budget and a surplus in the primary balance.</p> <p>Passing the Federal Law for Fiscal and Treasury Responsibility (Ley Federal de Responsabilidad Fiscal y Hacendaria) (2006) formalizing commitments to a zero deficit.</p>
<b>Tax Policy</b>	<p>The regressive bias in the tax system increased with the shift towards indirect taxes from direct taxes.</p> <p>Modernization of the tax system (SAT).</p> <p>The dependency on income from the sale of oil increases.</p>
<b>Financing Strategies</b>	<p>Instruments of internal debt: emission of treasury bonds ( Tesobonos ) amortized in US dollars.</p> <p>Financing that seeks to complement public investment with private investment in infrastructure projects. For example, PIDIREGAS (infrastructure projects in the oil and electrical sectors financed by private investment).</p> <p>Reduction in the size of the public sector with the privatization of parastatal enterprises (reduced from 1155 parastatals in 1982 to 252 in 1994).</p> <p>Privatization of pension and social security funds (AFORE).</p>
<b>Monetary Policy</b>	<p>1993: Central Bank is made autonomous.</p> <p>1988-1994 exchange rate used as a nominal anchor for inflation</p> <p>Inflation targeting policy through the management of the short term interest rate (until January 2008) and periodic publication of monetary data.</p> <p>All other interest rates are left to adjust freely.</p> <p>Freely floating exchange rates.</p>
<b>Banking Policy</b>	<p>Reduction of the reserve requirements until they are eliminated.</p> <p>Improvement of the institutional and regulatory framework.</p> <p>Banking bailout after the banking crisis of 1994. FOBAPROA is converted into the IPAB (Institute for the Protection of Bank savings) (1999).</p> <p>Foreign ownership of the banking sector: foreign ownership rises to 85 percent of all banking assets.</p> <p>Private institutions predominate and the importance of the public development banking sector diminishes (Nafin, Bancomext, Banobras).</p> <p>Creation of the Popular Banks, primarily to finance housing, creation of the Rural Finance Company and the maintenance of FIRA even though credit to the agricultural sector has declined substantially.</p>
<b>Role of the state</b>	<p>State interventions in the economy is reduced to compensatory actions and the promotion of a regulatory and institutional framework.</p>

Source: Authors' analysis of period under consideration based on articles cited in the bibliography.

### 4.3.1 Progressive realization and non-retrogression

#### *Obligations of conduct*

Governments are obliged to conduct monetary and fiscal policy in ways that promote progressive realization and non-retrogression of the right to work and to an adequate standard of living. This obligation suggests that states should have full employment and decent work as a policy objective, avoiding rigid rules like requirements for balanced budget each year, or a one-sided focus on inflation targeting. To assess this, we examined what laws and rules govern fiscal and monetary policy. Specifically, we asked whether the laws governing this policy allow a government to conduct a counter-cyclical policy. To this, we added quantitative data on the size of the budget deficit (the difference between total government expenditure and revenue), the inflation rate, and the real interest rate, seeing how they had changed over time. These are some of our findings for Mexico.

Table 4 compares the various policy instruments that the Mexican state has used to implement fiscal and monetary policy over the period that was known as “stabilizing development” and the later “neo-liberal period.”

In Mexico, during the stabilizing development period, fiscal and monetary policy played an active role in promoting growth, employment, and the strategic development of productive sectors using public expenditure. This government focus shifted with the debt crisis in 1982. The reduction of the budget deficit became the central objective of government policy to control inflation and re-establish the international credibility of the Mexican economy. A new economic model emerged that focused on the reduction of the role of the state in the economy, liberalization of international trade and finance, and labor market flexibility. Inflation targets became the guiding principal for monetary policy. These changes, which are also linked to changes in trade policy, have reduced the margin of action that the Mexican government can use to apply policies oriented toward the realization of economic and social rights. It must be acknowledged that it would be hard to change fiscal and monetary policy without also changing the way that Mexico is integrated into the world market.

#### *Obligation of Result*

To examine the obligation of result of both fiscal and monetary policy, we examined the trends in employment, unemployment, informalization of employment, and wages. Full employment has to be distinguished from over-work. Decent work must leave enough time for leisure, and the unpaid work of taking care of families and community activities. Because of social norms about the division of labor between women and men, women have a greater responsibility for unpaid work. In addition, women’s unpaid work tends to increase when there is a lack of decent paid work, as women undertake more home-based

**Table 5** Selected Macroeconomic Indicators, Mexico (1993-2006)

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006 a/
<b>Growth of GDP (%)</b>	1.9	4.5	-6.2	5.1	6.8	4.9	3.9	6.6	-0.2	0.8	1.4	4.2	2.8	4.8
<b>Growth of GDP per capita (%)</b>	1.9	2.7	-7.7	3.6	5.3	3.5	2.5	5.2	-1.4	-0.4	0.3	3.2	1.9	3.9
<b>Employment</b>														
<b>Activity rates* (%)</b>	55.2	54.7	55.4	55.4	56.3	56.6	55.8	56.3	55.6	55.0	55.5	56.4	57.9	58.8
<b>Open unemployment rates** (%)</b>	3.4	3.7	6.2	5.5	3.7	3.2	2.5	2.2	2.4	2.7	3.3	3.8	3.6	3.6

\* ratio of the working age population, urban areas.

\*\* As a percentage of the economically active population. From 2003 onwards 32 areas were considered urban instead of the previous 48 that were defined as urban previously.

Source: CEFEP (2007)

production for family consumption of goods like food and clothing. Paradoxically, a lack of decent jobs may mean enforced idleness for men (who cannot find as much paid work as they would like), and overwork for women (who have to do unpaid work as well as paid work). It is not sufficient to use only the official rate of unemployment as an indicator of result – it needs to be supplemented by indicators on the quality of employment. Also important are indicators of how unpaid work has changed in response to fiscal and monetary policy, but these may not be readily available. Below, our findings in the Mexican context lack these important data because the government does not make them available.

The data in Table 5 illustrate how the combination of adherence to a balanced budget and inflation control prevents the Mexican government from undertaking effective counter-cyclical policy in moments of recession or economic slowdown. This can be seen in the lack of dynamism in GDP growth over the last fifteen years – although one can observe a slight recovery after the 1994-95 crisis, in 2001, there was another significant downturn, and since then the rates of growth have been particularly low. Table 5 also shows the economic activity rate (the proportion of working-age population in the labor market) and the open unemployment rate. Open unemployment is low, due to the tiny proportion of workers covered by unemployment insurance. A large number of job seekers end up in the informal micro-enterprise sector, characterized by precarious and low earnings. In the 1995 economic crisis, the proportion of urban workers in this sector rose to 44%. The economic recovery

**Table 6** Structure of Employment by Type of Contract, 1995, 2000, 2007

	<b>Permanent Contract</b>	<b>Change (%)</b>	<b>Temporary Contract</b>	<b>Change (%)</b>	<b>Verbal Contract</b>	<b>Change (%)</b>	<b>Total</b>	<b>Change (%)</b>
<b>1995</b>	6,805,400		1,527,695		10,665,996		18,999,091	
<b>2000</b>	10,366,229	52.3	1,818,223	19.0	12,094,887	13.4	24,279,339	27.8
<b>2007</b>	12,058,356	16.3	2,557,576	40.7	13,259,870	9.6	27,875,802	14.8

Source: reproduced by Salas (2008) from ENE (Encuesta Nacional del Empleo) and ENOE (Encuesta Nacional de Ocupación y Empleo)<sup>37</sup>

in the second half of the 1990s saw a reduction in this rate. But, from 2000 onwards, the recovery of GDP has not been accompanied by a reduction of employment in the micro-enterprise sector, which highlights the failure of policy to enable the creation of sufficient jobs in the formal sector for those people seeking employment.

Table 6 provides further data that confirm that fiscal and monetary policy in the last twenty years has not led to the growth of stable employment in decent jobs. It shows employment growth by type of contract between 1995 and 2007. The rate of growth of employment has declined over time: between 1995 and 2000 total employment grew 27.8%, whereas between 2000 and 2007 the increase was only 14.8%. Moreover there has been an increase in employment with temporary or verbal contracts relative to the number of jobs with a permanent contract. The tendency towards ever more precarious employment in the last decade allows one to conclude that the current design of fiscal and monetary policy imperils the progressive realization of the right to work.

There has also been a large drop in the purchasing power of the minimum wage in the last 30 years (the minimum wage influences the whole labor market because it is a point of reference for collective bargaining). From 1996 onwards the real minimum wage stabilized at a low level, compared with figures from 1980. In the consultative Commission for the modernization of the system for setting minimum wages, established in 2001 by the Federal Government, the representative of the Bank of Mexico maintained that raising the minimum wage above the expected inflation rate and any productivity growth rate would have a negative effect on employment, competitiveness, and the overall macro-economic environment. The strategy outlined by the Bank of Mexico was to raise the well being of the population through measures that stimulated productivity and the demand for workers, “such as training and skills building, achieving flexible labor markets, and promoting a stable macro-economic environment.”<sup>38</sup> But these policies have failed to deliver an adequate standard of living.

### 4.3.2 Non-discrimination and equality

#### *Obligation of Conduct*

It is unlikely that the conduct of fiscal and monetary policy at the macro level will contain any rules or procedures that overtly discriminate. But policy that is not geared to full employment and decent work may discriminate in practice against people from racial minorities, women, and indigenous communities. These groups tend to be at the last ones to be employed in an economic upturn, and the first to become unemployed in an economic downturn, despite the presence of anti-discrimination and equal-opportunity legislation. In addition, women are likely to undertake more additional unpaid work than men in periods of economic downturn, and may, therefore, be more prone to overwork. We found that, in both Mexico and the U.S., whereas there are no overtly discriminatory aspects to the conduct of fiscal and monetary policy, in neither country is the Ministry of Finance or Central Bank exercising due diligence to monitor whether any such effects are occurring. Investigation of possible discriminatory impact of fiscal and monetary policy is left to non-governmental researchers.

#### *Obligation of Result*

Conduct can be cross-checked with results. To examine whether there has been equal enjoyment of employment and decent work across all social groups in the ups and downs of the economy, relevant indicators for work and an adequate standard of living must be disaggregated by race, ethnicity, sex, and age.

In the U.S., researchers have found that interest rate policy has differential effects on the employment of different social groups. “For the U.S., the real Federal Funds rate has a significant effect on the overall unemployment rate, the female to male unemployment ratio, and the black to white unemployment ratio.”<sup>39</sup> A rise in the Federal Funds Rate (the key interest rate set by the Federal Reserve Bank) slows down activity in the economy, and, consequently, the overall unemployment rate increases. However, white men are twice as likely to retain their jobs in economic hard times than black men. Moreover, it is found that negative macro-economic shocks, such as a tightening of monetary policy, that increase the unemployment rate by one percentage point take 0.28% of national income away from the lowest 40% of the income distribution, and redistribute it to the richest 20%.<sup>40</sup> This is because low income families – which are disproportionately female-headed – gain much of their income through employment, and little through interest on savings, whereas, the richest families derive considerable income through interest on their savings. In effect, neo-liberal fiscal and monetary policies favor those groups with unearned income from interest-bearing financial assets.

### 4.3.3 Accountability, Participation and Transparency

#### *Obligations of conduct*

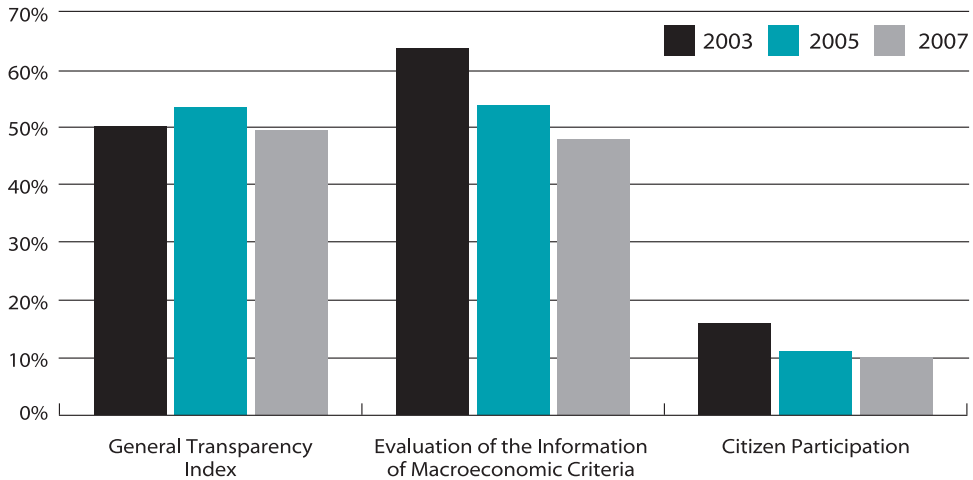
Fiscal policy and monetary policy should be transparent, and there should be mechanisms for participation and accountability. We examined procedures for appointing Central Bankers and macro-economic advisors, and mechanisms for holding them to account for their decisions. Macro-economic policy should not be treated as a purely technical issue, to be determined on the base of calculations, using complex mathematical models. Such models always have political and social values built into them. Any macro-economic models used to guide policy should be publicly available, and their underlying assumptions, clearly articulated, so that they can be publically discussed. Any policy conditions that are accepted in order to get loans from IMF and World Bank should be published.

We found that there had been improvements in laws regarding budget transparency in Mexico. The *Treasury Budget and Transparency Law* clearly lays out the rules and dates for the submission of budgetary information for the Chamber of Deputies. Such transparency gives more time to the commissions of the Chamber of Deputies to review the proposals of the Executive, and eventually prepare modifications; and to civil society organizations to influence specific budget allotments. Furthermore, documents that give information about the loans, projects and aid provided by these agencies to the Federal Government have been published in the web pages of the World Bank, Inter-American Development Bank and the IMF.<sup>41</sup>

However, there remain important limits in the access to governmental information. Whereas, the Federal Law for Transparency and Access to Public Governmental Information (LFTAIPG) stipulates that the government should publish information about the economic situation, public finances and debt, at the same time, this law restricts access to any “information that can damage the economic, financial and monetary stability of the country.”<sup>42</sup> This clause is written so generally, and permits such a wide definition of “economic stability” – the laws governing access to information in other countries do not have such a general definition of exemptions – that it can potentially prevent the right of access to information.<sup>43</sup>

The Transparency Law also applies to the Bank of Mexico, but the latter’s autonomy means that it is not subject to the resolutions made by the Federal Institute for Access to Information (IFAI).<sup>44</sup> The Information Committee of the Bank of Mexico, the body that decides about appeals in cases where information has been denied by the administrative divisions of the Bank, is made up of three functionaries who report directly to the governor of the Bank. In other words, in the case of the Bank of Mexico, there is not an impartial independent entity (such as the IFAI for the Federal Administration) that resolves those petitions for access to information in the last instance.<sup>45</sup>

**Figure 17** Latin America Budgetary Transparency Index (selected results for Mexico). Mexico.



Source: Lavielle (2007)

Another obstacle to an informed public debate is the lack of reliability of the economic and social data that the government agencies produce. For example, according to various newspaper sources, in April 2008, the Mexican Social Security Institute (IMSS) recognized an “error” in their methodology for measuring employment, which, over a number of years, contributed to an over-estimation of the number of formal jobs created: it was admitted that between 2005 and 2007, the Mexican economy did not create 2.2 million jobs; rather, only 1.6 million.<sup>46</sup> In short, while there are some opportunities for public scrutiny of budget proposals, there are not formal mechanisms in Mexico for citizen consultation and participation in fiscal and monetary policy.

### ***Obligations of result***

To assess the Mexican government’s meeting of their obligations of result, we need to ask how well the government complies with laws on transparency and the right to information. If there are mechanisms for participation and accountability, it is important to assess how well they work in practice. One source of information is the Latin American Index of Budgetary Transparency, produced every two years since 2003 by Fundar, one of the Mexican partners in our project. This information is based on approval ratings of experts in academia, civil society and the Legislature. The results for Mexico are shown in figure 17.

Mexico’s highest level of approval is for Information on Macro-economic Policy Published by the Executive. But citizen participation gets low approval ratings. Even though there is

more access to government data, the process of decision-making continues to be concentrated in the Treasury and the Central Bank.

### **CONCLUSION**

The choice of fiscal and monetary policy involves a simultaneous choice over the level of employment, the exposure of particular social groups to the deflationary effects of fiscal contraction, and the prospects for progressive realization of the right to work on an equal basis. In neither Mexico nor the U.S. is fiscal and monetary policy conducted on a regular basis with this in mind. One consequence of this is the lack of adequate data to audit the full implications of fiscal and monetary policy for the right to work. Central banks might argue that financial stability, not the right to work, is their remit. However, this is, ultimately, a political decision to let financial markets trump possible human rights concerns. Furthermore, such concerns need not be irreconcilable. If financial markets know in advance that central banks will create policy with an eye to human rights obligations, they will behave accordingly. The failure of central banks to consider their current and future policy in terms of the right to work is one that deserves, speedily, to be remedied by the application of democratic monitoring and oversight.

### **4.4 Trade policy<sup>47</sup>**

Neo-liberal economists have long argued that trade liberalization raises the general standard of living within a country by giving incentives to produce more efficiently and by promoting faster economic growth. This impact, however, depends on the existence of mechanisms that keep imports and exports in balance. Progressive economists point to the lack of such mechanisms, and evidence that trade liberalization in poor countries has been followed by trade deficits (which mean that imports exceed exports). They also argue that successful trade expansion is based on prior policies of public and private investment, not on cutting tariffs. Both groups of economists agree that trade liberalization produces both losers and winners, and that the gains from trade are neither equally shared within nor between countries. The gains consist of cheaper goods (if imports are cheaper than home production) and more employment in production of exports (if exports expand). The losses consist of loss of employment in production that can no longer compete with imports, and loss of tax revenue to fund public services, since trade liberalization implies cutting taxes on trade (i.e. import tariffs).

Examining trade policy through a human rights lens brings to the fore the question of the extra-territorial obligations of states for human rights. The UN Charter, Articles 55 and 56, makes it clear that the obligations of states extend beyond their own borders. ICESCR refers to international obligations for development co-operation. The UN High Commissioner for

Human rights has in recent year produced a number of reports on international trade and investment clarifying that international trade and investment agreements must be consistent with the human rights obligations of states. Extra-territorial obligations also apply in the context of international bodies in which states have voting rights. In such cases, if the governing body of the international authority, such as the IMF, World Bank, and WTO, makes a decision that fails to comply with the obligations of states' parties under the ICE-SCR, then this shows that at least some states' parties have violated the Covenant by such a decision.<sup>48</sup>

We illustrate the human rights dimension of trade policy in both U.S. and Mexico, with particular reference to the 1994 North American Free Trade Agreement (NAFTA).

#### 4.4.1 Non-discrimination and equality

##### *Obligations of conduct*

Trade agreements raise issues about non-discrimination and equality within countries and between countries. Trade liberalization creates winners and losers, and neo-liberal economists argue that countries should liberalize trade and use the gains of the winner to compensate the losers. However, if the winners are powerful, they may block any attempt to tax and redistribute the gains within a country (e.g. if the benefits of trade go to urban consumers who are able to buy cheaper imported food, urban consumers may block any attempt to tax them to compensate small farmers who lose their livelihood). There can also be winners and losers across national boundaries, but currently there are no mechanisms to tax internationally and transfer funds so that the benefits accrued in one country is shared with another country. To comply with their obligation to conduct trade policy in a non-discriminatory way, governments should conduct impact assessments to determine who will be the likely winners and losers before concluding trade agreements. Governments ought also to design trade agreements and complementary policies to insure that there is not an increase in de facto discrimination against particular social groups, and insure that safeguards are built into the trade agreements (e.g. ability to reintroduce import tariffs if livelihoods of discriminated groups are threatened by import surges or subsidized imports that are sold below cost).

Prior to NAFTA, the U.S. already had a Trade Adjustment Assistance (TAA) program, established in 1974 as a mechanism to provide those workers affected by trade-related lay offs with temporary aid and retraining. When NAFTA was passed, a new TAA program – known as NAFTA-Transitional Adjustment Assistance (NAFTA-TAA) – was established, targeting only the workers affected by NAFTA-related layoffs. Whereas, President George H.W. Bush had calculated that the NAFTA-TAA program alone would cost \$4 billion *per year*, from

**Table 7** NAALC'S Labor Principles

Group and Principles	Extent of Enforceability
<b>Group I</b> 1. Freedom of association and protection of the right to organize; 2. The right to bargain collectively; and 3. The right to strike.	Enforceable by discussion of National Administrative Offices, Secretariat, and Ministerial Council
<b>Group II</b> 1. Prohibition of forced labor; 2. Minimum employment standards pertaining to overtime pay; 3. Elimination of employment discrimination; 4. Equal pay for women and men; 5. Compensation in cases of occupational injuries and illnesses; and 6. Protection of migrant workers.	Enforceable by discussion as indicated for Group I plus evaluation by an Evaluation Committee of Experts.
<b>Group III</b> 1. Labor protections for children and young persons; 2. Minimum employment standards pertaining to <i>minimum wages</i> ; and 3. Prevention of occupational injuries and illnesses.	Enforceable by discussion as for Group I, evaluation as for Group II, and sanctions determined by an Arbitral Panel.

Source: Bolle (2002, p.4)

fiscal year 1994 through fiscal year 2002, the NAFTA-TAA and the general TAA programs were appropriated only \$3.08 billion in total for a seven-year period. Only a fraction of these funds went to NAFTA-TAA, while the general TAA program received the lion's share of them. Over the course of NAFTA-TAA's existence, it was appropriated a total of \$464 million, compared to \$2.67 billion that was appropriated for the general TAA program.<sup>49</sup> The Trade Act of 2002 consolidated these two programs into a single expanded program, extended it through 2007, and authorized the appropriation of "such sums as may be necessary" in order to carry out the purposes of the program. According to the estimates of the Congressional Budget Office, it would cost \$11.4 billion from FY 2003-2012 in order to fund the consolidated and expanded TAA program fully.<sup>50</sup>

As initially negotiated, NAFTA did not include provisions to protect labor rights. They were introduced later through a side agreement, the North American Agreement on Labor Cooperation (NAALC). One of the key structural weaknesses of NAALC is its lack of an independent oversight body. Instead, weak bilateral and trilateral mechanisms form the basis for enforcement.

The weakness of NAALC is in contrast to the strength of a side agreement on Intellectual Property Rights, which gives much greater protection to the rights of business than the former does to the rights of labor, as the following extract shows:

**Table 8** NAFTA's labor and business rights compared

NAFTA...	If you're a business	If you're a worker
<b>Rights defined by international standards?</b>	<b>YES:</b> Countries must "give effect" to the 1971 Geneva Convention for the Protection of Producers of Phonograms, the 1971 Berne Convention for the Protection of Literary and Artistic Works, the 1967 Paris Convention for the Protection of Industrial Property, and the 1978 and 1991 UPOV Conventions for the Protection of New Varieties of Plants.	<b>NO:</b> Countries are not required to respect internationally recognized worker rights as defined in conventions of the International Labor Organization (ILO)
<b>If my rights are violated, can I complain?</b>	<b>YES:</b> As a business person with intellectual property, you are a "rights holder" and may initiate a complaint under the Agreement. Associations and federations with a business interest in intellectual property rights can also be recognized as rights holders. Rights holders can seek redress against violators under another country's judicial and administration procedures that must be made to conform to the requirements specified by NAFTA.	<b>YES, BUT:</b> Although Individuals and unions can file complaints with their own "National Administrative Office" (NAO) (government agencies established under NAFTA) those complaints cannot be against a company or individual. They can only be against a government's "persistent failure to enforce" certain limited specified aspects of its own law. It is up to the NAO to decide whether or not to proceed with a complaint.
<b>Can I file a complaint about a particular violation?</b>	<b>YES:</b> As a rights holder you may file a complaint if you suspect a particular act of piracy of your intellectual property.	<b>NO:</b> Violations by individual companies <i>do not count</i> , even if they involve the 3 rights mentioned in the Labor Side Agreement. You must demonstrate a government's "persistent pattern" of failure to enforce existing laws. "Persistent pattern" is not defined.
<b>How long does it take before my complaint is decided?</b>	<b>180 DAYS</b> There are fixed time limits for each stage of the process: consultations, commission study, and two reports of an arbitration panel, which issues a final recommendation for resolving the violation.	<b>WHO KNOWS?</b> There are no fixed time limits for dealing with labor violations. To reach the ultimate stage of fines or removal of NAFTA benefits would take a minimum of nearly four years. First you must persuade your own country's National Administrative Office to "consult" with other NATO's, then "consult" with a Ministerial Council, which <i>may</i> request a report from an "Evaluation Committee of Experts" after which, if at least one other government agrees, an arbitration panel may be convened and write a second report and recommendation.

Source: Citizens Trade Campaign (2001)

### *Obligations of Result*

In order to assess results, we examined the winners and losers in terms of employment and in terms of price changes in basic consumer goods, including food. In particular, we were interested in whether groups that were already disadvantaged lost the most; what happened to migration flows; and whether there were any specific implications in terms of employment that can be seen either by sector or region.

In our research we found it difficult to isolate the job creation or job loss at the national level due to a specific trade agreement. There is an ongoing debate among economists over how to separate the impact of a specific trade agreement on employment from the host of other factors that influence changes in employment. Of the organizations working in this area, we found particularly helpful the estimates of the Economic Policy Institute of trade-related job creation and job loss in the U.S., in the period 1993-1994. EPI calculated that:

- Workers with at most a high school education were particularly hard hit by growing trade deficits – they held 52% of jobs displaced; these workers make up 43% of the workforce.
- Most of the jobs displaced by NAFTA trade deficits are in the manufacturing sector, which employs a higher share of such workers than any other major industry.
- NAFTA displaced into lower-paying jobs 523,305 workers with a high school degree or less.
- Men, who make up 55.2% of the labor force, lost 649,048 job opportunities, or 63.9% of total jobs displaced due to NAFTA deficits.
- Women, who make up 47.8% of the labor force, were especially hard hit by rising imports in apparel: they lost 34,855 job opportunities, 67% of all positions displaced in the apparel sector.<sup>51</sup>

In the case of Mexico, we found useful information on the relation between NAFTA and rural employment. Rural Mexicans (corresponding to 35 percent of Mexicans in the early 1990s) were dependent on agriculture as their main source of earnings. Before the introduction of NAFTA, these farmers, who had little education, were receiving subsidized water and other inputs in corn production. Furthermore, the prices they received for their output were twice the world price. Given that U.S. producers were producing more corn at about half the price paid by Mexican government to Mexican farmers, NAFTA was expected to encourage Mexican corn farmers to become fruit and vegetable growers. However, due to the farmers' limited access to irrigation, limited knowledge of fruit and vegetable production, and limited access to credits and export markets, NAFTA accelerated rural-urban migration instead of turning corn farmers into fruit and vegetable exporters.<sup>52</sup> The U.S. exports forced over 1.3 million Mexican peasant farmers, who depended on small-scale farming for a living, off their land. Many U.S. agribusinesses bought corn-processing or

tortilla-making factories in Mexico; and NAFTA led to the destruction of 28,000 small-to-medium-sized Mexican businesses through the investment- and service-sector rules that gave guaranteed access for Wal-Mart and other mega-retailers. One of the key reasons behind the increased migration between Mexico and U.S. is related to the negative consequences of NAFTA on Mexican farmers.<sup>53</sup>

#### 4.4.2 Minimum core obligations

Trade liberalization has important implications for the minimum core obligation to insure that no significant number of people is deprived of minimum essential levels of each of the economic and social rights. Here, we illustrate this principle with respect to food. At first sight, trade liberalization that results in imports of cheaper food seems to enhance the capacity of the state to meet its minimum core obligation on the right to food. However, cheaper imported food may lead to a poorer quality diet among those who buy it; and even if cheap, may not be affordable to poor farmers who once grew their own food, but who have been displaced from their land by import competition. People are also vulnerable to the volatility in the price of food on the world market, due to speculation or uses of grain, for example, to produce ethanol. Most of any benefits of trade liberalization in food may accrue to large scale trans-national agribusinesses that increasingly control both production and distribution of food.

##### *Obligations of conduct*

The UN appointed a Special Rapporteur on the Right to Food who has further clarified its meaning. The first such Rapporteur, Jean Ziegler, understood it in this way: “The right to food is the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.”<sup>54</sup> Ziegler explains that governments are bound to respect, protect, and fulfill the right to food. He suggests that the obligation to respect refers the obligation that the government arbitrarily should not reduce existing access to food without providing adequate alternatives. The obligation to protect refers to the obligations that the government must pass and enforce laws to prevent powerful people or organizations from violating the right to food. This implies regulating non-state actors, including corporations and individuals, who may threaten other people’s right to food; and establishing bodies to investigate or provide effective remedies. On the other hand, the obligation to fulfill (facilitate and provide) means that the government must take positive actions to identify vulnerable groups and to implement policies that ensure the access of these groups to adequate food.

The extra-territorial obligation to respect the right to food means that states should ensure that their policies and practices do not lead to violations of the right to food for people living in other countries. It does not require states to provide any resources; rather, it requires that they do not do any harm. For example, states should not use food and water to exert political or economic pressure (e.g., food embargoes). States should also refrain from making decisions within international organizations, such as the IMF or WTO, that jeopardize the right to food in other countries. The extra-territorial obligation to protect the right to food means that states should ensure that third parties subject to their jurisdiction (such as their own citizens or trans-national corporations) do not violate the right to food of people living in other countries. This is of vital importance, given the increasing monopoly control by trans-national corporations over all components of the global food chain. The extraterritorial obligation to fulfill requires states, depending on the availability of resources, to cooperate with other countries to support the fulfillment of the right to food.<sup>55</sup>

### ***Obligations of result***

There should be no worsening of access to nutritious food due to trade liberalization. We examined evidence for Mexico. At the time NAFTA was introduced, retail prices for some basic food products increased sharply (for example, the cost of tortillas rose by 50%). On the other hand, compared to the general consumer price index, the prices of some products fell after NAFTA, mostly driven by cheaper imports in these sectors: shoes and clothing (benefiting women's clothing specifically), electric and electronic equipment, domestic furniture, automobiles, toys, photograph equipment, sports supplies, and music. The prices of some food products, like meat, processed food and junk food have also decreased. Nevertheless, these developments combined with the rural-to-urban migration led to a fall of 10% in industrial wages, and reduced the purchasing power of an average Mexican worker. Women were disproportionately affected with an increase in their poverty rates by 50% since NAFTA went into effect.<sup>56</sup> (See *Table 9*).

NAFTA was followed by falls in the prices of products characteristic of a modern way of life that is under serious criticism for a range of reasons: this type of free trade has brought cheaper goods that are hazardous to the environment or unsustainable (like electronics garbage or a meat-rich diet); unsafe to the personal health (like processed and junk food – Mexico is the world's second most obese country after the U.S.); and products that promote economic or cultural dependency or are even detrimental to local cultures and small local producers.

Price reductions have, as might be predicted, benefited more the people with higher income. The central bank (Banco de Mexico) has calculated a separate Consumer Price Index (CPI) for people on different income levels. People whose income is less than three times the minimum wage experience higher inflation than those who earn more than three

**Table 9** Average CPI of selected products with reference to the general index (1980–2008) (General Index=100)

	<b>1980– 1984</b>	<b>1985– 1989</b>	<b>1990– 1994</b>	<b>1995– 1999</b>	<b>2000– 2004</b>	<b>2005– 2008</b>
<b>All foods</b>	115.1	114.1	105.7	106.2	101.5	106.5
Tortillas, bread and cereals	75.3	85.2	82.7	93.9	102.0	114.8
Fruits and vegetables	78.4	69.5	82.8	89.7	97.8	100.1
Tomatoes	62.6	56.0	68.0	81.7	101.5	104.3
Processed soups	117.8	116.8	122.9	123.1	101.7	95.4
Meat	170.8	170.3	147.0	122.9	103.5	107.3
Junk food	126.4	143.2	113.0	110.8	103.2	102.8
<b>Medicines</b>	56.1	66.2	54.6	81.9	101.6	111.5
<b>Education</b>	67.5	65.7	84.9	90.0	100.6	111.4
<b>Shoes and clothing</b>	140.3	142.6	110.0	101.0	98.7	87.2
<b>Electric and electronic equipment</b>	260.5	219.0	136.3	126.4	100.8	78.8
<b>Automobiles</b>	147.8	190.7	130.4	127.3	101.2	86.5
<b>Furniture</b>	157.5	152.9	119.2	108.7	100.7	90.8
<b>Entertainment: toys, photograph equipment, sports supplies, music</b>	152.3	154.7	118.3	111.5	100.5	85.4

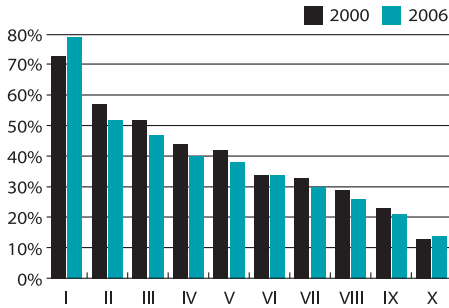
Source: data from Banxico (2008)

times the minimum wage (Figure 19). Additionally, the gap between the two groups is widening. While in December 2002, the CPI for the people with less than three times the minimum wage was 0.78% higher than the CPI of people with an income superior to three times the minimum wage, by December 2003, this difference was 0.99%; by 2004 this figure jumped to 2.13%; and 2.06% in 2005. Even in 2006, the CPI for the people with less than three times the minimum wage was higher by 2.85% compared to people with more than three times the minimum wage; by 2007, this difference rose to 3.21%; and by June 2008, by 3.55%. This trend is also true for inflation of food and beverages, and it seems that the promise of cheaper goods and products derived from free trade is not for everyone.

At first sight, trade liberalization that results in imports of cheaper food seems to enhance the capacity of the state to meet its minimum core obligation on the right to food. However, in the last two decades, food prices have been decreasing for products that were either not healthy or not accessible for the poor; and prices are rising for the basic food product for Mexicans: the tortilla.

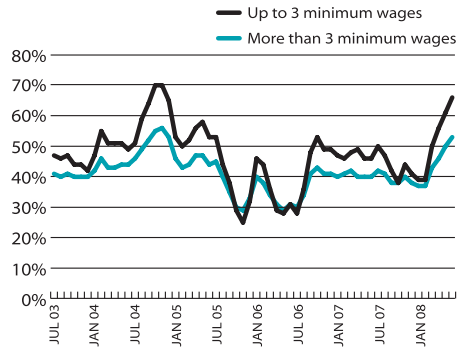
The recent food crisis has also shown that import dependence on essential food items

**Figure 18** Food expenditure as a share of monetary current income of households divided by deciles 2000-2006. Mexico.



Source: Author's with data from ENIGH, 2000 and 2006.

**Figure 19** CPI variation 2003-2008 according to the income level of households (% of variation). Mexico.



Source: Author's with data from Banxico, 2008.

makes countries vulnerable to changes in prices in the world market. The problem is that reliance on world markets may increase and may undermine the ability of states to provide guarantees and to fulfill their obligations.

### CONCLUSION

NAFTA, as expected, produced winners and losers in both U.S. and Mexico. There is evidence suggesting that in both countries it was poorer groups, disproportionately from ethnic minorities, that lost. Compensatory mechanisms in the US were underfunded and failed to provide adequate compensation for low income workers who lost their jobs as a result of increased imports from Canada and Mexico. Poor farmers in Mexico were not given sufficient assistance to convert to vegetable farming. Cheaper prices benefitted better-off Mexicans more than poor Mexicans. The price of the food staple, tortillas, increased rapidly, and cheaper prices for junk food worsened the diet of Mexicans. The legal provisions of the trade agreement strengthened the position of powerful corporations and weakened that of labor. In both the asymmetric design of the trade agreement, and the failure to compensate poor losers, the governments of both U.S. and Mexico did not live up to their obligations for the realization of economic and social rights.

### 4.5 Regulatory Policy: The Case of Pensions<sup>57</sup>

The final area of policy that we consider is regulatory policy, which we examine in relation to pensions and the right to social security. Pensions are provided both by governments and by the private sector, and an important aspect of pension systems is the way in which private sector provision is regulated.

The right to social security was established in Article 9 of International Covenant on the Economic, Social and Cultural Rights (ICESCR); and has been further elaborated in General Comment 19 ((E/C.1 /GC/19) by the Committee on Economic Social and Cultural Rights. It covers protection for nine contingencies, including old-age; and recognizes that in addition to contribution-based social insurance, there is a need for non-contribution-based social security provisions to ensure that everyone is adequately covered. Other international human rights instruments provide for the right to social security. Under Article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, States Parties are obligated to guarantee the right to social security and social services to everyone without any distinction. The Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) obliges States Parties to take appropriate measures to realize the right to social security for women on an equal basis with men, including social security in old age. The ILO Convention on Social Security (Minimum Standards) Convention 102 (No. 102) refers to nine different types of social security, and covers corresponding contingencies. These include medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalid benefit, and survivor's benefit.<sup>58</sup>

#### 4.5.1 Progressive realization and non-retrogression

##### *Obligation of conduct*

To assess the state's obligation of conduct, we ask how changes in regulatory policy have impacted the pension system, especially the adequacy of system in keeping people out of poverty in old age. We are particularly concerned with whether the regulations provide a defined benefit pension, in which people are guaranteed a definite weekly or monthly sum of money; or a defined contribution system, in which the regulations stipulate the size of the contributions but there is no guarantee about the size of the eventual pension, which will depend on the state of the stock market.

To illustrate, consider the contributory pensions system in Mexico, which covers only workers with formal employment contracts. The first, and by far, largest group of such workers falls under the Mexican Institute of Social Security (IMSS) system, based on tripartite contributions by employer, employee and federal government, as a proportion of the worker's salary. The contributions are defined but the benefits are not. Each worker chooses a private fund administrator, called AFORE (Administradoras de Fondos para el Retiro), to invest the money collected through contributions. In turn, the AFORE charges a fee and invests the worker's money through a diversified portfolio of financial assets, using a dedicated entity known as SIEFORE (Sociedad de Inversión Especializada en Fondos para el Retiro). Although the system of management and investment has been privatized, contributions are

still collected by the IMSS, and then handed over to AFORES. Most of the AFORES are run by banks (although IMSS has its own AFORE, called “Siglo XXI”).

Workers employed by the Federal Government are covered by ISSSTE (Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado) [State Workers Social Security Institute]. Their pension is based on contributions from the workers and the federal government, as a proportion of the worker’s salary. A new law (Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado, March 2007) has been enacted to move this system to a private-run one, along the same lines as IMSS.

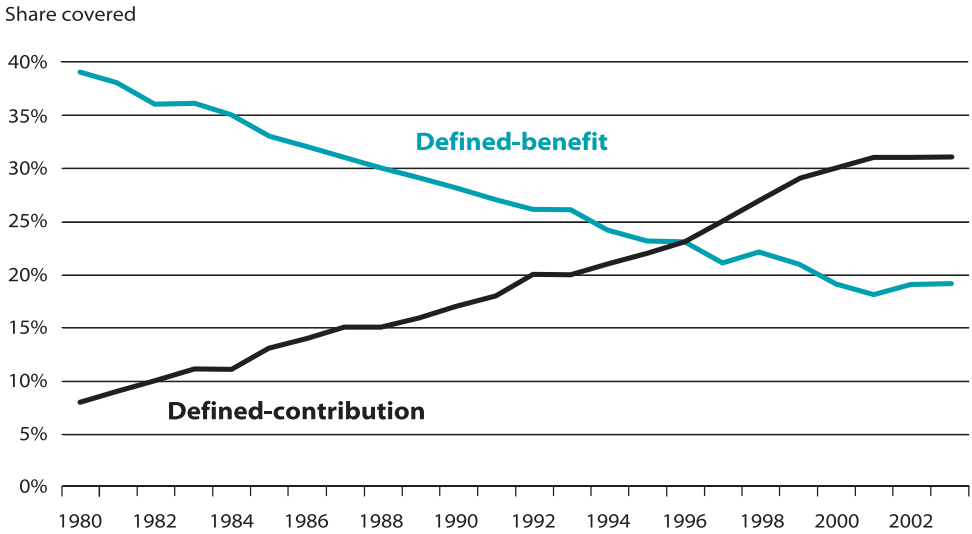
Mexicans who do not have formal employment do not have a contributory pension. The federal government has introduced a cash transfer program that targets poor elderly people in rural areas. This program offers 500 Mexican pesos every month to persons who can prove their age (seventy or older) and their residence in a community of up to 20,000 people. The program reached 1,201,808 persons during the first quarter of 2008.<sup>59</sup>

There are essentially two types of contributory pension plans in the U.S.: defined benefit (DB) and defined contribution (DC). A DB plan is sponsored by an employer, and pays a defined amount upon retirement based on length of service and final average salary. A DB plan is permanent and guaranteed by the government. A DC plan is determined by contributions made by the employee and the employer plus investment return on those contributions. There are various forms of defined contribution plans, such as Individual Retirement Accounts (IRAs), 401(k) plans, and profit sharing plans. In these types of plans, individual participants are thus responsible -not employers- for selecting the type of investment toward which the assets in their account are allocated. One of the most significant distinctions that should be drawn is that in a DB plan, the employer bears the risk, whereas in a DC plan the employee bears the risk. DC plans are thus more precarious than DB plans.

The U.S. has seen a dramatic shift from defined benefit to defined contribution plan since the 1970s. The shift resulted from regulatory legislation that was enacted, such as the Employee’s Retirement Income Security Act (ERISA) and the creation of the Pension Benefit Guarantee Corporation (PBGC). The impact of this change in legislation is clearly seen in the dramatic shift in the U.S. from defined benefit to defined contribution (see Figure 20). The economic crisis of autumn 2008 has drastically reduced the size of the pension that those holding defined contribution pensions can expect.

In addition to the contributory pension system, the U.S. has Social Security pensions, state-sponsored retirement benefits funded by payroll taxes. These pensions not linked to occupation and are non-contributory flat-rate pensions, linked to the length of time that a

**Figure 20** Share of Pension Participants in Defined-contribution and Defined-benefit Plans, 1980–2003. U.S.



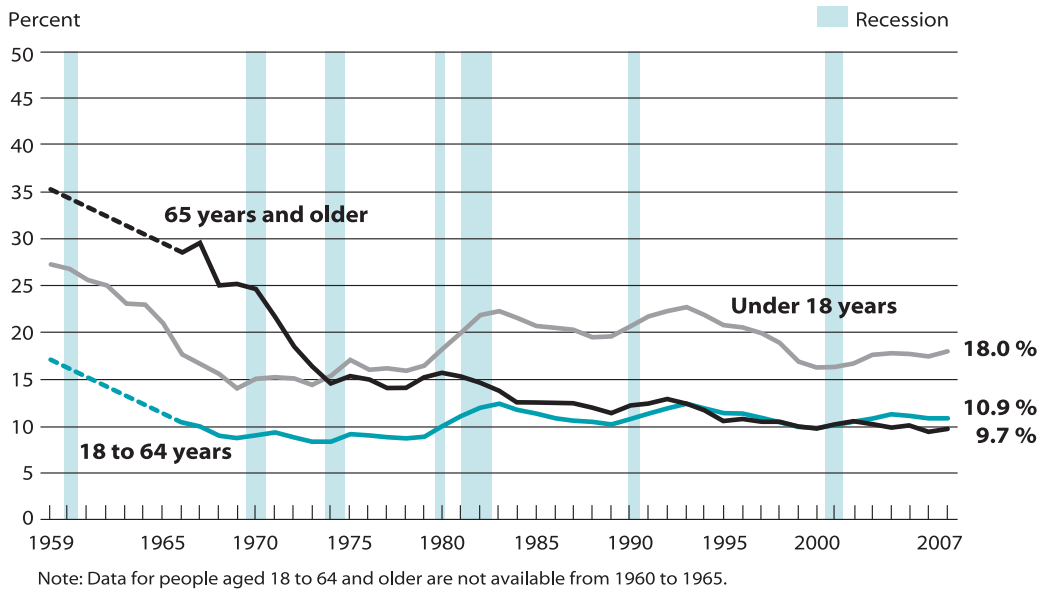
Source: Lawrence et al. (2007)

person has paid the pay roll tax. Thus, any proposals to reform the regulation surrounding Social Security have crucial implications for the future of America’s aging population and, of course, to other recipients of Social Security payments, such as the disabled.

### ***Obligation of result***

The obligation is to regulate the pension system in such a way as to provide an adequate standard of living in old age. In Mexico in 2007, according to data from the Department of Social Development,<sup>60</sup> there were 3.7 million poor people aged seventy and older. Such people are entitled to a cash transfer, but the benefits of this are not comparable to the benefits of having a pension. First, the amount of money they receive is a third of the minimum pension. Second, the program can only be accessed after reaching seventy years of age, not sixty. Third, residence in a rural area has to be proven, which tacitly discriminates against the poor living in urban areas. Fourth, persons with a pension also have access to a network of IMSS or ISSTE clinics and hospitals, which is not the case with those who have not contributed to the system. This program is, in other words, made necessary through a failure of regulation to insure the economic and social rights of the elderly in Mexico, and it continues to be an *ad hoc* solution to a chronic and systemic problem.

**Figure 21** Poverty Rates by Age. U.S.



Source: DeNavas-Walt et al. (2008, p. 14)

In the U.S., the incidence of poverty among the elderly fell from 1975-1999, and has stayed at around 10% since then (see figure 21). According to the U.S. Census Bureau’s report, *Poverty in the United States: 2007*, the number of elderly in poverty increased from 3.4 million in 2006 to 3.6 million in 2007, although the poverty rate remained unchanged at 9.7%.<sup>61</sup>

The poverty rates among the elderly are lower than among other groups due to the pensions provided by the Social Security system. However, due to the dramatic change from defined benefit (DB) to defined contribution (DC), poverty rates among the elderly may be expected to rise following the stock market fall in autumn 2008. In the U.S., those in favor of defined contribution pension schemes argued that they have higher returns and, therefore, are more able to secure security economic and social rights than defined benefit schemes. Even before the financial crisis wiped billions off the value of pension plans, this argument was specious. One study found that, in fact, defined benefit provided a higher return than the defined contribution 401(k) plan. The study’s authors attributed the unexpectedly lower return rate to investment fees, which account for “75 to 90 percent of total expenses associated with managing 401(k) plans.” In their conclusion, they state clearly, “defined benefit plans outperformed 401(k) plans over the period 1988-2004.”<sup>62</sup>

DB plans promise employees a fixed monthly income in retirement depending on years of

service and earnings at the end of their career, regardless of the ups and downs of the markets, and regardless of how long the employee lives. On the other hand, DC plans create individual accounts, for which employees must make investment decisions. This means that they face the consequences not only of bad decisions, but also of drawing on the account when the market is depressed. Moreover, workers face the risk of outliving their account balance if they do not buy an annuity upon retirement; or they run the risk of low interest rates at the time of purchase that causes lower annuity payments if they do purchase an annuity.<sup>63</sup>

The regulation of pensions in both the U.S. and Mexico has been retrogressive in so far as it has led to more pensions being at risk from stock market falls.

#### 4.5.2 Non-discrimination and equality

##### *Obligation of conduct*

The regulation of the pension system should protect and fulfill the right of women to social security on an equal basis with men, and the right of all ethnic groups on an equal basis. We examine this in the context of the U.S., where although women's labor force participation rates have increased dramatically, and are approaching those of men, women earn less than men, are more likely to work part time, and have interrupted careers.<sup>64</sup> In the U.S., the retirement systems are rooted in a model that assumes that men are the breadwinners. In the public system of Social Security there are eligibility requirements. If you were born in 1929 or later, you need to have worked for at least ten years (forty credits, not necessarily continuous)<sup>65</sup> to be eligible for retirement benefits.<sup>66</sup> Women who have not engaged in formal paid work, or who have only worked part time (and thus did not achieve the minimum credit), are not eligible to receive Social Security. Furthermore, due to the minimum requirement to have contributed in forty quarter-years, those working in the informal sector are much less likely to be eligible for Social Security. This discriminates, for instance, against those engaged in care work at home, who tend disproportionately to be women.

Women are also disadvantaged by the shift to defined contribution pension schemes, as they earn on average less than men, and cannot afford to contribute as much as men. Furthermore, the money contributed to a pension fund is not taxed, and, while there are limits, the more money one puts into a retirement fund the less income is taxed while earning. This is a subsidy to those who can afford to put aside a larger portion of their income for retirement, which will not be enjoyed by women on an equal basis with men.

The factors that disadvantage women in the contributory sectors of the U.S. pension system because they earn less than men on average, also disadvantage people from non-white groups. Discrimination in the labor market is carried over into the contributory pension system.

### ***Obligation of result***

Given the nature of the pension system, it is not surprising to find large inequalities in its outcomes. Weller and Wolff (2005) report that:

The retirement income that whites could expect in 2001 was almost three times as large as that of African Americans or Hispanics; single males could expect, on average, to have retirement income that was almost twice as large as that of single females; and homeowners could expect to have retirement income that was more than four times as large as that of renters. Not surprisingly, then, 57% of African Americans or Hispanics, 60% of single women, and 71% of renters could expect to have retirement income that was below a threshold of twice the poverty line. This compares to 23% of whites, 33% of single men, and 20% of homeowners.

The current system of pension regulation in the U.S. is not supportive of the obligation to protect and fulfill the right to social security on an equal basis.

## **4.5.3 Accountability, Participation and Transparency**

### ***Obligation of conduct***

The regulation of the pension system should be accountable, participatory and transparent. We examine how far this is the case in Mexico.

In Mexico, the process of pension reform in 1995 did offer some opportunities for participation, but the outcome of the consultations was more favorable to some participants than others. Officials prepared a document on the issues, which sparked a debate in which many business and labor groups presented to the media their proposals to reform the IMSS pension system. In favor of the introduction of individual accounts were Consejo Coordinador Empresarial [Enterprise Coordinating Council], Confederación Patronal de la República Mexicana [Mexican Employers' Association] and opposed Confederación de Trabajadores de México [Mexican Workers Confederation], IMSS's workers union, Congreso del Trabajo [Work Congress] and Movimiento Unificador Nacional de Jubilados y Pensionados [National Unified Movement of Retirees and Pensioners] (Dion, forthcoming). As Dion notes, "In October, IMSS Director organized round tables bringing together labor, business and government leaders to discuss IMSS reforms. ... This was supposed to be a tripartite consensus to formulate a reform proposal but a comparison of government and business sector proposals with this supposedly tripartite document shows a clear bias towards the government and business sectors [and away from labor]." <sup>67</sup>

### ***Obligation of result***

We may ask if the change in regulation that introduced individual accounts complied with

the right to information: what information is provided to Mexican people about their pensions? Is information provided in ways that ordinary citizens can understand?

In Mexico, the current legislation requires the AFOREs – the private fund administrators – to send each account holder a statement of their investments once a year, on which is shown clearly the extent of contributions, fees charged by the AFORE, and the profit from the portfolio. This information should enable the account holder to assess whether the chosen AFORE is doing a good job, especially on the fees and profits performance. Based on this information and charts comparing all AFOREs – also contained in the statement – account holders can change AFOREs as many times as they want. This option has led to an advertisement war between AFOREs to keep account holders and/or persuade others to join. While appearing to be a mechanism for transparency, it has resulted in an arduous process of sifting through documents from each of the eighteen AFOREs, which use complex fee schemes to hide their true net fees. Recognizing this, the Federal Congress changed the law; by March 2008 all AFOREs will provide information of net profit for the workers. Such information will be calculated from subtracting the profit given by AFORE minus the commission they charge to the workers. In theory, this should help workers choose a better AFORE.

### ***CONCLUSION***

A discussion of regulatory frameworks for pensions may seem far from the obligations with respect to economic and social rights; yet, the laws that regulate pensions are vital for the realization of the right to social security. The shift away from defined benefit to defined contribution systems of pension, particularly when implemented in conjunction with provisions that disadvantage women and people of color, weakens the ability of a government to comply with its human rights obligations. Improving the information on which workers are expected to base their decisions about how much to contribute to their pension fund and which company to select to manage it, will not change the fact that workers shoulder more risk in the defined contribution systems that pension reforms are introducing.

## 5. HUMAN RIGHTS ADVOCATES AND PROGRESSIVE ECONOMISTS WORKING TOGETHER: CONCLUSIONS AND LESSONS LEARNED

Over the course of three years, we – as a group of committed progressive economists and human rights advocates – convened to bring together knowledge of progressive economics and of human rights, especially economic and social rights. We sought expertise from groups and individuals who were not only well-qualified, but likely to be future stakeholders. We produced a series of outputs, including this one, designed for a range of audiences, from professional economists to NGO leaders to governmental policy makers.

For our purposes, a team of progressive economists was recruited in the U.S. from among the membership of the Political Economy Research Institute, the International Association for Feminist Economics and the Center for Popular Economics. We also found key human rights advocates from the US Human Rights Network, the National Economic and Social Rights Initiative, Global Rights etc. In Mexico, we approached human rights advocates, scholars, foundations and key institutions such as FUNDAR, CEPAL, INCIDE, Equipo Pueblo and faculty at UNAM. In addition, we recruited a team of eminent experts from the United Nations, key NGOs, and world-recognized thinkers, to act as an advisory committee, not only to benefit from their combined experience, but also to enlist them as partners in the dissemination of the research, and as recruiters for a broader, second stage of research and action. (See Appendix II)

The process of deciding which questions to ask was far from straightforward. There are a number of areas that we would have liked to cover, and which we had proposed in the original concept document (most notably the issue of migration). Through the iterative process of collaboration, we found that we had to focus less on some issues so that we could concentrate better on others.

This exploration of macro-economic strategies and their implications for obligations for economic and social human rights has demonstrated, we feel, the rich possibilities that exist by bringing together the domains of social and economic rights, on the one hand, with economic analysis on the other. Combining heterodox economic expertise with expertise on economic and social rights yields a number of benefits. First, it makes clear the connections between seemingly disparate domains, such as fiscal or regulatory policy and the question of human rights. Second, by asking questions around the implications of economic policy for human rights, new forms of analysis become available to human rights advocates, and a powerful ethical framework becomes available to heterodox economists. The results serve to expand the catalog of ways in which governments need to address human rights as part of their economic policy. Finally, this knowledge marshals the

evidence and analysis necessary to be able to mount more effective advocacy, to pressure states toward assuming greater responsibility for the implications of their economic policies on human rights. Through this collaboration, new paths for advocacy, lobbying and education have been discovered. These routes do not automatically lead to the best possible set of policies; there are far too many uncertainties to be able to do that. Rather, our aim is to move economic policy in a better direction by identifying which policies are at least likely to be inconsistent with human rights obligations. We think this is would be a significant contribution to the full and universal realization of economic and social rights.

## ENDNOTES

- 1 For the list of rights see <http://www.un.org/Overview/rights.html>.
- 2 *Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights*. Part II, para. 6. Maastricht, Netherlands. 22-26 January 1997.
- 3 GenCom 3, para. 1.
- 4 These principles are taken from ICESCR and UDHR and several general comments on the covenant.
- 5 Progressive realization imposes a “specific and continuing” (CESCR General Comment 12, para. 44) or “constant and continuing” (CESCR, General Comment 15, para. 18) duty to move as “expeditiously and effectively as possible” (CESCR, General Comment 3, para. 9; CESCR, General Comment 12, para. 44; CESCR, General Comment 15, para. 18) towards full realization of rights for men and women. These steps toward full realization of rights must be “taken within a reasonable short time after the Covenant’s entry into force for the States concerned” and such steps should be “deliberate, concrete and targeted as clearly as possible” in order to meet the obligations of States (CESCR, General Comment 3, para. 2; CESCR, General Comment 12, para. 43; CESCR, General Comment 14, para. 30; CESCR, General Comment 15, para 17).
- 6 The CESCR calls on each state “to take steps...to the maximum of its available resources, with a view to achieving progressively the full realization of...rights...by all appropriate means.” The Committee on ESCR has clarified that “such steps should be deliberate, concrete and targeted as clearly as possible” and that “the phrase ‘to the maximum of its available resources’ was intended...to refer to both the resources existing within a State and those available from the international community.” Since it is impossible to take steps toward the progressive realization of human rights without resources, the maximum available resources obligation is “both a protect-and fulfill-bound obligation.”
- 7 It is important to note that our work on maximum available resources is still ongoing. We need to pay attention to government borrowing and the long-run impact of debt on the sustainable level of resources.
- 8 CESCR, General Comment 3, para. 9; CESCR, General Comment 12, para. 45; CESCR, General Comment 14, para. 32; CESCR, General Comment 15, para. 19.
- 9 CESCR, General Comment 3, para. 10. The Committee on Economic, Social and Cultural Rights has clarified that this is a continuing obligation, requiring states with inadequate resources to strive to insure enjoyment of rights (General Comment 3, para. 11); however, even in times of severe resource constraints, states must insure that rights are fulfilled for vulnerable members of society through the adoption of relatively low-cost targeted programs (General Comment 3, para. 12; General Comment 12, para. 28; General Comment 14, para. 18); and (General Comment 14, para. 48; General Comment 15, para. 40).
- 10 *The Limburg Principles* devote an entire section to clarifying the grounds of discrimination mentioned in Article 2(2) of the ICESCR, clarifying that “the grounds of discrimination mentioned [therein] are not exhaustive” and are therefore open to broader interpretation. CERD, CEDAW, and the *Vienna Declaration and Programme of Action* all reinforce the importance of non-discrimination and equality in the enjoyment of human rights.
- 11 Morsink (2000, p.113).
- 12 UN Committee on ESCR, 2001, para. 14. UN Doc. E/C. 12.2001/10. Numerous additional human rights documents, such as the *Pact San Jose*, CEDAW, and various General Comments on the CESCR have explored and elaborated upon the importance of transparency, accountability, and participation to the realization of human rights.
- 13 See Epstein and Grabel (2007); Saad Filho (2007); and Weeks and Patel (2007).
- 14 Balakrishnan and Elson (2008, p.9).
- 15 The authors of the papers on which this section is based are Nursel Aydinler-Avsar, Radhika Balakrishnan and Diane Elson (U.S.); Veronica Zebadua and Jorge Romero Leon (Mexico).
- 16 Epstein and Grabel (2007), Saad Filho (2007), and Weeks and Patel (2007).
- 17 Kaiser Family Foundation (2007).
- 18 In Mexico, for example, during Vicente Fox’s administration a Committee for Poverty Measurement was set up in order to classify levels of poverty and development among different strata of the population. The Ministry of Social Development, who undertook the effort, came up with three poverty lines, which correspond to different levels of human capacity and opportunity: alimentary poverty (people with an income insufficient to cover basic food necessities); capacity development poverty (people with insufficient income to cover health and education needs, but which cover alimentary needs); and ownership poverty (people with an income insufficient to cover basic housing, dress, and

- transportation, but with sufficient income to cover food, health, and education).
- 19 Its name has been changed to Supplemental Nutrition Assistance Program as of October 1, 2008.
  - 20 Wolkfitz and Leftin (2008).
  - 21 The Advocates for Human Rights (2007, p. 2).
  - 22 Nord et al. (2008).
  - 23 Comments on Question 64 in International Budget Project (2005).
  - 24 The authors of the papers on which this section is based are Radhika Balakrishnan (U.S.); and Lourdes Colinas and Roberto Constantino ( Mexico).
  - 25 McIntyre et al. (2003, p.2).
  - 26 Olson (2007, p.3).
  - 27 Cantalá, Sempere and Sobarzo (2005); Bergman, Carreón and Hernández-Trillo (2006).
  - 28 See Bergman, Carreón and Hernández-Trillo (2006).
  - 29 The authors of the papers on which this section is based are Radhika Balakrishnan (U.S.); Sarah Gammage and Kristina Perkins (Mexico).
  - 30 Expansionary Fiscal Policy: Policy enacted by the government that increases aggregate demand. Examples include lowering taxes and increasing government spending.
  - 31 Contractionary Fiscal Policy: policy enacted by the government that reduces aggregate demand. Examples include raising taxes and decreasing government spending.
  - 32 Aggregate supply is the total supply of goods and services by a national economy during a specific time period.
  - 33 Epstein (2003).
  - 34 <http://www2.ohchr.org/english/law/cescr.htm#part1>.
  - 35 ILO Declaration on fundamental principles and rights at work, [www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE](http://www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE), Geneva: International Labour Organization.
  - 36 Reserve requirements: percentage of the total deposits that a bank should maintain as reserves with the Central Bank.
  - 37 These are household surveys that are periodically produced by the Mexican government through the National Institute for Statistics and Geography (INEGI) <http://www.inegi.org.mx/>.
  - 38 Baqueiro Cárdenas (2002).
  - 39 Heintz and Seguino (2007, p. 17).
  - 40 Blinder and Esaki (1978).
  - 41 These documents include, for example, the last "Letter of Intent" signed by the Mexican government and sent to the IMF and signed in June 1999 (available on line, [www.imf.org/external/np/loi/1999/061799.htm](http://www.imf.org/external/np/loi/1999/061799.htm)), and *Country Partnership Strategy for the United Mexican States, 2008-2013*, March 4, 2008, which are the guidelines for cooperation between the World bank and the current administration (available on line at: [www-wds.worldbank.org](http://www-wds.worldbank.org)).
  - 42 See the Federal Law for Transparency and Access to Public Governmental Information, Article 7 (9) and Article 13(3) in the Official Journal of the Federation, June 11, 2002.
  - 43 Sandoval (2008).
  - 44 However, the Bank of Mexico does provide accounts to the IFAI about meeting its obligations established in the LFTAIPG with respect to transparency and the right to information. See the website on transparency of the Bank of Mexico <http://www.banxico.gob.mx/footer/leyTransparencia/LeyTransparencia.htm>.
  - 45 Sandoval (2008).
  - 46 Rivera and Carrillo (2008).
  - 47 The authors of the. papers on which this section is based are Nursel Aydiner-Avsar and Diane Elson (U.S.); and Alberto Serdan, and Carlos Salas (Mexico).
  - 48 Kunnemann (2001).
  - 49 Public Citizen (2005a).
  - 50 Public Citizen (2005a).
  - 51 Scott et al. (2006).
  - 52 Martin (2004).
  - 53 Labor Council for Latin American Advancement and Public Citizen (2004).
  - 54 UN Commission on Human Rights (2006, p. 4).
  - 55 UN Commission on Human Rights (2006).
  - 56 Labor Council for Latin American Advancement and Public Citizen (2004).
  - 57 The authors of the papers on which this section is based are Radhika Balakrishnan (U.S.); and Gabriel Lara (Mexico).
  - 58 Darooka (2008).

- 59 Primer informe trimestral 2008 del Programa de Atención a los Adultos Mayores de 70 años y más en Zonas Rurales en: [www.sedesol.gob.mx/archivos/8015/File/1ertrim08/penccg/02\\_Adultos\\_Mayores\\_de\\_70\\_anos.pdf](http://www.sedesol.gob.mx/archivos/8015/File/1ertrim08/penccg/02_Adultos_Mayores_de_70_anos.pdf).
- 60 Programa de Atención a los Adultos Mayores de 70 años y más en Zonas Rurales en: [www.sedesol.gob.mx/index/index.php?sec=3003&len=1](http://www.sedesol.gob.mx/index/index.php?sec=3003&len=1).
- 61 DeNavas-Walt et al. (2008, p. 12).
- 62 Munnell et al. (2006).
- 63 Price (2005).
- 64 Munnell and Jivan (2005).
- 65 The amount of annual earnings needed for a credit is increased each year in proportion to increases in average wages in the economy. In 2004, the amount of earnings needed for a credit is \$900. In 2007, you receive one credit for each \$1,000 of earnings, up to the maximum of four credits per year.
- 66 Social Security Administration (2007, p. 2).
- 67 Dion (forthcoming).

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## APPENDIX I: List of Human Rights Documents Pertinent to this Report

<i>Document Name</i>	<i>Document Number</i>	<i>Date</i>
Universal Declaration of Human Rights (UDHR)	Resolution 217A (III), A/810	10 December 1948
International Covenant on Civil and Political Rights (ICCPR)	Resolution 2200A (XXI)	16 December 1966
Optional Protocol to the International Covenant on Civil and Political Rights	Resolution 2200A (XXI)	16 December 1966
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	Resolution 44/128	15 December 1989
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	Resolution 2200A (XXI)	16 December 1966
The Nature of State Parties Obligations: General Comment 3	CESCR General Comment 3	14 December 1990
Fact Sheet No. 16 (Rev. 1)	Fact Sheet No. 16, A/CONF. 157/24	25 June 1993
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	Resolution 2106 (XX)	21 December 1965
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Resolution 34/180	18 December 1979
Convention on the Rights of the Child (CRC)	Resolution 44/25	20 November 1989
Declaration on Social Progress and Development	Resolution 2542 (XXIV)	11 December 1969
Vienna Declaration and Programme of Action	A/CONF.157/23	12 July 1993
Preliminary Draft of the Inter-American Convention Against Racism and All Forms of Discrimination and Intolerance	CAJP/GT/RDI-23/06 Rev. 3	18 April 2006
Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights	Meeting of Experts: Int'l Commission of Jurists, Urban Morgan Institute on Human Rights, Centre for Human Rights of the Faculty of Law of Maastricht University	22-26 January 1997
Limburg Principles on the Implementation of the International Covenant on Economic, Social, and Cultural Rights	Meeting of Experts: Int'l Commission of Jurists, Urban Morgan Institute on Human Rights, Centre for Human Rights of the Faculty of Law of Maastricht University	2-6 June 1986

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**Revolutionary** is one of those words that through misuse has lost some of its original meaning—“markedly new,” or “introducing radical change”—but revolutionary is the only word that can describe the contribution that **Radhika Balakrishnan, Diane Elson** and **Raj Patel** are making to the field of human rights with this publication. Human rights activists in the field of economic, social and cultural rights have long waited for an instrument that would present both a clear theoretical framework that integrates human rights and economic concepts and a practical guide for applying that framework to real-life conditions. *Rethinking Macro Economic Strategies from a Human Rights Perspective (Why MES with Human Rights II)* is that tool.

**Ajamu Baraka**

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