

Statement on Visit to the USA, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights*

Washington, December 15, 2017

I. Introduction

1. I have spent the past two weeks visiting the United States, at the invitation of the federal government, to look at whether the persistence of extreme poverty in America undermines the enjoyment of human rights by its citizens. In my travels through California, Alabama, Georgia, Puerto Rico, West Virginia, and Washington DC I have spoken with dozens of experts and civil society groups, met with senior state and federal government officials and talked with many people who are homeless or living in deep poverty. I am grateful to the Trump Administration for facilitating my visit and for its continuing cooperation with the UN Human Rights Council's accountability mechanisms that apply to all states.

2. My visit coincides with a dramatic change of direction in US policies relating to inequality and extreme poverty. The proposed tax reform package stakes out America's bid to become the most unequal society in the world, and will greatly increase the already high levels of wealth and income inequality between the richest 1% and the poorest 50% of Americans. The dramatic cuts in welfare, foreshadowed by the President and Speaker Ryan, and already beginning to be implemented by the administration, will essentially shred crucial dimensions of a safety net that is already full of holes. It is against this background that my report is presented.

3. The United States is one of the world's richest, most powerful and technologically innovative countries; but neither its wealth nor its power nor its technology is being harnessed to address the situation in which 40 million people continue to live in poverty.

4. I have seen and heard a lot over the past two weeks. I met with many people barely surviving on Skid Row in Los Angeles, I witnessed a San Francisco police officer telling a group of homeless people to move on but having no answer when asked where they could move to, I heard how thousands of poor people get minor infraction notices which seem to be intentionally designed to quickly explode into unpayable debt, incarceration, and the replenishment of municipal coffers, I saw sewage filled yards in states where governments don't consider sanitation facilities to be their responsibility, I saw people who had lost all of their teeth because adult dental care is not covered by the vast majority of programs available to the very poor, I heard about soaring death rates and family and community destruction wrought by prescription and other drug addiction, and I met with people in the South of Puerto Rico living next to a mountain of completely unprotected coal ash which rains down upon them bringing illness, disability and death.

5. Of course, that is not the whole story. I also saw much that is positive. I met with State and especially municipal officials who are determined to improve social protection for the poorest 20% of their communities, I saw an energized civil society in many places, I visited a Catholic Church in San Francisco (St Boniface – the Gubbio Project) that opens its pews to the homeless every day between services, I saw extraordinary resilience and community solidarity in Puerto Rico, I toured an amazing community health initiative in Charleston (West Virginia) that serves 21,000 patients with free medical, dental, pharmaceutical and other services, overseen by local volunteer physicians, dentists and others (WV Health Right), and indigenous communities presenting at a US-Human Rights Network conference

* I am grateful for the superb research and analysis undertaken by Christiaan van Veen, Anna Bulman, Ria Singh Sawhney, and staff of the UN Office of the High Commissioner for Human Rights, as well as the many inputs made by civil society groups, including those organized by the US Human Rights Network, and by leading scholars in the field.

in Atlanta lauded Alaska's advanced health care system for indigenous peoples, designed with direct participation of the target group.

6. American exceptionalism was a constant theme in my conversations. But instead of realizing its founders' admirable commitments, today's United States has proved itself to be exceptional in far more problematic ways that are shockingly at odds with its immense wealth and its founding commitment to human rights. As a result, contrasts between private wealth and public squalor abound.

7. In talking with people in the different states and territories I was frequently asked how the US compares with other states. While such comparisons are not always perfect, a cross-section of statistical comparisons provides a relatively clear picture of the contrast between the wealth, innovative capacity, and work ethic of the US, and the social and other outcomes that have been attained.

- By most indicators, the US is one of the world's wealthiest countries. It spends more on national defense than China, Saudi Arabia, Russia, United Kingdom, India, France, and Japan combined.
- US health care expenditures per capita are double the OECD average and much higher than in all other countries. But there are many fewer doctors and hospital beds per person than the OECD average.
- US infant mortality rates in 2013 were the highest in the developed world.
- Americans can expect to live shorter and sicker lives, compared to people living in any other rich democracy, and the "health gap" between the U.S. and its peer countries continues to grow.
- U.S. inequality levels are far higher than those in most European countries
- Neglected tropical diseases, including Zika, are increasingly common in the USA. It has been estimated that 12 million Americans live with a neglected parasitic infection. A 2017 report documents the prevalence of hookworm in Lowndes County, Alabama.
- The US has the highest prevalence of obesity in the developed world.
- In terms of access to water and sanitation the US ranks 36th in the world.
- America has the highest incarceration rate in the world, ahead of Turkmenistan, El Salvador, Cuba, Thailand and the Russian Federation. Its rate is nearly 5 times the OECD average.
- The youth poverty rate in the United States is the highest across the OECD with one quarter of youth living in poverty compared to less than 14% across the OECD.
- The Stanford Center on Inequality and Poverty ranks the most well-off countries in terms of labor markets, poverty, safety net, wealth inequality, and economic mobility. The US comes in last of the top 10 most well-off countries, and 18th amongst the top 21.
- In the OECD the US ranks 35th out of 37 in terms of poverty and inequality.
- According to the World Income Inequality Database, the US has the highest Gini rate (measuring inequality) of all Western Countries
- The Stanford Center on Poverty and Inequality characterizes the US as "a clear and constant outlier in the child poverty league." US child poverty rates are the highest amongst the six richest countries – Canada, the United Kingdom, Ireland, Sweden and Norway.
- About 55.7% of the U.S. voting-age population cast ballots in the 2016 presidential election. In the OECD, the U.S. placed 28th in voter turnout, compared with an OECD average of 75%. Registered voters represent a much smaller share of potential voters in the U.S. than just about any other OECD country. Only about 64% of the U.S. voting-age population (and 70% of voting-age citizens) was registered in 2016, compared with 91% in Canada (2015) and the UK (2016), 96% in Sweden (2014), and nearly 99% in Japan (2014).

II. The human rights dimension

8. Successive administrations, including the present one, have determinedly rejected the idea that economic and social rights are full-fledged human rights, despite their clear recognition not only in key

treaties that the US has ratified (such as the Convention on the Elimination of All Forms of Racial Discrimination), and in the Universal Declaration of Human Rights which the US has long insisted other countries must respect. But denial does not eliminate responsibility, nor does it negate obligations. International human rights law recognizes a right to education, a right to healthcare, a right to social protection for those in need, and a right to an adequate standard of living. In practice, the United States is alone among developed countries in insisting that while human rights are of fundamental importance, they do not include rights that guard against dying of hunger, dying from a lack of access to affordable healthcare, or growing up in a context of total deprivation.

9. Since the US has refused to recognize economic and social rights agreed by most other states (except for the right to education in state constitutions), the primary focus of the present report is on those civil and political rights reflected in the US Bill of Rights and in the International Covenant on Civil and Political Rights which the US has ratified.

III. Who are ‘the poor’?

10. I have been struck by the extent to which caricatured narratives about the purported innate differences between rich and poor have been sold to the electorate by some politicians and media, and have been allowed to define the debate. The rich are industrious, entrepreneurial, patriotic, and the drivers of economic success. The poor are wasteful, losers, and scammers. As a result, money spent on welfare is money down the drain. To complete the picture we are also told that the poor who want to make it in America can easily do so: they really can achieve the American dream if only they work hard enough.

11. The reality that I have seen, however, is very different. It is a fact that many of the wealthiest citizens do not pay taxes at the rates that others do, hoard much of their wealth off-shore, and often make their profits purely from speculation rather than contributing to the overall wealth of the American community. Who then are the poor? Racist stereotypes are usually not far beneath the surface. The poor are overwhelmingly assumed to be people of color, whether African Americans or Hispanic ‘immigrants’. The reality is that there are 8 million more poor Whites than there are Blacks. Similarly, large numbers of welfare recipients are assumed to be living high on the hog. Some politicians and political appointees with whom I spoke were completely sold on the narrative of such scammers sitting on comfortable sofas, watching color TVs, while surfing on their smart phones, all paid for by welfare. I wonder how many of these politicians have ever visited poor areas, let alone spoken to those who dwell there. There are anecdotes aplenty, but evidence is nowhere to be seen. In every society, there are those who abuse the system, as much in the upper income levels, as in the lower. But the poor people I met from among the 40 million living in poverty were overwhelmingly either persons who had been born into poverty, or those who had been thrust there by circumstances largely beyond their control such as physical or mental disabilities, divorce, family breakdown, illness, old age, unlivable wages, or discrimination in the job market.

12. The face of poverty in America is not only Black, or Hispanic, but also White, Asian, and many other colors. Nor is it confined to a particular age group. Automation and robotization are already throwing many middle-aged workers out of jobs in which they once believed themselves to be secure. In the economy of the twenty-first century, only a tiny percentage of the population is immune from the possibility that they could fall into poverty as a result of bad breaks beyond their own control. The American Dream is rapidly becoming the American Illusion as the US since the US now has the lowest rate of social mobility of any of the rich countries.

IV. The current extent of poverty in the US

13. There is considerable debate over the extent of poverty in the US, but for the purposes of this report principal reliance is placed upon the official government statistics, drawn up primarily by the US Census Bureau.

14. In order to define and quantify poverty in America, the Census Bureau uses ‘poverty thresholds’ or Official Poverty Measures (OPM), updated each year. In September 2017, more than one in every eight Americans were living in poverty (40 million, equal to 12.7% of the population). And almost half of those (18.5 million) were living in deep poverty, with reported family income below one-half of the poverty threshold.

V. Problems with existing policies

15. There is no magic recipe for eliminating extreme poverty, and each level of government must make its own good faith decisions. But at the end of the day, particularly in a rich country like the USA, the persistence of extreme poverty is a political choice made by those in power. With political will, it could readily be eliminated.

16. What is known, from long experience and in light of the government’s human rights obligations, is that there are indispensable ingredients for a set of policies designed to eliminate poverty. They include: democratic decision-making, full employment policies, social protection for the vulnerable, a fair and effective justice system, gender and racial equality and respect for human dignity, responsible fiscal policies, and environmental justice.

17. Currently, the United States falls far short on each of these issues.

1. The undermining of democracy

18. The foundation stone of American society is democracy, but it is being steadily undermined. The principle of one person one vote applies in theory, but it is far from the reality. In a democracy, the task of government should be to facilitate political participation by ensuring that all citizens can vote and that their votes will count equally. In the US there is overt disenfranchisement of vast numbers of felons, a rule which predominantly affects Black citizens since they are the ones whose conduct is often specifically targeted for criminalization. In addition, there are often requirements that persons who have paid their debt to society still cannot regain their right to vote until they paid off all outstanding fines and fees. Then there is covert disenfranchisement, which includes the dramatic gerrymandering of electoral districts to privilege particular groups of voters, the imposition of artificial and unnecessary voter ID requirements, the blatant manipulation of polling station locations, the relocating of DMVs to make it more difficult for certain groups to obtain IDs, and the general ramping up of obstacles to voting especially by those without resources. The net result is that people living in poverty, minorities, and other disfavored groups are being systematically deprived of their voting rights.

19. A common explanation is that people see no improvement in their well-being regardless of who they elect, so that voting is pointless. But the most compelling and dispiriting explanation I received came in answer to my question as to why voting rates are so extraordinarily low in West Virginia. A state official pointed to apathy, which he explained by saying that “when people are poor they just give up on the electoral system.” If this is the case, as seems likely, some political elites have a strong self-interest in keeping people in poverty. As one politician remarked to me, it would be instructive to undertake a survey of the campaign appearances of politicians in overwhelmingly poor districts.

2. An illusory emphasis on employment

20. Proposals to slash the meager welfare arrangements that currently exist are now sold primarily on the basis that the poor need to get off welfare and back to work. The assumption is that there are a great many jobs out there waiting to be filled by individuals with low educational standards, often suffering disabilities of one kind or another, sometimes burdened with a criminal record (perhaps for the crime of homelessness or not being able to pay a traffic ticket), and with no training or meaningful assistance to obtain employment. It also assumes that the jobs they could get will make them independent of state

assistance. Yet I spoke to workers from Walmart and other large stores who could not survive on a full-time wage without also relying on food stamps. It has been estimated that as much as \$6 billion dollars go from the SNAP program to support such workers, thus providing a huge virtual subsidy to the relevant corporations.

21. In terms of the employment market, the reality is very different from that portrayed by the welfare to work proponents. There has been a long-term decline in employment rates. For example, by 2017, only 89% of males from 25 to 54 years were employed. While ‘supply’ factors such as growing rates of disability, increasing geographic immobility, and higher incarceration rates are relevant, a 2016 report by the White House Council of Economic Advisors concluded that reductions in labor supply are far less important than reductions in labor demand in accounting for the long-run trend.¹ Factors such as automation and new technologies such as self-driving cars, 3D printers, and robot-staffed factories and warehouses will see a continuing decline in demand for low-skilled labor.

22. Reflecting on these developments, leading poverty experts have concluded that:

Because of this rising joblessness, the U.S. poverty population is becoming a more deprived and destitute class, one that’s disconnected from the economy and unable to meet basic needs. ... 40 percent of the 1999 poverty population was in deep poverty ... [compared to 46 percent of the 2015 poverty population ...]. Likewise, rates of extreme poverty (i.e., living on less than \$2 per day per person) are also increasing, again because of declining employment as well as growing “disconnection” from the safety net.²

3. Shortcomings in basic social protection

23. There are a great many issues that could be covered under this heading. In view of space limitations I will focus on three major concerns.

(i) Indigenous peoples

24. Chiefs and representatives from both recognized and non-recognized tribes presented me with evidence of widespread extreme poverty in indigenous communities in the USA. They called for federal recognition as an essential first step to address poverty, indicating that without it their way of life is criminalised, they are disempowered, and their culture is destroyed – all of which perpetuate poverty, poor health, and shockingly high suicide rates. Living conditions in Pine Ridge, Lakota, were described as comparable to Haiti, with annual incomes of less than \$12 000 and infant mortality rates three times higher than the national rate. Nine lives have been lost there to suicide in the last three months, including one six year old. Nevertheless, federally funded programmes aimed at suicide prevention have been defunded.

25. Testimony also revealed an urgent need for data collection on poverty in all indigenous communities, greater access to healthcare, and stronger protection from private and corporate abuse. The Red Water Pond Navajo tribe spoke about predatory loans involving 400% interest rates, and a high incidence of kidney, liver and pancreatic cancers.

(ii) Children in poverty

25. A shockingly high number of children in the US live in poverty. In 2016, 18% of children – some 13.3 million – were living in poverty, with children comprising 32.6% of all people in poverty. Child

¹ Council of Economic Advisers, *The Long-Term Decline in Prime-Age Male Labor Force Participation* (2016).

² Charles Varner, Marybeth Mattingly, & David Grusky, ‘The Facts Behind the Visions,’ *Pathways*, Spring 2017, p. 2.

poverty rates are highest in the southern states, with Mississippi, New Mexico at 30% and Louisiana at 29%.

26. Contrary to the stereotypical assumptions, 31% of poor children are White, 24% are Black, 36% are Hispanic, and 1% are indigenous. When looking at toddlers and infants, 42% of all Black children are poor, 32% of Hispanics, and 37% of Native American infants and toddlers are poor. The figure for Whites is 14%.

27. Poor children are also significantly affected by America's affordable and adequate housing crisis. Around 21% of persons experiencing homelessness are children. While most are reportedly experiencing sheltered homelessness, the lack of financial stability, high eviction rates, and high mobility rates negatively impact education, and physical and mental health.

28. On a positive note, most children living in poverty do have medical insurance. Due to the expansion of Medicaid and the creation of the Children's Health Insurance Program in 1997, as of 2016, some 95% of all children had health insurance. Medicaid and CHIP have lowered the rate of children without health coverage from 14% in 1997 to 5.3% in 2015.

29. Other support programs are also important, such as the Supplemental Nutrition Assistance Program (SNAP) which is estimated to lift some five million children out of poverty annually, while in 2015 the Earned Income Tax Credit (EITC) and the Child Tax Credit (CTC) lifted a further five million children out of poverty. By contrast, TANF is not getting to enough children, with less than 25% of all poor families that are eligible for cash assistance under TANF actually receiving it. Proposed cutbacks to most of these programs would have dramatic consequences.

(iii) Adult dental care

30. The Affordable Care Act greatly expanded the availability of dental care to children, but the situations of adults living in poverty remains lamentable. Their only access to dental care is through the emergency room, which usually means that when the pain becomes excruciating or disabling, they are eligible to have the tooth extracted. Poor oral hygiene and disfiguring dental profiles lead to unemployability in many jobs, being shunned in the community, and being unable to function effectively. Yet there is no national program, and very few state programs, to address these issues which fundamentally affect the human dignity and ultimately the civil rights of the persons concerned.

4. Reliance on criminalization to conceal the problem

31. Homeless estimates published by the Department of Housing and Urban Development in December 2017 show a nationwide figure of 553,742, which includes 76,500 in New York, 55,200 in Los Angeles, and 6,900 in San Francisco.³ These figures are widely considered to be an undercount, as illustrated by estimates of 21,000 in San Francisco provided by various experts with whom I met.

32. In many cities, homeless persons are effectively criminalized for the situation in which they find themselves. Sleeping rough, sitting in public places, panhandling, public urination (in cities that provide almost zero public toilets) and myriad other offences have been devised to attack the 'blight' of homelessness. Ever more demanding and intrusive regulations lead to infraction notices, which rapidly turn into misdemeanors, leading to the issuance of warrants, incarceration, the incurring of unpayable fines, and the stigma of a criminal conviction that in turn virtually prevents subsequent employment and access to most housing. Yet the authorities in cities like Los Angeles and San Francisco often encourage this vicious circle. In Skid Row, LA., 6,696 arrests of homeless persons were reported to have been made between 2011 and 2016. Rather than responding to homeless persons as affronts to the senses and to their

³ <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>

neighborhoods, citizens and local authorities should see in their presence a tragic indictment of community and government policies. Homelessness on this scale is far from inevitable and again reflects political choices to see law enforcement rather than low cost housing, medical treatment, psychological counselling, and job training as the solutions. But the futility of many existing approaches was all too evident as I walked around some of the worst affected areas.

33. In many cities and counties the criminal justice system is effectively a system for keeping the poor in poverty while generating revenue to fund not only the justice system but diverse other programs. The use of the legal system, not to promote justice, but to raise revenue, as documented so powerfully in the Department of Justice's report on Ferguson, is pervasive around the country. So-called 'fines and fees' are piled up so that low level infractions become immensely burdensome, a process that affects only the poorest members of society who pay the vast majority of such penalties. State, county and municipal police and law enforcement agencies are not always forces for change in such settings. While they play an indispensable role in keeping the citizenry secure, they sometimes also pressure legislatures to maintain high staffing and overtime levels, at the expense of less expensive approaches which would address the social challenges constructively and effectively and eliminate the need for a law enforcement response.

34. Another practice which affects the poor almost exclusively is that of setting large bail bonds for a defendant who seeks to go free pending trial. Some 11 million people are admitted to local jails annually, and on any given day there are more than 730,000 people are being held, of whom almost two-thirds are awaiting trial, and thus presumed to be innocent. Yet judges have increasingly set large amounts of bail, which mean that wealthy defendants can secure their freedom, while poor defendants are likely to stay in jail, with all of the consequences in terms of loss of their jobs, disruption of their childcare, inability to pay rent, and a dive into deeper destitution. A major movement to eliminate bail bonds is gathering steam, and needs to be embraced by anyone concerned about the utterly disproportionate impact of the justice system upon the poor.

35. Finally, mention must be made of the widespread practice of suspending drivers' licenses for a wide range of non-driving related offences, such as a failure to pay fines. This is a perfect way to ensure that the poor, living in communities which have steadfastly refused to invest in serious public transport systems, are unable to earn a living which might have helped to pay the outstanding debt. Two paths are open: penury, or driving illegally, thus risking even more serious and counter-productive criminalization.

5. The gendered nature of poverty

36. Many statistics could be cited to demonstrate the extent to which women shoulder a particularly high burden as a result of living in poverty. They are, for example, more exposed to violence, more vulnerable to sexual harassment, discriminated against in the labor market. Luke Shafer and Kathryn Edin conclude that the number of children in single-mother households living in extreme poverty for an entire year has ballooned from fewer than 100,000 in 1995 to 895,000 in 2011 and 704,000 in 2012. But perhaps the least recognized harm is that austerity policies that shrink the services provided by the state inevitably mean that the resulting burden is imposed instead upon the primary caregivers within families, who are overwhelmingly women. Male-dominated legislatures rarely pay any heed to this consequence of the welfare cutbacks they impose.

6. Racism, disability, and demonization of the poor

37. Demonization of the poor can take many forms. It has been internalized by many poor people who proudly resist applying for benefits to which they are entitled and struggle valiantly to survive against the odds. Racism is a constant dimension and I regret that in a report that seeks to cover so much ground there is not room to delve much more deeply into the phenomenon. Racial disparities, already great, are being entrenched and exacerbated in many contexts. In Alabama, I saw various houses in rural areas that

were surrounded by cesspools of sewage that flowed out of broken or non-existent septic systems. The State Health Department had no idea of how many households exist in these conditions, despite the grave health consequences. Nor did they have any plan to find out, or devise a plan to do something about it. But since the great majority of White folks live in the cities, which are well served by government built and maintained sewerage systems, and most of the rural folks in areas like Lowndes County, are Black, the problem doesn't appear on the political or governmental radar screen.

38. The same applies to persons with disabilities. In the rush to claim that many beneficiaries are scamming the system, it is often asserted, albeit with little evidence, that large numbers of those receiving disability allowances are undeserving. When I probed the very high rates of persons with disabilities in West Virginia, government officials explained that most recipients had attained low levels of education, worked in demanding manual labor jobs, and were often exposed to risks that employers were not required to guard against.

7. Confused and counter-productive drug policies

39. The opioid crisis has drawn extensive attention, as it should. It has devastated many communities and the addiction often leads to heroin, methamphetamine, and other substance abuse. Many states have introduced highly punitive regimes directed against pregnant women, rather than trying to provide sympathetic treatment and to maximize the well-being of the fetus. As one submission put it:

Mothers in Alabama face criminal prosecutions which can result in years of incarceration, as well as civil child welfare proceedings that have the power to separate families and sever a person's parental rights. Families living in poverty are already disproportionately the subject of child welfare investigations in the United States. Experts have found that poor children disproportionately suffer impositions of the child welfare system, and families who receive public assistance are four times more likely than others to be investigated and have their children removed from the family home on the basis of alleged child maltreatment.⁴

40. Similarly, states are increasingly seeking to impose drug tests on recipients of welfare benefits, with programs that lead to expulsion from the program for repeat offenders. Such policies are entirely counter-productive, highly intrusive, and punitive where care is required instead. The justification offered to me in West Virginia was that the state should not be supporting someone who is addicted to drugs. It would be interesting to see if the same rationale were accepted if it was proposed that legislators and senior officials, who must keep the public trust, should also be regularly drug-tested, and punished for failure to go clean in a short time.

41. Similarly, the contrast between the huge sentences handed down to those using drugs such as crack cocaine, contrasts dramatically and incomprehensibly with the approach applied in most cases of opioid addiction. The key variable seems to be race. The lesson to be learned is that the generally humane and caring response to opioid users should be applied to most cases of substance addiction.

8. The use of fraud as a smokescreen

42. Calls for welfare reform take place against a constant drumbeat of allegations of widespread fraud in the system. The contrast with tax reform is instructive. In that context immense faith is placed in the goodwill and altruism of the corporate beneficiaries, while with welfare reform the opposite assumptions apply. The poor are inherently lazy, dishonest, and care only about their own interests. And government officials with whom I met insisted that the states are gaming the system to defraud the federal government, individuals are constantly coming up with new lures to live high on the welfare hog, and community groups are exaggerating the numbers. The reality, of course, is that there are good and bad

⁴ Poverty and Human Rights in Alabama.

corporate actors and there are good and bad welfare claimants. But while funding for the IRS to audit wealthy taxpayers has been reduced, efforts to identify welfare fraud are being greatly intensified. The answer is nuanced governmental regulation, rather than an abdication in respect to the wealthy, and a doubling down on intrusive and punitive policies towards the poor. Revelations of widespread tax avoidance by companies and high-wealth individuals draw no rebuke, only acquiescence and the maintenance of the loopholes and other arrangements designed to facilitate such arrangements. Revelation of food stamps being used for purposes other than staying alive draw howls of outrage from government officials and their media supporters.

9. Privatization

43. Solutions to major social challenges in the US are increasingly seen to lie with privatization. While the firms concerned have profited handsomely, it is far from clear that optimum outcomes have been achieved for the relevant client populations. In particular, greater consideration needs to be given to the role of corporations in preventing rational policy-making and advocating against reforms in order to maintain their profits at the expense of the poorest members of society. During my visit I was told of many examples. For example, bail bond corporations which exist in only one other country in the world, precisely because they distort justice, encourage excessive and often unnecessary levels of bail, and fuel and lobby for a system that by definition penalizes the poor. The rich can always pay, and can avoid the 10% or even more that bail bond companies demand as a non-refundable down-payment. I heard cases of individuals who paid thousands of dollars to post bail, and lost it all when charges were dropped a day later. If they were subsequently charged with a different offence, the whole process begins again and all previous payments are lost. Other examples include the corporations running private for-profit prisons, as well as bounty-hunters.

10. Environmental sustainability

44. In Alabama and West Virginia I was informed of the high proportion of the population that was not being served by public sewerage and water supply services. Contrary to the assumption in most countries that such services should be extended systematically and eventually comprehensively to all areas by the government, in neither state was I able to obtain figures as to the magnitude of the challenge or details of any government plans to address the issues in the future.

VI. Principal current governmental responses

45. The analysis that follows is primarily focused on the Federal level. Federalism complicates questions of responsibility but one irony that emerged clearly from my visit is that those who fight hardest to uphold State rights, also fight hard to deny city and county rights. If the rhetoric about encouraging laboratories of innovation is to be meaningful, the freedom to innovate cannot be restricted to state politicians alone.

1. Tax reform

46. Deep and dramatic changes look likely to be adopted in the space of the next few days as Congress considers a final unified version of the Tax Bill. From a human rights perspective, the lack of public debate, the closed nature of the negotiation, the exclusion of the representatives of almost half of the American people from the process, and the inability of elected representatives to know in any detail what they are being asked to vote for, all raise major concerns. Similarly, the proposed immediate upending of many longstanding arrangements on the basis of which citizens have planned their futures, raises important issues relating to the need for a degree of predictability and respect for reasonable expectations in adopting tax reform.

47. One of the overriding concerns however is the enormous impetus given to income and wealth inequality by the proposed reforms. While most other nations, and all of the major international institutions such as the OECD, the World Bank, and the IMF have acknowledged that extreme

inequalities in wealth and income are economically inefficient and socially damaging, the tax reform package is essentially a bid to make the US the world champion of extreme inequality. As noted in the World Inequality Report 2018, in both Europe and the US the top 1% of adults earned around 10% of national income in 1980. In Europe that has risen today to 12%, but in the US it has reached 20%. In the same time period in the US annual income earnings for the top 1% have risen by 205%, while for the top 0.001% the figure is 636%. By comparison, the average annual wage of the bottom 50% has stagnated since 1980.

48. At the state level, the demonizing of taxation, as though it is inherently evil, means that legislature effectively refuse to levy taxes even when there is a desperate need. Instead they impose fees and fines through the back door, some of which fund the justice system and others of which go to fund the pet projects of legislators. This sleight of hand technique is a winner, in the sense that the politically powerful rich do not have to pay any more taxes, while the politically marginalized poor bear the burden but can do nothing about it.

2. Welfare reform

49. In calculating how the proposed tax cuts can be paid for, the Treasury has explicitly listed welfare reform as an important source of revenue.⁵ Indeed, various key officials have made the same point that major cuts will need to be made in welfare provision. Given the extensive, and in some cases unremitting, cuts that have been made in recent years, the consequences for an already overstretched and inadequate system of social protection are likely to be fatal for many programs, and possibly also for those who rely upon them.

3. Healthcare reform

50. The Senate majority leader recently wrote that “the Senate also voted to deliver relief to low- and middle-income Americans by repealing Obamacare’s individual mandate tax. For too long, families have suffered under this unpopular and unfair tax imposed under an unworkable law.” Many observers with whom I spoke consider that this move will, over time, make the rest of the ACA unviable, thus removing many millions of persons from the ranks of the insured.

51. There have also been many references in statements by senior officials to the desirability of reducing Medicare and Medicaid expenditures. When I asked state officials what they thought the consequences would be of repealing the ACA’s Medicaid expansion, the unanimous response was that it would be disastrous, not just for the individuals concerned but also for state health care systems.

52. In addition, there is considerable uncertainty surrounding the funding of the Children’s Health Insurance Program (CHIP), on which almost 9 million low-income children depend for their primary health and dental care.⁶ If long-term funding is not secured, those children could be left unprotected. If funding is secured, but threats to gradually decrease funding for the program over the short-term eventuate, this would also have devastating on the health of millions of poor children in America. Similarly, Federally Qualified Health Centers (FQCHs) are federally-funded, “safety-net” providers of comprehensive primary and preventive health care, regardless of the insurance status or ability to pay.⁷ The health center program has been able to grow due to expanded Medicaid eligibility and increases in federal grant funding, including under the Affordable Care Act.⁸ The future of these centers is, however, uncertain, with a re-funding bill having passed the House but Senate consideration being delayed. If the

⁵ <https://www.treasury.gov/press-center/press-releases/Documents/TreasuryGrowthMemo12-11-17.pdf>

⁶ <https://ccf.georgetown.edu/2017/08/03/what-every-policy-maker-needs-to-know-about-the-childrens-health-insurance-program-chip-a-refresher/> ; <https://www.medicaid.gov/chip/downloads/fy-2016-childrens-enrollment-report.pdf>;

⁷ National Association of Community Health Centers, <http://www.nachc.org/about-our-health-centers/find-a-health-center/>

⁸ Julia Paradise et al, Community Health Centers: Recent Growth and the Role of the ACA (18 January 2017),

funding is lost, some 2,800 health centers across the country could close,⁹ 9 million patients could lose access to primary and preventive care, more than 51,000 providers and staff could lose their jobs, and \$7.5 billion revenue will be foregone in economically distressed communities.¹⁰ If the funding is decreased, one can only presume the effects will be commensurately devastating.

4. New information technologies

53. The term ‘new information technology’ or ‘new technology’ is not well-defined, despite its frequent use. It is commonly used for such widely different but interrelated phenomena as the spectacular increase in computing power, ‘Big Data’, machine learning, algorithms, artificial intelligence and robotization, among other things. These separate terms often also lack a clear definition.¹¹ There are clear benefits to the rapid development of new information technology. A 2016 White House Report, for example, highlights the major benefits of new artificial intelligence technology “to the public in fields as diverse as health care, transportation, the environment, criminal justice, and economic inclusion” in artificial intelligence.¹² But the risks are also increasingly clear. Much more attention needs to be given to the ways in which new technology impacts the human rights of the poorest Americans.¹³ This inquiry is of relevance to a much wider group since experience shows that the poor are often a testing ground for practices and policies that may then be applied to others. These are some relevant concerns.

(i) Coordinated entry systems

54. A coordinated entry system (CES) is, in essence, a system set up to match the homeless population with available homeless services. Such systems are gaining in popularity and their human rights impact has not yet been studied extensively.¹⁴ I spoke to a range of civil society organizations and government officials in Los Angeles and San Francisco about CES.

55. In Los Angeles, CES is one of the pillars of mayor Garcetti’s strategy¹⁵ to tackle the homelessness crisis in the city. The system is administered by the Los Angeles Homeless Service Authority (LAHSA). Tens of thousands of Los Angeles’ homeless population have been included in the system since it was first set up in 2013. It works as follows. A homeless service caseworker or volunteer interviews a homeless individual using a survey called the Vulnerability Index-Service Priority Decision Assistance Tool (VI-SPDAT). This data is stored in a Homeless Management Information System (HMIS) that stores the data. A ranking algorithm gives the homeless respondent a vulnerability score between 1 and 17 and a second, matching, algorithm, matches the most vulnerable homeless to appropriate housing opportunities.

56. The CES replaces a previous system of matching the homeless to housing that was described to me by various interlocutors as dysfunctional. It is based on the principle of ‘Housing First’, which focuses on

⁹ National Association of Community Health Centers, <http://www.nachc.org/wp-content/uploads/2016/02/NACHC-2017-Policy-Paper-Funding.pdf>.

¹⁰ National Association of Community Health Centers, *The Health Center Funding Cliff and its Impact*, September 2017; Peter Shin et al, *What are the Possible Effects of Failing to Extend the Community Health Center Fund?*, RCHN Community Health Foundation Research Collaborative Policy Research Brief # 49 (21 September 2017), https://publichealth.gwu.edu/sites/default/files/images/GG%20Health%20Center%20Fund%20Brief_9.18_Final.pdf

¹¹ In a written submission received by the Special Rapporteur from researchers at the Princeton University Center for Information Technology Policy, they write: “The concept of AI has been proven to be notoriously difficult to define. A basic though popular definition of AI refers to “intelligence exhibited by machines” or “the science and engineering of making intelligent machines.” These definitions assume that ‘intelligence’ is clearly defined itself, though it, too, is ambiguous. No commonly agreed upon definition of artificial intelligence currently exists.” Available here: <http://www.ohchr.org/EN/Issues/Poverty/Pages/Callforinput.aspx>

¹² Executive Office of the President National Science and Technology Council Committee on Technology, ‘Preparing for the Future of Artificial Intelligence’, October 2016, p.1.

¹³ Cathy O’Neil, ‘The Ivory Tower Can’t Keep Ignoring Tech’, 14 November 2017, available from: <https://www.nytimes.com/2017/11/14/opinion/academia-tech-algorithms.html>

¹⁴ One important exception is an excellent book that will be published in January: Virginia Eubanks, *Automating Inequality: Automating Inequality How High-Tech Tools Profile, Police, and Punish the Poor* (Forthcoming, 2018)

¹⁵ <https://www.lamayor.org/comprehensive-homelessness-strategy>

providing housing before anything else. But despite the good intentions of officials in Los Angeles, there is an Orwellian side to CES. Similar concerns were expressed to me about the San Francisco CES.

57. A first, and major, concern is that the VI-SPDAT survey asks homeless individuals to give up the most intimate details of their lives. Among many other questions, the VI-SPDAT survey requires homeless individuals to answer whether they engage in sex work, whether they have ever stolen medications, how often they have been in touch with the police and whether they have “planned activities each day other than just surviving that bring [them] happiness and fulfillment”. One researcher I met with who has interviewed homeless individuals that took the VI-SPDAT survey explained that many feel they are giving up their human right to privacy in return for their human right to housing.

58. A civil society organization in San Francisco explained that many homeless individuals feel deeply ambivalent about the millions of dollars that are being spent on new technology to funnel them to housing that does not exist. According to some of my interlocutors, only a minority of those homeless individuals being interviewed actually acquire permanent housing, because of the chronic shortage of affordable housing and Section 8 housing vouchers in California. As one participant in a civil society town hall in San Francisco put it: “Computers and technology cannot solve homelessness”.

59. A third concern related to access to and sharing of the wealth of data collected via coordinated entry systems and stored in HMIS. According to 2004 data standards by the Department of Housing and Urban Development, homeless organizations that record, use or process Protected Personal Information on homeless clients for a HMIS may share that information with law enforcement in a number of circumstances, including in response to “an oral request for the purpose of identifying or locating a suspect, fugitive, material witness or missing person” without the need for a warrant or any other form of judicial oversight.¹⁶

60. I understood from civil society organizations that homeless individuals who have been interviewed for VI-SPDAT have expressed a fear, a fear that does not seem unjustified in light of the current legal regime, that the police would access the very sensitive personal data stored in HMIS. When I met with the Executive Director of LAHSA, he assured me that LAHSA is working on a policy decision to deny the LAPD access to HMIS, which would be an important step in safeguarding the human right to privacy and other civil rights of the homeless. Other local and county officials have also assured me that the LAPD is currently not allowed access to HMIS.

61. However, since federal standards allow such access and given the fact that the LAPD informed me that it is “unfortunate” that they currently have no access to CES data, it is likely there will be continued pressure on LAHSA and similar agencies in other municipalities to give access to the police to this ‘gold mine’ of information. Access by the police to HMIS is only one policy decision away.

(ii) Risk assessment tools in the pre-trial phase

62. Across the United States, a movement is underway to reform the pretrial system. At the heart of the reform is an effort to disconnect pretrial detention from wealth and to tie it to risk instead. And to accomplish that goal, a growing number of jurisdictions are adopting risk assessment tools (also called actuarial tools, or Actuarial Pretrial Risk Assessment Instruments -APRAIs¹⁷) to assist in pretrial release and custody decisions.¹⁸ This move from pretrial detention and money bail to risk assessment is widely

¹⁶<https://www.hudexchange.info/resources/documents/2004HUDDataandTechnicalStandards.pdf>

¹⁷ The Criminal Justice Policy Program (CJPP) at Harvard Law School, ‘Moving Beyond Money: A Primer on Bail Reform’, October 2016, p. 18.

¹⁸ Sandra G. Mayson, ‘Bail Reform and Restraint for Dangerousness: Are Defendants a Special Case?’ *Public Law Research Paper No. 16-30 Yale Law Journal* (Forthcoming DO NOT CITE WITHOUT AUTHOR’S PERMISSION), p.1, available from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2826600; Human Rights Watch, ‘Not in it for Justice: How California’s Pretrial Detention and Bail System Unfairly Punishes Poor People’, April 2017, p. 87-88.

supported, but new risks to the human rights of the poor in the United States arise with the use of risk assessment tools.

63. Automated risk assessment tools, take “data about the accused, feed it into a computerized algorithm, and generate a prediction of the statistical probability the person will commit some future misconduct, particularly a new crime or missed court appearance.”¹⁹ The system will generally indicate whether the risk for the particular defendant, compared to observed outcomes among a population of individuals who share certain characteristics, is ‘high’, ‘moderate’, or ‘low’. Judges maintain discretion, in theory, to ignore the risk score.

64. One fundamental critique is that risk assessments are based on turning individual circumstances into risk categories. The overwhelmingly poor defendants who are confronted with these new practices are turned into ‘high’, ‘medium’ or ‘low’ risk classes, a demeaning process for those involved which goes directly against the principle of an individualized criminal justice system.

65. Several interlocutors warned that these tools may seem to produce objective scores, but that the decision what risk level to qualify as ‘high’ or ‘low’ is not an objective, but a political choice, that should ultimately be decided by voters, not the, often private, developers of these tools.

66. Risk assessment tools pose the same risks associated with privatizing public functions that currently plague the money bail system. I met with a Division Chief in the Public Defender’s Office of Los Angeles County who explained the pressure court systems are under to buy risk assessment tools ‘off the shelf’ from private vendors. As in other contexts, the inner workings of such tools as proprietary to the company that sells it, which leads to serious due process concerns that affect the civil rights of the poor in the criminal justice system.²⁰

(iii) Access to high-speed broadband access in West Virginia

67. Civil society organizations have urged me to focus on obstacles to internet connectivity in impoverished communities in West Virginia.²¹ This is a persistent problem in the state, where an estimated 30% of West Virginians lack access to high speed broadband (compared to 10% nationally) and 48% of rural West Virginians lack access (compared to 39% of the rural population nationally).²² But when I asked the Governor’s office in West Virginia about efforts to expand broadband access in poor, rural communities, it could only point to a 2010 broadband expansion effort. It downplayed the extent of the problem by claiming that there were “some issues” with access to Internet in West Virginia’s valleys.

5. Puerto Rico

68. I spent two days of the nine days I traveled outside of Washington, DC, in Puerto Rico. I witnessed the devastation of hurricane Irma and Maria in Salinas and Guayama in the south of the island, as well as in the poor Caño Martín Peña neighborhood in San Juan. Both in the south and in San Juan I listened to individuals in poverty and civil society organizations on how these natural disasters are just the latest in a series of bad news for Puerto Ricans, which include an economic crisis, a debt crisis, an austerity crisis and, arguably, a structural political crisis.

69. Political rights and poverty are inextricably linked in Puerto Rico. If it were a state, Puerto Rico would be the poorest state in the Union. But Puerto Rico is not a state, it is a mere ‘territory.’ Puerto

¹⁹ Human Rights Watch, ‘Not in it for Justice: How California’s Pretrial Detention and Bail System Unfairly Punishes Poor People’, April 2017, p. 88.

²⁰ Written submission from the AI Now Institute: <http://www.ohchr.org/EN/Issues/Poverty/Pages/Callforinput.aspx>

²¹ Written submission from Access Now: <http://www.ohchr.org/EN/Issues/Poverty/Pages/Callforinput.aspx>

²² West Virginia Center on Budget and Policy & American Friends Service Committee, ‘2016 State of Working West Virginia: Why is West Virginia so Poor?’, p. 55.

Ricans have no representative with full voting rights in Congress and, unless living stateside, cannot vote for the President of the United States. In a country that likes to see itself as the oldest democracy in the world and a staunch defender of political rights on the international stage, more than 3 million people who live on the island have no power in their own capital.

70. Puerto Rico not only has a fiscal deficit, it also has a political rights deficit, and the two are not easily disentangled. I met with the Executive Director of the Financial Oversight and Management Board that was imposed by Congress on Puerto Rico as part of PROMESA. This statement is not the place to challenge the economics of the Board's proposed policies, but there is little indication that social protection concerns feature in any significant way in the Board's analyses. At a time when even the IMF is insisting that social protection should be explicitly factored into prescriptions for adjustment (i.e. austerity) it would seem essential that the Board take account of human rights and social protection concerns as it contemplates far-reaching decision on welfare reform, minimum wage and labor market regulation.

71. It is not for me to suggest any resolution to the hotly contested issue of Puerto Rico's constitutional status. But what is clear is that many, probably most, Puerto Ricans believe deeply that they are presently colonized and that the US Congress is happy to leave them in the no-man's land of no meaningful Congressional representation and no ability to really move to govern themselves. In light of recent Supreme Court jurisprudence and Congress's adoption of PROMESA there would seem to be good reason for the UN Decolonization Committee to conclude that the island is no longer a self-governing territory.