RICHARDSON KISH COMPLAINT TO THE UNITED NATIONS RE: CITIZENSHIP TAXATION – APRIL 15, 2015 – INTERNATIONAL TAX

A SUBMISSION TO
THE SENATE FINANCE COMMITTEE
INTERNATIONAL TAX WORKING GROUP

by

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TORONTO, CANADA

APRIL 15, 2015

This is submission 7 of 7 total submissions.

The other six submissions are:

(1) "Richardson Kish Main Citizenship Taxation April 15, 2015 International Tax"

(2) "Richardson Kish Video Testimonials of Americans Abroad - April 15, 2015 - International Tax"

(3) "Richardson Kish Comments of Americans Abroad on Citizenship Taxation - April 15, 2015 - International Tax"

(4) "Richardson Kish The S. 877A Exit Tax - April 15, 2015 - International Tax"

(5) "Richardson Kish Revenue Raising Measures - April 15, 2015 - International Tax"

(6) "Richardson Kish Mutual Fund Comparison: Canada vs. United States – April 15, 2015 - International Tax"

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August 2014 Human Rights Complaint to United Nations Re: United States Citizenship Taxation

In August 2014 a group of non-resident U.S. citizens (some of whom were forced to renounce their citizenship) from ten countries filed a Human Rights Complaint with the United Nations over the harm caused by United States citizenship taxation laws and related "life control" that continue to be imposed on innocent citizens of other countries.

One of the authors of the April 15, 2015 Senate Finance Committee International Tax Working Group submission, Professor Stephen Kish, was a signer of the original complaint. The other signers do not wish to have their names disclosed in this public online version and Dr. Kish represents them in this submission.

The complaint describes the human rights harms of citizenship taxation and concludes with:

"We therefore ask you to follow your own directive contained in Article 2 of the Declaration of Human Rights, which states: "no distinction shall be made on the basis of the… international status of the country ... to which a person belongs." **We ask you to equally condemn the United States of America for the citizenship-based tax policy that is hurting and grieving so many people around the world.**

Bring an end to CBT, once and for all, so that finally every human being on the planet will be subject to taxation only by the governments that serve them."

A stimulus for the complaint was the unwillingness of non-U.S. governments to protect their citizens from the imposition, by a foreign country, of taxation, life control, and confiscation of non-U.S. retirement assets. Also, despite the receipt of hundreds of submissions by ordinary non-resident citizens describing the harm of U.S. tax policies experienced by them, the United States House Ways and Means Committee failed to make any attempt at, or even mention of, legislative relief for non-resident U.S. citizens.

This failure of the United States Government to protect its own citizens was a prime motivator in the composition of this Complaint.

See below for the Complaint:

Human Rights Council

Complaint Procedure Form

- **You are kindly requested to submit your complaint in writing in one of the six official UN languages (Arabic, Chinese, English, French, Russian and Spanish) and to use these languages in any future correspondence;**
- **Anonymous complaints are not admissible;**
- **It is recommended that your complaint does not exceed eight pages, excluding enclosures.**
- **You are kindly requested not to use abusive or insulting language.**

I. Information concerning the author (s) of the communication or the alleged victim (s) if other than the author

Individual ☐ Group of individuals ☐ NGO ☐ Other ☐

Last name: …**[The original version of this Human Rights Complaint was sent to the United Nations on August 7, 2014 with names of the signers (41 from 10 countries) disclosed in confidence to the U.N. The Complaint was signed in the original version by Dr. Stephen Kish and by others who do not wish to have their names disclosed in a public online version. Dr. Kish's signature in the original version was: "Dr. Stephen Kish, American/Canadian in Canada, signing personally and on behalf of the Alliance for Defence of Canadian Sovereignty Board of Directors, and the millions of U.S. persons abroad who are too frightened to sign this document."]** ……

First name(s): …….

Nationality: ……

Address for correspondence on this complaint: ……..

Tel and fax: (please indicate country and area code) …….

E-mail: …….

Website: …….

Submitting the complaint:

On the author's own behalf: ☐

On behalf of other persons: ☐ (Please specify: We are writing on behalf of ourselves and all others who are currently considered, under a broad range of legislation and evolving policies, to be "US Persons" for tax purposes by the United States of America. We come from diverse backgrounds and walks of life; we live in a variety of economic circumstances and reside in every corner of the globe. Many of us have become citizens of the nations in which we live and (if we acknowledge it at all) consider our relationship with the USA to be of a sentimental nature associated with our heritage. Some have had US permanent residency status in the past but no longer do so. Others amongst us do, indeed, consider themselves patriotic American citizens but have no financial dealings within the USA either through employment, investment or otherwise.

What unites us is the fact that we all live permanently outside the borders and jurisdiction of the USA. Yet this country claims that we owe it unlimited access to our personal financial information. This country threatens to punish us with major economic harm if we, and all who provide us any form of financial services, do not comply with its demands. It threatens our abilities as employees to exert control over any financial accounts. Such threats are without cessation, unless and until we pay to be released from its claim of legal status over us.

What unites us is that we are honest, law-abiding and taxpaying residents in our chosen lands and *not* tax-evaders under any reasonable definition of that term. Yet, because of our nationality status - as defined solely by the USA - we are being surveilled, threatened and sanctioned by the United States and by our home governments that are under severe economic pressure from the US to consent to implement these extraterritorial laws. By virtue of the fact that we in Canada live right next door to the US, and (with the possible exception of Mexico) comprise the largest concentration of individuals being confronted with these issues, our arguments as set forth below will be heavily supported by what has been experienced by Canadians.

II. Information on the State concerned

Name of the State concerned and, as applicable, name of public authorities responsible for the alleged violation(s): The United States of America and its President, Congress, Supreme Court, Treasury Department, and Internal Revenue Service (IRS). All have been involved in creating, upholding and maintaining citizenship-based taxation (CBT), the Foreign Bank Account Report (FBAR) filing requirement, and the Foreign Account Tax Compliance Act (FATCA) as applied to non-US-resident citizens and others this government has deemed to be "US Persons" for tax purposes. Further, all have played a role in other aspects of jurisdictional claims over us that have arisen solely in relation to our nationality status.

The governments of all nations that have signed agreements regarding FATCA, that have passed legislation implementing this US law within the borders of their own sovereign states, or that have been (and are now) otherwise aiding the US in asserting its jurisdictional claim over us. *[List of countries who have signed agreements* **http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx***]*

III. Facts of the complaint and nature of the alleged violation(s)

The complaint procedure addresses consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.

Please detail, in chronological order, the facts and circumstances of the alleged violations including dates, places and alleged perpetrators and how you consider that the facts and circumstances described violate your rights or that of the concerned person(s).

The central issue of our complaint is citizenship-based taxation (CBT) as practiced by the USA against all those it considers its citizens and "residents for tax purposes" who do not live within its borders. This class of individuals is termed "US Persons." It includes some persons who have voluntarily chosen US legal status through legal application for permanent residence and through physical presence within the jurisdiction of the United States. However, its vast majority are included in the class solely owing to their national status as US citizens, a status that has been and continues to be conferred upon them by the US without their consent and, even in many cases, without their knowledge. All persons included in this category of "US Persons" are held responsible for annual reporting and tax filing requirements under US law. All filings require these "US Persons" to make attestations under penalties of perjury under US law. Noncompliance with US financial reporting and taxation laws carries civil and criminal penalties including felony convictions and incarceration.

We, these "citizens", receive no services from the US government. We do not use US infrastructure; we do not use the US healthcare or school systems. We do not require the assistance of the US government in any way, nor will we ever do so. We cost the US government nothing. Moreover, coming from a variety of origins, and being scattered as we are across the entire world, we have no effective representation in the US Congress.

Regardless, the governments of the countries in which we live and are also citizens have submitted to the US claim of jurisdiction over us without inquiry and without objection. They have declared that how the United States treats us as a consequence of our nationality is not their concern and that we are not deserving of their protection. As a consequence of the following, our domestic remedies that may be offered in the future would be ineffective or unreasonably prolonged:

(1) our lack of effective political representation in the United States;

(2) the fact that we would be forced to submit to the United States jurisdiction to achieve any political representation, even though ineffective, which submission we reject as against our fundamental rights; and

(3) the failure of our countries of residence and primary citizenship to take up any responsibility to protect us from the unjust claims of a foreign jurisdiction.

Due to the breadth and scope of this issue, which involves millions of individuals over many decades, it is not possible to detail every instance of abuse with the precision that you have requested. However, we will do our best to describe the general history of the escalating abuse, precise details (where possible), and what is transpiring against us at this moment in history.

GENERAL BACKGROUND

The United States first asserted its right to tax persons based on their US citizenship when it adopted its first income tax (in 1861, to pay for the cost of their civil war). That income tax act was soon repealed but, to the present day, subsequent income tax acts have continued the tradition of including all US citizens within the definition of resident for tax purposes.

The definition of US citizen is the subject of a set of laws that are extensive and dynamic; the United States administrative agencies, legislature and judiciary each continuously alter significantly (and often retroactively) the subtle parameters of this term. Citizenship is not by consent in the United States; rather it is a status conferred by law that may only be shed by the filing of intrusive forms, typically with the payment of fees. Moreover, even if citizenship is relinquished for immigration purposes, former US citizens are still considered to be subject to the US tax system unless - and until - they file extensive exit paperwork including attestation and proof of long-term tax compliance together with detailed personal and financial information disclosure. In some cases the payment of exit fees and taxes are required. Owing solely to their status as former US citizens, even after full compliance with all these exit requirements, non-resident former citizens may be subject to US tax laws when they transfer property in the form of inheritance.

Over the years the US has revised its income tax code on a yearly basis. Tax scholars universally agree that the US income tax is the world's most complex tax system, that its international provisions are the world's most difficult to understand, most onerous in compliance requirements and punitive in the case of noncompliance. The entire financial lives of non-resident citizens of the US are captured within the international provisions of the US tax system. US citizens are typically unable to use various national retirement, health, education, and other savings plans because the US imposes taxes on these plans even when the individuals' country of residence and primary citizenship does not.

While subject to its most extensive, onerous and punitive international aspects, non-resident US citizens are typically denied the benefit of social programs delivered through the US tax code. The main example of this is the US earned income tax credit; this functions as a means of delivering cash transfers (welfare) to the working poor. Non-resident US citizens are not eligible for this benefit. They are excluded from this benefit precisely because they do not reside in the United States.

In summary, non-resident US citizens are conferred nationality status without their consent. Solely because of this status, they are subject to the world's most complex, onerous and

punitive tax system. Moreover, despite this status they are denied the benefits of this tax system because of their non-residence.

In 1970 the US Congress adopted the Bank Secrecy Act. Under this Act, all US Persons must declare (under threat of massive fines and penalties and on an annual basis) all financial account numbers and account balances for all accounts held in any bank or financial institution outside of the US that are aggregated at a value of $10,000 or more. This form is called the Foreign Bank Account Report (FBAR). There will be much more about the FBAR below.

In 2008 the US Congress passed the Heroes Earning Assistance and Relief Tax (HEART) Act, adopting an "exit tax" on citizenship renunciants with assets valued at over a certain prescribed threshold.

In 2010, the US Congress passed the Foreign Account Tax Compliance Act (FATCA) as part of the Hiring Incentives to Restore Employment (HIRE) Act. Worldwide, FATCA requires all foreign (non-US) financial institutions (FIs) to search out their "American" customers and report the detailed account information of such customers directly to the IRS. In order to compel the compliance of the world's FIs, Congress instituted a sanction of 30% withholding on any US source income paid to or through any non-compliant FI.

The United States' own banking regulation laws would not permit US banks to furnish customer information of the kind required by FATCA to the tax authorities of other countries. Similarly, other countries' laws would prohibit the furnishing of such confidential and private information to third parties (including the US tax authorities). Consequently, the US compelled other countries to enter into agreements with it to change their laws and require their FIs to comply with FATCA but use the foreign tax authority as the conduit for furnishing the information to the IRS. In these agreements, the US has agreed to furnish a very modest amount of information back to these other countries and to make modest adjustments to the requirements imposed under FATCA. Also, the US has promised to enact more regulations in the future to allow it to furnish more information. But no other country practices citizenship-based taxation (CBT) like the US. Thus, there is currently no possibility for full reciprocity in any of these agreements even if such future regulations are ever enacted. It is clear that all of these agreements are being signed under the duress of threatened economic sanctions.

This constitutes a threat made by one nation against the financial stability of all others, thereby defining as extortion the monies the US Treasury Department hopes to collect with the aid of its enforcer, FATCA.

Until the introduction of FATCA, it is apparent that, globally, very few people knew or understood the ramifications of CBT. Many had no knowledge or understanding whatsoever of FBAR. This is particularly the case for those who emigrated from the United States many years ago. Their children, both US- and foreign-born, were (and are) largely oblivious. Much to their horror, when stories about FATCA slowly started to appear in the financial pages of newspapers, a whole generation began to learn that, according to a law they never knew about in a country they didn't live in, they were considered to have been living as tax-evading

criminals, sometimes for their entire lives. Further, they were about to become hunted persons the world over. Our movement to stand firm and resist this unconscionable invasion of our nations and our lives was formed in the crucible of those terrible first months of our education in US tax law as applied outside its borders. *[See:* **http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2383432***]*

THE VIOLATIONS, ARTICLE BY ARTICLE

In the Introduction to the United Nations Declaration of Human Rights *[See:* **http://www.ohchr.org/EN/UDHR/Documents/60UDHR/leafletA4en.pdf***]* it is stated: "These rights belong to you. … defend them for yourself as well as your fellow human beings." We have come before you to do just that. Article by article we will show how CBT, FBAR and FATCA are stripping several million people of their fundamental rights.

Article 1: Our rights to reasonable treatment by people of conscience are violated because CBT is inherently unreasonable. CBT unreasonably demands that individuals who have no use for, or in many cases eligibility for, the US government's services, must pay for those services anyway. It unreasonably demands that people who left the country as babies or young children should be considered taxpayers merely because they were born on US soil (or born abroad to a US citizen parent). It unreasonably demands that people waste thousands of dollars each year, and untold hours of their precious time, in order to file a stack of paperwork to a government that may not even be owed a dime on the bottom line of the tax form.

One of the first stories about FATCA in a Canadian newspaper (June 2011) concerned a middle-aged Canadian woman who had been born to Canadian parents in a US hospital; she had lived in the US only for her first four days of life. A call from her broker notifying her of her US citizenship, her US tax liability and the new law designed to flush out people like her, forced her to seek expensive professional advice to deal with her newfound reporting burden. Such a burden enforced upon a person who had lived in the US for only four days is the very definition of "unreasonable". *[See:* **http://www.theglobeandmail.com/globe-investor/personal-finance/irs-bearing-down-on-americans-in-canada/article586970/***]*

Additionally, FBAR requirements unreasonably force us to report our entire financial holdings once a year, merely because those holdings exist outside the USA. FBAR filing must be done online, making filers vulnerable to theft and misuse. It must be done at the "Financial Crimes Enforcement Network" website of the US Government. This annual experience makes the user feel like a criminal suspect. It must be done by the US citizen his or herself. The instructions even suggest that US citizen children should be filling out these forms by themselves. Subjecting children to onerous criminal enforcement regimes under penalties of perjury under a law that is foreign to them is patently "unreasonable". Even for adults, the instructions are confusing and difficult to understand. It is noteworthy that Nina Olson, the US National Taxpayer Advocate, has officially denounced the penalties for FBAR mistakes as unreasonably punitive.

Those who blindly advocate the subjugation of "expat US persons" to this unreasonable taxation and reporting simply because "it's the law" are acting towards us without conscience. Conscience (literally meaning "with knowledge") requires thoughtfulness and the understanding that one's position might be wrong. In addition, FATCA, with its built-in threats of economic sanction, is the very antithesis of the "spirit of brotherhood" with which all people and nations should treat one another as stipulated in this Article.

Article 2: Our right not to be discriminated against by virtue of our national origin is being violated. FATCA has forced governments around the world to alter their own privacy and banking laws in order to allow their country's FIs to ask customers for their place of birth, a piece of information quite irrelevant to banking activities. Here are examples of what some Canadian FIs are now asking their customers as a result of FATCA and the Canadian government's acquiescence to it: [*June 2014: please note Section B of the following form:* **http://isaacbrocksociety.ca/wp-content/uploads/2014/06/ScotiaMcLeod-information-update-June-2014.pdf**; *please note pg. 4 of the following form:* **http://www.habibcanadian.com/downloads/HCB_Personal_AOF.pdf**; *for RBC Direct Investing online application:* **http://isaacbrocksociety.ca/2014/06/03/6-will-my-financial-institution-be-asking-me-if-i-was-born-in-the-u-s-from-cra-website-faqs-fatca/**; for RBC Dominion Securities: **http://isaacbrocksociety.ca/2014/06/26/please-provide-in-this-post-questions-big-canadian-banks-will-ask-new-account-holders-on-july-2-2014/comment-page-1/#comment-2083411** *]* Except for the first, these examples all constitute entrapment or, at minimum, a violation of the right to not incriminate one's self.

For a number of years already Switzerland has been severely targeted. US Persons living there have been forced to renounce their US citizenship in order to renew or to secure a mortgage and, in some cases documented in the following links, just to have an ordinary bank or investment account. *[See:* **http://isaacbrocksociety.ca/2013/06/07/its-official-renouncing-us-citizenship-saved-our-home/; http://world.time.com/2013/12/20/swiss-banks-tell-american-expats-to-empty-their-accounts/; http://origin.swissinfo.ch/eng/us-expats-feel-the-burden-of-fatca/35932576***]*

In addition, Eritrea which also taxes its diaspora (but on a much more modest basis than the US) has been condemned for its CBT practice by the Canadian government and ordered to cease its harassment of Canadians of Eritrean origin. By signing a FATCA Intergovernmental Agreement (IGA), Canada is allowing exactly the same threatening behaviour by the US, thus making a definite distinction based on the international status of the offending nation. *[See:* **http://www.cbc.ca/news/politics/john-baird-warns-eritrean-consulate-over-diaspora-tax-1.2701635?cmp=rss***]*

Article 3: Our "right to … liberty and security of person" has been severely restricted since the filing of FBARs began in 1970. FBARs carry heavy civil and criminal liabilities even for those whose failure to file is not wilful. Few "overseas Americans" were even aware of the requirement until very recently. A "noncompliant US Person" who files a first FBAR necessarily incriminates him/herself for past noncompliance. The annual FBAR filing multiplies the anxiety experienced by US taxpayers who hold accounts outside the USA. Every year we must file a form listing the institutions, the account numbers and the highest

annual balances of all accounts *to which we are signatory* that, when aggregated, have a value of $10,000 US or more. This is so even if a single amount of less than $10,000 is transferred from one account to another such that in the aggregate the accounts total or exceed $10,000. (More about this under Article 17.) This affects the vast majority of non-resident US Persons because *all* of their assets are held overseas in accounts that are local to *them* (but foreign to the US). Thus, in addition to reporting our annual income, we must report 100% of our financial *assets*. Such a thing is not demanded of any other citizens on earth.

This disclosure exposes non-resident US Persons to imminent harm in the form of cyber security risk. In these days of identity theft and electronic hacking it is simply foolhardy to send such information to anyone, let alone a government that is essentially foreign to us. The potential fines for failure to file FBARs are ruinous and, if applied, would cause instant bankruptcy. *[See:* **http://www.irs.gov/irm/part4/irm_04-026-016.html***]* It was when news of FATCA became public that many "US Persons" learned of FBARs for the first time.

The horror of FATCA exists in large part because when our local banks begin sending our information to the Internal Revenue Service (IRS) the Treasury Department will learn about us, thus further exposing us to the draconian penalties above-mentioned. CBT and FATCA are, in and of themselves, bad enough without the FBAR component. To add insult to injury, our own banks and our own government tax agencies are not even required to notify us if our information is about to be - or has been - sent to the US authorities. Such a situation leaves us in a perpetual state of fear that our financial privacy is about to be breached and that our assets are in danger of being taken from us.

The US offers no system of appeal or compensation for mistaken characterization of status as a US Person, or for mistaken transfer of information. Further, there is no redress in law for any security breach that results in loss of privacy, loss of identity, or loss of assets or income. The security of one's person has always been integrally linked to the security of one's financial assets and never more so than in this era of electronic records (which can be obtained easily by unscrupulous individuals and, quite frankly, are no one's business but our own). Under the FATCA system, millions of individuals are in danger of having their formerly private financial lives completely exposed to the government of the US as well as any individual who may be employed by it.

Article 4: While not being held in "slavery or servitude" in the traditional understanding of those words, we are, nonetheless (along with our FIs and the countries in which we live) being held hostage. Via FATCA, the US has said to us "We will prevent you from engaging in normal banking activities in *your* countries until you admit your guilt and come into compliance with *our* law." Via FATCA, the US has said to our FIs "You cannot do business as usual without considerable loss to your investments unless you accede to our demands." In this way, the USA has applied CBT as a way of exacting "tribute" from essentially foreign peoples in foreign nations with FATCA as the mechanism that allows it to succeed. The monies that the US government collects and diverts to the USA from its "overseas" residents are monies that will no longer be available to bolster those economies where the monies were earned and invested.

Moreover, in denying non-resident US Persons access to local government-sponsored health, education, and other savings plans, the US is making these individuals vulnerable to poverty and financial duress. It is denying them access to education, health care and other services solely because they are held to be citizens of, but do not live in, the United States.

Article 7: Our right to equal treatment under the law in our own countries also is violated by FATCA. Anyone who is discovered by their FI to have a US birthplace or other US *indicia* will have their information sent to the IRS if their account balances aggregate above a certain amount ($50,000). Again, this can occur when a single amount under the threshold amount is transferred from one account to another, thus aggregating above the threshold. Moreover, the threshold is voluntary: if it is expedient, any FI can choose to report accounts of lower amounts.

No other citizens or residents of the same country are subject to such measures. Even if one is notified that the information is to be sent (which is not required by law), individuals have no recourse if a mistake of fact or in law is made. If we refuse to answer incriminating questions, we will have our accounts closed. *[See: Agreement Between the Government of the United States of America and the Government of Canada to Improve International Tax Compliance through Enhanced Exchange of Information under the Convention Between the United States of America and Canada with Respect to Taxes on Income and on Capital, Article 4, subparagraph 2. The implication of the clause is that to avoid closure of the account the customer must be willing to have the account information shared with the USA.]*

In general, governments are sworn to protect their citizens from foreign aggression. Far from protecting, in the case of FATCA our governments are willingly handing us over with the suggestion (at least by the Canadian government) that we take up the issue with the USA. *[See:* **http://isaacbrocksociety.ca/2014/02/24/finance-minister-jim-flaherty-is-already-effectively-stripping-canadians-of-us-origin-of-their-canadian-citizenship/***]*. This informs us that we are no longer safe in our own lands.

Article 9: Our right to live without fear of arbitrary detention or exile has been violated. Many of us are exiled from our native land out of fear for our safety should a border guard decide to question us about tax issues.

Article 12: FATCA is an arbitrary interference with the financial privacy of all persons living outside the USA who have a US birthplace or other US indicia and are thereby suspected, without cause, of being US tax-evaders. Further, FATCA interferes with the financial privacy of persons closely linked to us. *[See: Article 17, below]*

Article 13: *[See: Article 9]*. Out of fear for our safety, many of us have felt we have had no choice but to give up our right to visit our native land to see our families and friends. Under current US law (the so-called "Reed Amendment"), those of us who have felt compelled to renounce our US citizenship may face a ban from ever re-entering the US. Commentators have noted that the Reed Amendment has not been enforced to date. However, there has been no US government statement confirming this, nor any evidence that it has not been enforced. As in the case of the FBAR, (which was on the books but virtually unenforced for several decades), past non-enforcement of the Reed Amendment would be no assurance at

all, even if such non-enforcement could be documented. *[See:* **http://www.reed.senate.gov/news/release/reed-offers-amendment-to-prevent-ex-citizen-tax-dodgers-from-reentering-the-us***]*

Article 17: Our right to hold financial accounts in association with others is virtually denied by the provisions of FBAR and FATCA. It was mentioned above *[See: Article 3]* that FBARs must be filed for each and every "foreign" account valued at $10,000 or more, or aggregated to a value of $10,000 or more, to which a U.S. Person is *signatory*. This includes accounts held jointly with spouses or other family members; it includes corporate and business accounts such as those of charitable organizations of which a "US Person" is a signing officer. It also includes accounts of other people to which a "US Person" may have access such as through power of attorney arrangements. Under the FATCA regulations, a joint account is considered wholly owned by the "US partner". *[See:* **http://www.law.cornell.edu/cfr/text/26/1.1471-5***]*

If a "US Person" obeys the letter of the FBAR law, he/she will be forced to expose the private finances of these other individuals, businesses or organizations despite the fact that they have absolutely no connection to the US. Many "US Persons" will not want to do this. Segregation of marital assets avoids disclosure of the non-US partner's private financial details, but can raise complex legal and social issues related to property rights *[See: Article 22]*. In employment and community involvements, the "US Person" may be forced to resign from positions of financial responsibility despite having every right to engage in these roles according to this Article. FATCA's interference in the financial affairs of other nations renders it nearly impossible for a "US Person" to own joint property with anyone else unless those individuals do not mind also having *their* financial records sent to the IRS.

Article 22: Our "right to social security" and to the "realization of the economic, social and cultural rights indispensable for our dignity" are violated by CBT, FBAR and FATCA. We take "social security" to mean the natural feeling of safety that one should have when one is at home. In the FATCA world even our own homes are no longer safe. In order to protect our financial resources as best we can, many of us have taken our names off joint marital assets accrued with our spouses over many years for security in our old age. Many of us have taken our names off the title to our homes in fear that the equity might be lost in order to pay a tax bill or an exit tax. After living safely in our homes and countries for decades, many of us no longer know what is going to happen to us. *[To protect our identities we will not cite individual cases in this instance. It must suffice for you to know that this is being done around the world.]*

We take the "realization of economic rights…" to mean being able to participate fully in the economic life of our countries and to take full advantage of the savings and investment opportunities afforded us by those countries. The US tax reporting requirements for "expat Americans" are so onerous in the area of investments that it is almost not worth having the investments at all. For example, Canadians are encouraged to invest in a "Tax-free Savings Account" (TFSA); however, these are considered by the US government to be "foreign trusts". US tax reporting in relation to a TFSA requires a form of several pages to be filled out along with a statement from an official of the bank plus documentation on the earnings of

the account (which are then taxable by the US government). Therefore, a TFSA that is available and marketed to all Canadians is of no value to a Canadian of US birth.

There are a number of "registered" accounts available to Canadians for special savings needs including the Registered Disability Savings Plan (RDSP) and the Registered Education Savings Plan (RESP). According to the FATCA agreement between Canada and the USA, these accounts are to be exempt from FATCA reporting. Yet some Canadian FIs now have birthplace and citizenship questions on their application forms for these accounts. Further, while exempt from FATCA reporting by FIs, the earnings within these accounts ARE deemed taxable by the U.S. government. *[See below]*

Mutual funds are another mine-field of tax complexities for "expat Americans". So, unless we wish to pay dearly for annual tax accounting services, we are reduced to keeping our investments very simple and having nothing but savings accounts earning minimal interest. Anything not invested in US-sited funds is onerously taxed under the Passive Financial Investment Company (PFIC) rules.

It is particularly noteworthy that US citizens abroad are no longer welcomed as new account holders with US-sited FIs. If an account already exists, the account holders are being informed that their accounts have been frozen (no longer allowed to purchase new shares/units or change their portfolio holdings other than selling current shares/units) or that they need to close their account entirely. In other words, we are being denied pathways for investing both in our country of residence AND in our country of citizenship.

Having mentioned the RDSP, we would like to draw your attention to a particularly egregious case of US tax abuse being perpetrated against a mentally disabled Canadian man; he is incapable of understanding the significance of citizenship and, therefore, ineligible for renunciation or relinquishment of his US citizenship, a status inherited from his mother. Please read his story at the following link. *[**http://isaacbrocksociety.ca/2014/06/20/time-for-reflection/comment-page-5/ - comment-2239876**]* Also, listen to how the Canadian government responded to this mother's serious concerns. *[**https://www.youtube.com/watch?v=ANqVaEpRi_4**]* It is even more astonishing when you realize that the RDSP contains not only the contributions of the owner of the plan but also a matched amount contributed by the Canadian government. Such matched amounts can be up to three times that which is contributed by the individual. In this situation, the resources accrued from all Canadian taxpayers also are being taxed by the US government.

Article 23: *[See: Articles 3 and 17]* One's right to "free choice of employment" is severely curtailed by CBT, FBAR and FATCA. When one's "US Personhood" is discovered, it is highly unlikely in the current CBT/FATCA world that such an individual would be even considered for employment positions that would require his/her signature on corporate accounts. One needn't even bother applying.

Article 25 (1): Given the recent worldwide implementation of FATCA, our right to an adequate standard of living is threatened by the confiscatory fines associated with FBAR filing violations to which the vast majority of people like ourselves are going to be increasingly exposed. *[See: Article 3]* Currently, the stipulated fines can equal several times

the value of any unreported account, thus having the potential of completely wiping out the life savings of a "US Person" resident outside the U.S. who had not been filing FBARs.

Article 28: Our right to expect a "social and international order in which all the rights and freedoms set forth in this Declaration can be fully realized" is indeed being violated by the existence of CBT, FBAR and FATCA. We are the only people on earth that have the annual, life-long "obligation" of filing tax returns to two nations (one of them onerously complex with ever expanding requirements), of paying tax to two nations (one of which gives us absolutely nothing in return), of sending a list of our entire asset portfolio to officials of a foreign government every year, of "voluntarily" giving up investment opportunities that would prevent us from realizing the same financial gains as our neighbours and, now, being a hunted and spied-upon class of individuals in every bank and nation of the world.

Those of us who have been familiar with US tax law and have complied with it all these years are fed up with the ever-increasing expenditures (in both time and money) to fulfil these "obligations". FATCA is the last straw. Life as a "US Person" abroad has been difficult but now is intolerable.

Those of us who did not know US tax law (because we either never lived in the US, didn't work there, or left when we were children) are now living in a nightmare.

Many of us are retired individuals who have thoughtfully organized our finances in such a way throughout our lives that, unwittingly, we have exposed ourselves to the full force of penalties and, in some cases, exit taxes. Our "foreign" spouses rightly refuse to allow their private information to be sent to the Treasury Department in the form of FBARs or FATCA information transfers. We are trapped by the unreasonable tax laws of a country with which we have little or no connection, and to which we believe we should have no obligation. As far as we are concerned, the USA has become the nation to which the Declaration refers in:

Article 30: that is, a nation that engages in activities aimed at the destruction of the rights and freedoms set forth in the Declaration. Throughout the past 50 years the USA has been on a documentable and systematic program of discrimination against - and financial abuse of - its own sons and daughters who have chosen to live elsewhere. As things stand at present, our "birth mother" has left us with a "Morton's Fork" of two options: (1) to keep our savings in our mattresses or (2) to be forced to relinquish or renounce our identity and heritage at great emotional and financial cost.

CONCLUSION

The Declaration suggests in Articles 9, 13 and 15 that national identity is very important and is the right of every human being. When people move around the globe, as they have done since time immemorial, people develop an attachment to their new home and become full citizenship partners in that *new* home. They should be allowed the freedom to do that, without fear that their *former* home will come after them later in life. They should also be free, without fear of the laws of any land, to retain their natural and rightful association with the country from which they came.

In closing, we want to remind you that CBT, the author of all the hardship we have described, is practiced by only ***two*** nations on earth, the USA and Eritrea. Eritrea was condemned for it by the United Nations on Dec. 5, 2011. The USA was a strong supporter of that resolution. *[See:* **http://usun.state.gov/briefing/statements/2011/178287.htm***]* The precedent is set.

We therefore ask you to follow your own directive contained in Article 2 of the Declaration of Human Rights, which states: "no distinction shall be made on the basis of the… international status of the country ... to which a person belongs." We ask you to equally condemn the United States of America for the citizenship-based tax policy that is hurting and grieving so many people around the world. Bring an end to CBT, once and for all, so that finally every human being on the planet will be subject to taxation only by the governments that serve them.

IV. Exhaustion of domestic remedies

1- Steps taken by or on behalf of the alleged victim(s) to exhaust domestic remedies– please provide details on the procedures which have been pursued, including recourse to the courts and other public authorities as well as national human rights institutions[*], the claims made, at which times, and what the outcome was:

For many years, US persons living abroad have petitioned the US government to end CBT. Notable amongst these are the directors and members of American Citizens Abroad (ACA) *[See:* **http://americansabroad.org/***]*; articles such as the following illustrate some of the efforts that have been made:

http://americansabroad.org/files/5513/3589/8020/taxnotes.pdf

http://americansabroad.org/files/9013/3589/7793/fatcapp.pdf

http://americansabroad.org/files/2813/6456/7161/final_arawg2.pdf

http://americansabroad.org/files/6513/6370/3681/finalsubrbtmarch2013.pdf

People who heard of this issue only recently, began writing to their own governments to try to stop any cooperation with the USA on FATCA. Examples of their submissions to the Canadian Department of Finance may be found at: *[***http://maplesandbox.ca/2014/here-is-what-canadians-said-on-fatca-iga-the-cons-didnt-listen/***]*. Here are some examples of submissions to the US House of Representatives Ways and Means Committee in the spring of 2013: **http://waysandmeans.house.gov/uploadedfiles/bugnion_wg_comments.pdf; http://waysandmeans.house.gov/uploadedfiles/conklin_wg_comments.pdf; http://isaacbrocksociety.ca/wp-content/uploads/2014/07/Ways-and-Means-Committee-submission-April-13-2013.pdf**

[*] National human rights institutions, established and operating under the Principles Relating to the Status of National Institutions (the Paris Principles), in particular in regard to quasi-judicial competence, may serve as effective means of addressing individual human rights violations.

Pleas of ordinary people from around the world have gone unheard. Governments normally described as fair and democratic such as Canada's (which buried the FATCA implementation legislation in a mammoth omnibus budget bill C-31, Part V), have railroaded the passage of laws that alter and supersede their own on their sovereign soil.

2- If domestic remedies have not been exhausted on grounds that their application would be ineffective or unreasonably prolonged, please explain the reasons in detail:

There are now political challenges to FATCA being brought forward by the Republican Party in the USA. FATCA will likely be a US election issue in 2016. That is two years away and our problems are here and now. Moreover, there is no legislative, administrative, or judicial activity that we know of studying the issue of CBT.

A legal challenge against Canada's FATCA implementation legislation, on the grounds that it violates Canada's Charter of Rights and Freedoms, is currently seeking funding. It likely will be several years before the matter is brought to court. In the meantime, many people are living in fear and in tenuous financial circumstances because of the combination of CBT/FBAR and FATCA. Moreover, even if the government of Canada's acquiescence to FATCA in an intergovernmental agreement is found to be unconstitutional in whole or in part, this has no impact on the US tax or financial reporting laws, including those concerning citizenship and CBT. Nor would it have any impact on the lives of US expats living in other nations. Success on the merits would merely return Canadians to the rules and economic sanctions contained in FATCA itself. We need resolution to this matter now. It cannot wait.

V. Submission of communication to other human rights bodies

1- Have you already submitted the same matter to a special procedure, a treaty body or other United Nations or similar regional complaint procedures in the field of human rights?

……

2- If so, detail which procedure has been, or is being pursued, which claims have been made, at which times, and the current status of the complaint before this body:

……

VI. Request for confidentiality

In case the communication complies with the admissibility criteria set forth in Council resolution 5/1, kindly note that it will be transmitted to the State concerned so as to obtain the views of the latter on the allegations of violations.

Please state whether you would like your identity or any specific information contained in the complaint to be kept confidential.

Request for confidentiality (*Please tick as appropriate*): Yes ☐ No ☐

Please indicate which information you would like to be kept confidential

Date: …… Signature: …….

N.B. The blanks under the various sections of this form indicate where your responses are required. You should take as much space as you need to set out your responses. Your complaint should not exceed eights pages.

VII. Checklist of supporting documents

Please provide copies (not original) of supporting documents (kindly note that these documents will not be returned) in one of the six UN official languages.

- Decisions of domestic courts and authorities on the claim made (a copy of the relevant national legislation is also helpful): ☐

- Complaints sent to any other procedure mentioned in section **V** (and any decisions taken under that procedure): ☐

- Any other evidence or supporting documents deemed necessary: ☐

VIII. Where to send your communications?

Office of the United Nations High Commissioner for Human Rights
Human Rights Council Branch-Complaint Procedure Unit
OHCHR- Palais Wilson
United Nations Office at Geneva
CH-1211 Geneva 10, Switzerland
Fax: (+41 22) 917 90 11
E-mail: CP@ohchr.org
Website: http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx