Fiscal Policy and Human Rights in the Americas

Mobilizing resources to secure rights

Thematic report

Executive summary

Prepared on the occasion of the Thematic Hearing on Fiscal Policy and Human Rights
156 Session of the Inter-American Commission on Human Rights (IACHR)
Washington DC, October 2015

WITH THE SUPPORT OF:

EXECUTIVE SUMMARY

Despite the sustained economic growth of the last decade in the Americas, fiscal policy has not fulfilled its huge transformative potential in combating poverty, inequality and the constant denial of human rights. Latin America and the Caribbean remains the most unequal region in the world with marked economic disparities that in turn reinforce gender and social inequalities. Some 165 million people in the region are poor, of which 69 million find themselves in extreme poverty. Poverty in the United States has risen to 14.5% of the population in 2013, while 12.9% of Canadians are poor.

Fiscal policies—characterized by regressive tax policies with low tax burdens and an imbalanced tax structure biased towards indirect taxes–are not serving to correct these structural problems. On the contrary, tax and fiscal policies have in many cases deepened inequalities and further impoverished populations already pushed to the limits.

Economic stagnation and reduced social spending have already begun to appear in the region in fact, with the foreseeable consequences of deepening chronic poverty, sharpening inequalities, and resulting setbacks in the life projects of the youth and social protection of the most vulnerable. As such, rapid and sustained human rights-centered reforms are needed to safeguard the progress of the last decade, and to prevent the adoption of austerity-driven fiscal retrenchments in the region.

In light of the arguments and evidence presented in this paper, aligning tax and fiscal policy with human rights principles is necessary to ensure robust, effective and sustainable public financing. Enhanced monitoring by human rights mechanisms could help prevent the type of serious systemic violations of civil and political as well as economic and social rights which stem from ill-conceived fiscal policy. As shown in several emblematic cases in this report, the current situation of "fiscal impunity" and lack of effective scrutiny of fiscal policy in accordance with human rights has fissured the social compact in many countries.

Fiscal policy is a public policy, and as such is subject to human rights obligations of States. Indeed, human rights principles provide a framework which underpins the key functions of fiscal policy: the mobilization of resources to finance social progress to the "maximum of available resources"; the redistribution of economic gains to reduce socio-economic inequality; accountability between the State and citizens; and the correction of market failures which drive violations of rights, including to a healthy environment. The principles contained in the human rights treaties have the potential to change the way these policies are designed, formulated and implemented. Incorporating human rights into fiscal policy decisions would help cement the bonds of accountability between the State and its people, encouraging governments to be more responsive to the rights and claims of those to whom they should answer. In so doing, human rights would strengthen citizens' oversight institutions aimed at subjecting fiscal policy to the most rigorous standards of transparency, efficiency, participation and effective public accountability.

Presented on the occasion of the thematic hearing of the Inter-American Commission on Human Rights on fiscal policy, the present report contends that the standards and principles contained in international and regional human rights instruments, as well as many Constitutions, provide a compelling normative framework under which States can be held accountable for their fiscal policy decisions. Indeed, human rights standards provide a set of parameters and operational principles to guide all phases of the design, development, implementation and evaluation of fiscal policy. Of all the existing duties, five human rights principles are especially relevant.

The principle of *equality and non-discrimination* is one of the central tenets of human rights law. Despite the broad normative recognition and international consensus on its importance, many States in the region deploy fiscal policies that either directly or indirectly discriminate.

As demonstrated in the report, taxation regimes in the region are, in general, regressive and the burden of taxation is skewed against labor and in favor of capital, thereby having a disproportionate impact on sectors with less income. In the same way, budgetary priorities and the way in which public spending is allocated may prejudice low-income sectors. In Mexico, for example, the richest 20% of households receive 31.6% of the benefits of public spending on human development, while the poorest 20% enjoy only 13.1%. Moreover, fiscal policies in the region often suffer from gender biases, both explicit and implicit, that reinforce traditional roles of women in society, creating greater burdens on them, with no reasonable justification for doing so.

Access to information, transparency, accountability and participation are principles with determinative impact on the quality and legitimacy of fiscal policy. Human rights by definition require mechanisms to enforce them, and allow people access to fiscal information and to participate in decisions that may affect them. Latin American governments have made significant advances in access to information and transparency, making available comprehensive budgetary information and creating electronic platforms to make fiscal information more readily accessible, including in real time by some national and sub-national governments. However, Latin American countries still face a deficit in meaningfully incorporating in law and practice the principles of transparency, right to information, participation and accountability, which together would lead to a step-change in the quality of fiscal policies in guaranteeing human rights for all.

For example, in the last decade in Mexico, there have been a variety of advances, especially at the federal level, in terms of both transparency and accountability with regard to budgets. Reforms have recently been approved that broaden the mandate and independence of national bodies devoted to overseeing transparency and access to information, and a new law regulating these areas has been enacted. Citizens across the region have also deployed innovative accessible tools such as Citizens' Budgets. Transparency in itself is not sufficient to improve the quality of public spending, however; it is also necessary to improve effective participation of the citizenry, along with other factors that determine adequate distribution of public resources.

States also have a duty to use and generate the *maximum available resources*—especially through sufficient and sustainable taxation—in efficient, equitable and non-discriminatory ways. This duty reaches beyond the task of allocating limited resources effectively, but also involves the obligation to increase the availability of resources through domestic revenue mobilization. However, the tax burden in Latin America is still much lower than OECD countries, which restricts the State's ability to fund its rights obligations.

The high levels of evasion and tax avoidance in the region, the excessive and unjustified tax privileges enjoyed by certain sectors and a very weak use of property and capital taxes further reduce the resources available to finance human rights. In Ecuador, for example, the hundred largest economic groups in the country maintained tax debts in the amount of US $1.8 billion in early 2013, in particular stemming from the failure to pay taxes. These debts represent a third of public investments – US $6.5 billion in 2012 – and more than the national budget for road construction, which reached $1.2 billion that year. Lack of efficiency in the use of public resources also derails the potential redistributive impact of fiscal policy.

The obligations of *progressive realization and the prohibition of retrogression* in the realization of economic and social rights are recognized in regional and international human rights treaties. These treaties recognize that economic, social and cultural rights can only be secured progressively given resource constraints. But they also establish that States must immediately take all appropriate measures, including through budgeting to achieve the full realization of rights over time. The prohibition of retrogression meanwhile implies a strong presumption that States are not permitted under law to take deliberate retrogressive measures, for example budget cuts which could foreseeably deteriorate the level of enjoyment of a right. Given the current realities of stagnation, recession, or even economic crisis, the principles of progressivity and non-retrogression in the exercise of economic and social rights are particularly relevant.

If any deliberately retrogressive measures are considered in the context of fiscal adjustment, the State must show that these measures ensure a minimum level of social protection and that they are temporary, non-discriminatory, proportionate and necessary after the most careful consideration of all possible alternatives, including tax reforms. In Brazil, the government announced a fiscal adjustment in May 2015 in the amount of US $24 billion, principally impacting the budgetary allocations for social security and human rights. The Ministry of Education suffered a budget cut of 23.7%, the Ministry of Health 11.2%, the Secretariat for Racial Equality 56.3% and the Human Rights Secretariat 56.3%. Meanwhile, illicit financial flows from Brazil represent approximately US $33.7 billion per year. The adoption of more effective measures to control illicit financial flows would contribute to stemming unnecessary revenue shortfalls, and as a result help offset budget cuts.

Additionally, each State has an obligation to ensure the satisfaction of at least *minimum essential levels of economic, social and cultural rights*. This means that the State has the immediate and binding duty to ensure that people enjoy a basic minimum standard of living, and that reaching this minimum floor must be a priority in the allocation of public resources. The reality of people living below these most basic levels of rights constitutes strong evidence of a breach of their governments' obligations under international law. In a regional and national context with alarming levels of chronic poverty, States must account for the absence of minimum levels of social protection for the vulnerable population. To meet these basic standards of living of Latin Americans, it is incumbent on governments across the region to review, rethink and renovate their fiscal policies, eliminating tax evasion and avoidance, promoting direct taxes levied on income and profits over taxes on consumption, and establishing a human rights-aligned system of public expenditure to help the inhabitants of the Americas meet minimum levels of recognized rights. The enduring, structural and systematic deprivation of these most basic rights remains the largest debt incurred by American States. In some countries, such as Colombia, the courts have recognized in their jurisprudence the necessity to assure the minimum essential levels of economic and social rights as a limitation on the state's power in the area of indirect taxation, and to establish human rights as directive criteria for state intervention in the economy.

The slowdown in economic growth in the region has begun to manifest in the form of austerity policies and reductions in social spending, representing an enormous challenge for States and a threat to the human rights of the population. In this context, the oversight of national, regional and international human rights bodies is particularly necessary to prevent States from adopting regressive measures that could limit and dismantle a decade of progress on poverty and inequality in the region.

As evidenced in several instances in this new report, it is possible to monitor, operationalize and adjudicate human rights in fiscal policy. National courts, treaty bodies and special mandates of the United Nations are increasingly scrutinizing governments' decisions on fiscal matters and the use of public resources. Civil society organizations in Latin America like those signing this initiative, consider fiscal policy a key field in the justiciability, enforceability and implementation of human rights.

In the light of the factors described above, it is opportune and appropriate for the regional system of human rights to consolidate its scope of protection for human rights violations resulting from the impact of regressive and unfair fiscal policies.

As a consequence, the petitioning organizations request the Inter-American Commission on Human Rights to:

- Prepare a thematic report on fiscal policy and human rights in the Americas aimed at contextualizing and operationalizing human rights principles into fiscal policy within the framework of the Inter-American System and formulate guidelines to the States in the region to adopt fair and progressive fiscal policies aimed at guaranteeing human rights.

- Encourage national human rights institutions to engage in monitoring of fiscal policy, the role of business in the lack of public resources and their impact on ESCR. This would accord with the Commission's aims to strengthen national human rights systems in the areas of promotion and protection of economic, social and cultural rights, with an emphasis on business and human rights and sustainable development.

- Urge States to comply effectively with periodic reports under the monitoring of the implementation of the San Salvador Protocol, providing full and adequate information about their fiscal policies, in concordance with the established indicators under Article 19 of said Protocol.

- Include an analysis of how fiscal policy affects human rights involved in all of its relevant thematic reports.