Toward comprehensive reform of fiscal rules in Latin America and the Caribbean:

A human rights approach

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This working paper was prepared by Julieta Izcurdia and Natalia Segura Diez (ACIJ), María Emilia Mamberti and Olivia Minatta (CESR), and Grazielle Custódio David (as support from OXFAM LAC). It was translated from Spanish by Róisín Allen Meade and designed by María Nela Díaz.

I. Introduction

Countries in Latin America and the Caribbean face various challenges in relation to their fiscal policies: the policies around the use of government spending and taxation to influence economic conditions. This paper focuses on "fiscal rules", which are one of the key instruments governments use to determine their fiscal policies.

Fiscal rules are usually defined as form al restrictions on the conduct of the authorities in economic matters relating to fiscal policy. These rules are designed on the basis of indicators of overall fiscal performance and tend to remain in place for a prolonged period of time, imposing numerical limits on different fiscal dimensions (Martner, 2003; Kopits, 1999, quoted in Centrángolo et al., 2022). Thus, fiscal rules can be classified according to whether they take as a reference the levels of (i) public spending, (ii) fiscal balance, (iii) public debt, or (iv) tax revenues. There are different ways of measuring each variable relating to Gross Domestic Product (GDP) or another fiscal unit.

Expenditure rules establish a numerical limit on what is generally referred to as total, primary, or current spending. This limit can be established in absolute terms, in connection to year-on-year growth rates, or as a percentage of GDP. **Balance sheet rules**, on the other hand, limit the magnitude of the fiscal deficit. They can be defined according to different elements of fiscal performance and, in some cases, may include specific exceptions (the most common, the "golden rule", excludes capital expenditure from the overall balance calculation). **Debt rules**, in turn, set a ceiling on public debt relative to GDP. Finally, **revenue rules** establish floors or ceilings on tax revenue and aim to increase tax revenues or avoid excessive taxation. The parameter for defining this type of rule is usually given in relation to GDP, expressed in nominal or real terms, and for different levels of government (Centrángolo et al., 2022).

Fiscal rules are widely used throughout Latin America and the Caribbean. This has generated various discussions about their impacts and what their scope should be, particularly in the context of crises that the region has experienced. For example, the United Nations Economic Commission for Latin America and the Caribbean includes in one of its flagship publications, its *Fiscal Panorama of Latin America and the Caribbean 2022* (ECLAC, 2022a), a chapter that refers specifically to fiscal rules.[1] The chapter notes the importance of flexibility around fiscal rules and further that the experience of making fiscal rules more flexible in the context of the COVID-19 pandemic prompted "a variety of modifications and adaptations to existing fiscal rules" (ECLAC, 2022a, p. 82). These consolidated "more resilient fiscal frameworks [...] enabling them to withstand a variety of unforeseen shocks and their profound socioeconomic consequences" (ECLAC, 2022a, p. 92).

Currently, states face huge economic, social, and environmental emergencies, often without the appropriate fiscal framework or sufficient resources to address them. It is therefore essential to review the functioning of fiscal rules in the global and regional context of "polycrisis".

The aim of this working paper is to broaden the regional debate on fiscal rules. It seeks to complement ECLAC's recommendations on reforms to fiscal rules, especially those contained in the *Fiscal Panorama 2022*. It relies on the *Principles for Human Rights in Fiscal Policy* (the Principles and Guidelines) to set out a human rights perspective on these reforms.[2] Human rights make it possible to put people at the center of fiscal discussions, provide regulatory support to many of ECLAC's recommendations, and guide the actions of states to assess and rethink their fiscal rules (for example, they can warn of the impacts of such rules on certain groups and persons). **The guiding questions this paper provides can be considered in the development, reform, implementation, and assessment of fiscal rules and be of use to governments, civil society organizations, social movements, and multilateral institutions, among other stakeholders.**

The paper begins with a brief explanation of the link between fiscal policy and human rights. It then describes the specific contributions that the Principles and Guidelines can make to ECLAC's recommendations. Finally, it sets out conclusions and provides a list of guiding questions for the assessment of fiscal rules from a human rights perspective.

1 This chapter was developed on the basis of the work of Óscar Cetrángolo, Dalmiro Morán, and Florencia Calligaro (2022), *El futuro de las reglas fiscales en América Latina y el Caribe: respuestas de los países ante la pandemia de COVID-19 y propuestas para su reformulación*, ECLAC (LC/TS.2022/189).

2 Principles for Human Rights in Fiscal Policy: https://www.cesr.org/sites/default/files/2021/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf in English; https://derechosypoliticafiscal.org/es in Spanish.

II. Human rights and fiscal policy in Latin America and the Caribbean

The world is undergoing multiple, interconnected crises that directly impact people's lives. Structural crises, such as the climate emergency or population ageing, have repercussions on global issues with long-term effects, such as the health, economic, and social crises exacerbated by the pandemic and the war in Ukraine. States' ability to react in this context is directly linked to their capacity to finance themselves and allocate resources to protect people and the planet.

In the case of Latin America and the Caribbean, the capacity of states to raise and allocate resources gains even greater significance because of the huge social, economic, cultural, and historical inequality in the region. Inequality is partially explained by the fact that **most of these countries collect little tax, and they all collect in a regressive manner compared to other regions.[3] This in turn often triggers the systematic adoption of austerity measures** (in many cases connected with fiscal rules) that frequently clash with human rights standards.[4]

As a result, millions of people throughout the region are deprived of their right to live a dignified life.[5] Fiscal policy plays a key role in reversing this situation, since it is the instrument that states use to allocate the resources necessary to finance rights and redistribute wealth and income. It also makes it possible to incentivize or discourage behaviors necessary to guarantee rights and to encourage democratic debates on public decision-making.[6]

3 It is estimated that tax collection in relation to average GDP for Latin America is well below that of OECD countries (21.9% for the former, compared to 33.5% for the latter). Among the most serious cases, there are countries such as Guatemala, where tax collection does not exceed 12.4% of GDP.

4 For example, see https://www.opendemocracy.net/en/oureconomy/why-brazils-permanent-austerity-policy-harming-its-economic-future/

5 It has been estimated that, by the end of 2022, 33.7% of the population in Latin America and the Caribbean would be living in poverty and 14.9% in extreme poverty. See OECD et al. (2022), *Latin American Economic Outlook 2022: Towards a Green and Just Transition*, Paris: https://www.oecd-ilibrary.org/development/latin-american-economic-outlook-2022_3d5554fc-en

6 See CESR (2022), *Key Concepts: Taxes, Budgets and Human Rights*: https://cesr.org/sites/default/files/2022/Taxes_Budgets_and_Human_Rights.pdf

Fiscal rules, insofar as they establish limits on the way states collect and spend public resources, must be consistent with states' obligations to protect people and the planet. This would not be the case, for example, if a fiscal rule specifying a limit on expenditure prevents the state from complying with its obligation to guarantee the core content of rights or to respond to emergency situations (such as a pandemic or a climate disaster).

The conceptual and practical relevance of including a human rights analysis in the study of fiscal rules is particularly justified in complex health, social, political, and economic contexts in which governments consider adopting - and have adopted - austerity measures and budget cuts. As civil society organizations and ECLAC itself have documented, austerity measures (often justified by fiscal rules to achieve "zero fiscal deficit")[7] have not necessarily been a sustainable solution to economic crises. Instead, they have generally deepened poverty and led to human rights violations. In Brazil and Argentina, for example, the implementation of austerity measures in recent years did not produce the desired investment and economic growth.[8] In both countries, cuts to government spending affected the most vulnerable sectors of the population since they mostly targeted social security, education, and housing programs.[9] In Colombia, the government's reaction to COVID-19 was late and insufficient. By the time the Fiscal Rule Law that established decreasing deficit targets was discarded, levels of unemployment and poverty were already too high. Different countries in the region, such as El Salvador and Ecuador, had to resort to loans, including from the International Monetary Fund, thus increasing their external debt and having to commit to early fiscal austerity measures, while the effects of the pandemic continued to be felt (Oxfam, 2022).

One of the lessons learned in response to economic crises is that guaranteeing the right to social security through social protection systems that respect the human rights framework can stabilize the economy and prevent further impacts. Social protection schemes need to be implemented timely, which in turn requires resource availability (ILO, 2014-15). Fiscal rules are also relevant in these cases because if rules are very rigid - as many in the region are - they can hinder the implementation of appropriate social security systems.

7 Stated simply, the idea that a government shall not spend more than it collects in a given fiscal year.

8 Although there are many diagnoses of the reason the model failed in Argentina, there is a general consensus about the inefficiency of the measures adopted. See A. Fontevecchia, "Argentina IMF-Style Austerity Can't be Macri's Only Solution", Buenos Aires Times, 2 June 2018: http://www.batimes.com.ar/news/opinionand-analysis/editorial-austerity-cant-be-macris-only-solution.phtml. As to Brazil, see L. Carvalho, "How did the Brazilian economy help to elect Bolsonaro?", London School of Economics Blog, October 2019: https://blogs.lse.ac.uk/latamcaribbean/2019/10/02/how-did-the-brazilian-economy-help-to-elect-bolsonaro/

9 In May 2015, the Brazilian government announced a USD24 billion fiscal adjustment, which mainly made cuts to the social security and human rights budgets. In Argentina, in 2022, 100 billion pesos were cut from key education and housing programs to pay for National Treasury liabilities. See *Fiscal Policy and Human Rights in the Americas*, a thematic report prepared by organizations participating in the Human Rights in Fiscal Policy Initiative (2015): https://www.cesr.org/sites/default/files/cidh_fiscalidad_ddhh_oct2015.pdf. See also ACIJ (2022), *Recorte fiscal: el impacto de la reducción presupuestaria en los derechos sociales*: https://acij.org.ar/wp-content/uploads/2022/08/Informe-El-impacto-de-la-reduccion-presupuestaria-en-los-derechos-sociales.pdf?utm_source=mailup&utm_medium=email&utm_campaign=general

Numerous examples of the connections between fiscal rules and human rights can be cited. For instance, from a human rights perspective, states' duties such as their obligation to ensure the "core content" of rights (see **Box 1**) or the prohibition against taking retrogressive measures (see **Box 2**) raise the need to include safeguard clauses in fiscal rules and other mechanisms to protect strategic social spending in times of crisis. Since extreme poverty, extreme inequality, and hunger are characterized as crises and undermine the fulfillment of core obligations, fiscal rules must not limit the spending necessary to end them.

Given this close connection between human rights and fiscal policy, it is not surprising that many institutions have explored this link in its various aspects. A number of human rights monitoring bodies have repeatedly noted that human rights standards are applicable to all aspects of fiscal policy. This development is visible, for example, in the work of different United Nations human rights treaty bodies and special procedures, both at a general level and in recommendations to countries, including several countries in the region.[10]

At the regional level, the Inter-American Commission on Human Rights (IACHR) has extensively developed the link between fiscal policy and human rights, highlighting, among other things, the role of fiscal policy in the fight against poverty[11] and climate change.[12] For its part, ECLAC has also stressed the importance of human rights as an analytical framework to assess fiscal policies,[13] in particular relating to moves toward gender equality[14] and a sustainable recovery from the pandemic.[15]

BOX 1

Principle of the "core content" of rights

International law makes it compulsory for states to adopt all the measures necessary to ensure the basic, core content of rights – defined in national and international standards – such as providing primary education for all persons and guaranteeing access to public educational institutions and programs without discrimination. The duty to ensure minimum standards is inexcusable, even in contexts of crisis, in which states have a reinforced duty to ensure this core content.

Source: Committee on Economic, Social and Cultural Rights, General Comment No. 3.

BOX 2

Principle of progressivity and non-regressivity

While human rights law recognizes that states may not be able to achieve the full realization of all rights – in particular social rights – in a short period, it does require that states take concrete measures to progressively realize them. The obligation of progressivity requires states to move as fast and effectively as possible toward that goal. Similarly, states cannot generally take regressive measures that reduce existing protections of rights. If they do, they need to demonstrate that such measures are necessary, nondiscriminatory, temporary, and taken in a participatory manner, among other requirements.

Sources: International Covenant on Economic, Social and Cultural Rights, article 2.1; American Convention on Human Rights, article 26.

10 For example, in recent years, different United Nations treaty bodies recommend that states, among other actions, assess the disproportionately negative impacts that austerity measures can have on certain groups of people, such as women; they also request that states strengthen budget planning and execution to avoid the underuse of resources for social investment. See, among others, Committee on ESCR, Concluding observations: on the 4th periodic report of Argentina (2018), on the 5th periodic report of Nicaragua (2021), on the 3rd periodic report of Bosnia and Herzegovina (2017), and on the 3rd periodic report of the Plurinational State of Bolivia (2021); CEDAW Committee, Concluding observations on the 10th periodic report of Ecuador (2021), and on the combined 4th and 5th periodic reports of Switzerland (2016).

11 See IACHR (2017), *Report on Poverty and Human Rights in the Americas*; IACHR (2019), *Business and Human Rights: Inter-American Standards*; and IACHR/REDESCA (2020), Resolution 1/2020 on Pandemic and Human Rights in the Americas.

12 See IACHR/REDESCA (2021), Resolution 3/2021 on Climate Emergency, which contains a chapter on "Fiscal, economic and social policies for a just transition".

13 See, for example, ECLAC Mexico Sub-Headquarters (2014), *El enfoque de la perspectiva de derechos en la política fiscal: construcción de un marco metodológico para aplicarse en México y países seleccionados de Centroamérica* (LC/MEX/L.1153).

14 See ECLAC release (2021), https://www.cepal.org/es/notas/cepal-destaca-la-necesidad-un-nuevo-pacto-fiscal-recuperacion-transformadora-igualdad-genero

15 See "10 alternativas para que América Latina se recupere de la pandemia desde

BOX 3

Principle of use of maximum available resources

This principle indicates that states have the duty to adopt measures to generate the resources necessary to effectively guarantee rights and use them adequately for this objective. When necessary, they must expand fiscal space to generate additional resources to guarantee human rights for all persons, through international cooperation, for example. The principle of maximum available resources involves budget, tax, debt, and financial cooperation.

Sources: International Covenant on Economic, Social and Cultural Rights, article 2.1; American Convention on Human Rights, article 26.

As a corollary to these developments, the Principles for Human Rights in Fiscal Policy were launched in 2021.[16] The Principles are a set of standards that systematize regional and global efforts to develop the implications of the human rights framework for fiscal decisions. In this way, they can guide the conduct of governments and facilitate the task of monitoring and evaluating, and the accountability of, different actors.

The Principles and Guidelines were developed by a group of civil society organizations[17] and a Committee of Experts in different fields.[18] They were developed over five years with the participation of representatives of social movements and specialized human rights bodies, among others. At the heart of the Principles is the duty of states to mobilize maximum available resources (see **Box 3**) and use fiscal policy to advance the redistribution of wealth and income and finance the transition to sustainable economies.

The Principles for Human Rights in Fiscal Policy are based on normative sources and therefore set out normative standards on what states must do. Associated with each principle are guidelines for action based on best practices and non-normative instruments that express recommendations for what states should do.

The following sections use the Principles and Guidelines as a reference to further analyze fiscal rules in the region and illustrate the value that human rights can add to this and similar initiatives.

la política fiscal" (2022): https://www.derechosypoliticafiscal.org/es/noticias/137-pandemia-y-economia

16 In English: https://www.cesr.org/sites/default/files/2021/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf; in Spanish: https://derechosypoliticafiscal.org/es/

17 ACIJ, CELS, CESR, Dejusticia, FUNDAR, INESC, Red de Justicia Fiscal de América Latina y el Caribe, y GI ESCR. See https://derechosypoliticafiscal.org/es/el-proyecto#comite-impulsor

18 See https://derechosypoliticafiscal.org/es/el-proyecto#comite-expert

III. Analysis of ECLAC's recommendations on fiscal rules and the contributions of the Principles for Human Rights

To deepen the analysis of fiscal rules in light of the Principles for Human Rights in Fiscal Policy, we took as a reference the recommendations on fiscal rules made by ECLAC in its *Fiscal Panorama of Latin America and the Caribbean 2022.* These recommendations provide an updated and comprehensive analysis of the rules in force throughout the region.

For the sake of clarity, the recommendations were grouped according to the following criteria: 1) recommendations related to the purposes of fiscal rules; 2) recommendations related to the protection of social spending; 3) recommendations related to the tax system; 4) recommendations related to procedural guarantees regarding fiscal rules.

1. Recommendations related to the purposes of fiscal rules

A. Reassess and align fiscal rules with the 2030 Agenda for Sustainable Development (recommendation no. 12)

ECLAC suggests that, when selecting and designing fiscal rules, the countries of Latin America and the Caribbean should reassess and deeply examine the 2030 Agenda, using it as a reference for the articulation of various public policies. It recommends aligning the various rules and other elements of fiscal policy with the 17 Sustainable Development Goals (SDGs) and their 169 associated targets. This is because fiscal rules tend to be extremely rigid and focus mostly on fiscal balance, which often limits social spending and can hinder the development of policies needed to achieve these goals and targets.

Reducing structural inequalities and eliminating discrimination through redistributive policies in the fiscal sphere are not only commitments made by states in the context of the 2030 Agenda and its SDGs; they are also human rights obligations. International human rights law provides a binding framework with which fiscal rules must explicitly be compatible, given the intrinsic relationship between these agendas.[19]

The Principles and Guidelines make it possible to analyze the duties of states in relation to different SDGs. For example, in the context of the 2030 Agenda, states committed to *end poverty in all its forms everywhere* (SDG 1). They must therefore implement appropriate social protection systems and guarantee significant resource mobilization from various sources - including development cooperation - for programs that aim to end poverty in all its dimensions. Likewise, the Guidelines point out that fiscal policy should significantly contribute to the reduction or eradication of poverty (Guideline 1 of Principle 9). This requires that taxes and public spending should have the effect of increasing the income and welfare of the population with the lowest income and should not negatively affect the situation of those who may be at risk of falling into poverty.

In addition, the Guidelines provide further details on the measures that states could take to do so. They highlight that states should create mechanisms that ensure that the effects of taxes on consumption or labor income do not cancel out the benefits deriving from transfers and subsidies for population groups living in poverty or at risk of falling into poverty. States must therefore refrain from regressive taxes of this nature and eventually maintain exemptions for essential goods (Guideline 1 of Principle 9).

Another example of how human rights can complement the 2030 Agenda in ways that are relevant to fiscal policy is provided by SDG 4, whereby states committed to *ensure inclusive and equitable quality education and promote lifelong learning opportunities for all*. In this regard, the Guidelines lay out that states should "promote the right to education through their fiscal policy" (Guideline 5 of Principle 12) by allocating the maximum available resources to ensure free, quality education, which should continually be improved. This requires, among other things, instruments for the diffusion of science, a strong research infrastructure with sufficient resources and adequate financing of scientific education, culturally appropriate education, and intercultural education. They also offer an equity approach by highlighting the special measures that should be adopted for certain groups. For example, the Guidelines recommend that states strengthen

19 Some instruments adopted in the ECLAC framework make reference to this protection framework. For example, at the XV Regional Conference on Women of Latin America and the Caribbean, the countries of the region adopted the Buenos Aires Commitment, in which they agreed to "design, implement and evaluate macroeconomic policies, and particularly fiscal policies, with a gender equality and human rights approach".

and protect ancestral knowledge, provide access to technology and digital education for ethnic and rural communities, and ensure scientific progress in terms of digital equality (ibid.).

Similarly, the Principles and Guidelines provide tools to operationalize SDG 5, which seeks to *achieve gender equality and empower all women and girls*, and its related targets. For example, the Guidelines urge states to incorporate a system that measures unpaid care work in their national accounts based on reliable surveys and methodologies and to examine the relationship between unpaid work and the incidence of poverty among women. They also invite states to "ensure investment in policies that promote gender equality and diversity" (Guideline 4 of Principle 6), maximizing available resources to invest in high-quality gender-sensitive public services. The Guidelines also require an increase in social protection to address the specific needs of women living in poverty, LGBTI+ people, girls and teenagers, members of Indigenous, Afro-descendant, and peasant communities, and people with disabilities. To do so, they recommend "developing and institutionalizing budgets with a gender focus" (Guideline 3 of Principle 6) and "integrating a gender focus in their tax systems" (Guideline 2 of Principle 6).[20]

Finally, the Principles and Guidelines also align with SDG 10, which seeks to *reduce inequality within and among countries*. The Principles add an intersectional perspective to the analysis and suggest concrete measures to achieve this goal and its related targets. These measures relate to adopting affirmative action whenever necessary (Principle 5); protecting budget spending pertaining to policies such as gender equality and racial equity, or those that target people with disabilities or children; and the appropriate use of statistics and indicators to overcome the invisibility of populations confronting structural discrimination (Guideline 5 of Principle 5).

B. Delimit and balance the objectives of multiple fiscal rules: balance between macroeconomic stability and sustainable development (recommendation no. 1)

ECLAC refers to the need to delimit the objectives of fiscal rules harmonizing different goals. For example, levels of public debt and macroeconomic stability need to be balanced with the principles of sustainable development, such as inclusive growth and intergenerational equity. Consequently, fiscal policy must be aligned with extrafiscal principles. Given the allocative and redistributive functions of fiscal policy, fiscal rules alone cannot be its guiding axis.[21] ECLAC recommends a reformulation of fiscal rules that,

20 For example, by taking measures to ensure that tax systems are no longer based on the presumption that households pool and share resources equally among their members; by promoting individual taxation or favorable differential treatment; by eliminating explicit and implicit gender biases in taxation by refraining from the allocation of certain income based on gender stereotypes and enabling the same deductions for men and women; and by eliminating measures that disadvantage sources of income in which women are overrepresented.

21 Several instruments adopted in the framework of the meetings of ECLAC's subsidiary bodies explore these notions and offer guidelines regarding what objectives of fiscal policy should be for this agency. ECLAC has proposed that in order to achieve a social covenant that would boost equality, it is necessary to enter into a new fiscal contract that

using a rights-based approach, would ensure the resources necessary for the sustainability of policies.

The Principles and Guidelines are a guide to complement ECLAC's recommendations. They highlight that limits to fiscal rules are imposed not only by the objectives of ensuring inclusive development and intergenerational equity, but also by the entire human rights framework. The indicate that "the realization of human rights must be a fundamental objective of fiscal policy" (Principle 1).

Fiscal rules must therefore aim to ensure human rights and must not be designed or applied in any way that may undermine rights. The Guidelines offer states explicit guidance to "align their fiscal rules with human rights obligations" (Guideline 3 of Principle 8), which includes refraining from adopting rules that unduly restrict the capacity of institutions to respond to changing environments and to realize rights progressively. They similarly discourage the adoption of rules that prevent increasing budgets for social spending beyond inflation and legal clauses that freeze public spending.

C. Articulate fiscal rules with midterm programming (recommendation no. 7)

Another of ECLAC's recommendations focuses on the connection between fiscal rules and midterm programming. It points out that fiscal rules cannot be considered independently from other instruments that regulate fiscal policy.

ECLAC urges that the parameters of the rules themselves consider several fiscal periods, thus contributing to the credibility of fiscal policy. At an operational level, it recommends building a matrix of fiscal sustainability indicators that function as "early warnings" in the event of significant deviations from the established objectives. Given its programmatic nature, this recommendation can be complemented by ECLAC's recommendation about the need to establish a fiscal pact.[22]

The Guidelines go a step further by offering hints on how to "build fiscal pacts in accordance with human rights" (Guideline 3 of Principle 1) based on reciprocity among the state, citizens, and businesses. For example, midterm pacts should include agreements on the management of public finances, considering countercyclical and redistributive criteria, and environmental and intergenerational sustainability (ibid.).

Likewise, an early warning system should not be limited to fiscal balance as a parameter but should also include indicators on the realization of human rights, which should also show the need to adjust a fiscal rule (Guideline 3

would make it possible to offer quality public services and provide financial sustainability to social protection systems (ECLAC, 2021).

22 ECLAC has, in different instruments and statements, highlighted the need to move toward a fiscal pact that enables the consolidation of a sustainable social pact (ECLAC, 2021).

of Principle 8). Thus, fiscal rules should not prevent the realization of essential levels of economic, social, cultural, and environmental rights and, where appropriate, should include exception clauses when essential levels are not being met, or the principle of proportionality is being breached (see **Box 4**).

D. Ensure coherence between fiscal rules and the use of sovereign wealth funds (recommendation no. 6)

Among its recommendations, ECLAC maintains that sovereign wealth funds are valuable devices that must be part of fiscal rule reviews, not only as instruments for savings and macroeconomic stabilization but also as tools for long-term sustainable development.[23] Sovereign wealth funds are state-owned investment mechanisms that allow states to accumulate resources and use them to fulfill certain purposes, such as responding to emergency situations, financing specific socioeconomic projects, or promoting industrial policies. The resources of these funds usually come from balance of payment surpluses, foreign exchange operations, or debt issuing, among other sources of funds.

Based on the experiences of the COVID-19 pandemic, in which different countries used sovereign wealth funds to mitigate the impacts of the crisis,[24] ECLAC has highlighted the need to evaluate the potential of these instruments. It proposes a discussion on the potential of sovereign wealth funds to redirect traditional infrastructure investments to exploit highly polluting natural resources toward projects related to the development of renewable energies and new energy technologies. Since legislation establishes the processes for sovereign funds' creation and administration, ECLAC recommends that those same norms should clearly indicate their purpose and the exceptional circumstances that enable their implementation.

BOX 4

Principle of proportionality

Proportionality is a principle that some bodies use to interpret law and evaluate measures taken by states that affect human rights or can potentially do so. Proportionality requires states to provide exhaustive justification in situations where they decide to limit constitutional rights. For example, they need to pursue a legitimate goal and use adequate means to achieve that goal in order for a measure that restricts rights to be legitimate.derechos humanos involucrados.

23 In other documents, ECLAC has highlighted how crucial these instruments are in boosting growth, increasing liquidity, and alleviating the debt burden of the economies in the region. In particular, it has highlighted the Caribbean Resilience Fund as a financing mechanism designed to offer liquidity to the Caribbean that has simultaneously served to attract financing for climate change adaptation and mitigation (ECLAC, 2021).

24 This is the case of Chile, the country with the most important sovereign wealth funds in the region: the Economic and Social Stabilization Fund (Spanish acronym: FEES), which seeks to ensure that any structural surplus is saved to finance possible deficit budgets; and the Pension Reserve Fund (FRP), which aims to complement the financing of certain fiscal obligations related to pensions. In the face of the COVID-19 pandemic, withdrawals were made from both funds to supplement the financing of the 2020 and 2021 Budget Law.

The Principles provide a normative basis for the concerns behind these recommendations by establishing that "states must ensure their fiscal policy does not result in retrogression in economic, social, cultural and environmental rights, even in contexts of economic crisis" (Principle 11). Meanwhile, the Guidelines specify what states must consider when addressing these situations, given that in contexts of crisis, they must maintain and even increase social policy efforts, "particularly those aimed at disadvantaged people and groups" through measures such as "programs that ensure the right to adequate food and income security for people with disabilities" (Guideline 2 of Principle 11).

In these contexts, the Guidelines indicate that states should undertake countercyclical spending to eradicate poverty and protect employment. They should also ensure space in the budget for countercyclical policies that minimize the effects of economic crises on human rights, ensuring the "social and intergenerational sustainability of public finances" (Guideline 2 of Principle 8).[25]

In turn, by virtue of the obligation of states to "ensure their fiscal policy is environmentally sustainable" (Principle 4), the Guidelines also encourage the use of sovereign wealth funds for the promotion of the energy transition.[26] They provide additional guidelines for doing so, such as the coordination of fiscal and environmental policies at both the national and international levels (Guideline 2 of Principle 4).

2. Recommendations related to the protection of social spending

A. Protect social spending and public investment at times of fiscal consolidation (recommendation no. 11)

According to ECLAC, given the severity of the economic impact of the pandemic, most countries in the region would engage in "fiscal consolidation" processes. These processes involve the adoption of measures to promote primary surpluses to reduce public debt as a proportion of GDP, which tends to be done through budget cuts to social policies. ECLAC recommends protecting social expenditure and public investment during periods of fiscal consolidation. Furthermore, it provides additional recommendations, such as prioritizing public social spending and public investment, and trying to maintain or increase the relative share of public investment in total expenditure. Likewise, it suggests excluding public investments from expenditure rules or

25 In the Buenos Aires Commitment, adopted at the XV Regional Conference on Women in Latin American and the Caribbean, countries also committed to implement countercyclical fiscal policies sensitive to gender inequalities to mitigate the effects of economic crises and recessions on the lives of all women.

26 Among the instruments that could be used to "capture and manage resources to overcome dependence on the extractive sector" (Guideline 4 of Principle 4), stabilization funds stand out. Using these instruments, states could guarantee the management of revenues from the exploitation of natural resources in the direction of productive diversification.

balanced budget objectives (ensuring the quality of these investments).

The Principles and Guidelines also contain provisions for what is known as "fiscal consolidation" - using the term "austerity measures" - that complement and qualify those proposed by ECLAC. First, according to the Principles, states must refrain from adopting regressive measures that affect the enjoyment of economic, social, cultural, and environmental rights unless they have "exhausted all available alternatives" and "even in contexts of economic crisis" (Principle 11). In other words, states should avoid austerity programs and instead prioritize all alternatives to expand fiscal space.

Second, the Principles establish certain procedural guidelines that these measures should observe if adopted, including that they should be temporary, necessary, proportional, nondiscriminatory, and decided in a participatory manner (Principle 11.1). States should also conduct impact and accountability assessments of the fiscal austerity measures they adopt (Guideline 3 of Principle 11).

Third, the Principles include other issues outside public investment which should also be excluded from consolidation. In contexts of economic crisis, maximum protection must be given to social expenditure and to the rights of disadvantaged populations and groups (Principle 11.2). In particular, states must ensure the right to social security and, in all cases, establish social protection floors that include at least: essential health services;basic income security for children; basic income security for working-age people who cannot work, particularly in cases of illness, unemployment, maternity, and disability; and basic income security for older persons (Guideline 2 of Principle 9).

Fourth, the Principles recommend that states ensure the provision of universal, appropriate, high-quality, accessible, and sufficiently funded public services that reduce social and territorial disparities (Guideline 2 of Principle 2). Provision of public services shall also be protected should "fiscal consolidation" strategies be incorporated, both to maintain the core content of the rights discharged through public services and to ensure nonretrogression in spending and in the level of rights fulfillment already achieved through public services.

Finally, the Principles and Guidelines highlight the role that international financial institutions often play in promoting fiscal consolidation measures without due consideration of the impact of such measures on the population. Nevertheless, as subjects of international law,[27] international financial institutions must demonstrate that their conditionalities will serve to fulfill, and not undermine, the human rights obligations of states and, if not, refrain from demanding such conditionalities (Principle 13). This may require establishing due diligence and safeguard mechanisms, assessing the

27 Specialized United Nations agencies, such as the International Monetary Fund, must comply with the provisions of the UN Charter, including the promotion of human rights.

impacts of the measures proposed on rights, and ensuring consultations and participation in decision-making, including with Indigenous, rural, and peasant communities (Guideline 7 of Principle 13).

B. Consideration of preexisting fiscal rigidities (recommendation no. 5)

ECLAC emphasizes the importance of effective compliance with fiscal rules. In this context, it identifies various rules that restrict fiscal discretion, which it calls “fiscal rigidities”. Such rigidities must be considered and harmonized to ensure the effective fulfillment of the rules. Rigidities would include, for example, the rules that establish spending levels as a proportion of GDP for a given purpose. Consequently, ECLAC proposes that states articulate the rules with “minimum social spending floors, aimed at consolidating the universalization of social protection systems and their financial sustainability”, which is particularly relevant for people who were especially affected by the crisis.

This recommendation coincides with the standards on fiscal rules contained in the Principles, which further identify other “fiscal rigidities”. Indeed, Principle 9.3 declares that states must protect the spending necessary to comply with “financial commitments undertaken at the international and domestic levels”,[28] thus adding international commitments as fiscal rigidities. As previously mentioned, protected “rigid” spending should also ensure financing for the core, essential levels of rights and for those included in constitutional commitments. In other words, the Principles and Guidelines add the idea of *implicit* rigidities determined by human rights commitments, such as ensuring essential levels of rights.

International human rights law further provides special legal protection for certain groups, which translate into additional “rigidities”. For example, there are reinforced protections for children which, in many countries, translate into special budgetary guarantees, such as the protection of allocations earmarked for children.[29]

C. Precisely define the fiscal dimension to be regulated (recommendation no. 2)

According to ECLAC, fiscal rules in the region usually refer to a variety of fiscal dimensions or indicators, while using different measurement modalities. For example, rules may refer to levels of public spending, fiscal balance or outcome, public debt, or fiscal revenues. Within this variety of rules, ECLAC notes that rules limiting expenditure can lead to budget reallocations to budget categories not affected by the limits. This practice can have a procyclical

28 Today’s constitutions in the countries in the region provide clear examples of this. For example, in some cases they include clauses on priority spending or minimum percentages for education (art. 212 of the Constitution of Brazil; art. 85 of the Constitution of Paraguay) or for health services (art. 166.9, 198.2, and 227 I of the Constitution of Brazil; art. 2°B of the Constitution of Mexico); or for sports (art. 217 II of the Constitution of Brazil; art. 91 of the Constitution of Guatemala) or social security (art. 167 of the Constitution of Brazil), among other constitutional clauses. At the legal level, countries often also have specific provisions on minimum or maximum percentages to guarantee rights or support programs associated with them; for example, the Educational Financing Law in Argentina.

29 Based on the principle of “best interests of the child”.

bias and encourage "creative accounting" to simulate compliance with the rule. Therefore, ECLAC recommends *precisely defining the fiscal dimension to be regulated by the fiscal rule* to ensure its credibility and true guiding capacity and prevent its manipulation. Specifically, it proposes using rules that stress fiscal balance and the sustainability of public debt, and instead limiting the use of other restrictions to short-term guidelines. In particular, it highlights that limits to public spending are not exactly linked to the sustainability of public accounts that fiscal rules seek to promote, but rather to a certain understanding of the state's role in the economy.

These recommendations, particularly those related to the potential problems of expenditure limits, are aligned with the Principles and Guidelines. These – as well as suggesting countercyclical measures in general – show that the obligations to respect, protect, and fulfill rights require a strengthened and proactive role of the state in the economy (Principle 2). In fact, the Guidelines explicitly ask states to "abstain from adopting fiscal rules that [...] prevent, aside from any other consideration, total public budget increases. Nor should they adopt rules which target key social sectors over and beyond inflation" (Guideline 3 of Principle 8).

The Principles provide guidelines that discourage rules that limit expenditure unconditionally. As mentioned, Principle 9.3 indicates that states must identify protected expenditure necessary to guarantee the core, essential levels of rights, which fiscal rules cannot affect. In general, this discourages rules that entail cuts in the fields of health and education (Guideline 3 of the same Principle) or social protection and food security. Likewise, the Guidelines indicate that states should make social spending a top priority, allocating resources for the realization of human rights above other allocations, and increasing the allocation of resources to unattended rights (Guideline 3 of Principle 3). Thus, even when introducing a rule that restricts expenditure, states could equally be more selective about the kind of expenditure to limit and exclude expenditure that directly aims to realize rights, particularly if there are extrabudgetary indicators that show non-compliance with essential levels of rights.

On the other hand, the Principles and Guidelines draw attention to the importance of monitoring the impact of rules, especially those that limit spending, on certain groups that may be disproportionately affected by the lack of financing in state programs.

In addition, the Principles and Guidelines provide further guidance on how to understand "debt sustainability" when fiscal rules refer to it. First, states must ensure that fiscal sustainability is not invoked to undermine rights or restrict their scope (Principle 8.2). Accordingly, states should make taxation and other domestic financing instruments a priority over external borrowing as part of their sustainability initiatives, and conduct independent debt sustainability analyses that incorporate assessments of the effects on human rights (Guideline 2 of Principle 8; Guideline 6 of Principle 3).

D. Specify exception clauses and pathways for the reestablishment of rules (recommendation no. 4)

ECLAC considers "escape" or exception clauses to be important elements in the design of fiscal rules and notes their special relevance in a context of emergency and unpredictability such as the one brought on by the COVID-19 pandemic. It recommends that - especially in the case of natural disasters - states specify escape clauses and paths for the reestablishment of rules. ECLAC further suggests that whenever there is a rule, its exception should also be explicitly regulated, stipulating the circumstances that enable the deviation. The channels to reactivate clauses must also be regulated, considering both time and fiscal factors.

This recommendation is fully aligned with the Principles and Guidelines, which explicitly underscore the importance of escape clauses in fiscal rules.[30] The Principles refer to noncompliance with human rights, in particular with essential levels of economic and social rights, as a circumstance that should enable the application of escape clauses. This exception should be included in addition to clauses linked to natural disasters and other emergencies, which in turn tend to have strong repercussions on rights.

Similarly, the Principles and Guidelines provide that rules reestablishment mechanisms should enable an inclusive, broad, and transparent dialogue based on solid and reliable evidence from different sources (Principle 7.6) and be subject to adequate accountability.

3. Recommendations regarding the tax system

A. Complement the rules with reforms to strengthen the level and structure of tax revenues (recommendation no. 10)

Among its recommendations, ECLAC points out that any reform of fiscal rules must be made without losing sight of tax collection in order to ensure an adequate and sufficient level of resources to guarantee public financing. Considering the growing demand for public spending in the region in the past ten years and in the context of the recovery from the COVID-19 pandemic,[31] ECLAC stresses that fiscal rules should be aligned with the need to boost tax revenue.[32] Specifically, it recommends strengthening collection with a focus on direct taxation, both on income and assets. This

30 For example, see Principle 9.3.

31 In the context of the restrictions set during the pandemic, the increase in public spending was counterbalanced by a huge drop in fiscal revenues. During the second quarter of 2020, tax collection in all the countries in the region dropped by between 30% and 70% in real terms. This led governments to finance themselves through currency issuance and public debt contraction. In this sense, some of the lessons learned are that, as well as having fiscal rules that allow certain flexibility in emergency situations, it is necessary to have fiscal rules that enable sustainable and sufficient planning for tax collection at all times.

32 See also ECLAC (2022), Towards the transformation of the development model in Latin America and the Caribbean: production, inclusion and sustainability, and ECLAC/UN Women (2022), The care society: horizon for a sustainable recovery with gender equality". Both form part of the Buenos Aires Commitment of November 2022.

could be done by increasing and consolidating traditional tax instruments and by exploring the potential of new tools, such as environmental taxes or selective taxes on certain products. Tax collection should not only have redistributive aims but also aspire to consolidate "fiscal cushions" with a stabilizing effect in the face of emergency situations.

In line with this recommendation, the Principles and Guidelines also promote the expansion of fiscal space through progressive taxation based on the duty of states to mobilize the maximum of available resources to guarantee rights (Principle 10.1). States must first determine the resources needed, in order to achieve an adequate expansion of fiscal space (Principle 10.2). Then, states should expand their fiscal space accordingly by creating revenues that are not being mobilized, such as those lost to the underutilization of progressive taxation, to tax evasion and avoidance, or to excessive use of tax incentives that are misaligned with human rights obligations (Principle 10, Guidelines 3, 4, and 5 respectively).

Second, the Principles and Guidelines underpin ECLAC's recommendation by pointing out the democratic value of a redistributive fiscal policy.[33] In a context of weak democracies, a more equitable distribution of income and wealth achieved by addressing historic levels of inequality can also reduce polarization, marginalization, and social discontent (Preamble and Principle 7).

Regarding direct taxation, the Principles and Guidelines show how this connects with the principles of horizontal and vertical equity, equality, non-discrimination, ability to pay, and progressivity (Principle 3.1) contained in many constitutions in the region. Moreover, they provide additional details by recommending, for example, that the main sources of income of the population at the top of the income scale – including dividends, financial income, and other capital income – be taxed at rates similar to or higher than other sources. The Guidelines similarly propose that low tax rates be avoided for progressive taxes and that high rates be avoided for regressive taxes with low redistributive value (Guideline 2 of Principle 3).

The Principles and Guidelines also provide concrete examples of novel taxation tools, such as environmental taxes to discourage the behavior of polluters and incentivize investment in renewable energies and the creation of quality green jobs (Guidelines 3 and 4 of Principle 4). These taxes can be used to encourage or discourage conduct that is necessary to guarantee human rights (Principle 12), making their fundamental aim explicit. Thus, for example, states can tax the production, commercialization, and consumption of tobacco, or tax sugary drinks to protect the right to health (Guideline 1 of Principle 12); or regulate the exploitation of urban space through taxation to discourage speculative practices and unpro-

33 Many of the social protests that took place in different countries in the region in recent years were linked to situations of social discontent with fiscal policies that were opaque and poorly redistributive; for example, the 2019 social outburst in Chile due to the increase in transport fares, or the 2021 protests in Colombia following a tax reform promoted by then-President Duque.

ductive land and to ensure the right to housing (Guideline 2 of Principle 12).

Finally, several Guidelines provide recommendations on how to **expand fiscal space with a human rights approach**, using additional tools and incorporating taxes. For example, with regard to tax incentives and other preferential tax treatments, they call on states to produce information on their use and impact, and to ensure transparency and frequent evaluations of their costs and benefits, to prevent them from becoming mere privileges for higher-income sectors or those with greater influence (see **Box 5**). The Guidelines also recommend strengthening tax administrations through financial, human, and technical resources; they provide many guidelines for action to fight fiscal fraud and make tax collection more effective and efficient (Guideline 4 of Principle 10); and they note the importance of taking the fight against corruption seriously, using a series of measures.[34]

4. Recommendations connected to the principles on procedural guarantees

A. Prioritize simplicity, clarity, and transparency of rules (recommendation no. 3)

ECLAC addresses the need for fiscal rules to be simple, have concrete monitoring indicators, and be publicly known. In addition, it recommends maintaining and reinforcing mechanisms that ensure transparency and adequate accountability, even in exceptional situations, suggesting using digital transparency portals as a reference model.

The Principles and Guidelines complement this recommendation by providing transparency and participation standards. For example, they indicate that states should "produce and provide the broadest possible access to quality tax information" (Guideline 1 of Principle 7), ensuring that fiscal information has classification and disaggregation criteria that enable a rights- and equality-based analysis, including criteria such as gender, ethnicity, or race, or other categories suspected of discrimination.

They also touch on a key point for a more transparent fiscal policy and to materialize ECLAC's recommendation, which is to limit tax secrecy (Guideline 4 of Principle 7), which leaves key information out of public reach.[35] Given the need to harmonize tax secrecy with the human right to access public information, the former should be given the most restricted interpretation, applying it only when it is legally regulated and opting for disclosure in case of doubt. In no case should tax secrecy include information on tax remissions, beneficiaries of tax incentives, or other differential treatment

34 Such as the creation of effective rules to manage income flows from all sources and guarantee accountability. See Guideline 7 of Principle 10.

35 See I. Santos Flores (2020), *Secreto fiscal, producción y acceso a la información pública en materia tributaria*. Series of Complementary Documents to the Principles for Human Rights in Fiscal Policy No. 8.

(Box 5), since this information is necessary to monitor the government's management of these benefits.

For these measures to be effective, it is important that states work to promote and strengthen institutions that guarantee access to public information and public scrutiny, such as agencies specializing in transparency or ombudsman offices.

B. Strengthening the role of Independent Fiscal Councils (recommendation no. 8)

In this recommendation, ECLAC urges countries to adopt and consolidate robust and independent institutions. In particular, it advocates that Fiscal Councils should have tools to monitor the functioning of fiscal rules in order to evaluate the consistency of these rules in the broader fiscal and budgetary context. For ECLAC, the strengthening of Fiscal Councils should underpin their technical capacity. It should also legally protect their independence from political cycles and pressure groups and their objectivity in elaborating recommendations and fiscal projections.

In turn, to guarantee the independence of the Fiscal Councils, it will be essential to strengthen the role and capacities of the state and prevent the capture of fiscal policy by interest groups (Guideline 1 of Principle 2). This requires the reinforcement of information systems, participatory planning based on objectives, revenue-raising powers, and other institutional capacities to implement a fiscal policy that contributes to ensuring rights. These agencies should also be empowered to sanction the undue influence of private interests in fiscal decision-making.

C. A careful transition and support for fiscal rules through consensus and political commitment (recommendation no. 9).

Aware of the risks of abrupt modifications, ECLAC recommends that transition and changes in fiscal rules are implemented carefully to avoid adverse effects. Likewise, it notes that it is essential for reforms of fiscal rules and overall policy to emerge from consensus and political agreements, the scope of which goes beyond election cycles.

It should be added to this recommendation that social participation is essential in the review of fiscal rules and fiscal policy as a whole, as pointed out by the Principles and Guidelines. As a priority and as a condition to ensure that fiscal decision-making is based on a wide and plural dialogue, states should promote fiscal education, culture, and democracy (Guideline 3 of Principle 7). In this way, it is expected that states should be able to guarantee that fiscal decision-making is based on the broadest possible national dialogue, with high participation and public scrutiny - including of Indigenous, rural, and peasant communities - during the stages of design, implementation, and evaluation.

BOX 5

Best practices for the regulation and implementation of tax incentives

"Tax incentives" are concessions, exemptions, or other kinds of differential treatment that reduce tax collection. Tax incentives are sometimes referred to as "tax expenditures" because they are indirect government expenditures, made through tax policy, which could be used for other purposes. Between 2016 and 2019, they represented, on average, 3.7% of Latin America's GDP.[1]

Tax incentives are not usually subject to the same monitoring and evaluation mechanisms as direct expenditure, as they are not always included in yearly budgets and usually don't have a preestablished expiration date. This makes them less transparent and makes it difficult to evaluate their effectiveness (ECLAC, 2022a), raising concerns about their impacts on efficiency and equity.[2]

To strengthen the role of tax incentives in promoting sustainable development, ECLAC recommends making comprehensive and public estimates, analyses, and reports on these waivers. It also recommends that they be comprehensively evaluated to determine if the benefits of these practices outweigh their costs and whether they meet the objectives they were created for.[3]

Likewise, the Principles mandate strict justification and evaluation of tax incentives, subjecting their continuity to evidence of deliberate and concrete progress toward objectives consistent with the human rights framework. Tax incentives must be established by law with clear expiration dates and must be supervised by a competent authority. Those lacking verifiable benefits or that deepen inequalities must be eliminated.

The Principles also specify the information that states should produce in order to carry out these evaluations. For example, they indicate that information on incentives should be available in open formats. Information should, at least, be disaggregated by income, sex, race, region, type of business, sector, and exempted tax liability. States should also quantify tax incentives, indicating the beneficiary, sector, and type of benefit or exemption, at both national and subnational levels, and including the exceptions contained in bilateral and multilateral trade agreements (Guidelines 5 and 6 of Principle 10).[4]

1 ECLAC)/Oxfam International (2020), *Tax incentives for businesses in Latin America and the Caribbean. Summary*, project documents (LC/TS.2020/19), Santiago.

2 A compared analysis of tax expenditure policies and practices in the region concluded that public information on this topic is frequently inadequate, that decision-making processes are closed and have potential for abuse and corruption, and that the impact tends to be negative in the few cases where it is measured. See P. de Renzo (2019), *Contabilizados, pero sin rendir cuentas: La transparencia en los gastos tributarios en América Latina*, International Budget Partnership.

3 R. M. Campos Vázquez (2022), *Measurement of tax expenditures in Latin America*, project document, ECLAC (LC/TS.2022/148), Santiago. See also ECLAC, 2022a, p. 96.

4 On this see L. Gerbase (2020), *Tax spending and tax justice in Latin America: Recommendations from international financial institutions and civil society organizations*, Series of Complementary Documents to the Principles for Human Rights in Fiscal Policy No. 7.

IV. Conclusions

Substantive discussions on fiscal policy are urgently required in Latin America and the Caribbean because of the region's historic challenges - such as unacceptable inequality and persistent poverty - and because of the current context of simultaneous crises, which require that the objectives of fiscal policy be redefined. It is urgent to explicitly recognize, in a clear and systematic manner, that fiscal policy is inextricably linked to the human rights that all states in the region have committed to guarantee under equal conditions for all people.

Because of fiscal rules' extended use and the impact that some of them can have on the effective enjoyment of human rights, such rules are a clear example of an aspect of fiscal policy that requires serious scrutiny and public debate. Insofar as some fiscal rules set limits on how states spend public resources, they must be aligned with state commitments to protect people and the planet.

Fortunately, ECLAC has made progress, through several instruments, in conducting a holistic analysis of fiscal rules that evaluates their design and implementation in a broader policy and regulatory framework. However, existing analyses fail to address the way fiscal rules should be designed to be consistent with human rights obligations. International human rights law provides a binding framework which fiscal rules must comply with. For example, duties such as mobilizing the maximum available resources, fulfilling the core content of rights, or banning retrogressive measures raise the need to incorporate safeguard clauses into fiscal rules, or other mechanisms to protect social spending for vulnerable groups, particularly in times of crisis.

In such a context, this working paper seeks to expand the debate on fiscal rules in the region, complementing ECLAC's recommendations with a human rights approach. The Principles for Human Rights in Fiscal Policy demonstrate in a concrete manner that human rights standards make it possible to qualify, refine, and complement the fiscal rules analysis conducted by ECLAC. The Principles also provide many of ECLAC's recommendations with a normative basis and therefore with increased legitimacy. Furthermore, the Principles make it possible to suggest specific measures that states could adopt to implement the recommendations and make them effective.

This exercise shows the feasibility and enormous potential of linking discussions on public finance to those on human rights. To promote and disseminate these efforts, the following section provides guiding questions which could be useful in evaluating fiscal rules from a human rights perspective.

V. Guiding questions for the assessment of fiscal rules from a human rights perspective

These guiding questions can be considered when developing, reforming, implementing, and evaluating fiscal rules. They can be useful for governments, civil society organizations, social movements, and multilateral institutions, among other stakeholders.

For ECLAC recommendations 1, 7, and 12 and Principles 1, 2, 6, 9, and 12

» Are human rights duties explicitly considered in the design and application of the fiscal rule?

» Were early warning systems to make fiscal rules more flexible put in place, such as fiscal sustainability indicators and human rights indicators?

» In addition to economic indicators, were social and environmental indicators considered when designing and assessing the fiscal rule?

» Does the rule protect core social spending, or promote social protection systems targeting people in vulnerable situations?

» Does the rule encourage the generation of sufficient resources to finance education, health, and other rights, and to ensure gender equality policies and generally compensate for situations of structural inequality of disadvantaged groups, such as Indigenous, Afro-descendant, and peasant communities?

For ECLAC recommendation 6 and Principle 11

» Do the regulations governing sovereign wealth funds clearly indicate their purpose and the exceptional circumstances that enable their implementation?

» For the regulation of sovereign wealth funds, is there a provision for the adoption of countercyclical measures aimed at ensuring rights protection in contexts of crisis, as well as the social, environmental, and intergenerational sustainability of public finances?

For ECLAC recommendations 2, 4, 5, and 11 and Principles 5, 8, 9, and 11

» Does the fiscal rule provide for the protection of social spending and public investment, even in periods of fiscal consolidation?

» If the fiscal rule enables fiscal consolidation, does it provide for exceptions in areas such as essential health or basic income security for children, older people, the sick, the unemployed, those on maternity leave, or those with a disability?

» When the fiscal rule was established, was its potential impact on current levels of access to rights assessed? Was it ensured that the rule does not generate setbacks in the guarantee of rights?

- When the fiscal rule was set, were existing commitments, both implicit and explicit, to finance certain rights taken into consideration?
    - Was the financing of minimum rights content considered as part of existing rigidities?
    - Was the financing of minimum rights content considered as part of existing rigidities?

- When the fiscal rule was set, were fiscal aggregates to be regulated precisely defined?

- At the time of choosing the fiscal aggregate, was it considered that an expenditure rule may not be the best option, for being more related to the role and size of the state than to fiscal sustainability, and, if so, was the decision adequately justified?

- Does the fiscal rule make it impossible to increase the public budget for social sectors beyond inflation?

In the case of introducing a restrictive expenditure rule:

- Does the rule establish selection criteria on the kind of expenditure to be limited and exclude expenditure directly aimed at the fulfillment of rights, particularly if there are indicators of noncompliance with core levels of rights?

- Was the exclusion of public investment from expenditure rules or balanced budget targets considered? If so, was it done following certain guidelines which, among other things, guarantee the quality of those investments?

- Does the fiscal rule provide escape or exception clauses that consider the need to make the rule flexible when essential, core levels of human rights or the principles of proportionality and of progressivity are not fulfilled?

- If the fiscal rule foresees guaranteeing minimum social spending floors or other budget "rigidities", was an assessment carried out of the possibility of the rule affecting other rights or those reached by such protections?

For ECLAC recommendation 10 and Principle 10

- In the case of a rule that affects social spending, is a prior analysis needed for its application, in order to gain the most from socially available resources (such as progressive tax reforms, review of tax incentives, or control mechanisms for tax evasion and avoidance)? If so, why were these alternatives not chosen?

For ECLAC recommendation 3 and Principles 5, 7, and 10:

- Are indicators planned for monitoring the fiscal rule? Are these accessible to the public?

- Are mechanisms envisaged for evaluating the results or impacts of the fiscal rule on the provision of goods and services aimed at realizing the human rights of the general population and of vulnerable groups in particular?

- Is there a provision to periodically evaluate whether the fiscal rule affects the state's duty to expand resource mobilization to promote the progressive realization of rights?

- When the fiscal rule was established, were there participatory and accessible mechanisms to allow for due consideration of the opinion of citizens and/or persons potentially affected by the application of the rule?

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