Rights and Resources

Bringing human rights to fiscal policy

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Finnish Ministry of Foreign Affairs
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CENTER FOR ECONOMIC AND SOCIAL RIGHTS

Rights and Resources: Outline

1. What is fiscal policy & why does it matter for HR?
2. Making the links in practice: Guatemala case
3. Fiscal policy in context: resisting austerity, resourcing development, reducing inequality
4. Reflections and lessons learnt

1. What is fiscal policy & why does it matter?

How governments **generate and spend public resources** (esp. through tax & budget policy)

Essential instrument for:

- **Revenue**: Resourcing rights
- **Redistribution**: Reducing inequalities
- **Re-pricing**: Incentivizing rights-respecting behaviors
- **Representation**: Fostering accountability

A govt's tax & budget policies **reflect its human rights priorities**

Fiscal policy & human rights: new links, old roots

"For the maintenance of the public force and for the expenditures of administration, a common contribution is indispensable; it must be equally distributed to all the citizens, according to their ability to pay."   Art 13 Dec of Rights of Man and of the Citizen (1789)

Emerging attention to an urgent concern

Human rights principles relevant to fiscal policy

Devote “maximum available resources” to achieve progressively the full realization of ESC rights
Ensure necessary goods and services are available, accessible, acceptable and of good quality (AAAQ)
Guard against retrogression in ESCR and fulfil minimum essential levels
Ensure no discrimination on grounds such as gender, race, disability etc
Guarantee freedom of information, expression & association, so as to ensure participation, transparency & accountability

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the ***maximum of its available resources****, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”*

Art. 2 (1), ICESCR

2. Making the links in practice: Guatemala

- Set out to show that insufficient and inequitable tax policy was stunting human rights
- Focus on maternal mortality, child malnutrition and low school completion
- Collaboration with economists and health/ education activists

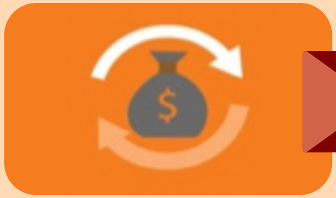
Methodology for linking rights to resources: OPERA

Outcomes

Measuring deprivations & disparities in rights enjoyment

Policy Efforts

Is the government putting in place the key policies needed?



Resources

How is the generation and use of resources affecting the problem?

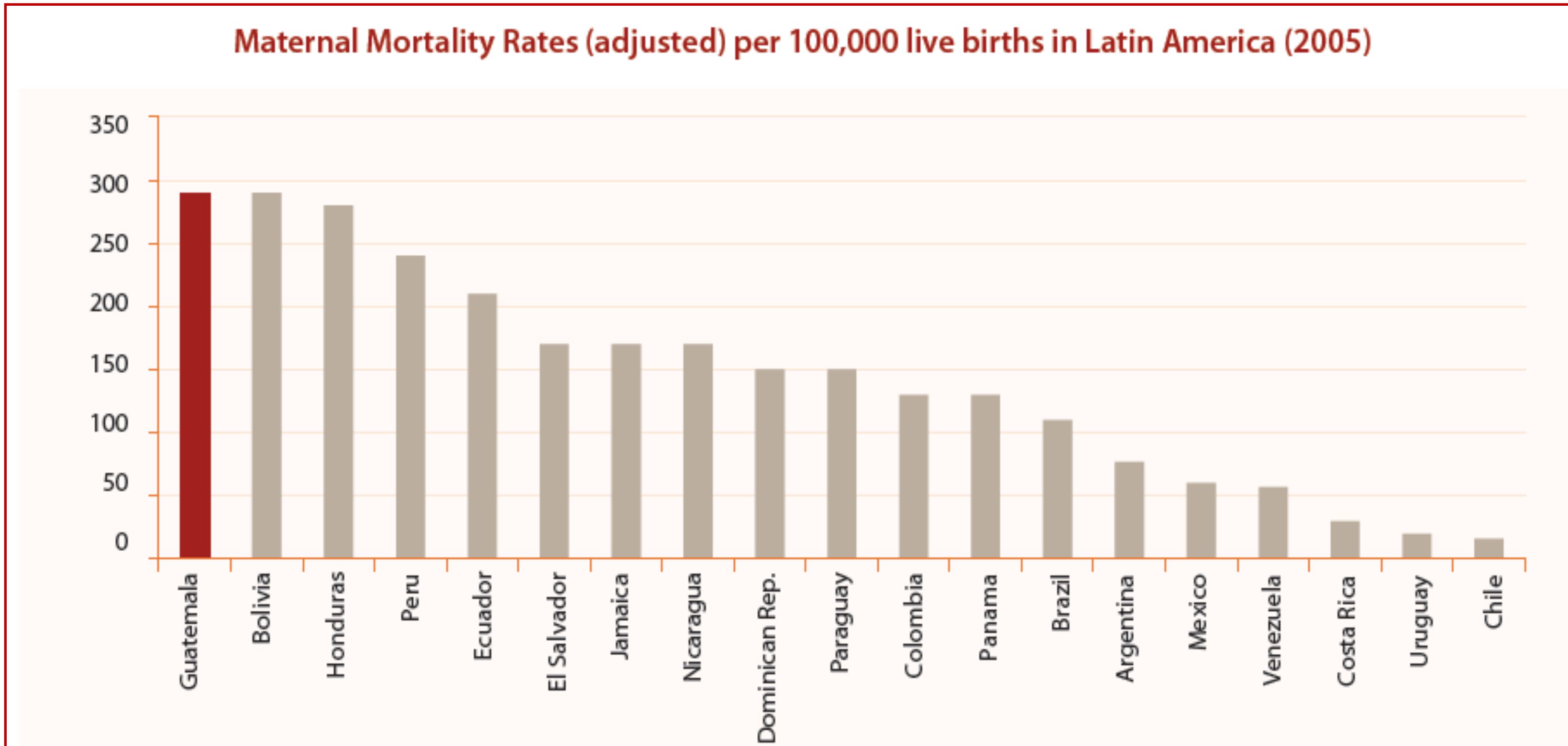
Assessment

In light of broader contextual factors, is the government breaching its HR obligations?

Outcomes

Measuring rights enjoyment at aggregate level

Guatemala's maternal health outcomes were among the worst in the LAC region, though far from being the poorest country



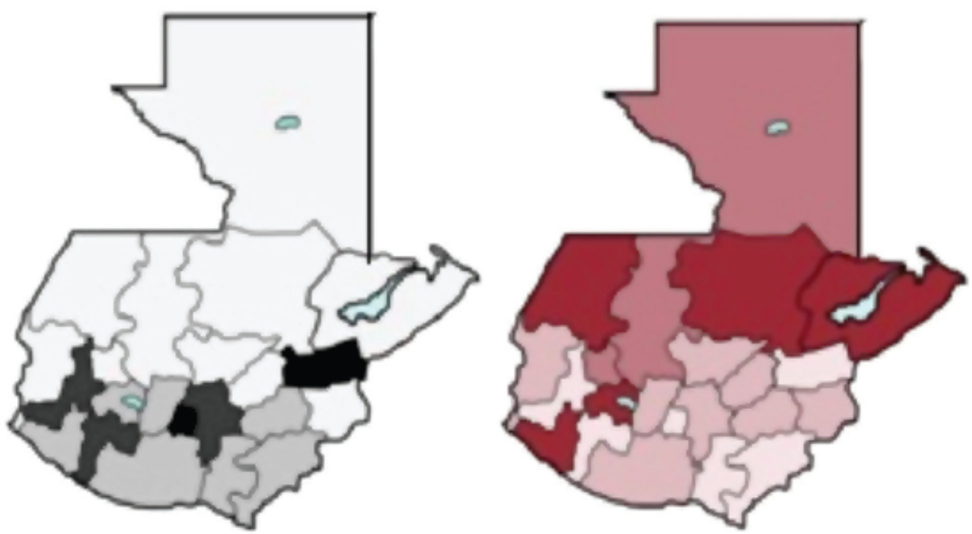
Source: Own calculations based on data from World Bank 2008

Policy efforts

Analyzing policy commitments, implementation and processes

Guatemala had an exemplary framework of constitutional, legal and policy commitments on the right to health. However, essential maternal health services were unavailable, physically/economically inaccessible, culturally unacceptable and of inadequate quality. Qualitative analysis and community interviews complemented quantitative data on shortcomings in policy efforts and processes.

Concentration Of Obstetricians And Gynecologists Per 100,000 Women Of Reproductive Age (Left) And Maternal Mortality Rate, By Department



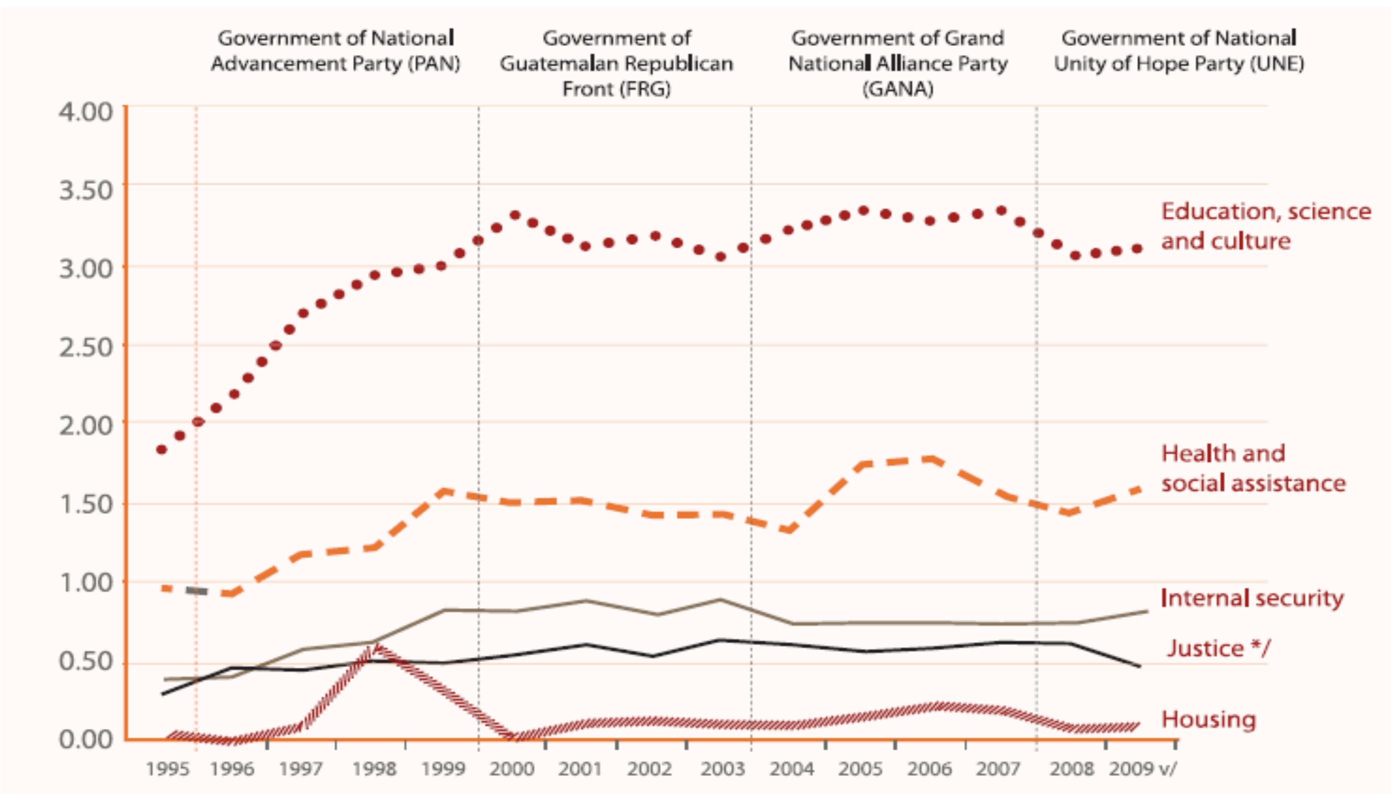
Darker shades represent higher numbers of obstetricians and gynecologists (left) and higher rates of maternal mortality (right).

Source: own design based on data from epidemiological reports by MSPAS and USAID, 2009

Resources **Analyzing resource allocation and expenditure**

Guatemala's social spending was among the lowest in the region, was grossly inequitably distributed and had not increased over time

Central government social spending since the Peace Accords by sector (as a percentage of GDP)



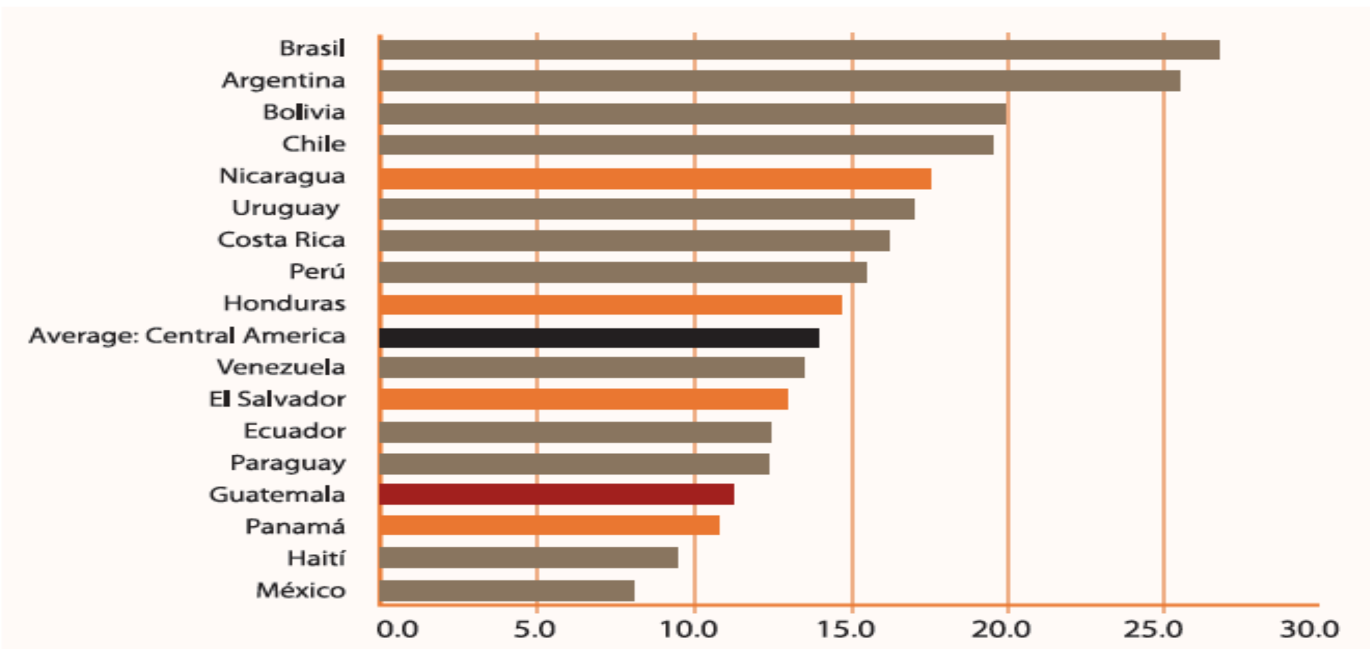
Source: own calculations based on statistics from the Ministry of Public Finance and the Central Bank

Resources

Analyzing resource generation

Low social spending was largely due to persistently low tax revenues. ***The tax system was highly regressive, with the poor shouldering the burden, while corporations enjoyed generous tax deductions. Budget and tax policy processes were not participatory, but unduly influenced by the country's business elite.***

Tax as a percentage of GDP in Selected Countries in Latin America and the Caribbean (2008, preliminary figures)



Source: own calculations based on statistics from CEPAL

Assessing constraints and overall compliance

Corporate capture of fiscal policy meant Guatemala's resource mobilization was insufficient, inequitable & unaccountable.

In light of its inadequate fiscal and policy efforts, Guatemala's alarming maternal health deprivations and disparities were in breach of its ESC rights obligations.

Led Minister of Finance to introduce progressive tax and budget reforms using HR justifications

ELSA CORONADO QUIB | DCA |

"Sin una política fiscal progresiva, el Estado viola los derechos económicos sociales y culturales de la ciudadanía", refleja un estudio del Instituto Centroamericano de Estudios Fiscales (Icefi) y el Center for Economic and Social Rights (CESR).

Jonathan Menkos, investigador del Icefi, dijo que los políticos deben actuar con madurez para enfrentar la situación derivada del bajo nivel de carga tributaria, porque de ello depende la estabilidad de la nación. "De lo contrario nos acercamos a una hecatombe social", advirtió.

El informe señala que se debe retomar la discusión de la reforma fiscal. El debate, según Menkos, debe involucrar a la sociedad, porque históricamente solo se trata entre los políticos y los sectores empresariales.

El ministro de Finanzas, Juan Alberto Fuentes, indicó que al formar parte del Gobierno ha identificado a los tres actores que obstaculizan las reformas tributarias: "diputados, empresarios y directores de los medios de comunicación, sectores a los que hay que dirigir este mensaje, a los que se debe convencer".

Dijo que sin una reforma fiscal la recaudación seguirá por debajo de la meta de los acuerdos de paz.

El estudio recomienda que se incremente la inversión social en educación, salud y alimentación, y que a la vez se eliminen los privilegios fiscales a los sectores empresariales poderosos.

ENTREVISTA

JUAN ALBERTO FUENTES KNIGHT, ministro de Finanzas Públicas

"Estamos ante una desnutrición financiera del Estado guatemalteco"

ELSA CORONADO QUIB | DCA |

El ministro de Finanzas, Juan Alberto Fuentes Knight, resalta la importancia de aprobar una reforma fiscal, para incrementar la inversión social.

¿Por qué es necesaria una reforma fiscal?

Estamos ante una desnutrición financiera del Estado guatemalteco. Esto debería ser una reflexión a superar esa limitación, para dedicar más recursos a educación, seguridad, justicia y salud.

¿Cómo van a lograr que la propuesta avance?

Vamos a hacer una lucha seria para impulsar esta reforma, que es moderada, que no va a afectar a las capas medias y pobres y que se centrará en tributación directa.

¿Cuánto percibirá el Estado si se logra implementar?

Entre Q1,500 y Q2,000 millones por año, de acuerdo a las estimaciones que hemos hecho.

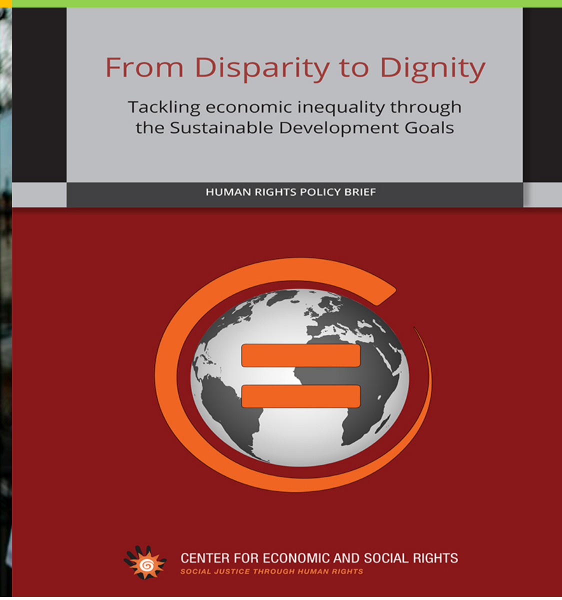
¿Han considerado eliminar las exenciones de que gozan los sectores empresariales?

Precisamente el Impuesto Sobre la Renta es uno de los que tienen más exenciones, en especial el régimen optativo del 30%. Contemplamos acciones para reducir la magnitud de ese efecto.

¿Cuándo entraría en vigencia?

Esperaríamos que el año entrante. Eso no quita la necesidad de medidas más amplias que no entablar con este Gobierno sino con el próximo. Quizá eso conlleva a un espíritu de mayor convergencia nacional para lograr un acuerdo sobre la política fiscal.

3. Fiscal policy in context

Resisting austerity	Resourcing development	Reducing Inequality
		

Fiscal austerity – an ongoing global trend

Countries projected to undertake austerity measures by 2020: 132 (81 developing)

- **minimum wage cuts/caps: 130**
- **increased consumption taxes: 138**
- **social protection cuts: 107**
- **pension cuts: 105**
- **privatizing public services: 55**

Spain: making the case that austerity measures are retrogressive

Any austerity measures should be "temporary, necessary, proportionate and non-discriminatory". Spain should "conduct a full evaluation of the effects of its fiscal policy on human rights…and ensure that its tax system is socially just and has a broad redistributive effect" (UN-CESCR, 2018)

Brazil: fighting the constitutionalization of austerity

BRAZIL

Visualizing rights

HUMAN RIGHTS IN TIMES OF AUSTERITY

Brazil made meaningful progress in tackling poverty over the past decade, largely as a result of public investments in health, education and social protection. Not coincidentally, the country's economy thrived from burgeoning domestic demand. Brazil set an example in its initial response to the 2008-2009 global economic crisis by increasing social investments (Tesouro Nacional, 2016), which in turn sustained the economy while protecting human rights.

Yet, as this factsheet illustrates, these advances are at imminent risk from a series of harmful and severe austerity measures put in place by the government starting in 2015. While aimed at tackling spiking deficits, these initiatives are deepening socio-economic inequalities in Brazilian society, with particularly disproportionate impacts on those already disadvantaged. Among the most extreme of these measures, the Constitutional Amendment 95/2016 (EC 95), known as the "Expenditure Ceiling" act, is particularly far-reaching in its harm to human rights. Coming into force in 2017, this act took the unprecedented step of freezing real public spending for 20 years. By constitutionalizing austerity in this way, any future elected governments without an absolute majority will be prevented from democratically determining the size of human rights investments needed to deal with aging populations and increased financing needs. The UN Independent Expert on Extreme Poverty and Human Rights considered the EC 95 "a radical measure, lacking in all nuance and compassion", arguing that the amendment "has all the characteristics of a deliberately retrogressive measure" (Alston, 2017). This call reinforced an earlier statement by the Inter-American Commission on Human Rights that the government's turn to harsh austerity measures may well be in violation of its legal obligations (IACHR, 2016). Under international law, states' margin of discretion in responding to economic crises is not absolute. To be in compliance with human rights standards, fiscal consolidation measures must: be temporary, strictly necessary and proportionate; non-discriminatory; take into account all possible alternatives, including tax measures; protect the minimum core content of human rights; and be adopted after the most carefully consideration with genuine participation of affected groups and individuals in decision-making processes (Committee on Economic, Social and Cultural Rights, 2012, 2016).

On the first anniversary of Brazil's 'New Fiscal Regime,' this factsheet assesses whether the Expenditure Ceiling Act—and the austerity measures surrounding it— comply with these aforementioned criteria established under international human rights law. EC 95 has already begun to disproportionately affect disadvantaged groups, such as Afro-Brazilian women and people living in poverty. Since its approval, new findings presented here show that significant resources have been diverted from the most important social programs toward debt service payments, threatening to exacerbate the extreme levels of economic inequality. This factsheet demonstrates how these fiscal decisions put at risk the basic social and economic rights of millions of Brazilians, including the rights to food, health and education, while exacerbating gender, racial and economic inequalities. Meanwhile, the Brazilian government has not demonstrated that EC 95 was necessary, proportionate and a last-resort measure, nor that less restrictive alternative measures have been explored and analyzed. In fact, there is solid evidence showing that alternatives—such as more progressive taxation and tackling tax abuses—are readily available. Further, these fiscal consolidation measures have not benefitted from public participation, as the measures were pushed through in the midst of narrowing opportunities for public scrutiny, accountability, and access to information. The EC 95 is also hardly temporary, but will extend far into future economic recoveries that may occur over the next two decades. These pro-cyclical fiscal measures even run counter to the government's own aims of deficit reduction. This factsheet illustrates how austerity in Brazil stands in serious breach of human rights obligations, including those enshrined in the country's Constitution, while jeopardizing decades of socio-economic progress.

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The 20-year public spending freeze "lacks all nuance and compassion, and has all the characteristics of a deliberately retrogressive measure" (UN SR Extreme Poverty, 2017)

Egypt: holding the IMF answerable for the human/women's rights impacts of austerity


Egypt's new IMF deal comes with a huge price tag for human rights

By Mahinour el-Badrawi and Allison Corkery

At issue

BRETTON WOODS project

FEBRUARY 2017

The government of Egypt has sealed a loan deal with the IMF following four years of negotiations. The impacts of the structural adjustment reforms associated with the loan raise strong human rights concerns, particularly for the status of economic and social rights in the country; aggravating employment conditions, the right to education, healthcare and to social protection.

In November 2016, the executive board of the IMF approved an agreement with the government of Egypt for a three year $12 billion loan. The new agreement is made under the IMF's Extended Fund Facility, which supports long-term "structural adjustment". The IMF is also reportedly working with the government of Egypt to secure an additional $5 to 6 billion in bilateral funding, including from China and Saudi Arabia. Intended to remedy the country's economic woes, the agreement pushes classic austerity-based policies in Egypt, which will aggravate poverty and inequality on a large scale. The Staff Report, outlining the policies underpinning the IMF arrangement under the Extended Fund Facility, was not publically released until January 18, 2017 despite the announcement of the deal by managing director Christine Lagarde in early November.

The aim of the extended fund facility programme with Egypt is to restore stability and confidence in the economy. To do this, the programme supports the "government's home-grown comprehensive economic reform plan". This plan includes a range of monetary and fiscal reforms that first seek to reduce public spending, including by reforming the civil service and by reducing the public sector's role in the provision of subsidised social services. The second aim of these reforms is to increase state revenue, including by introducing a value-added tax (VAT) and by liberalising the exchange rate to shore up the country's foreign reserves and encourage foreign investment.

So far, reforms have resulted in an unprecedented rise in inflation. The official inflation rate stood at 24.3 per cent in December 2016; the worst economic deterioration since 2013. This has huge consequences for the cost of living in the country, given its heavy reliance on imports. The burden of higher living costs will fall most heavily on the poor and is likely to exacerbate already widespread deprivations of economic and social rights in the country. In a country where over half of the youth population lives below the national poverty line and over a quarter are unemployed, the cumulative effect of these reforms is already starting to have a

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brettonwoodsproject.org

"The economy continues to grow robustly…and public debt is on a downward trajectory supported by growth-friendly consolidation efforts." (Christine Lagarde, IMF, 2019)

"More than 1 in 4 people live in poverty, and this number has increased since 2013. IMF reforms reducing social spending and services have burdened the poor most heavily" (CESR and EIPR submission to the UPR, 2019)

South Africa: showing how austerity perpetuates inequality - needlessly

SOUTH AFRICA

FACTSHEET No. 18

AUSTERITY IN THE MIDST OF INEQUALITY THREATENS HUMAN RIGHTS

This factsheet examines the enjoyment of economic and social rights in South Africa, ahead of the country's first appearance before the UN Committee on Economic, Social and Cultural Rights in October 2018. Specifically, it uses indicators based on national and international data sources to explore whether the South African government is fulfilling its obligations under Article 2(1) of the International Covenant on Economic, Social and Cultural Rights ("the Covenant") to take steps to progressively realise these rights using the "maximum of its available resources."

Post-apartheid South Africa provides a striking case study of the intersection between economic inequality, social exclusion and human rights deprivations. Despite the more inclusive agenda initiated in 1994, which included the adoption of some of the strongest constitutional protections for economic and social rights in the world, enjoyment of these rights remains elusive for the majority of people. Systemic inequality continues to be ingrained in the country's economic and social structures, resulting in the world's highest levels of income and wealth inequality. Poverty and unemployment are experienced by a large percentage of society and intersect with disparities in access to quality health care, education, housing and even food. Corruption thrives under such conditions of inequality. It diminishes available resources and erodes trust in public administration and private enterprise alike. These inequalities undermine opportunities for political participation and accountability.

Compounding these challenges is the fact that the South African government has adopted a policy of fiscal austerity in recent years. Austerity is being imposed in response to rising but moderate public debt, pressure from credit rating agencies and lower-than-expected GDP growth and revenue collection. These negative trends occur in a context of lower prices for South Africa's mineral exports, widespread corruption and "state capture" during the Jacob Zuma administration, as well as the mismanagement of critical state-owned enterprises. Austerity has taken the form of cuts in government expenditures and regressive tax changes, which present a growing threat to the achievement of social justice that is at the heart of the South African Constitution.

This factsheet focuses particularly on inadequate and inefficient resourcing for the rights to health (Article 12) and education (Article 13). Health expenditure per uninsured person has declined in recent years. Due to limits on personnel expenditure, most provinces are suffering from chronic staff shortages. This is resulting in an overall reduction in the quality of public healthcare. Real education spending per pupil has also declined, resulting in funding cuts to much needed school infrastructure programmes and underfunding of the country's poorest schools.

Post-apartheid South Africa provides a striking case study of the intersection between economic inequality, social exclusion and human rights deprivations

These measures do not comply with South Africa's obligations under the Covenant and in particular the non-retrogression criteria set out by the Committee, namely that such measures must be: temporary, legitimate, reasonable, necessary; proportionate; not directly nor indirectly discriminatory, according priority attention to disadvantaged groups; protective of the minimum core content of rights; and based on transparency and genuine participation of affected groups and subject to meaningful review and accountability procedures (Committee on Economic, Social and Cultural Rights, 2016). In order to negate the need for austerity, South Africa must take steps to maximize the resources available for the protection and fulfilment of human rights. This can be done by developing a more equitable tax policy that contributes to the redistribution of income and wealth and by taking meaningful steps to tackle rampant corruption and state capture. Redistribution, including wealth, is essential to expand fiscal space and enable a shift towards the people-centred rights-based development envisaged in the Constitution.

VISUALIZING RIGHTS

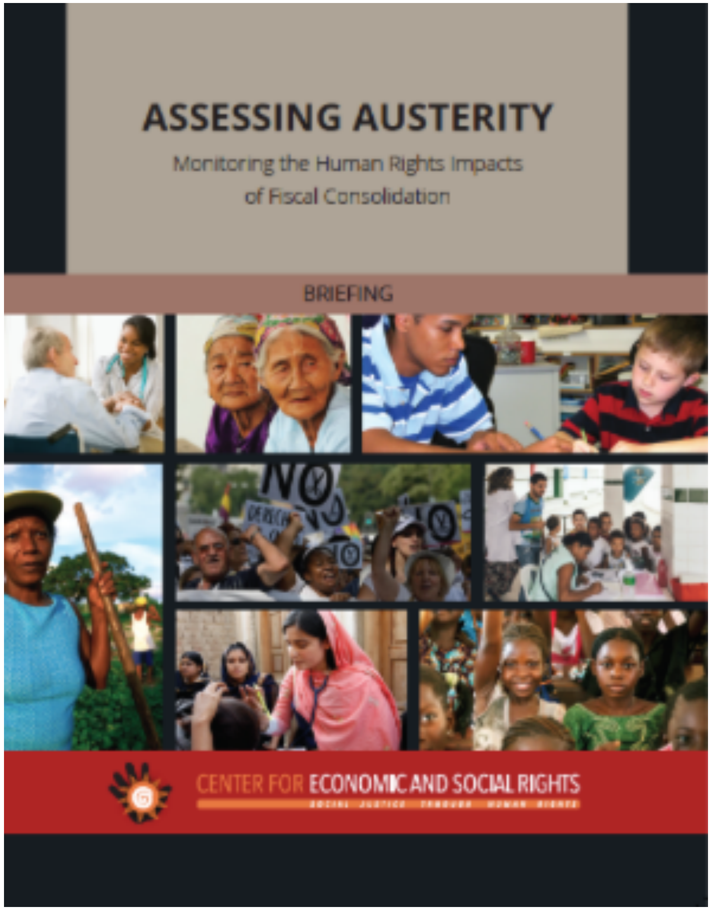
CENTER FOR ECONOMIC AND SOCIAL RIGHTS AT 25 · INSTITUTE FOR ECONOMIC JUSTICE · SECTION27 catalysts for social justice · SPII STUDIES IN POVERTY AND INEQUALITY INSTITUTE

Total budget shortfall = 48bn SAR

Lost to high income tax breaks = 52bn SAR

> *"The State party's fiscal policy … does not enable it to mobilize the resources required to reduce inequalities… Austerity measures have resulted in significant budget cuts in the health, education and other public service sectors, and…may further worsen inequalities in the enjoyment of the rights under the Covenant, or even reverse the gains made, particularly in the health and education sectors." (UN-CESCR, 2018)*

Assessing Austerity: HRIAs of fiscal policy



UN Guiding Principles on Economic Reforms and HRIAs

Spotlighting how tax abuse and regressive fiscal policies undermine development

"In the 2030 Agenda governments committed to a revitalized Global Partnership between States and declared that public finance has to play a vital role in achieving the SDGs. But in recent decades, the combination of neoliberal ideology, corporate lobbying, regressive fiscal policies, tax avoidance and tax evasion has led to a massive weakening of the public sector and its ability to provide essential goods and services"

(Spotlight on Sustainable Development Report 2017)

Holding tax havens accountable

"Switzerland's financial secrecy policies and rules on corporate reporting and taxation have a potentially ***negative impact on the ability of other States, particularly those already short of revenue, to mobilise the maximum available resources f****or the fulfilment of women's rights". Switzerland should "undertake independent, participatory and periodic impact assessments of the extraterritorial effects of its financial secrecy and corporate tax policies on women's rights"* (UN- CEDAW 2017)

SWITZERLAND

State Responsibility for the Extraterritorial Impacts of Tax Abuse on Women's Rights

Earlier this year, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) requested that Switzerland "provide information on the measures taken to ensure that the State party's tax and financial secrecy policies do not contribute to large-scale tax abuse in foreign countries, thereby having a negative impact on resources available to realize women's rights in those countries" (CEDAW, 2016). While Switzerland has taken steps in recent years to counter some forms of cross-border tax abuse, the State's conduct may still be at odds with its extraterritorial obligations under Article 2 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) to refrain from, and to protect against, conduct that foreseeably undermines the ability of other States to raise and retain the resources needed to fulfill women's rights and substantive equality.

This factsheet summarizes how Switzerland's financial secrecy policies and lax rules on corporate reporting and taxation jeopardize women's rights overseas. It presents questions and recommendations that the CEDAW Committee may consider posing during its review of Switzerland at its 65th Session in Geneva in November 2016. The factsheet is based on a more detailed report originally submitted to the Committee by the five undersigned organizations in March 2016, and then updated in November 2016 ("Joint submission").

PUBLIC RESOURCE SHORTFALLS INHIBIT WOMEN'S RIGHTS AND SUBSTANTIVE EQUALITY

State parties to CEDAW require adequate public finances to realize women's rights and substantive equality. Revenue shortfalls shrink public budgets for social services, leading to spending cuts that disproportionately affect low-income populations, among whom women are overrepresented. Budget constraints also lead to chronic under-funding of key institutions and programs that promote gender equality and combat gender-based violence, as well as other crucial instruments for the advancement of women's rights, including education, healthcare, childcare and eldercare. When the State fails to make these services available and accessible to all, women are often left to fill the gaps with their unpaid work. This additional burden on women entrenches inequalities. Women are disadvantaged even further when, in an effort to make up revenue shortfalls, States increase their reliance on more easily administered but regressive taxes, such as consumption or value-added taxes on basic goods and services (Joint submission, ¶¶ 2.5 - 2.8).

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SOCIAL JUSTICE THROUGH HUMAN RIGHTS
Global Justice Clinic
tax justice network
Public Eye
alliancesud

Financial Secrecy Index

1. Switzerland
2. Hong Kong
3. USA
4. Singapore
5. Cayman Islands
6. Luxembourg
7. Lebanon
8. Germany
9. Bahrain
10. UAE (Dubai)
11. Macao
12. Japan
13. Panama
14. Marshall Islands
15. United Kingdom
16. Jersey

Source: Financial Secrecy Index (FSI) 2015 results. The size of each flag in this graphic is proportional to the corresponding country's score on the FSI. www.financialsecrecyindex.com

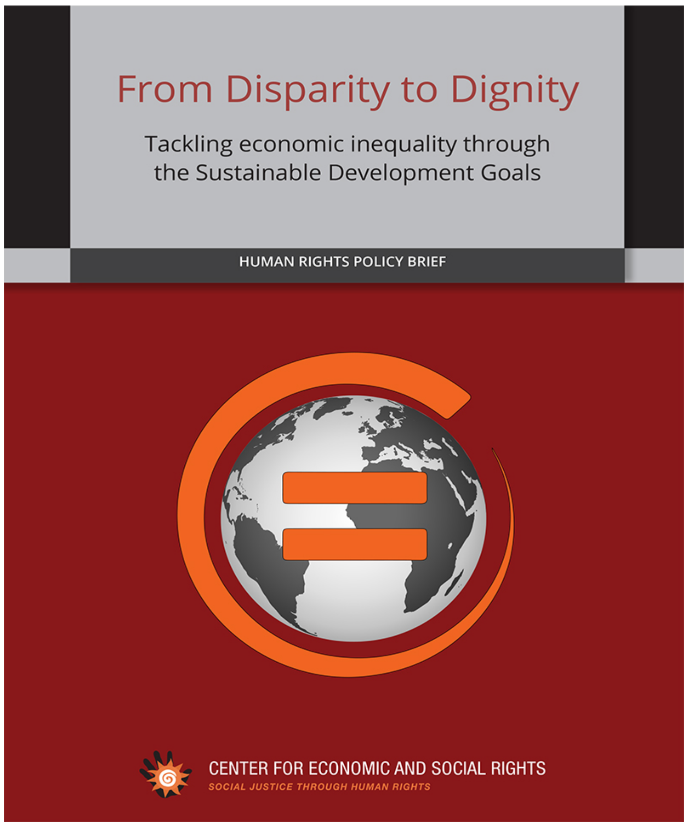
Resisting the global "race to the bottom" on corporate taxation – and towards new rules

"Tax havens are a key driver of global inequality. On top of helping MNCs dodge taxes, they enable ultra- wealthy individuals to hide their riches. A global registry of financial assets would deal a fatal blow to financial secrecy and would be the most effective weapon for global financial transparency." ICRICT

"The proposed tax reform package stakes out America's bid to become the most unequal society in the world" Philip Alston

Holding governments accountable for the pledge to "leave no one behind"

Proposing rights-based pathways to achieve SDG10



Enabling CSOs to monitor fiscal policy and its impact on development

Egyptian Social Progress Indicators

Tackling inequalities through fiscal policy

Highlighting the gendered impacts of tax policy at the Commission on the Status of Women…and beyond

Tackling inequalities through fiscal policy

Indigenous and afro-descendant rights defenders in Peru and Colombia explore the fiscal roots of inequality

Strengthening norms on fiscal policy & HR

Developing Principles and Guidelines on Fiscal Policy and HR in Latin America

Developing Guidance on the "maximum available resources" principle

4. Reflections and lessons learnt

What human rights brings to fiscal policy:

- **Shifts frames & discourses about tax justice**
- **Brings bindings norms to bear on policy**
- **Opens new pathways for accountability**

4. Reflections and lessons learnt

Challenges involved:

- Bridging frames & strategies across movements
- Strengthening norms and their enforcement
- Challenges of seeking accountability within and beyond the human rights system

Fiscal justice through human rights: an ongoing struggle

“Tax policy is public policy, and so can no longer be treated as a matter of mere technical engineering or be left entirely to the often unaccountable discretion of government.

Instead, we call on governments to cultivate transformative social and fiscal compacts, and empower citizen watchdog institutions that have the purpose of subjecting tax policy to the most rigorous standards of transparency, public participation, and meaningful accountability in line with internationally-recognized human rights principles.

Existing human rights standards provide a normative justification for a capable and well- resourced state.”

Lima Declaration on Tax Justice and Human Rights, 2015