

Fiscal Policies and the Safeguarding of Economic, Social and Cultural Rights in Latin America: Argentina, Brazil, Colombia and Peru

Thematic report

Executive Summary

Prepared on the occasion of the Thematic Hearing “Control of Public Spending, Fiscal Policies and Economic, Social and Cultural Rights Guarantees in Latin America” during the 168th session of the Inter-American Commission on Human Rights (IACHR)

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Executive Summary

In October 2015, the signatory organizations joined forces with others in the region to promote the first thematic hearing on the impact of fiscal policy – understood broadly as taxation and public spending – on the protection and enjoyment of human rights, in particular on economic, social and cultural rights (ESCR). Since 2015, poverty in Latin America has begun to increase again, and progress on reducing inequality has stalled. 187 million people, 30.7% of the population, in Latin America are poor. Economic inequality regionally remains the highest in the world. It is clear that the majority of Latin American countries have not taken advantage of the enormous transformative potential of fiscal policy in the fight against poverty, inequality and structural human rights violations. This is despite growing recognition by the Inter-American Commission of Human Rights (IACHR)—alongside the international human rights system and domestic judicial institutions—that human rights norms are fully applicable to economic policies, including fiscal policies.

Unlike Organisation for Economic Cooperation and Development (OECD) countries, fiscal policy in Latin America has had little effect in reducing economic inequality, even exacerbating the situation of the worst off in some countries, who end up being net payers rather than net beneficiaries of the fiscal system. In general, countries in the region are characterized by fiscal policies that are not very transparent nor participatory, and are predominantly regressive, posing a low tax burden and an unequal tax structure weighted towards indirect taxes. This report shows, using evidence on the concrete impacts in Argentina, Brazil, Colombia and Peru, that fiscal policies are central to determining the level of enjoyment of ESCR, in particular with regard to the most socially and economically excluded populations. The report also illustrates that States have not done enough to mobilize the maximum of their available resources, nor do they manage these resources efficiently toward the “progressive realization” of these rights, in accordance with regional and international human rights norms.¹ The combination of more progressive income and wealth tax reforms, the repeal of useless tax incentives, the implementation of effective strategies to combat tax evasion and avoidance, alongside a better design and allocation of public expenditure, could generate sufficient resources to eradicate poverty, contribute to the achievement of the Sustainable Development Goals (SDG) and overcome the historic deficits in ESCR the region faces.

The Inter-American Human Rights System, in particular the IACHR, plays a key role in ensuring that human rights standards and principles apply fully to the monitoring and oversight of fiscal policies. This report shows how certain fiscal policies compromise the principles and obligations recognized by the IACHR and other authorized bodies. In **Brazil**, the expenditure ceiling reform imposed in 2016 that froze real public spending for a period of 20 years constituted a violation of the obligation to progressively realize ESCR, has already led to discriminatory impacts against women, and threatens the fundamental rights of socially and economically disadvantaged populations. In **Colombia**, the lack of public will to implement tax reforms which would enable social spending increases and guarantee the necessary resources to implement the Peace Agreement puts into question the obligation of the State to mobilize the maximum of available

¹ See American Convention on Human Rights, Article 26; the Protocol of San Salvador, Article 1; and the International Covenant on Economic, Social and Cultural Rights, Article 2 (1).

resources for the progressive realization of ESCR. In **Peru**, fiscal policy is at the heart of the continuation of discrimination against the poorest women, as well as against indigenous people when it comes to guaranteeing their rights to health care and education. In **Argentina**, the State's refusal to use property taxes as a tool to regulate an increasingly speculative market poses key obstacles to the human right to adequate housing. Additionally, the government has implemented regressive social security measures which undermine the essential minimum levels of rights for people with disabilities as well as children and adolescents. All this in a context of serious failures in transparency, participation and accountability over essential public financing decisions, therefore preventing a democratic debate on possible fiscal alternatives.

As is increasingly the case for all parts of the international human rights protection system, the IACHR also has an essential role in providing guidelines and indications on how the States of the region could better integrate their human rights duties across the fiscal policy cycle: from the design and implementation of tax policies, to budget allocations and expenditure monitoring and the implementation of human rights impact assessments. This monitoring role would also involve exploring viable and pressing alternatives that other bodies such as the Economic Commission for Latin America and the Caribbean (ECLAC) have recommended to address the main fiscal challenges in the region, such as the need to raise more resources, and to do so more equitably by revising useless tax benefits, or by taking advantage of under-utilized instruments like personal income taxation, property taxes, land taxes, green taxes or health taxes. The arguments and evidence in this document present a compelling case for aligning fiscal policy with human rights principles in order to ensure the sufficient, equitable, sustainable and accountable provision of public resources to realize human rights.

Holding governments accountable for the use of their financial resources, in particular through fiscal policy, can also contribute to the prevention of systematic violations of civil and political rights, and to remedying the structural ESCR violations underlying them. Although some lessons have been learned about the need to adopt counter-cyclical fiscal policies in the region, governments continue to respond to economic downturns with austerity measures, without considering the human rights norms and principles guiding the process of fiscal adjustment. Low-income households across the region have suffered disproportionately as a result, and vital redistributive policies that would have benefited the population have been weakened. Austerity has had asymmetric effects on disadvantaged populations that are rarely offset by later economic expansions, perpetuating exclusion and socio-economic inequality. The adoption of human rights-aligned fiscal policies can prevent these and other adverse effects of economic downturns, while also helping to re-build a fiscal pact based on the mobilization of resources to finance human rights to 'the maximum of available resources,' the redistribution of wealth to reduce economic inequality and other inequalities, the protection of public goods such as the environment, and the accountability of the State to its people.

In light of all this, it is timely and urgent that the Inter-American Human Rights System strengthen its scope of protection against human rights violations resulting from regressive and unjust fiscal policies. Consequently, the petitioning organizations request that the eminent Inter-American Commission on Human Rights:

1. Draw up a thematic report on fiscal policy and human rights in the Americas, led by the Special Rapporteur on Economic, Social, Cultural and Environmental Rights and based on the considerations and recommendations adopted by the ICHR in the “Report on Poverty and Human Rights in the Americas,” aimed at contextualizing and operationalizing the human rights principles that arise from regional norms. We also ask that it include an analysis of the fiscal dimension that underpins the various human rights violations addressed by the IACHR in a number of reports and in case law;
2. Incorporate into the standards being developed in the area of business and human rights the duty of the States to protect against tax abuse, and the responsibilities of businesses to contribute their fair share to the financing of human rights in accordance with General Comment 24 recently adopted by the United Nations Committee on ESCR;
3. Invite national human rights institutions to get involved in monitoring and oversight of fiscal policy, including the role of businesses in the insufficient mobilization of public resources and its impact on human rights;
4. In accordance with the indicators established in the “Norms for the submission of periodic reports provided for in Article 19 of the Protocol of San Salvador,” call on the States to comply properly with the periodic reports that they are obliged to submit in the context of monitoring the implementation of the Protocol of San Salvador, providing full and adequate information about its fiscal policies;
5. We also request that the Commission, through the ESCR Rapporteur, take into account the evidence and requests presented in each of the countries in this thematic hearing – both in its general evaluation of the human rights situation in the respective countries as well as in its monitoring of these situations, where appropriate.

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