

WHAT DO HUMAN RIGHTS HAVE TO OFFER TO FISCAL TRANSPARENCY?

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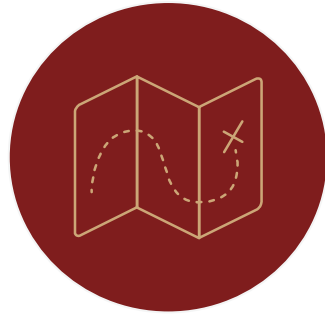
PART I-
GENERAL CONCEPTS
15 MINUTES

Fiscal transparency, participation and accountability (FTPA) have numerous, recognized benefits:

for informed and
efficient decision
making

provide people with an
opportunity to examine
and have a say about
decisions that impact
their lives

pre-requisite for
healthy democracies,
and for legitimating
fiscal decisions.



BUT! Unobserved in practice

Need to find frameworks to close the theory-practice gap.

Why human rights as a framework?

Human rights need aligned fiscal policies for their implementation, e.g.

they need resources for their funding.

They call for fiscal decisions that promote equality

Fiscal policy can enhance democratic values at the heart of the human rights framework

Fiscal policy can be used to incentivize or disincentivize conducts necessary to ensure human rights (e.g, with taxes on tobacco).

Fiscal policy is subject to mandatory human rights standards,

and States must be held accountable for aligning fiscal decisions with such standards.

human rights as a function or goal of fiscal policy

Some “effects” of the framework:

- complying with States’ international obligations
- mutual learning processes
- enhancing representation and legitimacy of fiscal policy and securing healthy democracies
- providing guidance on the scope and goals of FTPA

Human rights:

- Limit States discretion
- Standards of particular relevance for fiscal policy include the principles of equality and non-discrimination; the duty to use the maximum available resources; the principles of progressive realization of social and economic rights; and the principles of transparency, participation and accountability
- In practice, they have traditionally been separated from fiscal debates.
- But a growing body of standards recognizing that fiscal policy needs to align with human rights, emerging from the work of courts, international human rights bodies, civil society organizations, etc.

The ultimate example: the Principles for Human Right in Fiscal Policy



15 normative Principles with sub-principles, and associated guidelines

15 PRINCIPLES for Human Rights in Fiscal Policy

1. The realization of human rights must be a fundamental objective of fiscal policy.
2. The obligations to respect, protect and fulfill human rights demand a proactive role for the State and impose limits on the discretion of the State in relation to fiscal policy.
3. States must ensure that their fiscal policy is in line with the pursuit of social justice.
4. States must ensure their fiscal policy is environmentally sustainable
5. States must use fiscal policy to eradicate structural discrimination and promote substantive equality, integrating in a cross-cutting manner the perspectives of populations who suffer from discrimination in the design and implementation of such policies, and adopting affirmative action when necessary.
6. States must promote substantive gender equality through their fiscal policy, using an intersectional approach.
7. Fiscal policy must be transparent, participatory and accountable. People have a right to fiscal information.
8. States must adopt all the necessary financial and fiscal measures to realize human rights within a sustainable fiscal framework.
9. States must guarantee the enjoyment of minimum essential levels of economic, social, cultural and environmental rights in their fiscal policy as a matter of priority.
10. States must mobilize the maximum of available resources to progressively achieve the full realization of economic, social, cultural and environmental rights.
11. States must ensure their fiscal policy does not result in retrogression in protection of economic, social, cultural and environmental rights, even in contexts of economic crisis.
12. States are empowered, and on occasions obliged, to encourage or discourage certain conducts and correct externalities through specific fiscal policy instruments, and to adopt priority fiscal measures in order to guarantee human rights.
13. States, and the international institutions of which they are members, must offer assistance and international cooperation in fiscal matters. They must create an enabling global governance environment with the aim of achieving the full realization of human rights.
14. Non-state actors, including companies and their intermediaries, have human rights responsibilities in relation to their fiscal conduct.
15. States must prevent human rights violations and, when they do occur, establish appropriate reparations for human rights violations related to fiscal policy, whether they affect civil, political, economic, social, cultural or environmental rights.

Principle 7 on transparency, participation and accountability in fiscal policy

07

**FISCAL POLICY MUST
BE TRANSPARENT,
PARTICIPATORY AND
ACCOUNTABLE. PEOPLE
HAVE A RIGHT TO FISCAL
INFORMATION**

States must:

7.1. Fiscal culture

Adopt measures to strengthen fiscal culture and the active exercise of fiscal citizenship, including citizenship training and appropriate technical assistance in order to guarantee full, equal participation in fiscal debates.

7.2. Information

Produce, publish, and provide access to high quality fiscal information. This information must be structured clearly and comprehensibly and be made available for review by all persons.

7.3. Disaggregated data

Ensure that fiscal information is based on classification and disaggregation criteria that enable an analysis with a rights perspective. Include criteria such as gender, ethnicity and race, and other categories that are susceptible to discrimination.

7.4. Human rights indicators

Produce high quality indicators, that include fiscal criteria, regarding the fulfillment of their human rights obligations. This should be done in accordance with their duty to submit reports to regional systems of human rights protection and promotion.

7.5. Exceptions

Strictly justify exceptional limitations to the right to fiscal information for reasons of general interest and guarantee that those limitations are subject to review by impartial authorities, prioritizing access to fiscal information, in case of doubt.

7.6. Participation

Ensure that fiscal policy decision-making processes are open to informed public debate, through inclusive, broad, transparent and deliberative social dialogue processes. These decision-making processes should be based on solid evidence from different sources and using accessible language. Participation must be equitable, comprehensive, significant, multisectoral and inclusive.

**Principle: “Fiscal policy must be transparent, participatory and accountable.
People have a right to fiscal information”**

Sub-principles treat different aspects derived from such general standards:

States need to strengthen fiscal culture;

States obligation to produce, publish
and provide access to good quality fiscal
information;

States obligation to disaggregate
information in a way that permitted
analysis of how fiscal policy impacts
different people or groups;

States need to produce high-quality
indicators

States need limit access to fiscal
information only in very exceptional
cases, and subject to strict limitations;

States duty to ensure that fiscal policy
decision-making processes are open to
an informed public debate, through
meaningful, inclusive, broad,
transparent and deliberative
participation

Guidelines on transparency:

- Produce and give the broadest possible access to quality fiscal information
- as a rule, fiscal information should be publicly available
- information shall include measurable goals for fiscal policy, on which progress is measured and reported.
- information should be reliable, timely, accessible, published in open and reusable formats, and adequately disaggregated to account for the different impact of fiscal policy on different people, groups and populations.
- for budgets, which would include measures such as using “program budgeting” , “multi-annual budgeting”, or “results-based budget systems” ; using budget lines and codes that are consistent among the national and subnational levels, or mark expenditures that have the potential to promote the rights of certain people, groups, and populations
- secrecy regulations are harmonized with the right to access public information (e.g.: interpreting secrecy in the strictest way possible, opting or transparency in case of doubt, or excluding tax amnesties, tax expenditures and differentiated treatments from secrecy).

Further guidance

On participation

- ensure a participatory budgetary process which allows for “meaningful” participation, including from people who face structural discrimination.
- conduct education and awareness initiatives
- fiscal decision-making processes are based on the broadest possible national dialogue (e.g.: encouraging independent civil society organizations and academia to develop alternative fiscal policies and undertake research).

On accountability

- States, may carry out human rights impact assessments of fiscal policy
- They should be comprehensive, participatory, regular, informed, transparent, subject to independent verification, and estimate differentiated impacts on specific groups

PART II-
ILLUSTRATIVE CASES
15 MINUTES

Illustrative case 1 - Argentina



- Local NGO, ACIJ
- request for information to the tax agency on specific data on the export subsidies directed at benefitiating a group of big companies in the south of the country
- the treasury was losing around 3000 millions of pesos each year due to these tax expenditures.
- The federal government refused to answer the request and argued that data was protected by tax secrecy regulations.
- ACIJ went to court- accepting innovative arguments the judges narrowed the scope of tax secrecy -understood that whenever a person accepts to receive tax exemptions is benefiting from an exception to a general rule, should be subject to the public scrutiny.

Illustrative case 1 - Argentina



- ACIJ also requested information on tax benefits directed to aid small and medium companies.
- The tax authority deny it, but the intervening court ordered the tax agency to deliver the information drawing on human rights principles (presumption of disclosure and maximum disclosure)
- Rules governing tax secrecy must be interpreted strictly and cannot be an obstacle to scrutinize the use of public allocations; whenever a person applies for tax benefits, she accepts to submit her personal information to public scrutiny.

Illustrative case II - Mexico



- Work led by Fundar, NGO based in Mexico
- access information about tax amnesties
- The federal administration denied the request
- Fundar challenged the constitutionality of the law governing tax secrecy; the Supreme Court considered that the law was not unconstitutional, but narrowed the scope of tax secrecy on the grounds that "an absolute and general reserve of information is in violation of the principle of maximum disclosure".
- After many years, in 2019 the federal tax agency finally released information that revealed that 26% of the total money amounting for tax cancellations had been granted to only 10 people, representing 0.1% of the beneficiaries. Only one company received the same amount of tax benefits that was allocated to infrastructure for running water in 2015.

Conclusions from cases:

- Cases involve resorting to courts, using the normative value of human rights
- Cases show how to harmonize traditional laws with existing hr standards
- Cases show mobilization around fiscal transparency under a rights framing
- Cases led to fiscal transparency in practice
- Cases created awareness of the fact that tax benefits should not be considered as a complete discretionary tool for governments, to use without any human rights impact assessments and/or procedural and/or substantial limitations.

