

What do human rights have to offer to fiscal policy? Implications of fiscal transparency, participation and accountability

MARIA EMILIA MAMBERTI, LL.M.*
OLIVIA MINATTA, LL.M.*

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María Emilia MAMBERTI

Center for Economic and Social Rights, 10 número 973, piso 12, La Plata, Buenos Aires, Argentina

e-mail: mmamberti@cesr.org

ORCID: 0000-0003-0259-268X

Olivia MINATTA

Center for Economic and Social Rights, 374 Lloyd Ave., Ap. 9, Providence, Rhode Island, USA

e-mail: ominatta@cesr.org

ORCID: 0000-0003-4517-6993



Abstract

This paper highlights the relationship between fiscal transparency, participation and accountability (FTPA) and human rights. It argues that human rights provide guidance on the scope of FTPA, and tools for citizens to demand more transparent fiscal decisions. By ensuring FTPA, states discharge their international human rights' obligations and enhance representation and legitimacy in their fiscal policy. Because of these and other benefits, human rights are a useful framework to overcome the gap between FTPA commitments on paper and their implementation in practice. The paper zooms into Principle 7 of the "Principles for Human Rights in Fiscal Policy", which unpacks the multiple implications that human rights' standards have for FTPA and provides guidance to governments on discharging their relevant obligations. The paper presents illustrative cases showing how civil society organizations in two countries have used the human rights framework to advocate successfully for more transparency around different items of tax information.

Keywords: fiscal policy, human rights, tax benefits, accountability, transparency, participation

1 INTRODUCTION

The aim of this paper is to discuss the often-overlooked relationship between human rights and fiscal policy. It will do so by presenting the benefits of framing transparency, participation and accountability in fiscal policy (to which we will refer as FTPA) as a human rights issue. The paper will provide a theoretical overview of this relationship and present a recent effort oriented at examining in detail the connection between human rights and fiscal policy in all its relevant aspects: the Principles for Human Rights in Fiscal Policy.¹ It will then illustrate how human rights principles can be used to enhance FTPA through two relevant cases from Argentina and Mexico.

FTPA have numerous, well-known benefits. Among other things, they allow for informed and efficient decision making, and provides people with an opportunity to examine and have a say about decisions that, even though often presented as technical and detached from real-world experiences, impact their lives in very concrete ways. FTPA is also a pre-requisite for healthy democracies, and for legitimating fiscal decisions.

However, governments around the world often do not secure FTPA in practice (IBP, 2006). The consequences of not complying with FTPA standards are varied, and range from very specific issues to broad political conflicts. Recent examples from three countries in Latin America illustrate the potentially serious political consequences of not observing FTPA.

¹ For an overview of the project through which the Principles were launched, see: <https://derechosypolitica/fiscal.org/en/>.

In Chile, in 2019, the government announced that it would increase the price of subway tickets significantly (BBC, 2019). The decision, of relevant fiscal consequences, was informed by a recommendation from “a panel of experts” but did not arise from a process in which the people affected engaged in any way (lack of participation). With few formal options to challenge the decisions (lack of accountability), people – especially students – started demanding accountability through massive protests. Protests increased, and the government responded with violence. After a vicious circle of increased protest and institutional violence, the government had to take a step back and announce that it would “undo” its decision to increase train fares. However, it was already too late as a discrete fiscal issue (increase in train fares) became the tip of the iceberg of broader problems of fiscal policies that did not address issues such as high inequality nor provide finance for services such as higher education. Opposition to the government triggered debates around fiscal policy and many human rights issues inseparable from it. The debates were so widespread and intense as to lead to a process of constitutional reform that is now starting to take place.

The case of Ecuador is also illustrative of the relevance of FTPA, and their connection with human rights. In 2019, protests in Ecuador started after the government announced a traditional “austerity package”, with substantial cuts in subsidies to gas, and labor and tax reforms (Manetto, 2019). Measures were announced after an agreement with the International Monetary Fund (IMF), which requested such measures. The decision, informed more by the IMF’s needs than by the perspective of those impacted by it, triggered protests in sectors as diverse as taxi and bus drivers, students, and indigenous communities’ leaders. Among other things, many sectors in civil society demanded that negotiations and agreements with the IMF, which had a very significant impact on fiscal policy in the country, be conducted in a more transparent and participatory manner.

In the case of Colombia, protests triggered in 2021 by a proposed tax reform showed how distrust of the government – which FTPA could have addressed – made the proposed measures hard to apply in practice.²

These and other examples prove that while transparency, participation and accountability are widely regarded as valuable standards that governments should introduce in their fiscal policy, they are often unobserved in practice. The gap between acknowledging FTPA’s importance on paper and the barriers to its implementation in practice demonstrates the need to find frameworks that incentivize the actual application of FTPA standards.

This paper argues that framing FTPA as a human rights issue can help in closing that gap, and therefore for a closer connection between fiscal transparency and human rights debates. Human rights are “mandatory”, and therefore provide a normative

² For a reference to the fiscal dimensions of the Colombian example, see: Derechosypolitica.fiscal.org (2021).

language and institutional channels to demand FTPA. Furthermore, they can provide guidance to governments on what FTPA means in practice and how to interpret general standards, enhancing their ability to put transparency in practice.

To unpack these arguments, section two of this paper starts by giving basic definitions of human rights and of FTPA, and how both concepts are interrelated. It then moves to argue for a closer connection between the two fields, to then explain the effects of framing FTPA as a human rights issue. Section three presents a concrete effort to link FTPA and human rights better: the Principles for Human Right in Fiscal Policy, adopted in 2021 by an interdisciplinary group of experts and civil society organizations from various countries of Latin America. It zooms into the guidance that the Principles provide on what FTPA means. Section four discusses two cases where civil society organizations used the human rights framework to advocate successfully for more fiscal transparency (in particular around tax benefits). Finally, section five draws some conclusions and briefly presents some policy implications of the paper.

2 FISCAL TRANSPARENCY, PARTICIPATION AND ACCOUNTABILITY AS HUMAN RIGHTS

2.1 BASIC NOTIONS OF TRANSPARENCY, PARTICIPATION AND ACCOUNTABILITY AND HUMAN RIGHTS

To develop the connection between FTPA and human rights, we will start by defining the basic notions. “Transparency” is understood as government actions that provide people with access to government information (Birkinshaw, 2006); “participation” refers to the involvement of stakeholders in a decision-making process (Social Protection and Human Rights Platform, n.d); and “accountability” is defined as the “justification of an actor’s performance vis-à-vis others, the assessment or judgment of that performance against certain standards, and the imposition of consequences if the actors fail to meet applicable standards” (UN, 2018). These three concepts are interrelated: information is necessary for effective participation, which in turn can foster accountability (Social Protection and Human Rights Platform, n.d); and are often considered together with other rights such as the right to assembly or to an effective remedy (ibid).

FTPA can be seen as broad values to guide public policy interventions, but also as core human rights principles. Human rights are the rights that every person has for being such, regardless of any status, such as the right to education, the right to life, or political rights. Human rights embody the values of dignity and equality among all human beings and are characterized as universal (every person is entitled to human rights), inalienable (they cannot be taken away as a general rule), indivisible and interdependent among each other, and equal and non-discriminatory (Office of the United Nations High Commissioner for Human Rights, n.d).

In the context of the Organization of the United Nations, several decades ago different instruments started recognizing a broad range of rights (civil and political,

and economic, social and cultural rights), which were widely ratified by states from all over the world.³ In turn, many countries also recognized human rights in their domestic legal systems.

Human rights were recognized in such instruments as normative tools, meaning that they entailed responsibilities for states – they were obliged to discharge their human rights commitments – and that rights-holders could resort to mechanisms such as courts to claim their rights. Usually, due to the interpretation given to international instruments in which human rights are recognized, states have obligations to respect (not to interfere in the enjoyment), protect (from third parties interference) and fulfill (actively secure) human rights (Office of the United Nations High Commissioner for Human Rights, n.d).

Since human rights are binding, states must take steps of all kinds to ensure that no aspect of governmental action infringes human rights. In other words, states must refrain from violating human rights when they act in any sphere of public intervention (including fiscal policy), since human rights standards are applicable to all forms of governmental action.

In consequence, there are no theoretical reasons to exclude fiscal policy, as a form of governmental action, from the application of human rights principles (Balakrishnan and Heintz, 2020). The fact that public resources are involved in a certain area of public intervention does not mean that such an intervention can ignore human rights obligations. This has been increasingly recognized by the oversight bodies in charge of monitoring states' compliance with their human rights commitments, such as the United Nations Committee on Economic, Social and Cultural Rights⁴ and also by domestic courts in many countries.

In consequence, human rights standards apply to all aspects of fiscal policy, its formulation, implementation and monitoring (IACHR, 2017). While human rights principles do not indicate precise policies that states should pursue, they do limit states' discretion in making policy choices (Balakrishnan and Elson, 2008). For example, states must not take their fiscal policy decisions through secret or completely opaque channels, as that would equate to a violation of their obligations regarding transparency. However, states have a margin of discretion in their choices among tools to ensure that their fiscal decisions are transparent, as human rights do not indicate inflexible ways to ensure transparency.

There are widely-recognized human rights standards that limit states' discretion and are of particular relevance for fiscal policy, which include the principles of equality and non-discrimination; the duty to use the maximum available resources⁵;

³ To consult the ratification status of core human rights instruments by different countries, see UN (2022b).

⁴ An international experts body that has the mandate of receiving reports (and in some cases, individual petitions) to monitor States parties compliance with the United Nations International Covenant on Economic, Social and Cultural Rights.

⁵ International Covenant on Economic, Social and Cultural Rights, art. 2.1.

the principles of progressive realization of social and economic rights⁶; and the principles of FTPA, which will be developed in more detail below.

While all these human rights standards, as currently interpreted by authoritative bodies, have substantive and procedural implications for fiscal policies, in practice they have traditionally been ignored in fiscal debates. The following chapter discusses the reasons for overcoming such a gap, and for building a consistent dialogue between the worlds of fiscal policy and of human rights.

2.2 WHY THE TRADITIONAL DIVORCE BETWEEN HUMAN RIGHTS AND FISCAL POLICY SHOULD BE CHALLENGED?

While it is common to consider FTPA as important values to apply to fiscal policy, the idea that states are bound to secure such values as part of their human rights commitments is less developed. More broadly, fiscal debates would typically ignore altogether the human rights implications of fiscal decisions, which are often considered highly discretionary (despite the limitations to governmental discretion already discussed), and very technical, only accessible to a small group of experts from the fiscal field.

The divorce between human rights and fiscal policy is problematic for different reasons. In fact, the two fields are both conceptually and normatively connected. From one side, fiscal policy is subject to mandatory human rights standards, and states must be held accountable for aligning fiscal decisions with such standards. From this point of view, human rights become one of the functions or goals that fiscal policy must pursue (together with other more commonly recognized goals, such as fostering economic growth).

On the other side of the coin, human rights need aligned fiscal policies for their implementation. First, they need resources for their funding. They also call for fiscal decisions that promote equality, and resources distribution impacts significantly the recognition of rights in practice. Fiscal policy can also be a tool to incentivize or disincentivize conduct that is necessary to ensure human rights (for instance, with taxes on tobacco oriented at securing the right to health).

Given these points of connection, a growing body of standards recognizing that fiscal policy needs to be aligned with human rights and interpreting how such alignment could take place started to emerge from the work of courts, international human rights bodies, and even civil society organizations. The ultimate example of such efforts, which systematized existing standards on the issue, is the Principles for Human Rights in Fiscal Policy, which will be presented in more detail in coming sections. Before engaging on this exercise, however, we will briefly survey some of the effects that use of the human rights framework can have when designing, implementing and monitoring fiscal policy.

⁶Ibid.

2.3 THE EFFECTS AND IMPLICATIONS OF FRAMING FTPA AS A HUMAN RIGHTS ISSUE

Seeing FTPA through a human rights lens has several implications that can help secure a better implementation of such standards in practice, both by creating a normative architecture around FTPA, and by providing criteria to determine what actually counts as transparency and what does not (as anticipating, limiting governmental discretion). The following sections briefly explore such benefits and present some of the indirect benefits that the human rights framework can have for FTPA discussions.

2.3.1 POLITICAL EFFECTS OF USING A HUMAN RIGHTS FRAMEWORK FOR FTPA: COMPLYING WITH STATES' INTERNATIONAL OBLIGATIONS AND CREATING MUTUAL LEARNING PROCESSES

The core international human rights treaties that provide the basis for the human rights standards that apply to FTPA are a widely recognized and mandatory framework. Just to mention an example, there are 173 states parties to the United Nations International Covenant on Civil and Political Rights⁷, which sets the general normative basis for FTPA standards. As international treaties are binding, they trigger review procedures around which countries can engage in a learning process to identify which FTPA policies are aligned with their commitments and which are not. As review processes are universal, they also have the potential to be used as sources to learn from comparative experiences. This comparative exercise can create incentives to put FTPA standards into practice.

As normative tools, human rights can further trigger political effects, creating mobilization around them. The case studies presented below exemplify how the normative value of human rights has been used in litigation, which further led to more robust standards regarding fiscal transparency. Other forms of mobilization, such as naming and shaming in the case of noncompliance with international binding standards, show other examples of the potential political effects of framing FTPA as a human rights issue.

2.3.2 POLITICAL EFFECTS OF HUMANRIGHTS-ALIGNED FTPA: ENHANCING REPRESENTATION AND LEGITIMACY OF FISCAL POLICY AND SECURING HEALTHY DEMOCRACIES

As explained in the introductory section of this paper, many of the current “crises” of democracy connect with issues related to fiscal policy. This is a matter of the utmost importance, given the often-recognized tendency, in the last few years, for democratic “backsliding”, or the crisis of democracies in different regions of the world.

One of the clearest expressions of the current crisis of democracies is extended and systematic distrust of governments. Using human rights to guide FTPA, instead of thinking of it as a technical matter, unrelated to the real life experiences of constituencies, can help address the current crisis of democracies.

⁷ See information available at UN (2022b).

2.3.3 PRACTICAL EFFECT OF USING HUMAN RIGHTS TO GUIDE FTPA: PROVIDING GUIDANCE ON THE SCOPE AND GOALS OF FTPA

While human rights do not set detailed rules on how states should conduct their fiscal policy, they do limit discretion on which measures are acceptable and which are not. In setting those “boundaries”, they give hints to governments to guide their behavior regarding FTPA.

The “guidelines” that will be presented below, all derived from the human rights framework, are a good example of such guidance. They range from detailing what impact assessments should be like to which budgetary information shall be made public. Similarly, human rights explain that states not only need to secure “participation”, but “meaningful participation”, which requires that certain substantive and procedural conditions are met.

3 FROM THEORY TO PRACTICE – TRANSPARENCY, PARTICIPATION AND ACCOUNTABILITY IN FISCAL POLICY AS A HUMAN RIGHTS ISSUE: THE PRINCIPLES FOR HUMAN RIGHT IN FISCAL POLICY

This section discusses a recently launched tool oriented at systematizing and analyzing existing human rights standards applicable to fiscal policy, the “Principles for Human Rights in Fiscal Policy” (“the Principles”). It will first provide a short overview of the Principles, to then focus on Principle number 7, which details human rights obligations regarding FTPA.

3.1 BRIEF OVERVIEW OF THE PRINCIPLES FOR HUMAN RIGHTS IN FISCAL POLICY

Considering the importance of strengthening the relationship between human rights and fiscal policy, a group of organizations from all over Latin America started advocating several years ago for a better alignment of fiscal policy with human rights in countries of the region. In particular, they advocated (successfully) before the Inter-American Commission on Human Rights for the recognition of such connections. Based on these and other precedents⁸, in 2018 seven civil society organizations⁹ gathered in Buenos Aires to launch an initiative oriented at building through a collective and participatory process a set of principles and guidelines that would condense the most progressive human rights standards for the sake of providing guidance for fiscal policy. The organizations paired up with a group of experts from all over Latin America who would guide the process of drafting the set of Principles. After almost three years of dialogues and debates, the Principles for Human Rights in Fiscal Policy were launched and adopted in May 2021 through a week-long series of events that assembled over 1,000 participants and gathered consistent support for the Principles.

The Principles provide 15 standards to guide different aspects of fiscal policy. They are paired with more precise guidelines, to guide the implementation of the

⁸ For an overview of such precedents, see: <https://derechospoliticafiscal.org/en/the-project/history>.

⁹ ACIJ, CELS, CESR, DEJUSTICIA, FUNDAR, INESC and the Red de Justicia Fiscal de América Latina y el Caribe.

Principles in practice. The compendium of principles and guidelines can serve two goals: providing guidance to decision makers who seek to align fiscal policy with human rights in their realm of action; and facilitating tools to promote accountability from judicial and quasi-judicial actors, international institutions, and civil society.

Some of the Principles relate to specific topics such as the environment or gender equality, while some others are more general and refer to issues such as how to promote equality through fiscal policy. One of such overarching issues relates to FTFA, consolidated in Principle 7, as explained in further detail in the following section.

3.2 PRINCIPLE 7 OF THE PRINCIPLES FOR HUMAN RIGHTS IN FISCAL POLICY

Principle 7 of the Principles for Human Rights in Fiscal Policy states that “Fiscal policy must be transparent, participatory and accountable. People have a right to fiscal information”. It further engages with different aspects that derive from such general standards, such as: (a) states’ need to strengthen fiscal culture; (b) their obligation to produce, publish and provide access to good quality fiscal information; (c) states’ obligation to disaggregate information in a way that permits analysis of how fiscal policy impacts different people or groups; (d) the need to produce high-quality indicators; (e) states’ duty to limit access to fiscal information only in very exceptional cases, and subject to strict limitations; (f) 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.

The Principle builds on numerous sources such as the International Covenant on Civil and Political Rights, Inter-American Court of Human Rights case law, several general comments and concluding observations of United Nation Treaty Bodies, and reports of United Nations Independent Experts and Special Rapporteurs¹⁰. Together with the Principles, the associated guidelines provide an array of concrete implications that human rights standards in the field have for policymakers. The guidelines are a good example of how decision makers can extract concrete policy recommendations from general human rights standards. We will take a closer look at them to show how much can be unpacked from human rights.

Regarding **transparency**, human rights norms and related sources indicate that states should “produce and give the broadest possible access to quality fiscal information”, establishing that, as a rule, fiscal information should be publicly available (guideline 1). Such information should include measurable goals for fiscal policy, on which progress is measured and reported. Human rights also indicate that information should be reliable, timely, accessible, published in open and reusable formats, and adequately disaggregated to account for the different impacts of fiscal policy on different people, groups and populations.

¹⁰ For an overview of the sources consulted for the elaboration of this Principle, see: Derechospoliticaifiscal.org (2022).

“Human rights-aligned” transparency also indicates how to translate transparency into concrete guidelines for budgets, which would include measures such as using “program budgeting”, “multi-annual budgeting”, or “results-based budget systems” based on indicators of the effective enjoyment of rights that are sufficiently detailed to respond to the needs of specific populations; 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 (guideline 2).

Human rights also challenge the idea of “tax secrecy”, requiring that secrecy regulations are harmonized with the right to access public information, for example, by interpreting secrecy in the strictest way possible, opting for transparency in case of doubt, or excluding tax amnesties, tax expenditures and differentiated treatments from secrecy (guideline 4). Fiscal transparency must not only pertain to governmental information, but also certain information from corporations, intermediaries, and other non-state actors (guideline 5).

In terms of **participation**, human rights standards would enjoin states to ensure a participatory budgetary process which allows for “meaningful” participation, including by people who face structural discrimination. To secure meaningful participation, states can conduct education and awareness initiatives, and generally promote fiscal education, culture, and democracy. They should ensure that fiscal decision-making processes are based on the broadest possible national dialogue, for instance by adopting specific measures to guarantee equal access and opportunities to participate in fiscal decision-making, particularly for people living in poverty or facing structural discrimination; encouraging independent civil society organizations and academia to develop alternative fiscal policies and undertake research; promoting fiscal education and providing access to all relevant information in an accessible and understandable format with the aim of generating awareness of how taxes benefit society and how fiscal policy affects the realization of human rights; formalizing the role of civil society in fiscal policy processes, or implementing communications campaigns.

Finally, in terms of **accountability**, human rights standards indicate that states, among other things, may carry out human rights impact assessments of fiscal policy, which should be comprehensive, participatory, regular, informed, transparent, subject to independent verification, and estimate the differentiated impacts on specific groups (guideline 6).

4 ILLUSTRATIVE CASES

FTPAs are especially important in countries where fiscal policy has the biggest room for improvement. This is the case in Latin America, the most unequal region of the globe, where regressive tax systems, high reliance on consumption taxes and exploitation of non-renewable resources, and worrisome levels of tax abuse are prevalent. In the region, recurrent economic crises and macroeconomic

instability often prompt governments to condemn fiscal deficits and single out fiscal austerity as “the only way out”. Still, every year institutions such as the Economic Commission for Latin America and the Caribbean (ECLAC) or the Organisation for Economic Co-operation and Development (OECD)¹¹ and several civil society organizations highlight tax revenue collection in countries from Latin America as being far below what is sufficient and below the average for country members of the OECD. Indeed, Latin America was the region that gave birth to the Principles for Human Rights in Fiscal Policy, building on decades-long efforts of civil society to tackle some of the mentioned problems.

This regional context makes FTPA not only particularly relevant, but also more challenging to implement. It is therefore crucial to explore ways in which different actors and stakeholders can gather efforts to bring into practice the Principles described in the previous sections of this paper. With this aim, this section presents two case studies that illustrate how non-state actors can rely on the human rights framework to increase FTPA in practice.

The selected cases come from Latin America, to show how even in a challenging context reliance on the human rights framework can prove useful. They also model initiatives that seek to make fiscal policy fairer through FTPA, increasing their relevance. The cases were selected for the mentioned reasons and because there is enough public information about them to build a solid account. The selection does not aim to make the cases representative of others or of general trends, and does not imply that there are no other relevant cases either in Latin America or other regions of the world.

In these cases, the non-governmental organisations (NGOs) involved worked under the assumption that fiscal austerity cannot be the only alternative for states to fulfill their obligation to mobilize resources. On the contrary, before taking regressive measures such as cutting budgets, according to the human rights framework, states should assess other more progressive alternatives, such as taxing the rich or combating tax evasion.

Accessing relevant fiscal information (increasing transparency) was a way to effectively show that there are alternatives to mobilize resources, specifically through reviewing the tax benefits that are usually granted without seriously evaluating their trade-offs. Tax benefits may include a wide range of fiscal instruments, such as tax exemptions, condonations and amnesties. Although they are not bad *per se* (for example, there are exemptions or deductions for low-income people) they are not always considered as an expenditure by governments. As a consequence, tax benefits are usually subject to less strict standards or processes of evaluation and accountability.

¹¹ See IADB et al., 2021.

For the same reasons, accessing information on tax benefits is a difficult task in countries from Latin America. Strong regulations on tax secrecy, low levels of accountability, transparency and disaggregation of information make it difficult for civil society to control where public money is going. The following cases illustrate how to challenge these barriers successfully, relying on the human rights framework.

4.1 CASE ONE: HOW MUCH DO TAX BENEFITS COST ARGENTINA?

Despite the obstacles to accessing relevant fiscal information, in 2015 the Civil Association for Equality and Justice (ACIJ) estimated that tax benefits amounted to 2.64% of Argentina's GDP and 10.8% of the federal budget (ACIJ, 2018). When compared to other expenditures, ACIJ could find that tax benefits equaled the resources allocated to tackle food insecurities of the most vulnerable and represented almost 40% of public expenditures on pensions and retirements – the costliest federal program. This same tendency was shown for the following years¹².

According to ACIJ, in Argentina at least 21% of tax benefits are granted through economic promotion regimes, largely regulated by the executive and without any control from the legislature and/or the public at large (ACIJ, 2018). An example of this is the fact that the most relevant economic promotion regime (involving exemptions to a wide range of taxes) was established in 1973 to enhance the population of an isolated area of the country. However, after more than 40 years, there has been no public report or public assessment justifying its continuity.

These rough estimates convinced ACIJ of how powerful it could be to access more information about tax benefits and to analyse this data through a human rights lens. To start with, it could be used to show how much money the government could be allocating to ensure rights. Also, it could also be a strong basis to demonstrate that Argentina was not properly evaluating all the available alternatives to mobilize resources.

4.1.1 FIRST ROUND

Despite having a robust federal law on access to public information, accessing fiscal information is a challenge in Argentina. When asked for fiscal information, the federal tax agency usually argues that it is “technically difficult” to provide it without violating tax secrecy and that the obligation to provide public information does not entail the duty to produce information.

In 2017 ACIJ submitted a request to the federal tax agency asking for disaggregated data regarding the amounts of tax condonations made by the federal government during the years 2010-2016. The aim of the request was to determine how much money Argentina spends every year in condoning tax obligations: condonations that are usually granted without any transparency or impact assessments and

¹² For example, in 2019 ACIJ showed that tax exemptions amounted to 2.33% of the national GDP and 8.9% of public revenues.

on a very discretionary basis. For ACIJ, revealing that information would actually help to find out whether Argentina is violating its obligation to mobilize the maximum of available resources to realize rights (ACIJ, 2018).

Although the government refused to deliver (even global) data on condonations, the judicial process itself led to a series of dialogues and exchanges of information between the two parties. The case is still waiting for a final decision from the Court of Appeals.

4.1.2 SECOND ROUND: PART “A”

In order to avoid the usual defense regarding the difficulties in processing fiscal data, ACIJ decided to make a second, more focused request for information. This time, ACIJ asked the federal tax agency for specific data on the export subsidies directed at benefiting a group of big companies in the south of the country (“reembolsos a las exportaciones por puertos patagónicos”). Drawing on budgetary information, the claim noted that the treasury was losing around three billion 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, 2020).

The Court of Appeals entered judgment for ACIJ, accepting innovative arguments introduced by ACIJ that narrowed the scope of tax secrecy. In the core of the decision, the judges understood that whenever a person agrees to receive tax exemptions he or she is benefiting from an exception to a general rule: the rule that everyone should pay taxes on an equal basis. Thus, in a way, beneficiaries are “receiving” public funds that should be subject to the public scrutiny (ibid).

4.1.3 SECOND ROUND: PART “B”

In a separate claim, ACIJ challenged the federal tax agency’s refusal to deliver information regarding a regime of tax benefits directed at aiding small and medium-sized companies. This time, the federal agency’s defenses were grounded on tax secrecy allegations but also added that the claim concerned sensitive per-personal information (ibid).

The court confirmed the arguments made by the national agency on access to information and ordered the federal tax agency to deliver the information requested. Drawing on principles mainly developed in the Inter-American system of human rights – the Principles of presumption of disclosure and maximum disclosure – the decision considered that data on the identification and amounts of benefits received by the beneficiaries of tax benefits are public information. According to the national agency, rules governing tax secrecy must be interpreted strictly and cannot be an obstacle to scrutinize the use of public allocations. Similarly, the agency considered that whenever a person applies for tax benefits, he or she agrees to submit his or her personal information to public scrutiny (ibid).

4.2 CASE TWO: CHANGING THE NARRATIVES IN MEXICO – FROM TAX BENEFITS TO TAX PRIVILEGES

In México tax benefits are an even more worrisome issue than in Argentina. Mexico's percentage of revenue collection per GDP is much lower than Latin America's average – which, in turn, is already low when compared to OECD countries. According to the OECD, Mexico collected a total of 16.3% of GDP, compared to an average of 33.4% in OECD countries and 22.9% in Latin America (OECD, 2019). However, it was not until 2007 – when a national monitoring body reported that “certain taxpayers have been consistently avoiding their tax duties without the government enforcing actions against them” – that Fundar and allies became aware of the serious implications that tax benefits may have for the financing of human rights (Fundar, 2016). In this context, Fundar and allies started a successful campaign and litigation strategy against the federal government to access information about tax condonations¹³ and cancellations¹⁴ (hereafter referred to as tax amnesties). Given the refusal of the federal administration to provide any information, Fundar challenged the constitutionality of the law governing tax secrecy. Although the Supreme Court considered that the law was not unconstitutional, it provided an interpretation that 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”.

This decision contrasted with the continued application of tax secrecy by the federal tax agency. This prompted a public campaign to change the rules governing tax secrecy and led to a 2013 modification that required the tax agency to publish the names of the beneficiaries. The reform included an Executive message stating that the policy had “the aim of making a more transparent application of [cancellations and condonations] and was in response to the social demands to scrutinize these fiscal decisions”. Social demands continued and eventually led to new regulations requiring the federal government to publish not only the names but also amounts of tax benefits received in the concepts of cancellation and condonation (Fundar, 2016).

More institutional reforms in the field of access to information and transparency also strengthened these social demands. For example, the constitutional reform of 2014 granted autonomy to the federal agency on transparency and access to information which in turn, allowed the agency to make strong statements and urge the tax federal agency to adequately motivate the granting of tax benefits. According to this agency, transparency was deeply linked to an efficient allocation of resources and to the fight against tax avoidance.

In May 2019, influenced by the success of Fundar's campaign, the new president, López Obrador, issued a decree stating that there would be no tax cancellations and condonations in the future. Following that, in 2020 tax benefits were prohibited through a constitutional amendment.

¹³ Tax condonations are usually granted to increase public revenues in a short term, or to promote certain economic activities.

¹⁴ Tax cancellations are tax debts that the government decides not to enforce provided its small amount or the insolvency of the debtor. They are not condonations, as the credit continues to exist in favor of the government.

4.2.1 WHAT WAS BEHIND TAX SECRECY?

After many years of struggle, in 2019 the federal tax agency finally released part of the information requested. This allowed Fundar to process data and revealed that 26% of the total money amounting for tax cancellations had been granted to only 10 people, representing 0.1% of the beneficiaries. One company alone received in tax benefits the as much as had been allocated to infrastructure for running water in 2015.

Given that the tax administration did not explain the regulation or reasons that justified the cancellations in each particular case, it was not possible to assess their legality and legitimacy. However, based on additional requests for information made to the federal tax agency, Fundar concluded that there were no criteria for decisions about tax cancellations, and no methodology.

These decisions were rather made on a discretionary, non-systematic and irregular basis. The lack of impact assessments impeded evaluation of whether there was any public benefit derived from these massive cancellations. Similarly, the little information provided by the tax federal agency regarding the tax condonations that took place in 2007 and 2013, suggested that many taxpayers had benefited from more than one program of condonations. Far beyond the goal of providing the treasury with short-term revenue, this could create bad incentives for taxpayers and may ultimately affect the revenue collection.

4.3 LEARNING FROM THE CASES

In Argentina, the outlined decisions show how courts are starting to accept that rules governing tax secrecy must be strictly interpreted when it comes to regimes that provide some companies or persons with special benefits. Accepting that tax benefits and exemptions are public expenditures may have the powerful potential to: (a) provide civil society with useful information to evaluate governmental priorities and compare these kinds of expenditures to others; (b) create 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. Rather, governments should develop adequate tools and mechanisms to assess their impacts on a permanent basis and under objective criteria. Similarly to the cases litigated in Mexico, ACIJ highlighted the relevance of the human rights principles to achieve these goals (ACIJ, 2018).

In Mexico, the collective efforts made by Fundar and allies helped to change the narratives from the idea of “tax benefits” to “tax privileges”. This meant creating public awareness of the fact that tax benefits can be unfair when granted without any transparency, or human rights impact assessments. As reported by the International Budget Partnership, “through its efforts to highlight the unfairness of tax amnesty programs’ concentrated benefits, Fundar educated the public about the importance of being able to see precisely not only how the state spends public money, but also how it collects it” (IBP, 2017: 3).

In turn, the human rights framework helped to demonstrate that an efficient allocation of public resources is not only about how the government makes its budgetary decisions. It also requires that revenues are collected through ensuring the principles of equality and non discrimination, transparency and accountability. This is why “the campaign advanced not only the specific goal of tax transparency, but also the broader cause of equitable fiscal policy. Their efforts made the issue of economic inequality in the country more evident and demonstrated that while some benefited from tax amnesties – often with no apparent reason – others regularly met their tax obligations.”

5 CONCLUSIONS

As shown in this article, transparency, participation and accountability are widely regarded as valuable standards that governments should introduce in their fiscal policy. However, they are often unobserved in practice as there is a gap between acknowledging the importance of FTPA on paper and their implementation in practice. The human rights framework can be a powerful tool to achieve the actual incorporation of FTPA standards into fiscal policy.

Over the last years, a growing body of standards recognizing that fiscal policy needs to be aligned with human rights, and interpreting how such alignment could take place, started to emerge from the work of courts, international human rights bodies, and even civil society organizations. The ultimate example of such efforts, which systematized existing standards on the issue, are the Principles for Human Rights in Fiscal Policy.

The Principles contain a specific standard (Principle 7) that demands “transparent, participatory and accountable” fiscal policies. It also recognizes the right to access fiscal information. As shown throughout the paper, this Principle has several implications as it requests states to: (a) strengthen fiscal culture; (b) produce, publish and provide access to good quality fiscal information; (c) disaggregate information in a way that permits analysis of how fiscal policy impacts different people or groups; (d) produce high-quality indicators; (e) limit access to fiscal information only in very exceptional cases, and subject to strict limitations; (f) ensure that fiscal policy decision-making processes are open to an informed public debate, through meaningful, inclusive, broad, transparent and deliberative participation; (g) carry out human rights impact assessments of fiscal policy, which should be comprehensive, participatory, regular, informed, transparent, subject to independent verification, and estimate the differentiated impacts on specific groups.

As shown in the illustrative cases, the normative value of human rights was also used to engage in litigation, which ultimately led to more robust standards regarding fiscal transparency. This shows the potential of human rights to provide civil society and decision-makers with flexible standards to adapt to the changing needs of the times and properly channel the current social demands.

The analysis provided in this paper, however, has limitations in its scope. The cases presented are few, and not analyzed in full detail. They do not seek to work as full “case studies” that provide empirical support to the arguments made, but only to illustrate how general standards can play out in practice. Future research could explore cases from other parts of the world, and cases that explicitly engage the Principles for Human Rights in Fiscal Policy. Furthermore, future research could analyze how other initiatives can interact with the aforementioned Principles to increase FTPA.

The arguments made in this paper have at least two relevant policy implications. First, they require better and more institutionalized coordination among different areas of government that usually work in silos (e.g., offices with the authority to implement human rights and those with competence to make fiscal decisions). Second, more capacity-building and awareness-raising activities are needed, geared to government agents’ understanding of the binding and normative nature of human rights, and the particular implications for all the spheres of governmental action in fiscal policy.

Disclosure statement

The authors declare that they have no conflict of interest.

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