

TAXATION FOR HUMAN RIGHTS

feature

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States have a self-imposed duty to deploy “the maximum available resources” to secure the human rights of their population. Fiscal policies mean that many of them are currently failing in that duty.

What does tax have to do with human rights? Why is tackling tax evasion an ethical and legal obligation as well as a necessity for good governance? What do human rights obligations tell us about how States should design tax systems? How can good tax policies help us eradicate poverty and improve the enjoyment of human rights? These are all issues I hope to illuminate in my next report to the Human Rights Council.

Historically, human rights professionals and monitoring bodies have shown hesitation in addressing fiscal policies and their impact, but thankfully this is now beginning to change. During my country missions – for example to Paraguay and Ireland - I have seen firsthand the extremely unjust effects of taxation and spending policies that do not take human rights into account. It has become evident from the work of academics, practitioners, economists, NGOs and the UN, that examining fiscal and tax policies is a crucial component of assessing States’ compliance with human rights obligations. In particular, recent work has illuminated the relevance of these policies with regard to tackling inequality and in providing for the realisation of

human rights. Governments’ rhetoric about eliminating poverty and realizing human rights is rendered meaningless without an effort to collect the funds necessary to pay for hospitals, piped water, schools, social security or legal aid. Without adequate tax revenue, the availability and quality of public services suffer, with a direct negative impact on the enjoyment of rights such as education and health of the poorest people in society. This in turn perpetuates inter-generational poverty.

A rights-based approach provides guidance on how, and from whom, States should collect taxes. Often, due to their limited political voice, people living in poverty are required to pay more than their fair share in taxes, while their needs are overlooked when resources are allocated. For example, on my mission to Paraguay, I found that there was no income tax and the government largely relied on sales tax for revenue. This had profoundly discriminatory effects: the poorest 10 per cent of the population was paying 18 per cent of their income in VAT while for the richest 10 per cent of the population, VAT represented only 4.6 per cent of their income.¹ As well as running afoul of the right to non-discrimination, by disproportionately cutting

into their already small income, this also denied the poorest their rights to food, health and an adequate standard of living, among others.

The International Covenant on Economic, Social and Cultural Rights obliges its 161 signatory states to use the “maximum available resources” to secure the economic, social and cultural rights of its population. These maximum available resources include those that could *potentially be collected* through taxation. Therefore, if a State has a small tax base or overlooks widespread tax evasion while its people go hungry or homeless, it may in fact be in violation of this obligation.

Tax evasion, which is a particularly high-profile issue at the moment, has been estimated to result in annual revenue losses of USD \$285 billion to developing countries,² and Africa loses twice as much in illicit financial outflows (including tax evasion) as it receives in aid. The problem is not just limited to the developing world; tax evasion in Spain is estimated to have resulted in a loss equivalent to EUR 88

billion in 2010. This greatly exceeds the total budget cuts made in 2012 as part of devastating austerity measures, which severely impacted human rights enjoyment in the country.³ A state that does not take strong measures to collect all taxes owed cannot be said to be devoting the maximum available resources to the realisation of economic, social and cultural rights.

It is important, now more than ever, for human rights advocates to get ahead of the cost argument rather than avoiding it. The devastating spread of austerity measures – including taxation and fiscal policy reforms – is hitting the poorest people hardest and in many cases threatens their health, livelihood and very survival. Time and again, the poorest and most disadvantaged people (such as women, single parents or persons with disabilities) are being asked to pay more proportionally, while wealthy persons and corporations are escaping without paying their fair share. All too often, when governments face human rights bodies they use the defense of resource constraints; for instance claiming that the financial crisis leaves them no choice but to cut welfare benefits and services that those living in

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poverty rely on. Politicians, diplomats and policy-makers wheel out these excuses repeatedly, in media interviews and in reaction to the criticism of human rights bodies. In fact, in nearly every country of the world it is not a question of lack of resources, but rather of a lack of political will to collect and marshal these resources in a manner that is compliant with human rights - even though these states have voluntarily committed themselves, through international treaties, to precisely this responsibility.

Thankfully, more and more people are looking at tax through the lens of human rights. I warmly welcome this timely edition of *Tax Justice Focus* for bringing the human rights imperative to the fore, because there has never been a greater need to work together to demystify the idea that fiscal and macroeconomic policies are outside the reach of international human rights law. In the vital work of clarifying and communicating the social, economic and ethical imperative for a new global paradigm around tax, human rights and tax justice advocates are strategic allies.

Magdalena Sepúlveda served as the United Nations Special Rapporteur on extreme poverty and human rights between 2008 and 2014. She now reports to the General Assembly and the Human Rights Council on the obstacles that prevent people from enjoying their human rights.

Endnotes

- ¹ M. Sepúlveda, 'Report of the Special Rapporteur on Extreme Poverty and Human Rights: Mission to Paraguay' (3 April 2012) UN Doc A/HRC/20/25/Add.2, para. 43.
- ² Ortiz, Chai and Cummins, 'Identifying Fiscal Space: Options for Social and Economic Development for Children and Poor Households in 182 Countries', UNICEF, 2011, p. 242.
- ³ Center for Economic and Social Rights, 'Spain Factsheet', 2012: <http://cesr.org/article.php?id=1285>.