



PRINCIPLES FOR  
**HUMAN RIGHTS**  
IN FISCAL POLICY

# The Role Played by Fiscal Policy in Reversing the Structural Inequalities That Affect Historically Disadvantaged Groups

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for Human Rights in Fiscal Policy N° 2





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# INDEX

<b>Summary</b> .....	4
<b>1. Introduction</b> .....	5
<b>2. Groups that require special protection and cross-cutting human rights obligations applicable to fiscal policy</b> .....	6
2.1 Brief Review of the Development of the Concept of Groups That Require Special Attention in the Field of Human Rights .....	6
2.2 Cross-cutting Human Rights Obligations in Fiscal Policy .....	7
<b>3. Obligations stemming from the human rights of particular groups</b> .....	9
Women .....	9
Children and Adolescents .....	13
Persons with Disabilities .....	16
Other groups such as indigenous peoples, afro-descendants, farmers, migrants and LGBTTTQI++ persons.....	16
<b>4. Good practices and benchmarks to develop in the face of gaps identified in the analysis of obligations stemming from the human rights of particular groups</b> .....	18
<b>5. Proposals for fiscal policy to reverse situations of structural inequality that affect historically disadvantaged groups</b> .....	21



## SUMMARY

Equality is one of the core values that informs the **Principles for Human Rights in Fiscal Policy**. In addition to being present in the preamble, it is a key aspect of the cross-cutting obligation provided by *Principle 3*, which compels States to secure a socially just fiscal policy. The implementation of equitable fiscal policies urges States to secure taxation systems and public expenditure practices that promote substantive equality (*Sub-principles 3.1 and 3.2*). This means that they must develop taxation and budget systems with an intersectional approach and aim at reversing inequalities and structural discrimination, by affirmative actions if need be (*Principle 5*).

This paper explores the implications of a fiscal policy geared at the realization of substantive equality for groups that require special protection. After identifying some of these groups, such as children and adolescents, people with disabilities, women, socioeconomically segregated communities, indigenous peoples, Afro-descendants, older persons, workers, and migrants, the document delves deeper into the differentiated approaches that the international human rights system demands for each case. Accordingly, we want to emphasize the variety of fiscal policy tools that States should implement as measures of positive action.

Sustained by the latest developments in the international human rights system—such as the progress regarding the rights of women, children, and adolescents—this document pinpoints the implications of the principles of equality, non-discrimination, progressiveness, and non-regressivity in fiscal policies adopted both during the revenue-raising process and during the expenditure cycles. For instance, the inclusion of a gender approach in the field has revealed that apparently neutral fiscal policies entail their own gender biases, and therefore it is necessary to correct both explicit and implicit biases in taxation systems and in each specific tax (*Principle 6 and Sub-Principle 6.4*). Among the most relevant conclusions, the solid global consensus on the need to guarantee fairer, more efficient, more effective, and more transparent budget allocations stands out. These must “particularly benefit vulnerable groups and individuals.” There is, therefore, an agreement on the urgent need to review taxation systems in order to rule out discrimination and avoid the reinforcement of inequalities.



1.

## INTRODUCTION

This article outlines international standards of differential approaches that fiscal policy should adopt in order to guarantee the rights of historically disadvantaged groups. The aim is to identify what guidelines human rights provide to address the situations of discrimination and exclusion that affect children and adolescents, women and other gender identities, people with disabilities, Afro-descendants, migrants, refugees, and indigenous communities. Additionally, we highlight existing good practices in the field of fiscal policy that contribute to the main goal.

The first section briefly analyzes the evolution and development of the concept of vulnerable groups and of the cross-cutting obligations of human rights applicable to fiscal policy. The following section deals with the obligations derived from the human rights of specific groups, such as women, children and adolescents, people with disabilities, and other groups, such as indigenous peoples, Afro-descendants, agricultural workers, migrants, and LGBTTTQI++ people. In this section, we will classify the different findings according to whether

these are obligations linked with the allocation of resources and public funds or with the mobilization and generation of resources.

The next section identifies good practices and emphasizes the gaps found in the analysis of obligations from the human rights of specific groups in order to highlight pending challenges. Because it is a more developed field, this section further explores and details matters of gender equality. The aim is for these issues to serve as a basis to reflect on initiatives that allow to improve and safeguard the interests of the populations that are often pushed aside in fiscal discussions and regulations.

The final section synthesizes the findings in a series of proposals to move towards a fiscal policy that reverses the situations of structural inequality that affect historically disadvantaged groups. The aim is to contribute to the implementation of the Principles on Human Rights in Fiscal Policy, especially those that correspond to the cross-cutting obligations tackled in principles 5 and 6 of the document<sup>01</sup>.



01 | Principles for Human Rights and Fiscal Policy: [https://derechosypolitica.fiscal.org/images/ASSETS/principios-directrices\\_borrador\\_EN.pdf](https://derechosypolitica.fiscal.org/images/ASSETS/principios-directrices_borrador_EN.pdf)



# GROUPS THAT REQUIRE SPECIAL PROTECTION AND CROSS-CUTTING HUMAN RIGHTS OBLIGATIONS APPLICABLE TO FISCAL POLICY

## ➤ 2.1 Brief Review of the Development of the Concept of Groups That Require Special Attention in the Field of Human Rights

Traditionally, international law has defined minorities as groups that are numerically inferior to the rest of the population, in a non-dominating situation, and have distinct characteristics in terms of ethnicity, religion, or language, and that have an explicit or implicit shared sense of solidarity aimed at the conservation of their culture, traditions, religion, or language (UN, 1965). The development of this traditional concept of minority revealed it was insufficient to include all individuals and groups that require special protection. The concept has therefore been given more inclusive definitions. For instance, in U.S. law, a category labeled “disadvantaged groups” came about to initially include those who were subjected to racial discrimination, broadening to groups in economically unfavorable conditions, with the resulting creation of policies aimed at counteracting situations of poverty and balancing the population’s social conditions (Braveman & Gruskin, 2003).

The doctrinal advances in the field are profuse, but there is an agreement on the fact that the category implies groups with members in situations of long-standing subordination, ignorance of the particular characteristics of the group to which they belong, an unjust distribution of goods, and insufficient political representation (Owen, 1999). Human rights systems have advanced in the recognition of groups that require special protection, which need differentiated treatment from the State through affirmative actions or measures in order to avoid the further deterioration of their rights

(IACHR, 2006). Among these groups are children and adolescents, people with disabilities, women, communities segregated due to their socio-economic condition, indigenous people, Afro-descendants, older persons, and migrant workers.

The adoption of affirmative measures presupposes that the State acts “as an active guarantor of rights (...) to safeguard these subordinated groups’ exercising of their rights by adopting countervailing affirmative or positive actions involving differential treatment by the State and recognition of certain prerogatives based specifically on the needs of the members of a group identified as being disadvantaged and victimized by a situation of structural inequality<sup>02</sup>.”

The progress regarding the recognition of groups that require special protection have informed domestic legal frameworks<sup>03</sup>, both in terms of regulatory practices and in constitutional interpretation. Similarly, some progress has been made on the enforceability of the economic, social, and cultural rights (ESCRs) of these groups. Furthermore, the acknowledgement of universal rights with a differential approach (Bernal-Camargo & Padilla-Muñoz, 2018) has been reflected in the international community’s understanding (HLPF, 2019) of fiscal policy as a fundamental tool to promote positive action, for instance, through the incorporation of legal obligations regarding public expenditure allocated to specific populations<sup>04</sup>.



02 | Presentation by Mr. Víctor Abramovich, Executive Secretary of the MERCOSUR Institute of Public Policy on Human Rights. Second session of the United Nations. Open-ended Working Group on Aging for the purpose of strengthening the protection of the human rights of older persons. New York, 1-4 August 2011

03 | Since the mid-1980s, almost all Latin American countries have adopted new constitutions, as are the cases of Brazil in 1988, Colombia in 1991, Paraguay in 1992, Ecuador in 1998 and 2008, Peru in 1993, Venezuela in 1999, and Bolivia in 2009; or they have introduced very significant reforms in their current constitutions, as in the cases of Argentina in 1994, Mexico in 1992, and Costa Rica in 1989. These constitutional reforms mainly protect traditionally discriminated groups such as indigenous peoples and black communities, which have even received special and differentiated rights of citizenship in certain countries. See: Uprimny, Rodrigo. *Las transformaciones constitucionales recientes en América Latina: tendencias y desafíos*. In Rodríguez Garavito, César. *El derecho en América Latina. Un mapa para el pensamiento jurídico del siglo XXI*.

04 | In Argentina, Law no. 26.061 for the comprehensive protection of children establishes the intangibility of the resources allocated to public policies for children and adolescents. Law no. 25.724 establishes a national food program and dictates the intangibility of the *Fondo Especial de Nutrición y Alimentación Nacional* (Special National Nutrition and Food Fund). Argentina’s Constitution regulates the obligation to control and promote positive actions to guarantee equality in opportunities and treatment, and the full enjoyment of the rights of children, women, older people and people with

## ► 2.2 Cross-cutting Human Rights Obligations in Fiscal Policy

Fiscal policy involves a series of actions by which governments establish their priorities and can guarantee or prevent access to certain rights. Through fiscal policy, States can promote the development of specific sectors—both economically and geographically—and redistribute income and wealth to gain resources to guarantee rights. In many cases, however, what is actually promoted are conditions that favor the concentration of resources and tend to benefit those who have the most<sup>05</sup>.

Treaty bodies have recognized the insufficiency of fiscal policy for tackling the adverse effects of growing social inequality<sup>06</sup>, which, among other factors, is due to certain transactions' failure to reach the segments of the population they are supposed to benefit (ECOSOC, 2018; 2019) and to the excessive participation of indirect taxes in the total income of States (ECOSOC, 2016). Additionally, in many cases, socioeconomic gaps deepen ethnic or racial gaps<sup>07</sup> as well as age and gender gaps. This means that fiscal policy can affect certain groups that have been historically discriminated against and left behind in the States' interventions in a differentiated and disproportionate manner.

With this in mind, several actors involved in protection systems<sup>08</sup> have taken a stand on the obligations of States regarding public expenditure, budget, taxes, and public debt, and have pointed out that fiscal policy is instrumental in reversing situations of structural inequality and moving towards substantive equality for historically disadvantaged groups. At the same time, a strong consensus has emerged on the need to guarantee more just, efficient, effective, and transparent budget allocations, which should particularly benefit "the persons and groups in need (Bohoslavsky, 2016)." There is, therefore, consensus surrounding the urgent need to reassess taxation systems to avoid further discrimination and inequality (CRC, 2016).

This section revises the reach of cross-cutting human rights obligations applicable to fiscal policy to then car-

ry out a more in-depth analysis of the standards developed for groups that require special protection. Firstly, it is important to remember that two types of obligations have been distinguished in ESCR issues: 1) those of immediate realization, and 2) those of progressive realization; both imply increasing demands for fiscal policy to reflect the needs of these groups.

The first types of obligations are not subject to economic constraints or to the availability of resources. Among these are the obligations to take steps to guarantee rights and monitor their realization, guarantee rights in conditions of equality and without discrimination, and ensure the minimum content of rights. The obligation to take steps and monitor their realization includes the implementation of fiscal measures that contribute to eradicating structural and intersectional, ethnic, racial, geographical, and gender inequalities along with any others. It demands that States mobilize resources and allocate and execute public funds equitably, thereby contributing to reaching substantive equality.

The obligation to guarantee rights in equal conditions and without discrimination must be reflected in the different dimensions of fiscal policy, in the availability of funding to reverse discriminatory situations, and in a revenue-raising system adapted to the fiscal capacity of the different income sectors. Regressive measures of public expenditure allocation and revenue-raising—including those that apply a disproportionate tax burden on the most disadvantaged groups without considering individuals' capacity to pay and also those that give tax incentives and exemptions to companies and wealthy sectors—are incompatible with the principles of equality and non-discrimination<sup>09</sup>.

Laws, policies, and fiscal practices must be designed to counter structural discriminations based on gender, ethnicity, age, economic situation, etc. and also to promote substantial equality. This obligation not only contemplates the abstention from and—if applicable—the



disabilities. In Article 4, Mexican legislation also establishes the allocation of financial support for people with disabilities and pensions for older people.

05| It has been shown that redistributive policies too often benefit the richer sector more than the poor, increasing the differences in income and wealth and causing a very inefficient use of financial resources (Bohoslavsky, 2016).

06| The Inter-American Commission on Human rights has recognized that fiscal policy in Latin America and the Caribbean is predominantly regressive, that its tributary structure tends towards indirect or consumption taxes, lacks transparency, and is barely participative. This is worsened by low revenue due to tax evasion and avoidance and the existence of exemptions which deprive States of resources for guaranteeing rights. (IACHR, 2017b) *Audiencia sobre Gasto público y DESCA en América Latina*. 11 May 2018: <https://www.youtube.com/watch?v=-nl76z30RpI>

07| Ethnic and racial gaps are still a huge challenge in the entire Latin American region and cause high rates of poverty, significant education gaps, and low average income for women, people with disabilities, indigenous peoples, and Afro-descendants. For instance, in countries such as Bolivia, Brazil, Guatemala, Mexico, and Uruguay, between 0.96% and 9.1% of the general market income inequality can be explained through ethnic and racial causes. (Lustig *et al.*, 2019).

08| Among these are The Inter-American Commission of Human Rights, the Committee of Human Rights, CEDAW, the Committee on Economic, Social, and Cultural Rights, the Committee on the Rights of the Child, and Special Rapporteurs and Independent Experts of the United Nations.

09| Lima Declaration on Tax Justice and Human Rights (2015). In the same vein, the Bogota Declaration on Fiscal Justice for Women's Rights (2017) stresses the need to collect funds through progressive fiscal laws that recognize and promote women's rights. These funds must be allocated in order to eradicate not only long-standing structural inequalities between men and women (through the provision of universal access and public management of education, health services, care, water, hygiene, transportation, and social protection), but also disparities between the disenfranchised and the powerful, and between countries with different levels of development and economic sustainability.

eradication of unjustified differentiated fiscal treatment, but it also demands the implementation of affirmative actions which remove discriminatory social and cultural practices, for example, through direct allocation or tax breaks for disadvantaged groups or persons. Resources must be collected and invested in such a way that no specific group is discriminated against for illegal reasons.

In contrast, there are obligations of progressive realization; for instance, the obligation of progressiveness and non-regressivity and that of maximum use of available resources. These must also respect specific deadlines when directed towards groups that need special protection. The first of these obligations establishes the implementation of financial measures to move forward in the fulfillment of rights and avoid regressing on reached goals. This is a key guideline for evaluating economic and tax reforms, since it indicates that they are only acceptable if it is guaranteed that they are not discriminatory and do not affect the minimum content of the ESCRs, that they are temporary, legitimate, reasonable, necessary, proportionate, and that they guarantee the transparency and genuine participation of the affected groups in the search for alternatives; additionally, they are subject to accountability procedures (UNGA, 2007: para. 42; HRC, 2016).

States must establish and progressively broaden the minimum amounts of social protection and access to the essential ESCR levels, guaranteeing that all people have access to essential health care and basic income security, particularly socially disadvantaged groups (Bohoslavsky, 2016). Additionally, States cannot justify their

incapacity to eradicate a differentiated treatment that affects vulnerable groups on the basis of a lack of resources unless they can prove they have used all the possible alternatives that are available in an effort to address and end discrimination.

Even in times of financial restriction, States must exhaust all possibilities within their reach to mobilize resources that allow them to protect the most vulnerable groups. In turn, they must also adopt an approach based on human rights to evaluate the impact of budget cuts, providing precise detailed statistics on how austerity measures have affected the enjoyment of rights.

The obligation to allocate the maximum number of available resources includes both resources established in the framework of budgetary laws and those that are “socially available” and susceptible to being collected legally through fiscal reforms that involve redistributive measures (HRC, 2016). The aim is to facilitate the access to the minimum core of rights for all persons, especially those who have been historically excluded.

Lastly, States must respect the principles of transparency, accountability, and participation in fiscal measures. Information must be available and accessible to the maximum possible level of scrutiny; participation must be effective and significant, and include both civil society and affected individuals, especially those who live in poverty, women, LGBTTTIQ++ persons, children and adolescents, indigenous people, Afro-descendants, displaced people, migrants, rural populations, and people with disabilities.



# 3.

## OBLIGATIONS STEMMING FROM THE HUMAN RIGHTS OF PARTICULAR GROUPS



This section examines human rights obligations that are linked, firstly, to the allocation of public resources and budgets through direct expenditure or public investment, and, secondly, to the generation and mobilization of resources, contemplating other dimensions of fiscal policy such as tax collection and expenditure, international cooperation, and public debt. The analysis is carried out in separate segments according to the different vulnerable groups in order to identify the most relevant sources, findings, and challenges in terms of the obligations that are specifically linked to fiscal policies for the diverse groups that require special protection.

### WOMEN

#### I. Resource Allocation and Public Budget

Article 2 of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) eliminates direct or indirect discrimination against women. It establishes that there cannot be budgetary systems that implicitly or explicitly discriminate against women. On the other hand, Article 3 demands that women have substantive equality, which means that budgetary measures must truly improve the situation of women in comparison to that of men<sup>10</sup>.

The application of a gender perspective has revealed that apparently neutral fiscal policies actually entail gender biases. In order to understand how fiscal policies can increase inequalities, it is possible to classify gender biases (as well as socioeconomic, territorial, ethnic, and other biases) according to whether they are explicit or implicit. The first are found in fiscal provisions or discriminatory practices rooted in patriarchal traditions, and they are not the most common kind of bias. The implicit biases, in contrast, emerge when fiscal structures do appear to treat all people equally, but have an actual unequal impact, for instance, due to differences in wages or property between men and women or the sexual division of paid and unpaid labor.

When approaching these biases, it is important to keep in mind that indicators of unemployment, in-

formality, economic activity, and wealth distribution in Latin America very clearly prove the deep-seated inequality affecting women: “higher unemployment rates and low-quality employment, a huge number of women lacking social security or their own earnings, and feminization of poverty are only a few of the ways in which their economic disadvantages are visible<sup>11</sup>.”

Taking this situation into account, while the policies aimed at all persons individually should, in principle, allocate equal proportions to men and women, when this amount is not enough to reach substantive equality, more resources must be assigned to guarantee women’s rights. For instance, if there are differences in the levels of access to education or career for girls, as well as in the access to other rights, even though they represent 50% of the school-aged population –or the population targeted by the policy in question– the expenditure must be above 50% to reach substantive equality in the results (Elson, 2006).

This means that in certain conditions, treatment of men and women should not be identical, but rather, to guarantee equality, certain measures, also called positive or affirmative actions, must be adopted temporarily (CEDAW, Article 4.1). One example are the quotas to increase women’s participation in decision-making, or their inclusion in education, economy, politics, or



10 | Elson (2006). In her study, the author analyzes different experiences and relates the commitments of the States under CEDAW with the four main dimensions of the budgets: income, expenditure, macroeconomy, and budget decision-making.

11 | RJFALC (2020). This report quotes a 2014 study by the Instituto de Estudios Socioeconómicos (Inesc, Institute of Socioeconomic Studies) that shows that in Brazil 10% of the poorest sector of the population, mostly comprised of Afro-descendants and women (54.34%) pays 32% of their income in taxes, whereas the 10% richest sector, mostly white and male (83.72% and 62.05%, respectively), pays 21% of their income in taxes. In the case of Argentina, the poorest decile is comprised of almost 70% of women, whereas they only represent 37% of the richest decile. See also INDEC (2019).



employment. Positive actions can also be expressed in proportionally higher investments for women<sup>12</sup> and in targeted programs<sup>13</sup>.

In turn, budgetary programs must comply with Article 5.a of CEDAW, which requires governments to change social and cultural relations and patterns to eliminate prejudice and practices based on gender stereotypes. Regulations that allow access to income transfers or subsidies conditioned to the male members of the family must be eradicated, and women must be allowed to receive them on their own right. Requirements that only people with formal employment can fulfill must also be banned, as the vast majority of women are engaged in informal employment, and such demands exclude them from obtaining certain benefits.

On this basis, States must adopt strategies with a gender perspective for budget decision-making and guarantee the cross-cutting quality of this approach in all the steps of the taxation and budget process. The design, allocation, and execution of these resources must be aimed at guaranteeing women's rights in equal conditions and without discrimination. This requires developing public fund management systems<sup>14</sup> that allow for maximizing results in terms of gender equality, prioritizing investments to reach gender equality, increasing economic opportunities for women, promoting their equal access to productive resources, and especially attending to the needs of those who live in poverty.

## II. Generation and Mobilization of Resources

Taxes are the main source of public income and also the most sustainable and predictable way to finance public goods and services in the sense that they combine three critical functions, as follows: (i) generating revenue for the realization of rights; (ii) achieving equality and fighting against discrimination; and (iii) strengthening governance and accountability (Sepúlveda, 2014). This is why there has been a tendency to inquire further into the study of fiscal policy

The CEDAW committee addressed the question of debt and the feminization of poverty, and recognized that the application of structural adjustment programs and the increase of the debt burden have hindered progression towards a full realization of women's rights (CEDAW, 2001: par. 161). This is why States have been urged to incorporate a gender perspective on loan conditions and crisis response by allocating enough funds to correct or mitigate the significant negative effects of austerity measures on women's lives (CEDAW, 2017), giving particular priority to those living in vulnerable conditions (CEDAW, 2013) and adopting measures to avoid their further impoverishment.

States must equally carry out impact assessments according to gender and income in order to identify direct and indirect effects of taxes and budgets on social and economic equality, including gender equality. To do so, they need to pay particular attention to the combined impact of taxes and public expenditure on people living in poverty, on women, and on marginalized groups. It must be ensured that gender impact assessments are an integral part of the legislative process<sup>15</sup>, guarantee women's participation, and yield data detailed by gender. To make this information public, is also essential to satisfy principles of transparency and accountability (Chakraborty, 2016).

through the lens of gender equity, analyzing how tax systems reinforce models and structures that perpetuate gender inequalities, or how they do not (Itriago & Rodríguez, 2019).

What must first be considered is whether there are biases or discrimination in taxation norms that disproportionately affect population groups—or affect them to a great extent—that are relevant from

12| Given the insufficiency of resources allocated to the development of adequate policies in gender equality, a decision has been made to give priority to certain specific allowances for States that are in charge of implementing public policies aimed at guaranteeing women's rights. See: CEDAW/C/WSM/CO/4-5. Recommendations. Samoa. 07/08/2012; CEDAW/C/PRY/CO/7. Concerns/Observations. Paraguay. 22/11/2017. CEDAW/C/GTM/CO/8-9. Recommendations. Guatemala. 22/11/2017.

13| An adequate allocation has been demanded to increase the reach of education, employment, and healthcare programs for women, giving particular priority to those submitted to preventive detention (see: CEDAW/C/ITA/CO/7. Recommendations. Italy. 04/07/2017). Another specific allocation that was required focused on women who wish to leave prostitution through programs that grant them quick access to other jobs, education, and/or professional training (see: CEDAW/C/MCO/CO/1-3. Recommendations. Monaco. 22/11/2017; CEDAW/C/FRA/CO/7-8. Recommendations. France. 25/07/2016; States have also been urged to allocate specific budgets to eradicate violence against women and girls (see: CEDAW/C/MNE/CO/2. Recommendations. Montenegro. 24/07/2017; A/HRC/34/7) and to provide legal assistance in such cases (see: CEDAW/C/ETH/CO/8. Recommendations. Ethiopia. 14/03/2019).

14| The Sustainable Development Goal no. 5 on Gender Equality includes (Goal 5.c) the duty to "adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels" among its aims. Indicator 5.c.1 assesses the percentage of countries that have implemented systems to monitor gender equality and the empowerment of women and allocated public funds for this purpose.

15| CEDAW/C/MCO/CO/1-3. Recommendations. Monaco. 22/11/2017; CEDAW/C/BWA/CO/4. Recommendations. Botswana. 14/03/2019; CEDAW/C/GTM/CO/8-9. Recommendations. Guatemala. 22/11/2017

the perspective of gender equity; for instance, single-mother families, poor households headed by women, or households where both the man and the woman earn wages, among others. The impact of the design of the tax system on people's choices and behavior as well as on households, companies, and economic sectors must also be assessed. For instance, it is important to evaluate if tax policy encourages or hinders the labor participation of men and women, what its implications are for the consumption of goods or basic services and care services, and the economic development of sectors that create jobs for both men and women.

In many Latin American and Caribbean countries, the circumstances of disadvantaged families are not subject to income tax deductions, which hinders the generation of incentives for incorporating women into the labor market or penalizes households headed by women (CESR, 2017). Even though some countries include a framework for tax benefits and other tax mechanisms that are sensitive to family differences—for instance, by allowing expenses for dependents to be deducted—many still lack a gender perspective. This could mean that single-mother households formed by a single mother with two children end up paying higher taxes in relation to their income than a two-parent household with more income and three children<sup>16</sup>.

All over the world, women own less real estate, land, and other assets than men<sup>17</sup>. This unequal control over resources consolidates current power structures and increases inequality, since women do not benefit from the income these assets can generate to the same extent as men do<sup>18</sup>. This means that property ownership generally involves gender biases, which is why collecting significative property taxes has a greater effect on males, and therefore contributes to reducing gender inequality.

Something similar may happen with income or wage taxes in the sense that certain regulations are considered to reinforce stereotypes by discouraging married women's participation in the labor market and men's participation in unpaid domestic labor<sup>19</sup>. Regulations that include explicit gender biases must be eliminated on the basis that they violate the CEDAW provisions on transforming stereotypes, substantive

equality, and women's right to work with equal conditions and have the same rights and responsibilities within families.

Not only must these kinds of regulations be countered, but affirmative action should also be taken to compensate the structural inequalities perpetuated by fiscal policies. In tax collection, this could require that States establish a tax system with real redistributive power that preserves and progressively increases the income of the poorest households (Sepúlveda, 2014). In this sense, the promotion of substantive gender equality requires those with greater fiscal capacity to pay higher taxes; that is, men should have a greater fiscal impact than women, because their over-representation in sectors with higher income and wealth has been made evident (Elson, 2006).

Moreover, the high tax expenditure that exists in the region in general does not include impact assessments, and even less so assessments which ensure a positive net balance for women (RJFALC, 2020). This means that we do not know whether the tax revenue losses that these expenditures represent for States do in turn yield benefits like job creation, technological transference, and the inclusion of small businesses in supply chains, among the other goals of these types of policies. Additionally, because of the occupational segregation affecting women, tax exemptions also tend to benefit men more often.

In turn, tax incentives granted to businesses and companies mainly tend to benefit men with high incomes, since, compared to women, they hold more positions on boards of directors and higher-ranking posts in company management. Taking this into account, to promote greater socioeconomic and gender equality, it is essential to make progress in the gradual elimination of certain exemptions and deductions that benefit high-income sectors, in which men tend to be overrepresented (Bohoslavsky, 2016).

Regulatory frameworks on Value Added Tax (VAT) often include low rates, zero rates, or exemptions that can help reduce the tax burden on specific goods and services. When these reductions or exemptions are not applied to essential goods, such as fuel to cook, diapers, menstrual hygiene products, and food, and instead standard prices are established, women

16 | In Mexico, for instance, tax deductions focus on males (Fundar, 2020)

17 | The FAO has developed an online database on gender and access to land that provides evidence of the inequalities in land ownership all over the world. See: <http://www.fao.org/gender-landrights-database/en/>. The Beijing Declaration and Platform for Action, in turn, acknowledges this situation as a structural gender inequality problem and urges States to “undertake legislation and administrative reforms to grant women equal rights to economic resources as men, including access to ownership and control over land and other forms of property, credit, inheritance, natural resources, and appropriate new technology.”

18 | In the case of Argentina, for instance, out of the 100% of people affected by the tax on Personal Goods (the system's most progressive tax, which applies to property), 34% are women, and 66% are men, revealing a clear unequal distribution of property ownership (CEPA, 2020).

19 | For instance, if the law rules that only the husband can present a joint tax refund for a married couple, or if a higher tax rate is established for married women, or if tax deductions intended to support dependents are only applied to men. (Elson, 2006).

are disproportionately affected, since they are who generally buy these products.

Moreover, since women tend to have lower incomes, VAT has a greater impact on them, which is why the measures aimed at reducing the proportion of consumer taxes in the total revenue have a direct impact on reducing the economic inequality that affects women. VAT refund policies also affect businesses from the informal sector (mostly represented by women), when conditions to access these policies establish a minimum size for beneficiary companies. These kinds of regulations can also violate substantive equality in terms of the tax burden between men and women who own businesses, which is why their removal or their substitution by mechanisms that reverse these models must be evaluated (Elson, 2006).

Illicit cash flows are another way of reducing tax revenue, and, in some cases, they have a direct

negative impact on women, as in the case of human trafficking, the expansion of soy crops, and mining, which also affect their living environments (RJ-FALC, 2020). In this sense, instead of a tributary policy that contributes to the development and well-being of the population, and of women in particular, this type of policy contributes to reinforcing inequality.

Finally, in order to collect and mobilize resources in the struggle for gender equality, measures must be implemented that aim to eradicate illicit cash flows as well as tax evasion and avoidance. Also, measures must be taken to reverse gender inequality in tax payments and eradicate the obstacles that women face when accessing fiscal benefits. To control the impact of all taxes and fiscal measures according to gender, governments must report taxpayer information as precisely as possible, disaggregating it, at least, by sex and gender (Elson, 2006).



### I. Allocation of Public Resources and Budgets

States must guarantee an appropriate budget for the protection of children and promote the protection (UNGA, 2019; CRC, 2019) and maintenance of those allocations even in cases of economic crisis, natural disasters, and other emergencies<sup>20</sup>. To guarantee the incorporation of these practices, it has been recommended that States issue laws regulating the equitable distribution of funds and social benefits to children, adolescents, and their families<sup>21</sup>.

The budget must make it possible to clearly understand and identify the financial resources allocated to the realization of the rights of children and adolescents, both on a national and a local level, and it must set clear goals and aims<sup>22</sup>. In order to correctly formulate and supervise the budget and to obtain a correct evaluation of the results, States must collect relevant and disaggregated data on public expenditure allocated to children and adolescents in all sectors<sup>23</sup> and carry out an exhaustive evaluation of their budgetary requirements<sup>24</sup>.

Additionally, participative processes must be promoted in budget formulation, incorporating a perspective of children's rights with due consideration to children and adolescents in vulnerable situations that may require affirmative social measures or specific adaptations to guarantee their genuine participation<sup>25</sup>.

The best interests of the children, regulated by Art. 3.1 of the Convention on the Rights of the Child, must be a primary consideration in all steps of the budgetary process and in all budgetary decisions that affect children and adolescents. This means that States must hear the opinions of children and adolescents when assessing the impact of tax measures on their rights and take them into account, through mechanisms for their significant participation on a national and subnational level (CRC, 2013).

General Comment No. 19 of the Committee for the Rights of the Child on public budgeting for the reali-

zation of the rights of children and adolescents (CRC, 2016) and the report of the Inter-American Commission on Human Rights on the responsibility of National Protection Systems in guaranteeing the rights of children (IACHR, 2017a) thoroughly explain the content of budgetary obligations regarding children and adolescents, and they promote a real change in the way resources are planned, approved, executed, and supervised.

Both documents establish that States must give priority to the rights of the children and adolescents who are in vulnerable situations, and they must do this guided by the budgetary principles of efficacy, efficiency, equity, transparency, and sustainability in decision-making. Under the **principle of efficacy**, States must carry out the planning, approval, execution, and monitoring of the budgets in a way that promotes the rights of children and adolescents.

Regarding the **principle of efficiency**, public resources allocated to policies and programs related to childhood must be managed in view of optimizing the resources and with consideration for the obligation to respect, protect, and enforce those rights.

States must also mobilize, allocate, and spend enough public resources<sup>26</sup> to fulfill their obligations in a progressive manner, abstaining from interfering with the enjoyment of rights; for instance, by avoiding discrimination against certain groups of children in budgetary decisions or the diversion of funds allocated to the enjoyment of their rights. States must also comply with their obligation to protect these rights, which implies making sure that no third parties—which may be individuals or companies—disturb or compromise the States' duty to mobilize income, allocate budgets, and make expenditures.

When austerity measures affect children and adolescents, impact evaluations must take the best interests of the child into account and measure the ef-



20 | CRC/C/NZL/CO/5. Recommendations. New Zealand. 20/10/2016.

21 | CRC/C/BIH/CO/2-4. Recommendations. Bosnia Herzegovina. 29/11/2012.

22 | CRC/C/GRC/CO/2-3. Recommendations/Observations. Greece. 13/08/2012.

23 | CRC/C/TUV/CO/1. Recommendations. Tuvalu. 30/10/2013

24 | CRC/C/SYR/CO/5. Recommendations. Syrian Arab Republic. 06/03/2019.

25 | CRC/C/HND/CO/4-5. Concerns/Observations. Honduras. 03/07/2015. CRC/C/GBR/CO/5. Recommendations. United Kingdom of Great Britain and Northern Ireland. 12/07/2016; CRC/C/ALB/CO/2-4. Recommendations. Albania. 07/12/2012.

26 | The insufficiency of resources allocated to the development of adequate policies to enforce the rights of children and adolescents has been brought up in several cases. Besides the many requirements formulated generically, specific increases have been demanded for certain rights such as education and healthcare. For instance, States have been urged to increase the budget to reinforce public policies for the prevention of child and adolescent pregnancy. (A/HRC/41/16. Recommendations. Dominican Republic. 18/04/2019). See also: CRC/C/LTU/CO/3-4. Recommendations. Lithuania. 30/10/2013; CRC/C/TUV/CO/1. Recommendations. Tuvalu. 30/10/2013; CRC/C/SYR/CO/5. Recommendations. Syrian Arab Republic. 06/03/2019

fects of the budgetary cuts<sup>27</sup>, establishing measures to supervise and evaluate the suitability, efficacy, and equity of the distribution of the resources allocated for the realization of their rights<sup>28</sup>.

The **principle of equity** demands that no child or adolescent be discriminated against in the allocation or execution of public funds. To spend funds equitably does not always imply allocating the same amount to each child, but rather it can also require the implementation of expenditures that contribute to the substantive equality of certain groups of children in particular<sup>29</sup>. Under the principle of equity, States must prioritize expenditure items destined to enforce the ESCRs of children who are members of economically disadvantaged groups, specifying the amounts and proportions of the State expenditure allocated to that purpose in order to assess the impact and effect of these expenditures in relation to the accessibility, quality, and efficacy of the services provided to children in different sectors<sup>30</sup>.

States must identify the groups of children and adolescents who require special measures and ensure adequate and sufficient public allocations to guarantee the implementation of these measures. There are precise instructions for priority investment in public policies to eradicate child poverty through specific allocations for vulnerable or poor children, who may need affirmative social measures, and for allocating additional amounts to the more disadvantaged social sectors and families<sup>31</sup> in order to correct disparities on the basis of social indicators<sup>32</sup>.

States have also been ordered to apply affirmative actions by allocating necessary resources and by identifying measurable goals to prevent and eradicate all forms of *de facto* discrimination against indigenous,

Afro-descendant and migrant children, children with disabilities, gay and lesbian, bisexual, transgender, and intersex children, children who live in the street, or children who live in poverty and in rural zones<sup>33</sup>.

Regional disparities are a growing concern and yield a series of recommendations aimed at reversing the inequality rates that are geographically perpetuated and negatively affect children in rural zones or cities located far from the capitals<sup>34</sup>. States must allocate the maximum amount of available resources to reduce inequalities between and among jurisdictions<sup>35</sup>, and ensure that public income policies and distribution criteria between diverse entities favor and enhance the guarantee of rights and equality between children and adolescents of diverse geographical districts (IACHR, 2017a).

There are other specific requirements for sub-groups within the group of children. For instance, UN bodies that supervise the treaties have requested that States secure adequate financial resources for alternative care centers and services for the protection of children deprived of parental care<sup>36</sup> and considerably increase the budget to improve the quality, availability, and accessibility of education for displaced rural children, in particular for girls, giving priority to an education policy for indigenous and Afro-descendant girls<sup>37</sup>.

Moreover, these bodies have asked for the allocation of major amounts of public expenditure to policies targeting the children of migrant laborers, particularly those in irregular situations, children who are not registered for permanent residence<sup>38</sup>, Bedoon children, or children with disabilities<sup>39</sup>; specific allowances were ordered for the prevention and protection against of child trafficking, prostitution, and pornography<sup>40</sup>.



27 | CRC/C/COL/CO/4-5. Recommendations. Colombia. 06/03/2015

28 | CRC/C/GBR/CO/5. Recommendations. United Kingdom of Great Britain and Northern Ireland. 12/07/2016; CRC/C/ALB/CO/2-4. Recommendations. Albania. 07/12/2012.

29 | In order to achieve substantive equality, States parties should identify groups of children that qualify for special measures and use public budgets to implement these measures (CRC, 2016; para. 42).

30 | CRC/C/CYP/CO/3-4. Recommendations. Cyprus. 24/09/2012

31 | CRPD/C/MEX/CO/1. Recommendations. Mexico. 26/10/2014. CRC/C/NZL/CO/5. Recommendations. New Zealand. 21/10/2016. CERD/C/AUS/CO/18-20. Recommendations. Australia. 26/12/2017. In this sense, priority is given to programs aimed at helping children and families most affected by economic crises, children of single-parent families or that live in marginal areas or "sensitive urban zones," children of overseas departments and territories, and unaccompanied migrant children. (CRC/C/FRA/CO/5. Recommendations. France. 23/02/2016).

32 | CRC/C/COL/CO/4-5. Recommendations. Colombia. 06/03/2015. In some instances, there have been demands to specifically enhance education indicators (see for instance: CRC/C/ALB/CO/2-4. Recommendations. Albania. 07/12/2012)

33 | CRPD/C/MEX/CO/1. Recommendations. Mexico. 26/10/2014.

34 | For instance, an increase has been required in the allocation for basic healthcare and basic obstetric care in the rural zones of Haiti: CEDAW/C/HTI/CO/8-9. Concerns/Observations. Haiti. 09/03/2016. In the same sense: CRC/C/GAB/CO/2. Recommendations. Gabon. 08/07/2016; CRC/C/SUR/CO/3-4. Recommendations. Suriname. 09/11/2016; CRC/C/ALB/CO/2-4. Recommendations. Albania. 17/12/2012; CRC/C/GTM/CO/3-4. Recommendations. Guatemala. 25/10/2010; CRC/C/PER/CO/3. Recommendations. Peru. 14/03/2006; CRC/C/PER/CO/4-5. Recomendaciones. Perú. 02/03/2016; E/C.12/AGO/CO/4-5. Concerns/Observations. Angola. 15/07/2016; CEDAW/C/ETH/CO/8. Recommendations. Ethiopia. 17/06/2019; CEDAW/C/MCO/CO/1-3. Recommendations. Monaco. 22/11/2017; E/C.12/SEN/CO/3. Recommendations. Senegal. 13/11/2019.

35 | CRC/C/GBR/CO/5. Recommendations. United Kingdom of Great Britain and Northern Ireland. 12/07/2016.

36 | CRC/C/BGD/CO/5. Recommendations. Bangladesh. 30/10/2015

37 | CEDAW/C/NIC/CO/6. Recommendations. Nicaragua. 01/02/2007; CRC/C/NIC/CO/4. Recommendations. Nicaragua. 20/10/2012; CRC/C/COL/CO/4-5. Recommendations. Colombia. 06/03/2015

38 | CRC/C/RUS/CO/4-5. Concerns/Observations. Russian Federation. 25/02/2014; CRC/C/LTU/CO/3-4. Recommendations. Lithuania. 30/10/2013.

39 | CRC/C/KWT/CO/2. Concerns/Observations. Kuwait. 29/10/2013

40 | CRC/C/OPSC/TLS/CO/1. Recommendations. Timor-Leste. 21/02/2008; CRC/C/OPAC/CRI/CO/1. Recommendations. Costa Rica. 02/05/2007; CRC/C/OPSC/MDA/CO/1. Concerns/Observations. Republic of Moldova. 28/10/2013; CRC/C/OPSC/MDG/CO/1. Concerns/Observations. Madagascar.

Additionally, under the **principle of transparency**, systems and practices must be established for managing public allocations that are open to scrutiny. In the same sense, information on public resources must be freely accessible. In the budget accountability phase, a monitoring, vigilance, and evaluation system must be applied to the allowances and use of resources that different areas of the government allocate to children and adolescents and to the entire public budget<sup>41</sup>. Demands have even been made to ensure that the different effects of such

## II. Resource Generation and Mobilization

In the previously mentioned General Comment No. 19, the Commission for the Rights of the Child (2016) exhorted States to mobilize domestic resources through taxation and other revenue-raising practices such as debts, natural resources, international cooperation, and through the contribution of the private sector in the generation of resources aimed at the realization of the rights of the child. The IACHR (2017a) urged States to mobilize their available resources in line with their obligation to provide special protection for children (Articles 19 IACHR and VII ADHR) and to attend to the best interests of the children. For this to be possible, the effects of legislation and fiscal policies on the rights of the child must be assessed.

For instance, it must be considered that tax income through indirect taxes heavily impacts the purchasing capacity of families with less resources, and has, therefore, potentially negative effects on vulnerable children and adolescents. State capacities to formulate and manage fiscal policies must be strengthened in order to guarantee that public resources fulfill their obligations in matters of children's rights. Depending on the context, this can require increases in direct tax collection, widening the tax base, or the creation of agreements between countries to avoid double taxation and tax evasion.

Taxes must not be disproportionately aimed at people who are in vulnerable situations who might be

budgetary investments on children and adolescents are measured<sup>42</sup>.

Finally, the **principle of sustainability** mandates giving due consideration to the best interests of current and future generations of children in all budgetary decisions. States must elaborate sustainable multi-annual income and expenditure projections that allow for assessing the budgets for different groups of children of the current generation, taking future generations into account (CRC, 2016: Art. 4).

in charge of children and adolescents. States must establish tax rates and collect taxes in line with the child's best interests and individuals' varying payment capacities.

In addition to carrying out evaluations of the impact of fiscal legislations and policies on the rights of children, States must adapt them to guarantee that they contribute to their materialization. For this, they must collect relevant information in order to make the scope of fiscal measures understandable. In turn, the lack of transparency surrounding fiscal systems may lead to inefficiencies in the mobilization of resources and foster corruption. States must address corrupt and illicit practices, including fiscal evasion and cash flows, in order to increase the resources allocated to the rights of the children.

Sustainable management of public debt allows for mobilizing resources in favor of children's rights. As mentioned before, available resources for the rights of children and adolescents must be made sustainable for current and future generations by securing its income sources and guaranteeing that its passive expenses do not lead to insolvency or payment default. For this, States must elaborate laws, policies, and transparent loan management systems with clear functions and responsibilities for the request, consolidation, administration, and assessment of the debt.



28/10/2015.

41 | CRC/C/SYR/CO/5. Recommendations. Syrian Arab Republic. 06/03/2019; CRC/C/COL/CO/4-5. Recommendations. Colombia. 06/03/2015; CRC/C/LTU/CO/3-4. Recommendations. Lithuania. 30/10/2013.

42 | CRC/C/ALB/CO/2-4. Recommendations. Albania. 07/12/2012

### I. Allocation of Resources and Public Budget

The previously reviewed guidelines regarding public expenditure for children also apply to developing budgets to promote and protect the rights of children and adolescents with disabilities (CRPD, 2019). This has been especially stressed in the obligation to periodically evaluate the national budget in order to ensure that the maximum available resources are allocated to making their rights effective<sup>43</sup>. Specific allocations have been required to guarantee the inclusive education of children with disabilities<sup>44</sup> and their right to participate in cultural life, recreational and leisure activities, and sports under the same conditions as others.

The Convention on the Rights of Persons with Disabilities binds States to adopt all measures necessary to ensure the realization of “reasonable adaptations,” that is, any kind of adaptation and modification needed to guarantee that all persons with disabilities can enjoy and exercise all their human rights and fundamental freedoms with the same conditions as others. These measures include the allocation of adequate resources.

Considering the intersectionality faced by many of the people who belong to groups which require special protection, an adequate and sufficient budget allowance is required for programs geared toward persons with disabilities who are members of indigenous groups<sup>45</sup>. In these cases, the committees have

urged States to guarantee that the policies be designed so as to ensure their active participation and consultation, just as with organizations of people with disabilities<sup>46</sup>.

The insufficiency of resources allocated to protect and promote the rights of people with disabilities<sup>47</sup>, in particular children and adolescents (CRC, 2007), has been emphasized, and this has required approving specific and adequate allocations for state institutions in charge of implementing public policies aimed at guaranteeing the rights of persons with disabilities<sup>48</sup>. There are also specific budgetary demands for implementing the rights of persons with psychosocial disabilities. Requests have been made to allocate an adequate budget for autonomous bodies to examine their situation<sup>49</sup>, promote their deinstitutionalization, access to services, and required support<sup>50</sup>, as well as to eradicate violence against people struggling with mental and psychosocial health issues<sup>51</sup>.

In the context of the present crisis, the United Nations Special Rapporteur on persons with disabilities ordered social protection measures that allow people with disabilities to continue receiving support that is guaranteed during this time. For these groups, access to additional economic support that reduces the risk of suffering more vulnerability and conditions of extreme poverty is of vital importance (UN, 2020b).

### II. Resource Generation and Mobilization

Although there are no specific guidelines on how to obtain income to guarantee the rights of persons with disabilities, as there are with women’s rights, States have been urged to mobilize resources to ensure that people with disabilities and their families

are not disproportionately affected in periods of austerity, in such a way that they are guaranteed an adequate standard of living through financial support and specific social security measures<sup>52</sup>.



43 | CRPD/C/LTU/CO/1. Recommendations. Lithuania. 10/05/2016.

44 | A/HRC/41/8. Recommendations. Uruguay. Recommendations. 17/06/2019.

45 | Unless dictated otherwise by observation and assessment of its impact, the Mexican Constitution establishes the allocation of economic support with intersectional perspective. Its Art. 4 states: “The State will guarantee economic support to persons with permanent disabilities under the terms established by the law. In order to receive this benefit, priority will be given to persons under eighteen years of age, indigenous peoples, and Afro-Mexicans up to the age of 64, and persons living in poverty.”

46 | CERD/C/AUS/CO/18-20. Recommendations. Australia. 26/12/2017; CRPD (2019).

47 | For instance, in the case of the Republic of Moldova, the state was exhorted to allocate sufficient resources to protect and promote the rights of Roma persons with disabilities, because they were at high risk of being involved in human trafficking (CRPD/C/MDA/CO/1. Concerns/Observations. Republic of Moldova. 18/05/2017). See also: CRPD (2019).

48 | CRPD/C/MEX/CO/1. Recommendations. Mexico. 26/10/2014.

49 | A/HRC/41/8. Recommendations. Uruguay. 18/04/2019; E/C.12/ECU/CO/4. Recommendations. Ecuador. 14/11/2019.

50 | A/HRC/29/8. Recommendations. Uruguay. 29/09/2016

51 | E/C.12/ECU/CO/3. Recommendations. Ecuador. 13/12/2012

52 | CRPD/C/LTU/CO/1. Recommendations. Lithuania. 10/05/2016

## OTHER GROUPS SUCH AS INDIGENOUS PEOPLES, AFRO-DESCENDANTS, FARMERS, MIGRANTS AND LGBTTTQI++ PERSONS

### I. Resource Allocation and Public Budget

In countries with indigenous and Afro-descendant populations, these groups tend to have less probabilities of receiving social security than white or non-indigenous people living in situations of poverty. Even though pension programs are often progressive in terms of race and ethnicity, they benefit the poor white population more than the indigenous or Afro-descendant peoples living in situations of poverty (Lustig *et al.* 2019).

Taking this situation into account, the treaty bodies of the United Nations have exhorted States to reverse this type of discrimination in the access to budgetary programs by allocating the necessary resources and identifying measurable goals through affirmative actions that allow for preventing and ruling out all forms of *de facto* discrimination against Afro-descendants. Affirmative action measures have been required to

prevent and eradicate all forms of *de facto* discrimination against indigenous peoples, people living with HIV, migrants, asylum seekers, and refugees<sup>53</sup>.

Moreover, the approval of specific and sufficient allocations has been required for State bodies that are in charge of implementing public policies aimed at guaranteeing the rights of migrants, victims of human trafficking<sup>54</sup>, and indigenous communities<sup>55</sup>. Even though the budget increase requirements that treaty bodies tend to orchestrate do not usually indicate precise amounts of money or percentages, there were cases in which the requests had more details, such as the exhortation that Uganda should raise the healthcare budget by 15% in order to guarantee vulnerable groups' (such as sexual minorities) access to sexual and reproductive health services<sup>56</sup>.

### II. Resource Generation and Mobilization

In the context of the pandemic, international bodies have stressed the need to broaden the social protection of especially affected groups (UN News, 2020) by implementing a basic universal emergency income, among other measures. They have also been working on more detailed recommendations regarding financing sources that States can rely on to guarantee these measures.

In a report published in September 2020 (UN, 2020a), the Special Rapporteur on Extreme Poverty and Human Rights, Oliver De Schutter, asserted that many of the programs implemented to face the COVID-19 crisis do not respond to the realities of the different groups that require special protection, such as those who work in the informal sector, migrants, undocumented persons, and indigenous peoples, who—despite being overrepresented among the population living in pover-

ty—remain invisible in the public databases and face a variety of obstacles to obtain social benefits.

In view of this, the rapporteur urged States to build social protection systems conceived as a set of permanent rights regulated by domestic legal frameworks, defining people as individuals with subjective rights. In order to do this, he encouraged States to mobilize domestic resources and appeal to international cooperation. In turn, the former independent expert on foreign debt (Bohoslavsky, 2020) invited States to respond to the COVID-19 crisis with structural reforms for redistributive justice through progressive tax reforms and in accordance with the taxable capacity of high-income individuals and companies, where millionaires, multimillionaires, and large corporations contribute in proportion to their fortunes.



53| E/C.12/CRI/CO/5. Recommendations. Costa Rica. 21/10/2016

54| CMW/C/ECU/CO/3. Recommendations. Ecuador. 05/10/2017; CRC/C/OPSC/CZE/CO/1. Recommendations. Czech Republic. 05/03/2019; E/C.12/CRI/CO/5. Recommendations. Costa Rica. 21/10/2016

55| CCPR/C/AUS/CO/6. Recommendations. Australia. 01/12/2017

56| A/HRC/34/10. Recommendations. Uganda. 27/12/2016; CRC/C/GAB/CO/2. Recommendations. Gabon. 08/07/2016

## 4.

# GOOD PRACTICES AND BENCHMARKS TO DEVELOP IN THE FACE OF GAPS IDENTIFIED IN THE ANALYSIS OF OBLIGATIONS STEMMING FROM THE HUMAN RIGHTS OF PARTICULAR GROUPS

As can be gathered from the previous section, there are no specific benchmarks that fit all groups in the different aspects of fiscal policy. The most extensive advances are found in the analysis of recommendations aimed at reducing gender inequalities, which, reflected in fiscal policy, increase the gaps that women suffer surrounding access to rights under conditions of equality. There has also been ample development in budgeting for the rights of female and male children and adolescents, but this development has been less visible for other groups.

In general terms, we can conclude that in order to avoid discrimination, fiscal policies must acknowledge and address the social barriers that the different groups encounter in the process of accessing their rights, especially considering their different needs and establishing priorities for the allocation of resources, so as to resolve and eradicate the disadvantages they face on a daily and historical basis.

At this stage, the role played by affirmative measures is key. In any case of structural discrimination, fiscal policy is an essential tool to compensate and reverse practices that sustain this discrimination, be it through direct transference and proportionally higher expenditures for these groups, or through the eradication or reduction of taxes that weigh on the most disadvantaged groups disproportionately.

In matters of public expenditure, one good practice is the adoption of quotas or percentages that allow an equal and non-discriminative distribution of budget resources that correspond to social policies. Other measures that States may implement to guarantee access to essential public services is to subsidize rates, since those costs mainly tend to affect poor households, and more specifically poor women as the main caregivers. To apply these measures adequately, States must have precise information regarding the target group's social indicators and income levels.

After applying these kinds of affirmative measures, States must analyze whether the adopted quotas are sufficient

to overcome substantive inequalities. They must also promote the involvement of the interested parties in determining the amounts, goods, and services that are required to fund policies in order to actually reach equality. To achieve this, they must first agree on expected results and then research which measures will best achieve these results and how much they will cost (Elson, 2006).

To begin to explore how to move forward towards a cross-cutting approach to human rights in fiscal policies, it is useful to review budgeting experiences from a gender perspective. These initiatives are mainly focused on including gender goals in budget classification schemes, which has allowed for monitoring the execution of expenditure and promoting its sufficiency. However, they have not necessarily led to the comprehensive redesign of the fiscal policy budget and goals.

Since the mid-1990s, more than 50 countries have engaged in some type of gender-sensitive budget initiative, and both governments and civil society have worked to examine how budgets can reverse gender gaps (Elson, 2006). These initiatives cover everything from the assessment of specific public policies with gender perspectives to proposals for labelling or identifying the entire expenditure aimed at reducing gender inequalities (Coello, 2016).

For a budget to be gender-sensitive, it needs more than a series of identifiable expenditure items aimed at supporting programs or policies with the explicit purpose of reducing gender gaps or guaranteeing the rights of women and people with other gender identities. A gender-sensitive budget is designed to promote real equality, considering the far-reaching differences in the access to rights among genders. It is not about creating an area or group of policies focused on gender, but rather about incorporating a cross-cutting and comprehensive perspective in all phases of the budgetary cycle (preparation, discussion, approval, execution, evaluation, and control).

The major challenge is, therefore, to guarantee that all resource mobilization and expenditure allocation poli-





cies promote gender equality, not only those that explicitly seem to do so, but all of the government's activities. This is the direction that budgets and fiscal measures in general must take. To do so, however, States require disaggregated information in order to evaluate the impact of every public policy, the amounts allocated, the goals set (quantifiable in physical goals and in results indicators), and detailed information regarding beneficiaries, broken down not only by gender and sex but also by age, geographical location, race or ethnicity, etc.

Impact assessments must be periodical, and, as a minimum, include: a) the monitoring of resource distribution to ensure they arrive to their planned delivery point; b) the details of target groups in order to determine whether women and groups that require priority assistance receive the services in a manner that respects their human rights; and c) quantitative research on the results using indicators disaggregated by sex, gender, and all the prohibited categories of discrimination. The results must prove that the funds were allocated to the site where the service was provided, that the beneficiaries were satisfied, and that their position or the access to the enjoyment of the rights the policy seeks was improved after receiving the assistance (Elson, 2006).

Based on these results, States must take all necessary measures to improve the availability and accessibility of services and programs and seek other alternatives if they were insufficient. For instance, they can generate tax incentives that aim to reduce the obstacles that vulnerable groups have when accessing paid jobs<sup>57</sup>, which contributes to more equal distribution of paid and non-paid labor in low-income families, single-parent families, and disadvantaged groups, reducing gender, ethnic, racial, and socioeconomic gaps in matters of wages and pensions.

Regarding tax issues, the recommendations are aimed at redesigning tax systems in such a way that they do not reproduce or reinforce structural inequalities but rather promote more just and equal taxes, collecting more from those who have higher profits and wealth, and investing the revenues in substantive equality.

These recommendations are made acknowledging the impact the tax system has, or should have, in terms of

equality, since it does not only determine the amount of income available to invest in public services and in policies that guarantee rights, but it can also bring about a redistribution of the resources of high-income individuals towards people with lower incomes. In order to achieve this, direct tax payment must be reinforced through income and property taxes, since low collection of these types of taxes considerably hinder the income generation and the redistributive power of the tax system as a whole (ECLAC, 2020).

Contrary to taxes on income and property, which are progressive and direct, VAT is a tax that weighs equally on goods for the rich and the poor. This means that the impact on the income of the former and of the latter will be totally different. Therefore, it is considered regressive and unfair, and demands have been made to ban it from certain essential goods and products<sup>58</sup>.

VAT exercises a gender bias because women's consuming habits, as opposed to those of men, are tied to purchasing more goods and services related to health, education, food, and other aspects of social reproduction (RJFALC, 2020). This, added to the pervading job insecurity and wage disparity for women, means they carry a heavier VAT burden. To reverse this discrimination, exemptions should be made, such as reductions or zero VAT rates for menstrual hygiene products, products that are exclusively for early childhood, and services that have a positive impact on society, health, and the environment.

It must be made clear that if all the actors involved in its implementation are not adequately supervised, the reduced types of VAT can become a deficient tool for gearing support toward poor households (OECD, 2020; Itriago & Rodríguez, 2019). In these cases, States must evaluate their substitution by direct transference programs and guarantee their efficient distribution<sup>59</sup>. Even when tax deductions are adequately implemented and fulfil their goals, States must make these products available in public places such as schools, universities, and shelters for homeless people and for women with low-income backgrounds.

As can be observed, the most specific recommendations have been given for reversing the gender bias

57| For instance, by incorporating the possibility to deduce the tax on the wages, income, and social charges of people who work in private homes. This measure was introduced in Argentina with law no. 26.063 (article 16) in 2005, demanding the formalization of the sector. The measure succeeded in formalizing a labor market in which more than 80% of workers are women.

58| An experiment that applied a human rights perspective to tax regulations is the case of VAT bans for menstrual hygiene products in Colombia. All information is available in Spanish at: <https://justiciatributaria.co/genero/>. Similar initiatives have been promoted in Mexico: <https://bit.ly/2toToj> and Argentina: *Economía Femeni(s)ta: Proyectos de Ley - #Menstruación como un derecho*. <https://bit.ly/3fCLGZg>. See also: "Conversatorio regional sobre tributación y género. Un debate sobre el impacto de las exenciones y deducciones al IVA en productos de gestión menstrual." <https://www.youtube.com/watch?v=iKXDkpcdQyk>

59| The Inter-American Development Bank has recommended the implementation of policies of direct transfers in the cases in which low-income sectors are affected by eliminating exemptions and reduced rates, but warning that to be viable—since it is not a viable option in all countries—the requirements are: i) that the degree of informality and poverty rates are confined within certain boundaries; ii) that there be enough management capacity to focus on beneficiaries and carry out the transfers. (IADB, 2012). As such, it has been proved that in some countries, targeting policies by direct transference does not yield the expected results. In Brazil, for instance, targeting leaves out 44% of poor people, and in others, such as Guatemala, it does not reach 96% of the target population (Athias & Kidd, 2019).

in taxes. Positive examples of gender-sensitive tax regimes include estimated taxes and specific tax regimes for small and medium-sized businesses that provide incentives for women to join formal labor forces through comparatively lower tax rates and a simplified regulatory charging system. For these initiatives to be enough, they need to be linked to expenditure programs that recognize, reduce, and re-distribute unpaid care labor, which women perform disproportionately.

States must guarantee that taxation and fiscal policies acknowledge unpaid care labor and help represent, reduce, and redistribute it (RJFALC, 2020). This can be done through taxes that create incentives to change the traditional labor division in households and promote women's engagement in the labor market, for instance, by providing a refundable tax for people who are in charge of care duties or by promoting tax exemptions on the consumption of goods that are typically consumed by poorer households, which are mostly composed of women (Elson, 2006).

In this sense, to avoid regressive taxes that worsen socioeconomic inequalities and inequality based on gender, "States should not apply the value-added tax on certain goods, such as food and basic medicine. Instead, income should be collected limiting tax exemptions for private companies, taxing financial speculation, and fighting against tax evasion (UNGA, 2012)."

Consequently, "monitoring, preventing, and punishing (tax) abuse is essential in order to comply with human rights principles and improve the distributive effects of tax systems (Sepúlveda, 2014)."

Applying tax relief and exemptions to powerful financial sectors and inadequately preventing fiscal fraud reduces the capacity to fulfill the obligation to mobilize as many resources as possible to fully implement the economic, social, and cultural rights of disadvantaged and marginalized groups and individuals (ECOSOC, 2018; 2016). This type of differentiated treatment must be approved through transparent processes, following clear guidelines and easily measurable goals.

Timely, detailed, and updated information must be published about the costs, expected benefits, and names of individuals and businesses that benefit from tax expenditures, at least for cases of taxes on wealth and property. In all cases, their implementation or their maintenance must be justified, and mechanisms must be designed that allow for assessing the fulfillment of their goals. They must also include the pre-established end date or expiration date, and evaluations should be institutionalized to decide their continuation or revision, and those that are not justified or equitable should be eliminated (ECLAC & OXFAM, 2019; IBP, 2019).



## 5.

# PROPOSALS FOR FISCAL POLICY TO REVERSE SITUATIONS OF STRUCTURAL INEQUALITY THAT AFFECT HISTORICALLY DISADVANTAGED GROUPS

States must apply the budgetary principles of efficacy, efficiency, equity, transparency, and sustainability in the fiscal decision-making that affects groups which need special protection. States must do this in compliance with the principles of progressiveness and non-regressivity, non-discrimination, substantive equality, maximum use of available resources, transparency, participation, and accountability.

To achieve this, it is essential to produce disaggregated information on each public policy, mentioning the number of resources allocated and executed, their objectives (quantifiable in physical goals and in result indicators), and details on beneficiaries, disaggregated

by sex and gender, age, geographical location, race or ethnicity, and all the categories that ban discrimination.

It is recommended to ratify the Bogota declaration on tax justice for women and make it effective (Bogota Declaration, 2017), and to also promote its implementation with specific adaptations that consider the rights of other groups in special situations of vulnerability in a comprehensive and intersectional manner; these groups include people who live in poverty, LGBTTTIQ++ persons, children and adolescents, members of indigenous and rural communities, people with disabilities, Afro-descendants, and displaced and migrant people.

Recommendations are listed as follows:

### A

All levels of the government should implement gender-sensitive budgets with a human rights approach, and they must guarantee that women, people living in poverty, LGBTTTIQ++ persons, children and adolescents, members of indigenous and rural communities, people with disabilities, Afro-descendants, and displaced and migrant people have equal say in defining how public money should be spent.

### B

Laws must be passed to regulate the equal and intangible allocation of social funds and benefits for diverse groups that need special protection, ensuring that they are maintained, even in situations of crisis, natural disasters, and other emergencies.

### C

Budgetary and tax impact assessments should be carried out in a systematic, independent, solid, credible, participative, informed, and transparent way, with a gender and rights perspective, and they should always consider the best interests of children and recognize the greater vulnerability of the poorest LGBTTTIQ++ persons, children and adolescents, members of indigenous and rural communities, people with disabilities, Afro-descendants, and displaced and migrant people. Particular efforts should be made to secure the capacity of these groups to participate in fiscal policy decision-making processes.

### D

Impact evaluations must pay special attention to potential and accumulative effects of economic and taxation measures on specific people and groups in order to secure that the most vulnerable are not disproportionately affected and that, on the contrary, they are protected from these effects, including through affirmative measures, whenever necessary, to reach substantive equality.



**E**

New laws must not be passed and budgetary or tax programs must not be created that widen gender gaps and increase income and resource inequality for the most disadvantaged groups, whether in terms of the gaps surrounding access to natural, cultural, and social resources or in those surrounding market and net income after taxes.

**F**

All available resources must be maximized to invest in high-quality, gender-sensitive public services, the caregiving sector, and accessible, high-quality social protection; they should be sufficient and adequate for attending to the specific needs of people living in poverty, LGBTTTIQ++ persons, children and adolescents, members of indigenous and rural communities, people with disabilities, Afro-descendants, and displaced and migrant people.

**G**

Tax revenue must be collected progressively through direct taxes on income, property and wealth. Those with high purchasing power should carry the greatest burden, basing tax responsibility on the capacity to pay, both for low-income and high-income sectors.

**H**

The increase in direct and progressive revenue-raising must be implemented hand-in-hand with a reduction in the collection of indirect and regressive taxes on goods and services, such as VAT, as well as the application of exemptions and reduced and zero rates on menstrual products and on goods and services that have a beneficial effect on society, health, and the environment. These measures must be monitored to control the fulfillment of their expected results and to complement or substitute them with the direct distribution of these products whenever their effectiveness cannot be guaranteed.

**I**

The regulation of income taxes must guarantee that no one whose income is below the poverty rate pays income taxes or social contributions. In turn, all conditionalities that depend on males having to apply for tax deductions or exemptions must be eliminated to ensure that women can benefit on their own right.

**J**

Enough incomes should be generated to increase States' investments in keeping education, health, caregiving services, transportation, food security, and housing within the public sector. Accordingly, the state must increase the blatantly unequal participation of women, LGBTTTIQ++ persons, children and adolescents, members of indigenous and rural communities, people with disabilities, Afro-descendants, and displaced and migrant people in accessing natural, cultural, and social resources, and in the distribution of market income, net tax income, and political participation.

**K**

Relief or additional help should be provided for all those who earn less than what is established by the poverty line. Taxation measures should be implemented to promote decently paid and permanent jobs for women, LGBTTTIQ++ persons, members of indigenous and rural communities, people with disabilities, Afro-descendants, and displaced and migrant people. All conditions that might exclude these groups from these social benefits should be removed.



**L**

Tax expenditure must be approved through transparent processes, following clear, objective, and easily measurable guidelines. Timely, detailed, and updated information should be published about costs, expected benefits, and the names of beneficiary individuals and businesses. There must always be a justification for their implementation and maintenance, and mechanisms should be designed to assess the fulfillment of their goals. They must also include a pre-established end date or expiration date, and evaluations should be institutionalized to assess and decide on their continuation or revision, and to eliminate those that are not justified or equitable.

**M**

All exemptions and deductions of personal and corporate taxes on high-income and powerful economic sectors must be removed, and measures should be taken to fight fraud, tax evasion, and tax elusion.



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