PRINCIPLES FOR HUMAN RIGHTS IN FISCAL POLICY

General Aspects and Standards Applicable to Subnational Fiscal Policies and Territorially Based Tax and Non-Tax Instruments

Series of Complementary Documents to the Principles for Human Rights in Fiscal Policy Nº 6

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SUMMARY

One of the issues addressed by the Principles for Human Rights in Fiscal Policy relates to subnational finance bodies. Its relevance lies in the role that these territorial entities often play in guaranteeing the rights of their populations, in their significant democratic function due to their proximity to citizens, as well as in the possible wealth disparities that may arise among different jurisdictions. In this sense, part of the State's duty to guarantee a socially just fiscal policy (Principle 3) requires "ensuring inter-jurisdictional equity among its territorial entities with a solidarity-based distribution of resources that seeks equivalent and harmonious development among them and is directly related to their responsibilities, services, and functions" (Sub-principle 3.4).

This document reflects how subnational fiscal policies have contributed to the reproduction of territorial inequalities in Latin America. These inequalities are evident in the quality of basic public services and infrastructure as well as in the physical, technical, and financial resources available to subnational public administrations. The following are among the specific causes identified: decentralization processes without an adequate resource transfer system; exploitation of strategic natural resources at the subnational level; the "race to the bottom" or creation of tax benefits to attract business investment, and the low levels of collection of territorially based taxes.

The document highlights two aspects of particular concern. On the one hand, there is the low financial autonomy that subnational entities show on average, with significant disparities according to the jurisdictions' relative wealth. On the other hand, there is a predominance of indirect taxes or royalties for the exploitation of non-renewable natural resources–whose tax bases are vulnerable to the fluctuations of macroeconomic variables beyond local control–among the financing sources. Given these features, local finances tend to be pro-cyclical, with fiscal expansion during periods of economic boom and restraint during recession periods. In turn, these measures contradict international commitments linked to progressivity and non-regression, as they reduce protection levels of already existing rights.

In order to obtain more autonomous, efficient, and sustainable subnational finances (Sub-principle 8.2.) that are also respectful of the principles of progressivity (Principle 10), equality (Principle 5), and participation (Principle 7), the document puts forth a number of alternatives. In this regard, it stresses the need to increase revenues from more stable and currently under-exploited sources, such as direct taxes on wealth.

1. SUBNATIONAL FINANCES AND TERRITORIALLY BASED FISCAL INSTRUMENTS IN LATIN AMERICA AND THE CARIBBEAN

Latin America's subnational administrations address their governance obligations in a context of high and persistent levels of poverty and inequality. According to ECLAC, the region's disparities in income distribution "are among the highest in the world" (ECLAC, 2019b). Wealth and extreme wealth currently determine the socioeconomic structure of the region. In 2014, while the richest 10% concentrated 71% of the capital, the poorest 70% of the population accounted for only 10% (Oxfam, 2016). Faced with this situation, fiscal redistribution has been inadequate, as regressive taxes and expenditures have weakened the public sector and favored wealth concentration (ECLAC, 2019c). In general, subnational fiscal policies have contributed to the reproduction of inequality, as reflected in the low tax burden on wealth and, especially, on real estate, which is the most evident source of wealth accumulation by the richest sectors.

The neoliberal reform of States, undertaken in the 1980s, implied an intense process of decentralizing functions, in which most subnational administrations in Latin America and the Caribbean acquired new responsibilities. To those considered historical–like the provision of basic services such as sanitation, public lighting, and maintenance of public spaces–others of greater complexity were added, such as the provision of public health and education services, the promotion of community and local development, environmental care and, in some cases, even security services. At the same time, albeit with certain asymmetries, fiscal mechanisms were also decentralized (Cravacuore, 2017). In most cases, the assumption of new responsibilities did not entail transferring the corresponding resources from central to local governments. In general terms, paraphrasing Daniel Arroyo (1998), one could say that rather than a decentralization process, Latin America underwent a Welfare State crisis municipalization process.

Considering the impact that decentralization processes have on the deepening of territorial inequalities within countries is also necessary (ECLAC, 2011). According to ECLAC data, the difference between the GDP of the richest and poorest territories in Latin America is six times greater in countries such as Peru, Mexico, Brazil, and Argentina (ECLAC, 2016). These inequalities become evident in the quality of basic public services, infrastructure, and in the physical, technical, and financial resources available to subnational public administrations. In some Latin American countries, such as Argentina, ownership of natural resources has been transferred to subnational jurisdictions. Thus, provinces that are rich in terms of mineral or oil resources also benefit from the economic revenues resulting from their exploitation, which, in turn, deepens territorial inequalities. In order to compensate for the differences regarding resources between jurisdictions, it is important for the central States to consider corrective mechanisms–such as equalization transfers–and guarantee the realization of the rights of all people, regardless of the region where they were born.

As part of the inter-jurisdictional competition, companies are often subject to tax benefits from subnational governments as an incentive for them to invest in their territories. The fiscal cost of this type of instrument in several Latin American countries is around 1% of GDP (ECLAC, 2019). In addition to their impact on public finances, these types of exemptions are often handled with opacity and discretion. Ensuring the transparency of this type of tax incentives, carrying out rigorous evaluations of their effectiveness in promoting direct investment and, at the same time, implementing coordination mechanisms with the federal government to avoid possible overlapping or even inconsistencies are of utmost importance.

Subnational public finance management mechanisms in Latin America are highly heterogeneous, as are the States' organizational structures and the levels of socio-territorial inequality within each of them (Gómez Sabaini & Jiménez, 2011). While Argentina, Brazil, Mexico, and Venezuela are all federal countries with three levels of government, there are others with a unitary and highly decentralized regime, such as Bolivia, Colombia, Ecuador, and Peru, and there is a final group, consisting of unitary countries with a low level of de-

centralization, such as Chile, Paraguay, Uruguay, and the countries comprising Central America and the Caribbean (Huácar & Radics, 2018). After more than three decades since the decentralization process began, most subnational governments in the region share a set of conditioning factors regarding their capacity to access and distribute the required resources, which hinders their ability to meet their obligations of ensuring the full exercise of their populations' rights.

Most subnational finances have a high vertical imbalance with significant gaps between current expenditures and their revenues (Fretes & Ter-Minassian, 2015). As a result, dependence on transfers and the rate of indebtedness prevail in order to finance rigid and pre-allocated current expenditures (Jiménez & Ter-Minassian, 2016). Two aspects are of special concern in this context. First, financial autonomy–measured as the jurisdictions' revenues as a percentage of total revenues–remains low, on average, with significant disparities depending on the jurisdictions' relative wealth. Second, indirect taxes based on economic activity or royalties for the exploitation of non-renewable natural resources–whose tax bases are vulnerable to fluctuations in macroeconomic variables beyond local control–predominate among the financing sources (Jiménez a&Ter-Minassian, 2016). The latter is linked to one of the central features of the economic structure of Latin American countries, such as dependence on raw material exports and overexploitation of natural resources.

Given these characteristics, local finances tend to be pro-cyclical, with fiscal expansion during economic booms and restraint during recessions (Gómez Sabaini & Jiménez, 2011; Jiménez & Ter-Minassian, 2016). Financial vulnerability to macroeconomic cycles severely conditions the capacity of subnational administrations to maintain their revenues over time and, particularly, to sustain the financing of investment expenditures that are necessary to progressively fulfill their obligations to ensuring the full realization of human rights (CESCR, 1990). In times of economic slowdown, some recommendations point to adopting measures based on reducing public spending. But these measures generally contravene international commitments to progressivity and non-regression, as they reduce protection levels of pre-existing rights (Courtis, 2006).

In order to increase their financial autonomy, subnational governments must amend their fiscal matrix by reducing vertical imbalances. To this end, they must increase revenues from stable sources and, therefore, modify their composition by giving more importance to resources that come from direct taxes on wealth, as a progressive and more sustainable local tax base, which is currently under-exploited. This tax base has the advantage of being progressive in two ways. From a taxation point of view, wealthier agents contribute more, and from a human rights point of view, it allows for generating a gradually sustained financial flow to meet their obligations in terms of guaranteeing the rights of the population over time.

Among wealth taxes, at the subnational level, the property or real estate tax takes on special relevance for guaranteeing rights. Basically, it is a tax that is typical of this kind of jurisdiction with certain (economic and legal) features that make it a suitable fiscal mechanism both for obtaining a more permanent flow of resources and for redistributing wealth at the local and regional levels. As a source of income, it has a more stable tax base (real estate), which is less dependent on macroeconomic fluctuations. Due to its immobile nature, it cannot migrate to other jurisdictions, as is the case with productive activities. As property cannot be hidden, taxation is more difficult to evade. Land, as a taxable base, is not exhausted either; moreover, its value increases over time and, to a large extent, as a consequence of the actions of the subnational administrations themselves–such as public works or changes in regulations–which becomes a genuine source of income for these jurisdictions (Gómez Sabaini & Jiménez, 2011; Bonet & Pineda, 2014).

In turn, from the viewpoint of tax law, its progressive nature lies in the fact that it is levied with greater force on those who have the greatest contributive capacity, that is, on those who own the most valuable real estate. Its distributive potential lies in the fact that the property tax liability only arises from the State exercising its power of authority, and the legal basis for its requirement is independent of any State activity (CIAT, 2015). In other words, the proceeds do not need to be tied to the property that the tax is paid on and can therefore be mobilized to other parts of the jurisdiction.

In addition, the real estate tax can have a regulatory function in discouraging behavior that concentrates real estate income. Through this function, measures aimed at combating real estate speculation can be deployed and complemented. For example, by applying a higher and progressive tax burden to idle properties (speculative land retention), the tax contributes to boosting the real estate market and promoting a more rational use of land, thus favoring an increase in the supply of land resources (affordable, well serviced, and well located) for the population as a whole.

In the Latin American context, all subnational governments have some form of direct wealth tax legislation in place. With the exception of El Salvador, all have either have recurrent taxes on real estate, tax real estate transfers, or financial and capital transactions, and, in addition, most of them tax other assets (cars, boats, aircrafts, etc.). Also, the majority have legislation to levy

contributions on improvements or similar expenditures (De Cesare & Lazo, 2008).

Despite these merits, real estate taxes tend to be underutilized in the region. Indeed, according to a 2008 ECLAC study of 13 countries and 66 jurisdictions in Latin America, real estate taxes represented, on average, only 0.37% of GDP, 1.6% of the total tax burden, and approximately 40% of revenues from property taxes (De Cesare & Lazo, 2008). This low level of collection stems from the weak tax pressure on wealth in the region's countries: while, on average, in Latin America it represents 0.94% of GDP, this figure rises to 1.81% for OECD countries (De Cesare & Lazo, 2008: 78). Other recent studies and statistics (ECLAC, 2019c; OECD *et al.*, 2019) confirm the low relative weight of this tax, which in most cases is under 0.7% of GDP (with the exception of Colombia and Uruguay). Given this trend, "what clearly arises is that it is difficult for subnational governments to take advantage of the tax powers already available, as can be seen, for example, in the meager revenues generated by the property tax in Latin American countries" (ECLAC, 2019c).

The low collection of land-based taxes can be explained by a number of reasons of a political, institutional, technical, and/or administrative nature. The political difficulty of taxing real estate income is rooted in defending private property as an inviolable right of an almost absolute nature and therefore arguing that it cannot be restricted in terms of collective social interests. These arguments conceal its main role: that of being a source of patrimonial accumulation as a primary reproducer of wealth. In our countries, this generates strong resistance to tax increases, either by the Judicial Power, as occurred in Brazil in 1996 (De Cesare, 2016), or by the Legislative Power, as recently occurred in the province of Buenos Aires at the beginning of the year 2020. In some jurisdictions, there is limited political autonomy for determining several or some of the components of the structure of these taxes. A number of governments have the autonomy to establish the tax, although with some technical and administrative deficiencies. The registration of real estate is often incomplete or the registered real estate is undervalued, which reduces turnover. Shortcomings in the control and management of this tax also diminish the collection of the invoiced amount[01]. The combination of some of these aspects severely weakens the tax's capacity both to generate resources and to distribute the tax burden progressively among taxpayers (De Cesare, 2016; Bonet & Pineda, 2014).

In addition to taxes and contributions, local governments must also redefine their authority over urban planning regulation, which plays a significant role in the current regressive allocation and distribution of real estate profit increases. When local governments envision development strategies or target public investments, they simultaneously create expectations about the increase in property values. More specifically, when municipalities assign urban planning indexes (permitted uses and building densities), they simultaneously distribute the economic content of the different plots of land according to what can be built on them. Given that these increases in value benefit each of the properties in a differentiated manner, it is necessary to redistribute them, as they are public resources created by the community through state action.

Hence, subnational governments must develop their capacity to mobilize these real estate appraisals, which arise from their regulatory authority over urbanization processes. To this end, territorial planning and management should include mechanisms to control and regulate the local land market in order to recover part of this real estate wealth as a source of income that is available to guarantee human rights. Even when most subnational administrations are equipped with plans or regulations, in practice, the allocation of normative benefits and public investments are not usually aimed at distributing resources to progressively achieve the full realization of human rights. While the region has had experiences with a more redistributive and inclusive vision, practices that privilege those who have more resources and power to access decision-making on urbanization processes prevail (Rolnik, 2002). The restoration of land appraisals resulting from government activity is almost non-existent in most of the region's countries, and it is often resisted. This is explained by the prevalence of a civil-and-property-oriented vision of real estate, which tends to "enhance owners' rights to the detriment of their responsibilities, and it does not consider other social, environmental, and cultural interests that derive from property tenure" (Fernandes and Maldonado, 2009).

Therefore, when public authorities do not restore land appraisals, they are relinquishing legitimate resources and, at the same time, contributing to the concentration of wealth and the persistence of inequality by favoring a permanent transfer of collectively created resources to individual private property. This validates an "unjustified enrichment" mechanism for property owners, because their patrimony grows for reasons unrelated to them–administrative decisions and public investments–and at the expense of the rest of society (Rabello, 2007). At the same time, this mechanism

01 | A survey of 200 jurisdictions across the region found that, despite some variations, cadastres do not generally cover all properties; appraisals are outdated and often represent well below 50% of market values; collection is inefficient and often amounts to less than 70% of what is billed (De Cesare, 2016).

fosters expectations of higher income for real estate agents and owners, which produce an artificial increase in the value of real estate derived from widespread speculative practices.

The ultimate result of this type of public management that renounces the recovery of legitimate resources from real estate profit is a serious issue for three reasons: first, it reduces the possibilities for significant population groups to access land, giving them no other option but to live in precariousness; second, it fuels the wealth concentration and inequality cycle; and, finally, it prevents the State's different levels from having the necessary resources to comply with their obligations in terms of human rights. In this sense, recent citizen protests held in several countries throughout the region highlight the fact that policies favoring the reproduction of injustice and inequality distort and limit the democratic political system as a whole.

To summarize, the fiscal situation of subnational governments in Latin America is characterized by an insufficient revenue collection–which prevents them from fulfilling their responsibilities–and by tax structures that are mainly supported by indirect taxes. This makes societies increasingly unequal and renders governments dependent on transfers from national governments or on debt to be able to sustain their current expenditures. At the same time, subnational governments give up legitimate economic resources that would contribute to a more progressive and sustainable tax scheme. This occurs through tax exemptions–the fiscal cost of which is greater than the benefits obtained–as well as through an insufficient tax burden on real estate.

2. PRINCIPLES AND STANDARDS APPLICABLE TO SUBNATIONAL FISCAL POLICIES

This second part is divided into two sections. The first one examines the sources from which subnational states' human rights obligations arise. The second section analyzes the principles and standards applicable to the fiscal policies of these government levels with a focus on territorially based taxes.

First, it should be noted that, in order to generate the resources available for guaranteeing rights, States' legislation, policies, and systems regarding revenue mobilization are particularly important. States parties must adopt specific sustainable measures to mobilize domestic resources, such as taxes and non-tax revenues, at national and subnational levels. Among other specific duties, States must review and ensure that policies and formulas for dividing revenues, both vertically (between different State levels) and horizontally (between same-level units), favor and promote equality among people in different geographical regions. The distribution of resources among different jurisdictional levels is particularly relevant in federal States with large territorial gaps in the access to fundamental rights (CRC, 2016: para. 74 and 77.b). Finally, States must guarantee the production and accessibility of all information related to fiscal policy decisions as a necessary condition for adequate accountability and effective citizen participation in the design of these policies.

> 2.1 Human Rights Obligations of Subnational States

Local and subnational governments[02] are responsible for the effective enforcement of human rights, especially with regard to the responsibilities and powers assigned to them. This is of particular relevance since, in recent decades, subnational levels have acquired increasing powers associated with the administration and provision of public goods and services necessary for exercising basic social rights, although they are not always equipped with adequate resources and capacities. Moreover, as the level closest to the citizen, the local administration is, in principle, much better positioned than the central government to deal with issues that require knowledge of the local reality and regulations adapted to local needs and priorities (UN, 2015).

The human rights obligations of local governments arise both from international human rights law and from the adoption and incorporation that national and local governments themselves have progressively carried out in the constitutional charters and internal norms in each country. Along these lines, Article 28 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and Article 50 of the International Covenant on Civil and Political Rights (ICCPR) both state that "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions whatsoever." Consistent with these provisions, in her 2014 report, the Special Rapporteur on adequate housing notes that a State's human rights obligations extend to all levels of government and to any exercise of public power within the scope of assigned responsibilities (Farha, 2014).

However, the trend towards decentralization and increased devolution of powers to local and subnational governments has meant that the implementation of States' obligations under international human rights law is increasingly entrusted to local and subnational governments. Yet, often times, responsibilities have been devolved from national governments to other levels without a corresponding transfer of resources, knowledge, capacity, and accountability regarding human rights obligations related to the right to adequate housing, a situation that is worthy of concern and one that must be reversed.

In this regard, local governments must be held accountable, and national governments–as those ultimately responsible for upholding and guaranteeing human rights–must ensure that they have the capacity and

02| In this report, the term "local government and other subnational levels of government" ranges from rural villages to large metropolitan areas and from districts to provinces, and it recognizes that there are usually multiple levels of local government within a single country (*Ciudades y Gobiernos Locales Unidos*, 2012: para. 2).

resources to meet these obligations (Cfr. UN, 2015). So states the Independent Expert on the effects of foreign debt in his report on Guiding principles on human rights impact assessments of economic reforms, when he establishes that "decentralization is not always favourable to the implementation of human rights law, and it can be especially burdensome if it is not combined with sufficient resources or policy space (both internal and by facilitating community participation) for the implementation of human rights. Recognition of multilevel governance in areas such as revenue collection, tax policy, labour reforms and solidarity across regions is crucial. The national Government remains responsible for ensuring that appropriate cross-government coordination mechanisms and processes exist and that subnational governments are given the necessary resources to fulfill their human rights obligations" (Bohoslavsky, 2018). Similarly, the Committee on the Rights of the Child notes that States parties must ensure that local authorities "have the necessary financial, human, and other resources to carry out [their] functions effectively"[03].

In addition, within the framework of their own powers, subnational levels must mobilize and allocate sufficient resources to fulfill their human rights commitments. According to a report by the Rapporteur on the Right to Adequate Housing (Farha, 2014), in order to fulfill their human rights responsibilities, local authorities should be equipped with the necessary powers and financial resources. In order to adequately implement human rights standards–in particular economic, social, and cultural rights–, local authorities require financial resources, which are not always available. Regardless of the powers vested in the local authorities, they will be ineffective unless there are financial resources to enable their exercise.

Simultaneously and gradually, this process was reflected in the incorporation of human rights protection principles and obligations in several constitutional charters and in the laws of different subnational governments. The following are some relevant examples:

Title Two, Article 4 – Bill of Rights of the Political Constitution of Mexico City establishes that "all individuals shall be entitled to the human rights granted by this Constitution and the international treaties signed by the Mexican State, as well as to the guarantees for the protection of these rights;" human rights, as a whole, make up the parameter of local constitutional regularity. It further adds: "All authorities, within the scope of their powers, are obliged to promote, respect, protect, and guarantee the human rights [...]."

In the case of Brazil, after years of struggle carried out through social movements, the issue of social equality and access to urban land ranked at the top of the demands and, therefore, of the political and development agendas. To meet this challenge, Brazil's response in 1988 was to change its federal constitution in order to promote long-term reforms. As a result, Brazil's political institutions underwent profound changes, creating new institutions at the local level as well as promoting a considerable expansion of the political and taxation power of subnational entities. Likewise, in 2001, Law 10.257, known as the City Statute, was passed, which strengthened local capacities to develop territorial policies with a rights perspective. In addition, following the constitutional reform, most Brazilian states have adopted local mechanisms for human rights protection. These include, by way of example, the State Defense Council for the Rights of the Human Person in São Paulo, provided for in Article 110 of the State Constitution and created by Law No. 7.576 / 1991, and the Permanent Human Rights Council of the State of Paraná, established in Article 227 of the 1989 state constitution and created by Law No. 11.070 of 1995.

In Argentina, most provincial constitutional charters, reformed between the mid-1980s and the end of the 1990s, incorporated the defense of human rights as one of their most relevant obligations. The charter of the province of Córdoba devotes its entire second chapter to guaranteeing a wide range of social rights and the third to guaranteeing political and civil rights; the state's obligations to guaranteeing access to collective rights such as work, social security, housing, health care, culture, public education, etc. are detailed in the second title–Special State Policies. In its Article 36, the Constitution of the Province of Buenos Aires stipulates that "the Province shall promote the elimination of economic and social obstacles, or any others that affect or impede the exercise of constitutional rights and guarantees," and, to this end, it establishes policies to protect ten social and collective rights. In the Constitution of the Province of Río Negro, the purpose of the second chapter is to guarantee civil and political rights, its following chapter aims to ensure a wide number of social rights, and, from Article 58 onwards, it establishes special policies to achieve the full exercise of collective rights (social security, health, education, culture, etc.).

Likewise, the constitution of the Autonomous City of Buenos Aires, approved in 1996, dedicates its first book (Articles 10 to 59) to rights and guarantees and

03| Information: central governments must "take the necessary measures, in particular at the local level, to establish procedures and controls to ensure that the State's human rights obligations are fulfilled. Local authorities, within the scope of their local powers, are obliged to fulfill their duties under the State's international human rights obligations. Local authorities are in fact responsible for implementing these policies. Representatives of local authorities should therefore be involved in the formulation of these policies [...]" (CRC, 2003: para. 41).

the special policies related to them. Moreover, the purpose of title two of its second book is to guarantee political rights and citizen participation.

Finally, it is worth noting that a considerable number of municipal charters in Argentina guarantee a wide variety of social and civil rights. For example, in the case of the capital city of Cordoba, its charter, approved in 1995, provides for many different institutes of popular participation and establishes that "it is the duty of the Municipality to provide for human and community development, economic progress with social justice, productivity of the local economy, job creation, educating and training its workers, retraining the labor force, and scientific and technological research and development as well as its dissemination and use. It promotes the city's harmonious growth and differentiated policies that tend to balance the unequal relative development of its different sectors and areas." Also, in Article 36, the Municipality "recognizes health care as a fundamental human right [...] It promotes, plans, and carries out preventive and restorative medicine programs." Finally, the organic charter of the city of Neuquén (also from 1995) guarantees and promotes "participation as an element of existence and deepening of democracy," and dedicates Chapter II of Title I to guaranteeing duties and rights; moreover, in Title II, it presents a broad list of principles and special policies to achieve the full exercise of social and collective rights.

2.2 Principles and Standards Applicable to Territorially Based Subnational Taxes

Considering the multiple functions and responsibilities that local governments (of provinces, districts, municipalities, etc.) must fulfill today, subnational taxes take on special relevance. In the design, implementation, and oversight of local taxation, particularly of territorially based taxes, local governments must consider the principles and standards proposed below, which stem from the international and constitutional frameworks.

The principles to be addressed in this section, which are applicable to land-based taxes, are:

a. Efficiency.

b. Equality and progressivity.

c. Social function of property.

d. Information production and distributive impact assessment.

e. Participation and democratic city management.

f. Sustainability[04].

04 | See CRC (2016), General Comment No. 19 (Art. 4), July 21, 2016. This comment sets out a number of principles for public budgeting and for resource mobilization through the tax system, including land-based taxes (para. 76).

EFFICACY

The subnational tax scheme must have the main purpose of guaranteeing human rights

Subnational governments should conduct and establish their taxation schemes in such a way as to promote effective realization of human rights (CRC, 2016: para. 59). To this end, they should constantly assess how their taxation scheme enables or hinders the realization of rights (within the framework of their powers and functions) and how such a scheme affects different population groups, in particular, those groups in situations of disadvantage and/or vulnerability.

Given that it pertains to an unavoidable budget, subnational governments should make periodic estimates of the resources needed to address unresolved human rights issues in order to inform macro-fiscal and budgetary planning (Guideline 1.1.). For example, many local governments must assume responsibility for urban and territorial planning as well as land and housing access policies, and they must therefore provide sufficient tax resources to deal with these issues; property taxes would be best positioned to finance land and housing access policies for socioeconomically disadvantaged populations (Guideline 1.1, p. 8).

Based on the technical information they must produce as input for adopting tax policies, States should implement the most egalitarian and equitable taxation schemes possible for generating the necessary resources to fulfill their public functions and, in particular, their human rights obligations. Along these lines, the most appropriate and efficient tax scheme should be adopted in order to obtain the greatest amount of resources. In other words, based on diagnostic evaluations and technical tax information, States must ensure that their decisions in this field lead to the best possible results in terms of guaranteeing fundamental rights for as many inhabitants as possible, paying special attention to groups that are in situations of financial, social, cultural, gender, ethnic, etc. disadvantage and giving them priority.

EQUALITY AND PROGRESSIVITY

Subnational states should not discriminate against any person or category of persons when mobilizing resources or allocating or executing public funds. Raising funds in an equitable manner generally implies taxing different persons or categories of persons differently, according to their contributive capacity. The aim is to ensure that decisions made regarding the tax system contribute to achieving substantive equality among individuals and groups of individuals. In order to promote equality, resources must be obtained in a fair manner. Governments must eliminate any unequal and discriminatory consequences arising from their tax systems that may imply obstacles to accessing rights[05].

In this sense, regressive tax regimes–which require a greater share of income from sectors in situations of poverty and greater vulnerability than from wealthy sectors–are questionable from the perspective of non-discrimination. Meanwhile, progressive tax regimes–which rely more on income and wealth taxes–generally tend to be more effective in mobilizing national income in an equitable manner across households (Balkrishnan *et al.*, 2017, p. 22).

Tax regimes that do not consider families' ability to pay can lead to inequalities in the mobilization of resources. Thus, a disproportionate burden may be imposed on people who already have scarce financial resources, some of them with dependent children (CRC, 2016: para. 76). The same regressive impact can be seen in tax exemption policies, which generate enormous fiscal costs without a corresponding or greater benefit in terms of direct investment.

In this sense, according to López Accotto et al (2018), overall, progressive taxes constitute a powerful redistributive tool that is held by governments. In addition to direct redistribution, wealth taxes also affect financial investments, resulting in an even greater concentration of wealth (Piketty, 2014). This distributive power can be further deepened through escalating proportional structures: the higher the level of wealth, the higher the percentage to be paid (López Accotto *et al.*, 2018).

In this scheme, and under the standard of adopting progressive measures according to the maximum available resources, equality/equity, and efficiency/

05| See CRC (2016), General Comment 19..., para. 61. Along these lines, if policies do not incorporate these heterogeneous realities in their design, not only do they run the risk of not being effective, but their result may derive in an increase in inequality. Also see IIPDH (2014).

efficacy, the State has the duty of prioritizing taxes with the greatest potential for income redistribution and revenue collection. In contexts of high levels of social inequality and concentration of wealth/property/land, taxes on wealth and, in particular, taxes on property and land appraisal processes play a fundamental redistributive role. Under the above-mentioned standards, States should apply these taxes as a priority.

Under the standard of equality and non-discrimination, national States must ensure that vertical organization of fiscal responsibilities and powers does not deepen inequalities within national territories. To this end, they must apply corrective and redistributive mechanisms that guarantee the fulfillment of human rights in each of the country's jurisdictions. This applies, for example, to taxes obtained from the exploitation of natural resources, which tend to be concentrated in certain jurisdictions. When making decisions regarding the transfer of resources to the provinces, the national government must take the objective of territorial equality into account as one of its main criteria.

SOCIAL FUNCTION OF PROPERTY (ACOSTA, 2015)

The principle of the social function of property is recognized by international human rights law and should guide the fiscal policies of national governments, in general, and of subnational governments, in particular, in such a way as to modify the traditional regulatory framework, which is based on a liberal individualistic legal matrix that hinders the development of equitable and progressive tax policies. This, in turn, would make it possible to support inclusive housing measures[06].

The American Convention on the Rights of the Child, in its Article 21.1, includes the right to property, implicitly recognizing the social function of property by establishing that "the law may subordinate such use and enjoyment to the social interest" and prohibiting the "exploitation of man by man." It is clear from this formulation that the right to property is not absolute and is therefore subject to limitations and restrictions[07]. In turn, the American Declaration of the Rights and Duties of Man guarantees the right to private property only to the extent necessary to provide protection for those assets that are necessary to lead a decent life[08]. The Universal Declaration of Human Rights recognizes not only individual property but also collective property, thereby discarding private property and the liberal-individualist legal regime as the only conceivable form of property. Along the same lines and explicitly, the recently adopted United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (2018) recognizes the "social function of land," by determining that States should carry out agrarian reforms in order to facilitate broad and equitable access to land and other natural resources for peasants and avoid excessive concentration of land ownership[09]. Likewise, the constitutions of a number of Latin American countries recognize the social function of property[10].

Policies promoting the social function of property are intended to ensure that land is allocated, used, and regulated in ways that meet individual and collective needs. Such policies establish limitations on private property rights in order to promote social interests and general welfare. These policies are, in turn, fundamental to guaranteeing the right to the city[11]. Accordingly, the principle of the social function of property promotes the creation of different tools and instruments to modulate and restrict the exercise of the right to private property in pursuit of

06| Cfr. *National Consensus for Decent Habitat*, Principle 1. www.consensohabitar.org.ar
07| The IACHR Court has reaffirmed this interpretation on numerous occasions (Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs [Judgment of November 21, 2007]; Case of Abrill Alosilla *et al.* v. Peru, Merits, Reparations and Costs [Judgment of March 4, 2011]; Case of Ivcher Bronstein v. Peru. Reparations and Costs, mentioned above; Case of Salvador Chiriboga v. Ecuador, Preliminary Objections and Merits [Judgment of May 6, 2008] and Case of Perozo *et al.* v. Venezuela, Preliminary Objections, Merits, Reparations and Costs [Judgment of January 28, 2009], among others).
08| In this sense, in its Article XXIII, the American Declaration of the Rights and Duties of Man (ADRDM) determines that "every person has the right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home."
09| Article 17.6. states: "Where appropriate, States shall take appropriate measures to carry out agrarian reforms in order to facilitate the broad and equitable access to land and other natural resources necessary to ensure that peasants and other people working in rural areas enjoy adequate living conditions, and to limit excessive concentration and control of land, taking into account its social function. Landless peasants, young people, small-scale fishers and other rural workers should be given priority in the allocation of public lands, fisheries and forests." https://undocs.org/pdf?symbol=en/A/RES/73/165
10| In Argentina, in addition to constitutional recognition through Article 75, paragraph 22 of the National Constitution (which incorporates the ACHR and its Article 21), the principle of the social function of property is recognized in 14 provincial constitutions.
11| This principle was originally coined by Henri Lefebvre and later recovered by social movements and civil society organizations in the World Charter for the Right to the City, approved within the framework of various social forums between 2004 and 2005. Since then, the principle of the right to the city has been recognized in multiple legal instruments that seek to apply human rights to the urban context, such as the European Charter for the Safeguarding of Human Rights in the City, the Brazilian City Statute and the Montreal Charter.

the general interest. These tools include, as noted by the Rapporteur on the Right to Adequate Housing, the levying of taxes on real estate, the exercise of expropriation powers in favor of the public good, legislation on acquisitive prescription, and urban planning determining spaces for public use and environmental protection. But in turn, States should take additional measures to ensure that both public and private lands are used optimally to fulfill their social function, including access to adequate housing for people living in poverty in urban areas (Rolnik, 2013).

In this sense, the collection of real estate property taxes becomes an instrument of special relevance for bringing about a redistribution of wealth that allows access to land and soil for those who are unable to do so by their own means; this should be done in an egalitarian, non-discriminatory manner and with special attention to the principle of substantive equality. In this case, the application of sufficient and progressive taxes on real estate–among other measures, but mainly due to revenue-raising and redistributive potential–will allow for land allocation, use, and regulation in a way that satisfies both collective and individual needs, especially in contexts of land concentration and high levels of economic and social inequality.

Finally, it is important to point out that the real estate property tax is considered the only tax that allows for effectively integrating fiscal and urban policies. This tax plays an important role in terms of mobilizing resources that is not only justified by financial matters but also by regulatory effects, due to its potential to promote rationality regarding land use and occupation and to combat financial speculation (De Cesare, 2016). Similarly, the Declaration on the Rights of Peasants, considering the social function of land, recognizes that agrarian reforms, as redistributive measures, allow for broad and equitable access to land and other natural resources that are necessary for decent living, in order to limit excessive land control and concentration.

INFORMATION PRODUCTION

I. Revenue collection and distribution impact assessments

In order to assess the relevance of adopting either tax scheme in terms of its capacity to mobilize resources in an egalitarian manner, information production is necessary. Thus, subnational governments should analyze the revenue-raising potential of subnational taxes based on individuals' and companies' fiscal capacity as well as the redistributive dimension in order to make fiscal decisions. (This is in relation to the principle that asserts that States must ensure a socially just tax policy, as opposed to other types of taxation.) To this end, they should carry out periodic assessments on the distributive impacts of the taxes they are responsible for and on specific populations through comparable methodologies. In particular, they should implement rigorous evaluation mechanisms on tax exemption policies, to ensure that they are not forgoing resources in favor of concentrated actors.

These impact assessments may provide evidence on the advisability, and even the legal duty, of subnational governments establishing territorially based taxes as a priority over other types of taxes (due to their revenue-raising potential and redistributive dimension)[12]. In particular, this is considering the Latin American context of income and property concentration that has already been addressed in this document (López Accotto *et al.*, 2018).

II. Information production as input to make land-based taxes operative (updated real estate registry, updated tax valuations, etc.)

Another aspect that is related to the duty to produce information is tied to the need to update the records of the real estate that the property tax could be levied on as well as to systematically perform tax valuations thereof. Subnational governments must generate the technical capacity to produce this type of information on a systematic and periodic basis in order for property taxes to achieve their full collection and redistributive potential in line with specialized literature and eventual impact exercises that may be carried out. This type of information is essential for recording real estate valuations brought about by state action.

As suggested in the first section of this paper, the potential of land-based taxes is underexploited for a number of reasons of a political, institutional, technical, and/or administrative nature. Among the latter, although several governments have the autonomy to determine progressive systems of pro-

12| See *Principles for Human Rights in Fiscal Policy (*Principle 1): The realization of rights must be a fundamental objective of fiscal policy.

portional rates or fees and make an attempt to tax the most valuable properties and idle real estate more heavily, in practice the measure proves insufficient for reducing regressivity and regulating land occupation. Sometimes, real estate registration is incomplete; other times, the registered properties are undervalued; it also happens that, due to tax control and management problems, collection is low in proportion to the amount invoiced (study cited in De Cesare, 2016).

PARTICIPATION IN FISCAL DECISION-MAKING IN CITIES AND DEMOCRATIC CITY MANAGEMENT

From a rights perspective, information production is not limited to putting together the necessary input for policy design and the realization of rights. The production and dissemination of information must also address the need for accountability and generate a knowledge base that makes a society's political and social participation feasible (IPPDH, 2014). The resource mobilization system, when discussed within the framework of the executive and legislative branches, should also be subject to a process of civil society's meaningful participation (CRC, 2016: para. 62).

In the definition and application of real estate taxes, the possibility of directing these resources towards the guarantee of human rights is at stake, in particular, the right to housing benefits and decent housing for the least favored sectors. Since policies related to territory are at stake, the principle of democratic city management takes on particular relevance.

Democratic territorial management is a decision-making process that must guarantee the active and major participation of citizens and, in particular, of civil organizations and associations that are part of the social fabric. Communities have the right to participate in different instances of designing, implementing, and following up on housing and territorial management policies—including those related to territorial-based taxes—and to also demand compliance with the law through the exercise of actions and rights before administrative and judicial bodies (UN, 2017). In short, they have the right to participate in state decision-making processes related to resource generation and to how these resources are applied to guarantee the rights of sectors in situations of vulnerability. To this end, public agencies must implement appropriate tools (such as formalized multi-stakeholder bodies, workshops, debates, hearings, and public consultations) to overcome asymmetries in the ability of different social groups to participate. Moreover, full access to all necessary information must be ensured[13].

Subnational states should establish and maintain public financial management systems and practices that are open to scrutiny as well as information on public resources that can be freely accessed. Transparency contributes to efficacy and can prevent mismanagement of both fiscal policies, in general, and public budgets, which in turn increases the public resources that are available for promoting human rights. Public officials should actively promote access to information on public revenues, allocations, and expenditures related to human rights and also adopt policies to support and encourage ongoing engagement with both the legislative branch and civil society (CRC, 2016: para. 62).

SUSTAINABILITY[14]

Due consideration should be given to the rights of present and future generations in all resource mobilization and budgetary decisions. Revenue mobilization and public resource management by States should be carried out in such a way as to systematically adopt policies and implement programs aimed directly or indirectly at the realization of human rights. Planning for public revenues and land-based taxes should be conducted with the short, medium, and long term in mind, i.e., with the objective of generating a stable resource base to enforce rights. To this end, it is essential to have a solid institutional framework surrounding tax policy. The increase in the share of direct taxes in fiscal structures also contributes to the sustainability of local finances, as their tax bases do not depend on economic cycles.

13| *Cfr. National Consensus for Decent Habitat,* principle 8.
14| In a similar vein, see CRC (2016: para. 63): "The best interests of current and future generations of children should be given serious consideration in all budget decisions. States parties should mobilize revenues and manage public resources in such a way as to ensure the ongoing adoption of policies and delivery of programmes aimed at directly or indirectly realizing children's rights. States parties may only take retrogressive measures in relation to children's rights as outlined in paragraph 31."

3. LATIN AMERICAN TERRITORIALLY BASED TAX POLICY PRACTICE

In this section, we will briefly outline critical aspects associated with the regional situation in terms of territorial fiscal policy and urban planning regulation.

Tax Base and the Distributive Benefits of Land-Only Taxation

One specific aspect of land taxation is the choice of the tax base. Here, the advisability of taxing only land is widely supported from a theoretical point of view. "Economically speaking, the real estate tax is the combination of one of the worst taxes (the part derived from improvements to a real estate) [...] and one of the best (the land tax or site valuation tax) (Smolka, 2014)."

From an economic point of view, land–due to its supply inelasticity–as a taxable base, allows for the generation of public revenues without distorting the productive process (Youngman, 1996). Taxation does not affect land supply nor its prices, as is the case with other taxes applied to production or consumption. From an ethical point of view, while in theory it is fair to tax only land–whose value grows at the expense of society's effort–it is also fair to eliminate the tax on construction as a productive activity that creates jobs and whose profit is the result of the builder's efforts.

Despite its advantages, in practice there are few cases that have adopted land value as the taxable base without including the value of the construction (Bird & Slack, 2005). However, in the regional context, in 1989, the municipality of Mexicali (Mexico) replaced the property tax on the value base of the entire real estate with the land-only value base; this was for practical reasons in view of a rather significant lack in property tax revenues. Updating valuations increased horizontal tax equity, since the increase fell more heavily on the most valuable properties, while properties in low-income neighborhoods were less affected, with increases of under 20% and monthly payment schemes, which also favored the acceptance of the new tax (López Padilla & Gómez Rocha, 2013).

Contradictions in the Fiscal Progressivity of Real Estate Taxes

Under-registration and undervaluation of properties are two critical factors that go against the principle of equality and non-discrimination among people with higher and lower fiscal capacities. The province of Buenos Aires is a clear example, where there are around one thousand high-standard, private and gated residential neighborhoods, but "less than half are regulated and pay the corresponding taxes, while there are another 590 that pay taxes as rural or vacant plots, despite the fact that most of them have all their infrastructure in place"[15]. The approval procedures for these projects are incomplete or have problems, so these irregularities "exempt them from paying the corresponding taxes, which causes the State to lose resources that should be used to guarantee rights" (CELS, 2019).

Undervaluation is another source of inequity. For international reference, the real estate tax rate in California, USA dropped from 3% to 1% of the property's market value after a protest from property owners[16]. In Latin American cities, the rates or amounts are usually set by thousands, and properties are generally undervalued. For example, if the rate is set at 1 per thousand (0.1%) of the property's cadastral value and the appraisal is 50% of the market value, the effective rate ends up being 0.05% of the property's market value. In other words, 20 times less is charged for the real value of the property with respect to the cap set in California. In the most highly appraised areas–which in turn are the most undervalued for tax purposes–this gap is much greater. The most valuable properties end up being

15| Opinion of Gastón Fossati, Executive Director of the Tax Agency of the Province of Buenos Aires (ARBA) in the article "Nueva metodología de valuación para countries," published on the official website of the agency, accessed in June 2018.
16| The maximum collection limit was set at 1% in "Proposition 13" (officially named the People's Initiative to Limit Property Taxation), an amendment to the 1978 California Constitution considered a victory won by individual property rights advocates. See more in: https://www.californiataxdata.com/pdf/Prop13.pdf

taxed proportionally much less than other less valuable properties.

In almost all jurisdictions, the updating of cadasters and cadastral bases has historically been one of the most difficult tasks to uphold over time. Valuation cycles usually range from 5 to 20 years or even more, and each change causes a hike, which in turn results in the tax losing stability. Many jurisdictions attempt to correct low cadastral values by increasing rates (e.g., for inflation), which levels off the amount paid on all properties; this is due to the fact that increases in actual property market prices follow different rhythms. Occasionally, progressive proportional rate systems are applied to correct the relative distances between valuations. However, the final result is a rather distorted distribution of the tax burden, which mixes technical and political motivations, resulting in the tax losing legitimacy. Claims of "lack of data" are common, but this argument is "sometimes used intentionally to block progress in the region or to hide the urban reality, although in most cases it is simply a reflection of neglect or ignorance" (Erba & Piumetto, 2016).

In contrast, the Territorial Real Estate Survey of the Province of Córdoba (Argentina) seeks to take advantage of scientific knowledge and new technologies in order to update land valuations on an ongoing basis. The project started in 2017, and its main purpose was to update urban and rural land values in the province by developing new appraisal methods, which use automated mass appraisal models to predict values based on computational learning algorithms. This technique allows for handling large volumes of data, with a high predictive capacity, which surpasses statistical or econometric methods, allowing a trade-off between bias and variance in the estimates that are closer to market values (Piumetto *et al.*, 2019). In terms of results, in 2018, land values of over two million urban and rural properties—distributed across more than 400 localities in a territorial extension of 165,000 square kilometers—were updated. The first studies were completed in 2018, and, as of 2019, the values have been updated on an annual basis (Piumetto *et al.*, 2019).

Tax Benefits and Real Estate Speculation

When granting benefits or incentives to certain activities, areas, or taxpayers, governments forgo important revenues. In general, most of these tax incentives are intended to stimulate productive investment, although they are not always effective or justified. In Latin America, these tax expenditures [17] are generally above 2% of GDP, which in most countries represents between 15 and 30% of effective revenue collection (CESR *et al.*, 2018). At the same time, the reduction in revenues is offset by an increase in regressive taxes. Meanwhile, the average corporate income tax rate fell from 43.9% in 1985 to 26.8% in 2015; the consumption tax rate went up from 10.6% to 15.2% in the same period (Gómez Sabaini & Jiménez, 2011). "Increasing the efficacy of tax collection calls for a re-examination of tax moratoriums, exemptions, and extensions that disproportionately benefit the more advantaged sectors of society" (ECLAC, 2019).

When subnational jurisdictions apply the reduction of territorial taxes as an incentive to attract investments, an additional source of discrimination is created, which may prove to be counterproductive for the very investments it is intended to attract. This is due to the very nature of land commodities whose prices are not production costs but rather profits for owners. Therefore, they can charge full market price for their property without deducting the amount corresponding to the tax exemption (Morales Schechinger, 2005). Thus, in the end, the benefit does not go to the projects to be favored–whether industrial, commercial, or touristic–, but to the agents who speculate on land prices. In contexts of high real estate demand resulting from the attraction of productive investments (i.e. the case of the Vaca Muerta unconventional oil and gas production basin, in the province of Neuquén, Argentina), speculative processes intensify[18].

Measures to Discourage Real Estate Speculation and Mobilize Land Supply

As a measure to discourage real estate speculation, a significant number of subnational governments in different countries apply higher tax rates to vacant or underutilized properties. However, in most cases this measure to discourage speculative practices does little to discourage speculation because the tax charged is low enough that land retention (while waiting for better prices) continues to be profitable. Even without tax benefits, under-taxation or inadequate regulation of real estate ownership provides adequate conditions

17| Tax expenditure: the amount of revenue that the Treasury forgoes by granting a tax treatment that deviates from that established in general tax legislation with the objective of benefiting certain activities, areas, taxpayers, or consumption.
18| Among other analyses, see De Vicenzi (2019).

for the immobilization of land, including passive property without speculative intentions.

Colombia, Brazil and, more recently, the province of Buenos Aires have proposed instruments to increase land supply by dissuading and punishing speculative land retention through more direct intervention mechanisms that combine tax policy with urban policy. This type of practice favors the principle of equality through an anti-discriminatory protection measure among those who demand land and the owners of idle land.

In Brazil–according to Law 10.257/2001 – City Statute– properties that do not fulfill their social function may be declared underutilized or unoccupied. The practice combines two instruments: Parceling, Building, or Compulsory Use (PEUC, for its Portuguese initials) and Urban Property and Land Tax (IPTU, for its Portuguese initials), which is progressive over time. Research conducted among municipalities with more than 100,000 inhabitants in 2014 found that 25 municipalities had regulated the PEUC, and only eight had started its implementation: Curitiba (PR), Maringá (PR), Palmas (TO), Goiânia (GO), Santo André (SP), Diadema (SP), São Bernardo do Campo (SP) and São Paulo (SP) (Denaldi *et al.*, 2017). In Santo André, Diadema, and Curitiba, the implementation of the instrument was interrupted. In Goiânia and Palmas, it was resumed after a period of interruption. In São Paulo, the experience was recent. The municipalities of Maringá and São Bernardo do Campo were the most advanced and had reached the stage of applying the IPTU progressively over time (Denaldi *et al.*, 2017).

Colombia's Declaration of Priority Development and Construction (subject to forced sale at public auction) is regulated at the national level by Law 388 of 1997 (Territorial Development Law) and Law 1151 of 2007 of the National Development Plan (Maldonado and Tarazona, 2013).

In 2012, the municipalities of the province of Buenos Aires were empowered to declare the Mandatory Parceling and/or Building of underutilized properties and even to apply progressive levies over time to properties that do not comply with the deadlines established by Law 14,449/2012 – Fair Access to Habitat Law (CELS, 2017). The instrument is also linked to fiscal policy, since the law empowers the municipalities to establish a special levy on the properties listed in the declaration that do not comply with the established terms. This levy is progressive over time, allowing the rate to be increased over a period of five years, although it is capped at 50% of the rate for street lighting, sweeping, and cleaning (the ABL tax, for its Spanish initials, which is charged on an annual basis). The local governments of Buenos Aires are not constitutionally empowered to levy real estate taxes, but rather service taxes.

Charging for the Implementation of Public Works (and Other Benefits)

The betterment levy (also known as special assessment for public works) is a type of taxation based on the principle of benefit[19], yet it can incorporate the principle of contributive capacity and help subnational governments deal with the chronic lack of adequate infrastructure and services suffered by the region's populations.

Its potential lies in the fact that public works and infrastructure projects are located on land that is appraised above construction costs and, therefore, it can be linked to the granting of a benefit. For example, in the western area of Rio de Janeiro, Brazil, the price of fully urbanized land (with services) was US$145 per square meter in 2011, while the price of undeveloped land (without services) was US$34 per square meter (Smolka, 2014). However, the cost of providing services to the land ranges from US$10 to US$35 per square meter. In other words, the final price of urbanized land can be more than double the sum of the cost of land and infrastructure. Very similar results were found in a study carried out on a sample of more than 600 lots in the Buenos Aires Metropolitan Area in 2013 (Ronconi *et al.*, 2018).

The betterment levy or special assessment is a legally well-established tax; most jurisdictions have legislation in place and some already have extensive experience with it. In Latin America, ten countries apply this tax instrument (Argentina, Brazil, Colombia, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Uruguay, and, more recently, Panama), seven have legislation in place but do not implement it (Bolivia, Costa Rica, Dominican Republic, El Salvador, Paraguay, and Peru) and three have yet to create laws on it (Chile, Cuba, and Puerto Rico) (Borrero, 2014).

Colombia stands out for its long tradition. Since 1921, when the first legislation was introduced, "the betterment levy has played an important role in the financing of public works and has had a considerable share in the cities' revenues" (Borrero, 2013). According to the same author, between 2010 and 2014, investments reached almost US$1.5 billion in eight cities that were used to finance all types of works, including major investments in roads, avenues, and highways. Colombian law provides three parameters for calculating the levy: construction cost, valuation or capital gain generated,

19| See more on this tax in CIAT (2015), Article 17.

and the taxpayers' ability to pay. This last aspect brings the tax closer to the principle of equity, because not only those who obtain the greatest benefit from the public work pay more, but the ability to pay is also considered in order to contribute to its financing. In other words, it extends the principle of benefit–inherent to this tax–to the principle of contributive capacity.

At the same time, the use of this tax among the region's countries remains rather limited. Those that use it show significant variations between countries and jurisdictions. In Mexico, it represented only 0.42% of municipal revenues; in Brazil, less than 1% of all taxes related to real estate; and in Rosario, Argentina, it represented less than 0.30% of local revenues[20]. In contrast, Cuenca (Ecuador) and some Mexican states such as Coahuila, Sonora, and Zacatecas performed better. There are also contrasts. For example, in Maranhão, in Brazil, one of the poorest states (with US$1,300 GDP per capita), the betterment levy collected US$32 per capita, while in São José dos Pinhais, in the state of Paraná (the sixth richest state in Brazil, with US$13,000 per capita), it collected only US$12 per capita (Smolka, 2014).

The municipality of Trenque Lauquen, in Argentina, represents an innovative case. There, administrative actions that produce a significant increase in the value of properties–such as changes in zoning and urban planning parameters–in addition to investments in public works are included as a taxable event for betterment levies (Municipal Ordinance 3184/2008).

Participation in Real Estate Valuations Generated by Urban Development Actions

Como se señaló, al posibilitar un uso más rentable del sAs noted, by enabling a more profitable use of land, the vast majority of administrative decisions on land regulation by local governments lead to increases in the price of land. These changes in valuations unequally benefit different urban sectors and different agents, creating a regressive transfer of rents–known throughout literature as urban value capture–and, therefore, a mechanism for the reproduction of inequality. The participation of subnational jurisdictions in at least part of these increases, through various tax and non-tax mechanisms, serves both to generate new redistributable resources and to contribute to reducing land value speculation. The burdens imposed may take on various forms: works or equipment, land, financial resources, or other resources. Whatever the case, an equivalence study is essential in order to ensure that the taxes or compensation payable are proportional to the benefits derived.

The Latin American experience shows a densely populated panorama of successful experiences and setbacks in this area, of which we will only mention a few.

The most widespread experience in the region is that of Colombia, with the approval of Law 388 in 1997, which states, in its Article 3.3, that the objective of "guaranteeing that the use of land by its owners conforms to the social function of property and allows the constitutional rights to housing and public utilities to be enforced, and of ensuring the creation and defense of public space, as well as environmental protection and disaster prevention." According to the Lincoln Institute of Land Policy, "Value capture instruments are widely considered to be beneficial fiscal planning mechanisms, even though they are difficult to implement. Colombia is notable in Latin America for its unique and long-standing experience with institutionalizing value capture" (Barco and Smolka). All the information related to the Colombian practice shows that value capture and redistribution has become a relevant instrument for municipal management of land use plans and that the resources it generates are mainly allocated to the construction of low-income housing and the provision of public works and services.

The Onerous Granting of the Right to Build (OODC, for its Portuguese initials) is one of the instruments regulated by the Brazilian City Statute, which differentiates the right to own property from the right to build. The instrument "confers ownership of building rights to the public power along with the authority to sell these rights to those who wish to exercise them on urban property" (Cymbalista & Santoro, 2006). This instrument reformulates the economic content of the property up to a limit called the basic use coefficient, and it recovers the land value assigned by urban regulations when construction indexes are granted above that limit. For the builder, the final value of the land is the same, except that a part of the value is paid to the owner of the basic right and another part is used for paying the counterpart.

The resources collected may be allocated throughout the city for urban regularization; execution of social housing programs and projects; creation of land reserves; organization and direction of urban expansion; implementation of urban and community facilities; creation of public recreational spaces and green areas; creation of conservation units or protection of areas of environmental interest; and for the protection of areas of historical, cultural, or landscape interests (Art.

20| Pérez Torres *et al.* 2012, Pereira 2012 & Álvarez 2009, cited in Smolka (2014).

26 and 31 of Law 20,257 of 2001, City Statute). The municipal master plans may establish the areas in which the right to build may be exercised over and above the basic use coefficient that is adopted through compensation that is to be provided by the beneficiary (Art. 28 of the City Statute).

Over the past 15 years, social mobilization of urban value capture in Argentina has emerged as a redistribution mechanism and, in the case of urban projects, it is generally carried out through consideration for particular regulations. The map that shows the experiences also suggests that–due to the sparse local tradition in a context where local governments seek to take advantage of and exploit their management capacities to the fullest and in direct relation to the possibilities of real estate development on their own and private lands–these processes imply a high dose of "trial and error." However, it is noteworthy that in late 2012, Law 14,449 on Fair Access to Habitat was approved in the Province of Buenos Aires, which, for the first time in Argentina, established municipal participation in real estate valuation as a local instrument of effective financing for the 135 provincial municipalities. As a result, the financing of the social habitat policy is based on the redistribution of real estate income, thus altering the Argentine normalized logic in which the population feeds the income of speculative sectors.

Latin America has a considerable number of innovative local experiences in territorial taxation. However, they are still isolated and exceptional cases opposite the vast majority of local governments that remain underfinanced and face political and technical difficulties in creating more progressive and sustainable tax structures over time. The lack of systematized and transparent information, the limited capacity of their human resources, and the difficulties that small-scale governments experience when facing concentrated economic interests are some of the factors that explain the shortcomings of subnational fiscal policy when attempting to align with States' human rights commitments and approach the principles of efficacy, progressivity, social function of property, transparency, and sustainability. Therefore, subnational governments must promote a paradigm shift in fiscal matters with the support of the national States in terms of training, institutional framework development, and political backing.

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