



Civil and Political Rights in Tax Policy

This is the third in a series of advocacy tools produced by RightingFinance to assist education and dissemination of standards on tax policy and human rights contained in a report produced by the UN Special Rapporteur on Extreme Poverty and Human Rights¹ (Unless otherwise noted, textual references in the text are from that report).

BOX 1

Ruling elites' control of tax policy: Key to perpetuating their power

Political regimes are the outcome of tension and conflict between (a) elites who control the state, and wish to remain in power and to exercise that power as freely as possible, and (b) societal actors who want to place restraints on the power of a potentially overweening state, either to protect themselves from despotism and depredation or as a strategy for obtaining power themselves. Revenue is central to this conflict for two reasons.

First, it represents a key strategic resource for state elites. If non-state actors can limit and control elites' access to revenue, they enjoy countervailing power in relation to the state. Second, if state elites need to depend on general taxation because they lack alternative, easier revenue sources, they generally have to put considerable organisational and political effort into obtaining the revenue, and face strong incentives to bargain and negotiate, directly or indirectly, with at least some taxpayers, rather than simply to extract revenue forcibly.⁵

A survey in six countries (Spain, Brazil, India, South Africa, the UK and the US) showed that a majority of people believe that laws are skewed in favor of the rich – in Spain eight out of 10 people agreed with this statement. A recent Oxfam poll of low-wage earners in the US reveals that 65 per cent believe that Congress passes laws that predominantly benefit the wealthy.⁶

A recent study presents compelling statistical evidence that the preferences of wealthy Americans are overwhelmingly represented in their government, compared with those of the middle classes.

By contrast, the preferences of the poorest people demonstrate no statistical impact on the voting patterns of their elected officials. If this trend continues, public policies will most likely reproduce the conditions that are worsening economic inequality and political marginalization.⁷

Another study finds that elites in Central America were able to shape fiscal policy to their advantage by three key mechanisms: maximizing profits through arguing they were stimulating productive activities, economic growth and employment generation; socializing private costs by covering them with public debt or other fiscal policy distortions and aligning fiscal policy with their corporate interests of expansion, consolidation or migration to other sectors.⁸

Normative basis

“The rights to participation, accountability, transparency and access to information are critical human rights principles that also apply to fiscal policies and must be implemented throughout the policy cycle, from design of budgets and tax codes, allocation of expenditure, through to monitoring and evaluation of impact.”² (para. 20)

“Many human rights treaties emphasize the right to participation. In particular, article 25 of the International Covenant on Civil and Political Rights includes the right of all people to take part in the conduct of public affairs, a right that covers all aspects of public administration and the formulation and implementation of policy at international, national, regional and local levels.” (para. 21)

“Effective and meaningful participation is in turn dependent on the right to seek, receive and impart information.” (para. 21)

Application in tax policy

Taxation and participation in “the conduct of public affairs”

“Decision-making processes regarding tax and public revenues must therefore be based on . . . the broadest possible national dialogue, with effective and meaningful participation of civil society and those who will be directly affected by such policies, including people living in poverty . . . Fiscal policies must be subjected to the



BOX 2

The links between taxation and political accountability

The process whereby government efforts to increase taxation give rise to demands from more political accountability has been well documented by reference to the growth of state institutions in Western Europe and the United States.⁹

A study relied on examination of the historical experience of Ghana to verify whether such proposition could be empirically verified in a developing country. It found that “the challenge of raising tax revenue has forced processes of implicit and explicit bargaining between state and society, and has been an important factor in causing political change.”

However, it noted that “while there appears to be an important relationship between taxation and accountability, it is equally important to note that the particulars of that relationship vary dramatically based on contingent factors.

These include the broader state of politics, the role of elites, the mobilising capacity of civil society, the motives for the tax increase and the type of tax in question, among others.”¹⁰

scrutiny of the population during design, implementation and evaluation stages, with the various interests transparently identified,” and “inclusive mechanisms must be put in place to ensure that [the population is] actively engaged in devising the most appropriate policy options.” (para. 22)

This is justified because tax policy is part and parcel of the policies of the state and reveals its priorities better than any official pronouncement. Participation may involve creating space for citizens and civil society groups to participate directly in tax assessment processes or creating open forums for citizens to engage with local governments, tax authorities and national Members of Parliament around revenue and budgeting decisions. Where space for such engagement is created, taxation can become a catalyst for active public engagement among citizens and for long-term improvements in governance.³

Unfortunately, many countries currently lack these types of institutional venues for engagement. Absent such participation, it is easy for elites who control the state at a given moment to capture it and direct its policies to their own benefit, thus increasing and entrenching their power. (Box 1)

But effectively broadening participation requires more than a state opening up suitable venues and opportunities for citizens to influence tax policy. It requires “capacity-building and fostering fiscal literacy in the population,” (para. 22) because, as in other areas of economic policy, one of the reasons that make it relatively easy to limit participation is the reduced number of people who feel qualified to address such a complicated or technical matter. Furthermore, it is important to remove the perception that tax policy is a specialized field that should be left to technocrats.

Asymmetries of power are another obstacle to participation: “Owing to the asymmetries of

power, expertise and interests in this debate, specific measures should be taken to ensure equal access and opportunities to participate, particularly for people living in poverty.” (para. 22)

The links between political rights and taxation run both ways, though: “a sustainable base of domestic revenue becomes an enabling factor to exercise the right to self-determination and the right of all persons to take part in the conduct of public affairs. In this regard, it will also be crucial to build public confidence that these resources are being well used by, for example, increasing public participation and oversight of budgeting and expenditure.” (para. 52)

“[T]ax abuse and unfair tax practices erode confidence in government, while States that do not have to rely on tax contributions (but rather on, for example, revenues from natural resources) tend to exhibit lower levels of . . . participation in public affairs.” (para. 51)

“Income distribution and its management through taxation also have a crucial relationship with democracy. Growing income disparities can serve to polarize and fragment societies, which can ultimately lead to alienation and social unrest.” (para. 53)

Making tax policy accountable

“Historically, the formation of accountable and effective States has been closely tied to the emergence of taxation systems. Fiscal policies can spur State-building and foster citizenship, affect the level and quality of people’s participation in public affairs and strengthen the accountability and capacity of the State.” (para. 51)

The link between accountability and taxation is an inextricable one (Box 2): “In the same vein, the more a State can rely on domestic rather than external resource mobilization for its financing, the more it will be able to deploy sustainable development strategies and



policies that are responsive to the needs of its people and accountable to them.” (para. 52)

Transparency and access to information in tax policy

“The population must have access to all relevant information in an accessible and understandable format.” (para. 22)

Access to information is a pre-requisite for effectively exercising the right to participate. (Box 3)⁴

Ramifications for tax incentives

“[F]iscal policies, (including, for example, tax incentives granted to foreign investors) must be open to judicial oversight, while public officials must be accountable for decisions that endanger the enjoyment of human rights. Accessible mechanisms for complaints and redress must also be put in place.” (para. 23)

Tax incentives also have “significant implications for the right to information, transparency and accountability, as tax incentives are often negotiated in secret between the Government and the company concerned, fostering corruption and weak governance.” (para. 65)

Avenues for challenging the lack of compliance with any of the normative requirements for fiscal incentives would contribute to strong accountability in the granting of fiscal incentives.⁴

Ramifications for taxation of natural resources.

The right to enjoy a fair share of the financial and social benefits that natural resources can bring requires “ensuring participation, access to information and high standards of transparency and accountability in decision-making about the use of natural resources. Where indigenous peoples are involved, States have additional and specific obligations,

including ensuring free, prior and informed consent in any decisions regarding the use of their lands.” (para. 18)

“The right of people to participate in decisions regarding natural resources is often violated, especially where the land, territory and resources of indigenous peoples is concerned.” (para. 70)

BOX 3

The role of access to information in enabling participatory tax policy-making

“People’s right to access detailed, reliable, periodic and disaggregated fiscal and financial information is strongly curtailed in many countries, especially the financial information necessary to root out illicit financial flows, curb corporate capture of development processes, and detect other tax abuses such as socially-useless tax expenditures.

This fundamental vacuum in fiscal information compounds and reinforces the lack of effective, meaningful and institutionalized participation of the most disadvantaged social groups and countries in the design, implementation and monitoring of fiscal policy. If they happen at all, tokenistic consultations too often take the place of meaningful participation, with little to no impact on decision-making.”¹¹

“Taxpayers should have a clear understanding of (a) the legal basis for their tax liabilities, (b) the amounts of revenue collected and from whom, and (c) how tax revenue is used. Transparency does not only mean announcing tax laws and total revenue collection – it means actively providing for tax education and supplying detailed information to taxpayers about what revenue is collected, from whom, and linking collection as directly as possible to public spending programmes.”¹²

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Questions for reflection

- Do decision-making processes on public revenue from design to implementation and evaluation (e.g. tax codes, budget allocations) allow for mechanisms for effective and meaningful public participation? How inclusive are those, especially regarding the poorest and vulnerable segments of the population? Regarding taxation of natural resources, what specific characteristics are in place regarding mechanisms for participation of those affected by their exploitation?
- Does the state implement capacity-building measures to enable broader participation? Who does usually participate?
- Does the public have access to sufficient data on revenues and expenditures to be able to effectively participate in tax decision-making processes?
- Are fiscal policies (for instance the granting of tax incentives) susceptible of judicial oversight when they are not compliant with human rights guarantees?

Endnotes

- ¹ A/HRC /26/28, May 22 2014 (available at <http://www.rightingfinance.org/?p=1195>).
- ² Among other instruments that enshrine the right to participation are the Universal Declaration of Human Rights (arts. 21 and 27), the International Covenant on Economic, Social and Cultural Rights (arts. 13.1 and 15.1), the Convention on the Elimination of All Forms of Discrimination Against Women (arts. 7, 8, 13(c) and 14.2), the International Convention on Elimination of All Forms of Racial Discrimination (art. 5(e)(vi)), the Convention on the Rights of the Child (arts. 12 and 31) and the Convention on the Rights of Persons with Disabilities (arts. 3(c), 4.3, 9, 29 and 30).
- ³ Budget Advocacy Network 2011. Building a Fair, Transparent and Inclusive Tax System in Sierra Leone.
- ⁴ See also second advocacy tool in this series: “Maximum available resources, non-retrogression and minimum essential levels in tax policy.”
- ⁵ Moore, Mick 2007. How Does Taxation Affect the Quality of Governance? IDS Working Paper 280. April.
- ⁶ Oxfam 2014. Working for the Few: Political Capture and Economic Inequality. Briefing Paper No. 178. January.
- ⁷ Ib.
- ⁸ Central American Institute of Fiscal Studies –ICEFI 2015. Fiscal policy: Expression of power of the economic elites in Central America.
- ⁹ Organization for Economic Cooperation and Development 2008. Governance, Taxation and Accountability: Issues and Practices.
- ¹⁰ Prichard, Wilson 2009. The Politics of Taxation and Implications for Accountability in Ghana 1981–2008. IDS Working Paper 330.
- ¹¹ Center for Economic and Social Rights and Christian Aid 2014. A Post-2015 Fiscal Revolution. May.
- ¹² See endnote 3.

