

<https://doi.org/10.23913/ricsh.v10i19.229>

*Artículos Científicos*

## Respeto al mínimo vital como un derecho humano ineludible en México

*Respect for the vital minimum, as an inescapable human right in Mexico*

*O respeito pelo mínimo vital como um direito humano inescapável no  
México*

**Gerardo Hernández Barrena**

Centro de Estudios e Investigaciones para el Desarrollo Docente CENID A.C. México

[barrenagerardo@yahoo.com.mx](mailto:barrenagerardo@yahoo.com.mx)

<https://orcid.org/0000-0003-1593-6402>

### Resumen

La Constitución Política de los Estados Unidos Mexicanos señala en su artículo 31, fracción IV, que todos los mexicanos están obligados a contribuir para el gasto público; sin embargo, antes de pagar, el Estado debe garantizar que el contribuyente subsanó sus necesidades de alimentación, vivienda, salud, educación, etc., para estar en condiciones de contribuir; esto recibe el nombre de *mínimo vital*, derecho humano que debe ser resguardado por parte de cualquier organismo gubernamental. Por eso, la presente investigación tuvo como objetivo dilucidar si en México el Estado protege el derecho al mínimo vital. Para ello, se ha trabajado tomando en cuenta los principios del método deductivo, pues se presenta el tema de lo general a lo particular. Además, se ha usado un instrumento tipo encuesta con la finalidad de conocer la opinión de los contribuyentes. Según los resultados conseguidos, se puede concluir que el Estado no considera para el pago de las contribuciones el derecho al mínimo vital de los contribuyentes, lo que violenta sus derechos humanos.

**Palabras clave:** contribuciones, derechos humanos, mínimo vital.



## Abstract

The Constitution states in article 31 fraction IV that all Mexicans are required to contribute to public spending, however before paying, the State must ensure that the taxpayer met their needs for food, housing, health, education etc., in order to be able to contribute, this is named after the minimum vital, human right to be protected by any governmental body; that is why this research aims to clarify whether the State protects the right to the minimum of life, which will be carried out under the deductive method, presenting the subject of the general to the particular, also using a survey-type instrument with the purpose to obtain data that determine the opinion of taxpayers, concluding that the State does not consider for the payment of contributions the right to the vital minimum of taxpayers, then violating their human rights.

**Keywords:** contribution, human rights, minimum vital.

## Resumo

A Constituição Política dos Estados Unidos Mexicanos indica em seu artigo 31, inciso IV, que todos os mexicanos são obrigados a contribuir para os gastos públicos; Porém, antes de efetuar o pagamento, o Estado deve garantir que o contribuinte tenha atendido às suas necessidades de alimentação, moradia, saúde, educação, etc., para poder contribuir; Isso é chamado de mínimo vital, um direito humano que deve ser protegido por qualquer órgão governamental. Portanto, a presente investigação teve como objetivo elucidar se no México o Estado protege o direito ao mínimo vital. Para isso, trabalhamos levando em consideração os princípios do método dedutivo, uma vez que o assunto é apresentado do geral ao particular. Além disso, um instrumento do tipo survey tem sido utilizado para conhecer a opinião dos contribuintes. De acordo com os resultados obtidos, pode-se concluir que o Estado não considera o direito dos contribuintes a um mínimo vital para o pagamento das contribuições, o que viola seus direitos humanos.

**Palavras-chave:** contribuições, direitos humanos, mínimo vital.

**Fecha Recepción:** Febrero 2020

**Fecha Aceptación:** Diciembre 2020



## Introduction

Human rights define the relationships between individuals and power structures; These delimit the power of the State and, at the same time, require that entity to adopt measures to guarantee conditions in which all people can enjoy their human rights (Inter-Parliamentary Union, 2016). Economic, social and cultural rights are born from human dignity and are, therefore, inherent to the human person, so they are directly related to the protection of the needs and capacities that guarantee a quality of life (Nowak, 2005).

One of the basic pillars of the rule of law is the guarantee of freedom, but for individuals to truly enjoy it, they must have a minimum of economic security. The Political Constitution of the United Mexican States establishes tax principles —also called constitutional principles—, among which those of justice, legal security, legality, proportionality and equity stand out. From the principle of proportionality arises the right to the vital minimum, which seeks to ensure the economic capacity for the taxpayer to cover his primary needs and those of his family. In this context, the principle of equity lies in equality before the tax law, which serves to determine the payment of the tax according to economic capacity (Ruiz López, 2015).

It can be said, then, that the vital minimum is a right by virtue of which people cannot be called to contribute if they do not satisfy their basic needs, taking into account the principles of proportionality and equity (Hernández, 2016). In this sense, article 31 section IV of the Political Constitution of the United Mexican States establishes that it is the obligation of the Mexican to contribute to public spending in a proportional and equitable manner as provided by law; However, for the taxpayer to comply with this constitutional norm, he should, in the first instance, satisfy his elementary needs, as well as those of his family.

## Problem Statement

At present, the protection of human rights plays a fundamental role for people, hence now more than ever citizens demand from the State the broadest protection because it is the main one in charge of promoting, respecting, protecting and guaranteeing these rights; In tax matters, protection must cover the economic aspect of taxpayers. That is, for people to pay their contributions, they must first meet their needs for food, housing, health and education; This is known as protection to the minimum vital of taxpayers, a concept that is not respected by the tax authorities in the tax field.



## **Objectives**

### **General objective**

- Evidence the violation of the vital minimum of the taxpayers, which happens from the moment in which the tax authorities do not make sure that before contributing, said taxpayer has met their needs for food, housing, health and education.

### **Specific objectives**

- Know the origin of human rights in the international arena.
- Examine the protection of human rights in Mexico.
- Elucidate on the protection and respect for the vital minimum of taxpayers by the tax authorities.

## **Developing**

### **The vital minimum**

From birth everyone has natural rights derived from nature and human reason. In the international arena, on December 10, 1948, 30 articles were recognized in the Universal Declaration of Human Rights, where it was stated that all human beings are born free and equal in dignity and rights, and endowed as they are with reason and conscience. and they should behave fraternally with one another. For this reason, the rights and freedoms to which every human being can inalienably aspire and under conditions of equality have been clearly established (United Nations, 2015).

Mexico, of course, was not immune to this declaration, since on June 10, 2011, through a constitutional norm, the concept of individual guarantees was left behind to give way to human rights and their guarantees, which was registered in the title first, chapter 1, of the Political Constitution of the United Mexican States published in the Official Gazette of the Federation.

However, the vital minimum is a fundamental human right, since it refers to the income that a person has to finance their basic needs and to be able to enforce the right of human dignity. In this sense, one of the rights of every person who works is their salary, which must allow their needs to be covered not only for themselves, but also for their family, so it is directly related to the enjoyment and satisfaction of their human rights.



In ancient times, in Mesopotamia the workers' salary corresponded to the allocation of a unit of wheat per day, while in Greece and Rome there were slave and free workers who received food, clothing, footwear and, sometimes, a small piece of land. It would not be until the year 300 - reign by Gaius Aurelio Valerio Diocleciano - when a real list of wages was fixed for all the workers.

Later, in the Middle Ages there were many ordinances that fixed wages; In fact, in 1349 and 1350 anyone who demanded a higher salary than that received 20 years ago was threatened with prison. Starting in 1350, before the plague, wages had remained static; after that they only increased 4%, and it was until 1375 that it was recorded at 14%. In modern times, the arrival of the industrial revolution (which meant the application of machines by labor) caused the displacement of men with lower wages that were not enough to satisfy the minimum in the life of the worker and his family (Juárez , 2013).

Then in 1839, the law of the poor focused on granting the minimum wheat per week to ensure that the impoverished peasants did not reveal themselves. Later, in the 20th century England claimed the creation of a dividend and in France a guaranteed social minimum was advocated for every individual from birth to death. Subsequently, on December 10, 1948, with the Universal Declaration of Human Rights, a double recognition was approved: on the one hand, the so-called vital minimum or right of the worker to “an equitable and satisfactory remuneration, which ensures, as well as to his family, an existence in conformity with human dignity and which will be supplemented, if necessary, by any other means of social protection”(article 23.3); on the other hand, the right of every person to “an adequate standard of living that assures him, as well as his family, health and well-being and, especially, food, clothing, medical assistance and the necessary social services”(Article 25.1) (Senate of the Republic, June 21, 2017).

The International Covenant on Economic, Social and Cultural Rights - approved by the United Nations General Assembly in 1966, and whose entry into force took place in 1976 - also contains this double recognition of the right to a vital minimum. Article 7 establishes the right of all workers to sufficient remuneration to provide them and their families with decent living conditions. Likewise, article 11 recognizes "the right of every person to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to a continuous improvement of living conditions." (Rosales, 2017).



On the other hand, the work Minimum Wage and Human Rights (National Human Rights Commission [CNDH], 2016) indicates that in 1980 in New Zealand and Australia the concept of minimum wage or income was adopted, since the remuneration for workers - especially for women and youth - it was so low that it was not enough for them and their families to survive. This concept was adopted in several countries. For example, in Colombia it was decreed that the vital minimum is an unnamed right, built from the interpretation of the Constitution that originated in a similar concept: existential minimum. Likewise, in Costa Rica—according to the second chamber of the Supreme Court of Justice—it was established that this can be exceeded at the will of the parties, so that the salary amount will cover material, moral and cultural needs. Guatemala, on the other hand, recognized the right to a living minimum by ensuring a minimum wage to cover the basic needs of the worker.

In 1962, Mexico incorporated the figure of the minimum wage into article 123 of the Political Constitution of the United Mexican States in section A, section VI, referring to an irreducible amount that every person who performs a job to cover their needs must receive by legal mandate. basic and those of his family. It is important to point out that our country was one of the first to establish the salary figure in its Political Constitution, an initiative presented by Lic. Adolfo López Mateos, then President of the Republic. In fact, this purpose was materialized in Article 90 of the Federal Labor Law (1970), where the following is established in its second paragraph: “The minimum wage must be sufficient to satisfy the normal needs of a head of the family in the material, social and cultural order, and to provide for the compulsory education of children ”.

Likewise, in article 31, section IV, of our Constitution (Political Constitution of the United Mexican States, 1917) it was determined as an obligation that Mexicans should contribute to public expenditures in a proportional and equitable manner, which gave rise to the four fundamental principles of public spending, proportionality, equity and legality.

From the principle of proportionality comes the right to the principle of the vital minimum, which tries to ensure the economic capacity for the taxpayer to cover their primary needs and those of their family (Hernández, 2016). The vital minimum, as a projection of the principle of tax proportionality, constrains the tax legislator so that when designing the purpose of the contributions and identifying the ideal capacity to contribute, it respects a free or reduced tax threshold, corresponding to the resources necessary to the subsistence of people, where it is forbidden to enter because the imposition of taxes on that essential minimum is not



constitutionally legitimate (Tenorio, 2013). For other authors such as Benvenuto (1959), the "minimum for existence" does not represent a taxable capacity, but rather the cost of living, which cannot be reduced by taxes, since the tax would be transferred to other taxpayers.

Now, summarizing various judgments of the German Constitutional Court, the fundamental right to the vital minimum derives from the principles of the social state of law, human dignity and solidarity, in accordance with the fundamental rights to life, personal integrity and equality; It is intended to prevent a person from being reduced in the intrinsic value of him as a human being because he does not have the material conditions that allow him to lead a dignified existence. This right seeks to guarantee that the person, the center of the legal system, does not become an instrument for other purposes, objectives, purposes, assets or interests, however important or valuable they may be. That is, it seeks to protect the person against any form of degradation that compromises the intrinsic value of him, specifically in what refers to the basic and essential material conditions to ensure a dignified and autonomous survival, therefore it constitutes a limit to the tax power of the state (Gerencie.com, 2019).

It could be argued that the tax authorities protect the vital minimum of taxpayers by allowing, for example, that people who receive a minimum wage will not be subject to withholding tax, or that most other taxpayers are allowed to reduce their income, expenses or deductions related to your activity in order to reduce your tax burden; However, in this context the Supreme Court of Justice of the Nation (Thesis: P. VI / 2013 ninth epoch 159821 full book 1, December 2013, volume I, page 135 isolated thesis) has indicated that the vital minimum is not exclusive of the working class, although for them it is important to keep the minimum wage safe. However, it also points out that "the right to a minimum wage is not an exclusive prerogative of the working class, nor is its content exhausted by exempting from embargo, compensation or discount to the minimum wage"; a contrary sense means that any person must be subjected to a vital minimum regardless of his activity.

In this regard, recent studies have been carried out which show that on average a family with 4.15 members has a monthly expense of \$ 30,013.00; Therefore, and according to an analysis by Coneval, for a family with an average of 4 members not to be in a state of poverty, it must have a monthly income of \$ 12,458.76 (Rodríguez and Contreras, 2018), although with this Any of the amounts expressed far exceeds the minimum wage, for which the amount with which a family must cover its needs is subject to tax.



Something similar happens with authorized deductions, since only taxpayers can reduce their tax burden if the expenses are related to their activity; therefore, it is indubitable that by not being able to reduce concepts such as food, health and housing, the vital minimum of taxpayers is not being protected.

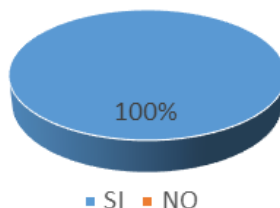
## Methodology, techniques and materials used

The present investigation was of a correlational type, since the causes and effects of the protection of the vital minimum of taxpayers were investigated. The deductive method was applied because human rights and the vital minimum were analyzed, from the general to the particular. The type of study was documentary and its focus was, on the one hand, qualitative because an analysis of secondary sources such as books, newspapers, magazines and internet pages was carried out, and, on the other hand, quantitative because the figures were presented in percentages and figures. results of surveys carried out with businessmen and professionals. For the study, a sample of 50 businessmen and accountants from a population of 100 people was considered, who were randomly selected, using a pilot test and correcting the instrument to filter respondents who had some experience in the matter. The instrument proved its reliability because similar results were found in the application of the pilot test and in obtaining definitive data. The items were validated with the help of experts on the subject.

## Results

In order to establish a general knowledge and provide support with a contributory approach to the protection of the vital minimum and human rights, a questionnaire was applied to 50 businessmen and accountants. The results are shown in the following figures.

**Figura 1.** ¿Sabe qué son los derechos humanos?

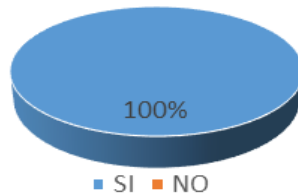


Fuente: Elaboración propia



Figure 1 shows that 100% of the interviewees know what human rights are, which is relevant, since the more the subject is known, the more protection can be demanded from the State.

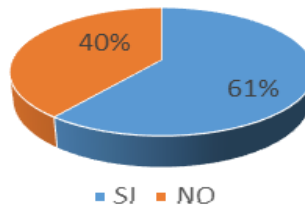
**Figura 2.** ¿Sabe que la Constitución Política de los Estados Unidos Mexicanos protege los derechos humanos?



Fuente: Elaboración propia

Figure 2 shows that all those interviewed know that our Constitution protects human rights, which undoubtedly reflects that the constitutional reforms in this matter have not gone unnoticed by the citizens.

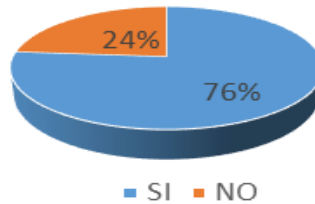
**Figura 3.** ¿Conoce qué organismos internacionales protegen sus derechos humanos?



Fuente: Elaboración propia

Figure 3 shows that 61% of the population is aware of the international organizations that protect their human rights, which indicates that greater dissemination is required on this aspect in order for citizens to learn about the various international institutions and their specific role.

**Figura 4.** ¿Conoce qué organismos nacionales protegen sus derechos humanos?



Fuente: Elaboración propia

According to figure 4, 76% of the interviewees know the national organizations that protect their human rights; This figure is somewhat contradictory, because although in Figure 1 everyone knew what human rights were, 24% do not know the country's institutions that are responsible for defending them.

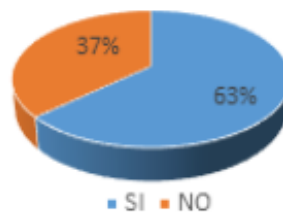
**Figura 5.** ¿Sabe lo que es el mínimo vital?



Fuente: Elaboración propia

Figure 5 shows that 82% know what the vital minimum is, which shows that not everyone knows this precept, hence it may not be required by taxpayers, despite the fact that it is protected by the Constitution itself and is considered as a human right.

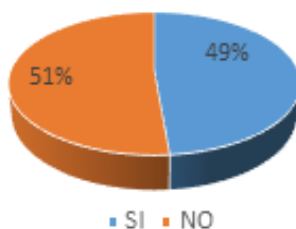
**Figura 6.** ¿Considera que al no ser sujetos del impuesto sobre la renta los trabajadores que perciben salario mínimo, se está protegiendo su mínimo vital?



Fuente: Elaboración propia

Figure 6 shows that 63% of the population considers that by not collecting income tax from workers who receive the minimum wage, their vital minimum is being protected; However, as has been shown, this salary does not meet the needs of an average family, which undoubtedly compromises the food, housing and education of citizens.

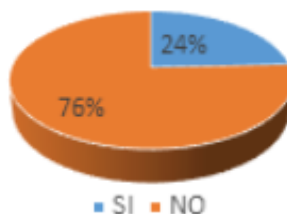
**Figura 7.** ¿Considera que al permitir a ciertos contribuyentes que disminuyan de sus ingresos gastos o deducciones, se está protegiendo su mínimo vital?



Fuente: Elaboración propia

Figure 7 shows that 51% of the interviewees consider that the vital minimum is not protected by allowing certain taxpayers to reduce their income, expenses or deductions. In this regard, it should be noted that the vital minimum is a principle that goes beyond reducing an outlay of income, so it must be recognized that the taxpayer must correct expenses related to his subsistence and that of his family from his gain, although these expenses are not always recognized—or not totally—for the payment of their contributions.

**Figura 8.** ¿Considera de manera general que las autoridades fiscales respetan y protegen su mínimo vital?



Fuente: Elaboración propia

Figure 8 shows that 76% of those surveyed consider that the authorities do not respect or protect the vital minimum. Undoubtedly, the word of the citizen and the perception of him about the protection of his vital minimum are transcendent to determine this lack of human rights, which constitutionally becomes a violation of the supreme law of our country.

## Discussion

To carry out a study related to the vital minimum, there are limitations derived from the lack of knowledge about the concept. Therefore, it can be assured that although it is true that this right is protected by the Political Constitution of the United Mexican States, in practice its fulfillment cannot be demanded when its scope is unknown.

In this sense, various authors have given their concept of the vital minimum, and in this regard they conclude that before contributing, the subject must meet their basic needs for food and housing, among others. In fact, for García Bueno (2002) the contributory capacity is conditioned by a logical requirement: the presence of economic capacity, since the fact that the subject has an index of economic capacity does not guarantee the birth of his contributory capacity. Carmona Cuenca (2006) also indicates that when we speak of the vital minimum we must refer to the right of all individuals to have a minimum amount to meet their most basic needs.

On the other hand, a very weak link between the human right and the fiscal aspect is reflected, since despite being recognized as a tax right, the satisfaction of basic needs is in doubt as this fact is not corroborated by the authority, which leaves human rights in tax matters adrift.

However, over the years, a greater emphasis has been placed on the protection of human rights by different authorities, agencies and organizations, where the tax aspect is undoubtedly included, so in a certain way it will guide the due compliance with the vital minimum.

## Conclusions and recommendations

Currently, human rights play a fundamental role in the protection of people in social, political, gender, environmental and economic aspects, for which concern at the international level has allowed the creation of various bodies and norms that protect dignity of people. In that sense, the economic sphere must encompass the contributory sphere of citizens and the interpretation of the laws must favor taxpayers at all times in favor of the pro-person principle.

In this regard, Mexico has not been the exception, since with the constitutional reforms that entered into force on June 11, 2011, it is perceived and stated that all norms related to human rights will be interpreted in accordance with the Constitution and with international treaties to favor people at all times. Likewise, in article 1 of our Constitution, third paragraph, it is



indicated that the authorities have the obligation to promote, respect, protect and guarantee human rights, which undoubtedly includes the protection of the right to a vital minimum, therefore the authority must ensure that the taxpayer has met all their basic needs, as well as those of his family, in order to be able to pay his contributions.

From our point of view, it is evident that the authority is omitting an important step in the tax collection process: verifying that the taxpayer is in a suitable condition to comply with his tax. In other words, as established in article 123 of the Constitution, section VI, it must be verified that the income received from the work or service rendered is sufficient to cover your basic needs, as well as those of your family, because - otherwise - the taxpayer would not be obliged to pay taxes.

It is important to point out that the study carried out by the authority to the families must be periodic to meet the needs in a material, social and cultural order, since in this way initiatives can be created to improve purchasing power, which it will allow people the enjoyment and enjoyment of their human rights.

If the State or our tax authorities protected the vital minimum, it would have a positive impact on both taxpayers and the authorities, since there would be an evolution in the collection system and there would be a better recognition of human rights and the vital minimum of the subjects required to contribute.

In short, paths are opened for new lines of investigation related to the protection of human rights in tax matters, since the tax field encompasses more acts and procedures where tax authorities must guarantee, protect and interpret the laws in benefit of the principle of pro - person.

## References

- Benvenuto, G. (1959). *Principios de ciencia de las finanzas* (6.ª ed.). Buenos Aires: Depalma.
- Carmona Cuenca, E. (2006). Los derechos sociales de prestación y el derecho a un mínimo vital. *Nuevas Políticas Públicas: Anuario multidisciplinar para la modernización de las Administraciones Públicas*, (2), 172-197.
- Comisión Nacional de los Derechos Humanos [CNDH] (2016). *Salario mínimo y derechos humanos*. Recuperado de [http://www.cndh.org.mx/sites/all/doc/OtrosDocumentos/Doc\\_2016\\_018.pdf](http://www.cndh.org.mx/sites/all/doc/OtrosDocumentos/Doc_2016_018.pdf)
- Constitución Política de los Estados Unidos Mexicanos (1917). México: Cámara de Diputados del H. Congreso de la Unión. Última reforma publicada DOF 06-03-2020.
- García Bueno, M. C. (2002). *El principio de capacidad contributiva como criterio esencial para una reforma fiscal*. México: Universidad Nacional Autónoma de México.
- Gerencie.com. (2019). *El mínimo vital y el salario mínimo*. Recuperado de <http://www.gerencie.com/derecho-fundamental-al-minimo-vital.html>
- Hernández, B. G. (2016). *El mínimo vital y los impuestos sobre la renta y al valor agregado*. México: Cajica.
- Juárez, R. A. (2013). *Administración de la compensación*. México. Recuperado de <https://cucjonline.com/biblioteca/files/original/8b6446e4bc766d7b63f03b4170474e49.pdf>
- Ley Federal del Trabajo (1970). Mexico: Cámara de Diputados del H. Congreso de la Unión. Última reforma publicada en el *DOF* 02-07-2019.
- Naciones Unidas (2015). *Declaración Universal de los Derechos Humanos*. Recuperado de [https://www.un.org/es/documents/udhr/UDHR\\_booklet\\_SP\\_web.pdf](https://www.un.org/es/documents/udhr/UDHR_booklet_SP_web.pdf)
- Nowak, M. (2005). *Derechos humanos: manual para parlamentarios*. Recuperado de <https://www.ohchr.org/Documents/Publications/training13Newsp.pdf>
- Rodríguez, Á. G. y Contreras, P. T. (2018). *El mínimo vital en México*. Universidad Nacional Autónoma de México.
- Rosales, C. M. (2017). El mínimo vital como institución de justicia elemental. *Revista IUS Doctrina*, 10(10). Recuperado de <https://revistas.ucr.ac.cr/index.php/iusdoctrina/article/view/31912>
- Ruiz López, M. E. (2015). Puntos fundamentales de los principios de proporcionalidad y



- equidad tributaria. Ruiz Consultores. Recuperado de  
<https://www.ruizconsultores.com.mx/que-son-los-principios-de-proporcionalidad-y-equidad-tributaria/>
- Senado de la República (21 de junio de 2017). *Iniciativas de ciudadanos legisladores*. Gaceta de la Comisión Permanente. Recuperado de  
[https://www.senado.gob.mx/64/gaceta\\_comision\\_permanente/documento/72549](https://www.senado.gob.mx/64/gaceta_comision_permanente/documento/72549)
- Tenorio, I. C. (2013). *Conceptos constitucionales de la contribución o del derecho al mínimo vital*. Recuperado de  
<http://cesmdfa.tfja.gob.mx/investigaciones/historico/pdf/conceptosconstitucionales.pdf>
- Unión Interparlamentaria (2016). *Derechos Humanos*. Recuperado de  
[https://www.ohchr.org/Documents/Publications/HandbookParliamentarians\\_SP.pdf](https://www.ohchr.org/Documents/Publications/HandbookParliamentarians_SP.pdf)

