

Submission to the UN Independent Expert on the effects of Foreign Debt and other related international financial obligations on human rights, ahead of her country visit to Argentina
June 2022

The Center for Economic and Social Rights (CESR) welcomes the opportunity to provide inputs on the occasion of the Independent Expert's country visit to Argentina, to be held from the 1st to the 10th of August in 2022. This submission builds on CESR's research and on the Principles for Human Rights in Fiscal Policy, developed by the Initiative for Human Rights Principle in Fiscal Policy of which CESR is a member. We invite the Independent Expert to read this document together with the submissions made by other members of the Initiative, ACIJ and CELS, which seek to cover different points included in your call for inputs. CESR's submission focuses on the following four issues included in the call:

1. Information and analysis related to debt sustainability, debt restructuring and negotiations with international financial institutions and creditors.

In 2021, the Argentine Congress passed Law 27.612 (2021) on “strengthening the sustainability of public debt”¹. Even though the law sought to enhance the sustainability of the country's public debt, its provisions are scarce and focused exclusively on debt to private creditors with foreign-law bonds and on discrete aspects of debt with the IMF (it does not cover, for instance, debt to China, which in the case of Argentina is likely very significant²).

While important, the statute is incremental in its effects and of limited scope. There is no information on additional regulations having been put in place. In this context, we would like to suggest that, during her visit, the Independent Expert encourages a more robust understanding of “debt sustainability”, building on the human rights framework. This could be achieved through the expansion of the aforementioned statute's provisions, or through complementary regulations, reports, guidance and mechanisms to bring the spirit of the law to practice.

Argentina has made, during its recent negotiations with the IMF, efforts to promote an understanding of sustainability that is broader than the traditional “repayment capacity” analysis, which has been criticized for its failure to take into account factors such as a country's internal debt and the social cost of debt repayment³. The Independent Expert could consider gathering learnings from those efforts.

¹ Text available, in Spanish, at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/345000-349999/347532/norma.htm>

² Especially in the form of “commercial loans”, see https://www.thedialogue.org/map_list/. But see also https://www.thedialogue.org/MapLists/index.html?initialWidth=1200&childId=iframeContainer&parentTitle=China-Latin%20America%20Finance%20Databases%20-%20The%20Dialogue&parentUrl=https%3A%2F%2Fwww.thedialogue.org%2Fmap_list%2F#/Policy/List/amount.

³ See, e.g., The Return of Debt: Latin America Faces a New Context, Latindadd (Dec. 2017), <http://www.latindadd.org/wp-content/uploads/2019/04/TheReturnOfTheDebt.pdf>.

In CESR's view, traditional debt sustainability analysis frameworks fail for two main reasons. First, they fail to be comprehensive, realistic, informed and transparent. For example, with regards to Argentina's 2018 Stand-by agreement with the IMF (the biggest in the history of the Fund), it has been argued that "the Fund failed to ensure adequate safeguards for the provision of its general resources", due to its largely unrealistic assumptions, and that "...it was reasonably foreseeable that the design of the programme would result in an extension of the duration and magnification of the degree of disequilibrium in Argentina's international balance of payments"⁴. This has led scholars to argue that the agreement should be deemed void⁵. The process through which Argentina ended up entering such an agreement was opaque, and the government failed to provide information even on the very limited procedural requirements that the Argentine legislation imposes⁶. Therefore, opportunities to make evident the narrow, unrealistic analysis that was being made were missed.

The second related reason for the limitations of the current debt sustainability analysis is that it does not reflect human rights' concerns, failing to acknowledge the human impacts of States' indebtedness and their human rights' obligations. Notably, human rights require, among other things, transparency and meaningful participation around fiscal decisions, which could help address the limitations described above.

More importantly, under international human rights' law, Argentina has committed to mobilizing the maximum of its available resources to progressively achieve the full realization of economic, social and cultural rights (ESR)⁷. Debt sustainability analyses that focus mainly on repayment issues ignore that the large amounts of resources that are devoted to debt-paying undermine many States' capacity to comply with such obligation. As argued by CESR in the past, there is a mutually reinforcing relationship between high levels of debt and the systematic deprivation of human rights. Indeed, "...debt servicing is often undertaken at the expense of social investment. When debt payments squeeze government budgets, or debt relief comes with attached conditions, this leads to the privatization of public assets; cuts in social protection programs; and disinvestment in essential public services"⁸

Notably, States Extraterritorial obligations (ETOs, further developed below) are also relevant here. Under the Universal Declaration on Human Rights (UDHR), States have extraterritorial obligations to not only respect human rights, but to help others fulfill those rights in proportion to each State's resources. Importantly, States do not lose those obligations when acting as members of international institutions such as the IMF.

⁴ Patricio Ferreira Lima, Karina and Marsh, Chris, The IMF's 2018 Stand-By Arrangement with Argentina: An Ultra Vires Act? (January 10, 2022). Available at SSRN: <https://ssrn.com/abstract=4004595> or <http://dx.doi.org/10.2139/ssrn.4004595>.

⁵ Idem.

⁶ For an expansion of this argument, see <https://fmiargentina.com/introduccion/>

⁷ For example, under the International Covenant on Economic, Social and Cultural Rights or the American Convention on Human Rights.

⁸ See CESR, Key Concepts, "Sovereign debt & human rights", available at https://www.cesr.org/sites/default/files/2022/Sovereign_Debt_and_Human_Rights.pdf

In recent years, even the IMF has begun to recognize that debt sustainability analysis is a complex issue⁹, although its proposals do not fully consider social spending, public investment, and debt's overall impact on human rights. The United Nations General Assembly in turn has already recognized respect for human rights as part of the “principle of sustainability” for debt restructuring¹⁰. Furthermore, a previous mandate holder of your mandate proposed benchmarks for a multilateral framework for debt restructuring which include human rights considerations¹¹, such as the need to: a) make restructuring compatible with human rights obligations; b) include human rights impact assessments¹² in any debt sustainability analyses; c) ensure that minimum essential levels of the enjoyment of ESC rights can be satisfied even in financial crises; and d) reflect the human rights principles of impartiality, transparency, participation, and accountability.

The Principles for Human Rights in Fiscal Policy¹³, launched in 2021, further distill what a human rights' approach to debt sustainability means. They claim that States should:

- Undertake independent analysis of debt sustainability, incorporating assessments of the effects on human rights and of the distributive impacts resulting from the trajectory of interest payments on debt. They should take into consideration the financing required to fulfill human rights obligations and international commitments relating to sustainable development in external debt sustainability assessments.
- Take measures to ensure negotiations and modifications for debt crisis prevention are orderly, equitable and guarantee the fulfillment of human rights obligations¹⁴. This includes incorporating collective action clauses in negotiated debt contracts to facilitate and expedite negotiation procedures.
- When conducting debt sustainability and debt relief assessments, include the implementation of social and environmental sustainability regulations, as well as a broader vulnerability index, to ensure that debt servicing does not undermine the enjoyment of human rights¹⁵.
- International financial institutions, both in their loan-granting and when providing technical assistance, should also incorporate a human rights dimension into debt sustainability analysis and participate in negotiations on debt relief and restructuring. This should be

⁹ The International Architecture for Resolving Sovereign Debt Involving Private-Sector Creditors – Recent Developments, Challenges, and Reform Options, International Monetary Fund 1 (23 Sept. 2020).

¹⁰ See A/RES/69/319, par. 8.

¹¹ See Juan Pablo Bohoslavsky, Towards a multilateral legal framework for debt restructuring: Six human rights benchmarks States should consider, OHCHR (Jan. 26, 2015), <https://www.ohchr.org/Documents/Issues/Development/IEDebt/DebtRestructuring.pdf?user=4818>.

¹² On HRIAs, see also

https://www.ohchr.org/sites/default/files/Documents/Issues/IEDebt/GuidePrinciples_EN.pdf

¹³ <https://derechosypoliticafiscal.org/en/>

¹⁴ Guzmán, M and Stiglitz, 2016, “A Soft Law Mechanism for Sovereign Debt Restructuring Based on the UN Principles. FES. International Policy Analysis”, UNCTAD, 2019. Trade and Development Report 2019: Financing a Global Green New Deal, pp. 71-101.

¹⁵ Report of the Independent Expert on the effects of foreign debt and other related international foreign obligation of States on the full enjoyment of all human rights, particularly economic, social and cultural rights. A/71/305 (5 August 2016).

done with the aim of freeing up fiscal space to safeguard the capacity of States to meet their human rights obligations¹⁶.

The aforementioned principles and benchmarks could be included in Argentine debt-sustainability legislation, through an update or reform of the current normative framework.

2. Issues related to taxation, revenue and the use of the maximum of available resources for the realization of human rights.

Tax resources make up the vast majority of public resources in Argentina, and national taxes (as opposed to local taxes), in turn, account for the majority of those resources. Despite its duty to use the maximum of available resources, Argentina has a system of abundant “tax expenditures”¹⁷ (including tax exemptions, holidays and incentives). Because tax expenditures, by definition, imply reducing the revenue that the State is able to collect, they may contradict States’ obligation to mobilize the maximum available resources to secure ESR. In other words, through these measures the State deliberately forgoes significant amounts of revenue, allegedly to pursue policy goals which are often not aligned with its human rights’ obligations (such as fostering the mining sector). From a human rights point of view, tax expenditures may also be problematic in light of equality and nondiscrimination, both because they often benefit high-income sectors and because revenue losses are “compensated” by relying more heavily on indirect taxes, often considered easier to collect.

There are several problems around tax expenditures in the country, including the following:

- Argentina uses a very minimal estimate to calculate the costs of tax incentives, exemptions etc., which likely underestimates the revenue foregone and is in tension with the country’s obligation to regularly assess whether the maximum of available resources have been used to progressively achieve ESR.
- Tax expenditures increased steadily, as a percentage of GDP, especially between 2004 and 2017.
- Tax expenditures are under-discussed and once incorporated they are not reviewed periodically. For example, most tax expenditures do not include sunset clauses.
- Many of the tax expenditures in force are inequitable. For example, there are tax exemptions for big football clubs¹⁸, mining activities, and for the income tax paid by federal judges.

¹⁶ Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights. The responsibility of international financial institutions for complicity in human rights violations, (2019), A/74/178, par. 87. See also Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Guiding principles on foreign debt and human rights, A/HRC/20/23.

¹⁷ Defined by Argentine legislation as the revenue that the State fails to collect due to differential treatments granted to a person, activity or area.

¹⁸ See Law 16.774.

Argentina also faces deep problems in compliance with tax rules, losing large sums of resources over tax avoidance and evasion¹⁹. Furthermore, the regulation on “forgiveness” of taxpayers debts in Argentina is unclear and there are no public and general criteria that indicate in which cases or for what purposes they should proceed. Although these measures are usually considered exceptional, in Argentina some tax debts’ cancellations have been “hidden”, for example, within the annual budget laws.

Furthermore, the Argentine tax system is disproportionately dependent on indirect taxes, levied on the consumption of goods and services, which particularly impact people with lower incomes and working class women. In other words, Argentina does not take all the measures within its power to reduce inequality through its tax policy, despite its obligations of equality and non-discrimination. The Argentine State provides no reasons or evaluations related to why it prioritizes indirect taxes (as evidenced, among other things, by the maintenance over decades of both direct and indirect taxes originally incorporated as “emergency” taxes).

The above-mentioned Principles for Human Rights in Fiscal Policy also provide guidance on how to enhance policies in this area, which the Independent Expert could consider recommending to the Argentine Republic, for example by:

- Strictly justifying and assessing tax expenditures, with measures such as:
 - Ensuring prior assessment of the social impacts of tax expenditures, and subjecting them to public hearings.
 - Conditioning tax expenditures to the achievement of measurable objectives and setting a time limit for them through expiration clauses.
 - Regularly and publicly assessing existing tax expenditures. Their continuity must be conditioned on the verification of specific progress towards legitimate aims in line with the human rights framework.
 - Limiting tax benefits to critical activities or sectors, avoiding widespread tax collection waivers. In the case of business incentives, prioritize those linked to investments. Tax expenditures must not give preference to high earning sectors and large corporations.
 - Only establishing expenditures by law.
- Guaranteeing transparency in tax expenditures, through measures such as:
 - Publishing all differential treatments established in their tax systems, both at the national and subnational levels, including exemptions, fiscal benefits, waivers, and debt cancellations.
 - Making information available in open formats (e.g. csv files), including benefits’ effective dates, assessments, and the people and companies who are beneficiaries of the incentives. This should include disaggregation by income

¹⁹ It is estimated that for 2007 the rate of VAT evasion in Argentina was 19.8%, while that of the Income Tax of 49.7% (being the identical rate for the income tax of natural and legal persons). This rate of income tax evasion is substantially higher than that reported by ECLAC for Brazil, Chile, Colombia, and Mexico. ECLAC also estimates that Argentina, for 2015, lost an equivalent of 2% of its GDP due to evasion of the Value Added Tax, an equivalent of twelve thousand seven hundred million pesos (\$ 12,700,000,000).

decile, gender, race, region, business type, sector, waived tax obligation, and estimated cost, among other relevant information.

- Quantifying the total fiscal cost of expenditures by beneficiary, sector, and type of benefit or exemption. This should be done both at the national and sub-national levels, including the exceptions contained in bilateral and multilateral agreements. The methodology used to estimate the cost of tax expenditures should be published, explaining the reference framework used.
- Including the publication of tax expenditures in the budgetary cycle calendar to ensure that the final budget accounts for them.

3. Issues related to Illicit financial flows and corruption; access to information, accountability and transparency mechanisms in this domain.

Illicit financial flows inevitably have a cross-border component to themselves. This means that even international illicit financial transactions are carried out through the SWIFT messaging system: a secure communications protocol used amongst thousands of banks to communicate and authorize credits or debits of accounts.²⁰ Evidence from numerous past scandals like the Russian Laundromat have shown us that accounting movements are not always decided on the basis of "economic reality".²¹ The cross-border characteristic of illicit financial flows is built on the conventions established by the international banking correspondence system, with the US dollar being the dominant currency being used. More importantly, banks that make accounting movements go via jurisdictions based on convenience as a matter of fact should be considered as illicit too and must be recognized as facilitators. Enforcement agencies of global South countries, however, are not always privy to this information held by SWIFT which has often been used by the US to detect money laundering or terrorist financing activities.

Timely detection of cross-border illicit financial flows is useful in recovering hidden assets and wealth for that country. Financial secrecy at this point is deliberately being maintained by international banks and financial institutions to keep countries from being able to access real time tax and financial information and take prompt action. In a step towards transparency, we recommend that any international transaction under SWIFT must include information on the ultimate beneficial owner.²² International cooperation on matters of illicit financial flows and in particular tax abuse must bridge geopolitical differences in how information is shared with global South countries.

As CESR, we recommend creating a public register of ultimate beneficial ownership that includes information on direct or indirect control, influence, voting rights or significant interest through contract or otherwise. In the definition adopted by Argentina's beneficial ownership register on Foreign Passive Entities through Article 90 of Law No. 27,260, "the final beneficiary

²⁰ Andres Arauz (2020): Technical Module : The Role of Banks in Latin America as a Facilitator of Illicit Financial Flows. https://www.cbgaindia.org/wp-content/uploads/2020/03/Module-5_Technical-Module_The-Role-of-Banking-in-Latin-America-as-a-Facilitator-of-Illicit-Financial-Flows.pdf

²¹ See <https://www.occrp.org/en/laundromat/the-russian-laundromat-exposed/>

²² Andres Knobel (2019): Data on Bank Transfers: Complementing Automatic Exchange of Information and Detecting Illicit Financial Flows in Real Time. Tax Justice Network <https://taxjustice.net/wp-content/uploads/2019/07/Swift-proposal-2019-Tax-Justice-Network.pdf>

must be identified, understanding as such the human person who owns the capital or voting rights of a company, legal entity or other contractual entity or legal structure - regardless of the percentage of participation-, or that by any other means, exercises direct or indirect control of said legal person, entity or structure.”²³ The central register on legal entities is maintained by the Administración Federal de Ingresos Públicos (AFIP). Information available from legal entities required to maintain a shareholder registry must also be reflected in the public beneficial owner register. So far, there is no central register on real estate but decentralized information is accessible to certain professions (lawyers, etc.) at the provincial level. ²⁴

In CESR’s view, a public register on ultimate beneficial ownership must cover all legal entities, instruments and arrangements like companies (listed/unlisted, assets or holdings), foundations, trusts, associations (unincorporated/ incorporated or body of persons), different classes of investment funds, cooperative societies and limited liability partnerships. It is further recommended that the threshold for identifying the ultimate beneficial owner should be at zero as any other threshold would be susceptible to further abuse. The threshold appointed by Argentina’s beneficial ownership register is around 1%. While Argentina’s legal framework on cracking down on complicated company structures and ownership secrecy is an improvement in comparison to other G20 countries, the beneficial ownership register is yet to be made open to all. This cross-verification of information on ownership (including assets) will also prove to be useful between jurisdictions is crucial to not only tackle different modalities of illicit financial flows but also be able to recover stolen assets. In March 2022, the ruling coalition introduced a bill to seize undisclosed assets held by citizens overseas in order to pay off the \$44.5 billion debt owed to the IMF as part of the 2018 loan.²⁵ As of December 31, 2021, nearly \$417.5 billion worth of undeclared assets are held by Argentinian citizens offshore. Even with a bubbling socio-economic crisis, the Argentinian government is forced to prioritize servicing their debts to international financial institutions like the IMF over emboldening their public services as part of its commitment to mobilize “maximum available resources” to ensure economic, social and cultural rights of the citizens.

Along with ownership transparency, information on financial accounts of companies on a country-by-country basis must be made available in an open data format. At present, Argentina has no legislation calling for public country by country reporting of multinational companies.

These recommendations and considerations must be grounded in human rights’ obligations, including Argentina’s duty to use its maximum available resources to ensure ESR, and States’ extraterritorial obligations under international human rights’ law. As consistently stated by the UN Committee on Economic, Social and Cultural rights, “available resources” are not limited to existing public resources. On the contrary, when necessary, mobilizing resources may require increasing the availability of resources to generate revenue that is sufficient to effectively

²³ See <https://www.boletinoficial.gob.ar/detalleAviso/primera/227833/20200415>

²⁴ Financial Secrecy Index (2022). Tax Justice Network <https://fsi.taxjustice.net/country-detail/#country=AR&period=22>

²⁵ See <https://batimes.com.ar/news/economy/frente-de-todos-senators-eye-bill-to-tax-undeclared-assets-held-overseas.phtml>

realize rights²⁶, for example, by recovering resources lost to illicit financial flows, tax evasion and avoidance²⁷.

Similarly, because of the above-mentioned cross-border component of Illicit financial flows, States' Extraterritorial obligations (ETOs) -this is, obligations they have to people beyond their borders- under international law²⁸ are of utmost importance. Among other things, ETOs indicate how States should act in the global economy, including around financial flows over which richer countries have greater influence²⁹. Because of their ETOs, States must promote international cooperation with a human rights focus, support national efforts to realize rights, and abstain from any conduct that undermines another State's capacity to fulfill their own obligations, including by facilitating tax abuse. However, these obligations are often overlooked, especially by rich countries that facilitate practices such as presiding over tax havens. The Independent Expert could look into how Argentina's debt problem is deepened by such countries' failure to comply with their ETOs.

4. Information about access to information on financial and fiscal issues at the federal and provincial levels, with relevant disaggregation and, when possible, periodicity.

In Argentina, access to information on fiscal and financial issues is quite distinct at the federal, provincial, and municipal levels. Overall, the most copious and updated information is found at the national level, and is more detailed for budgetary expenditures³⁰. However, even at the national level, significant limitations in access to fiscal information remain, in particular in connection to taxes (as opposed to information on budgets, which is abundant)³¹. Limitations include:

- Lack of production of certain information, in particular the one necessary to assess the fairness of the tax system, such as:
 - Which sectors benefit from tax expenditures and benefits;
 - The tax burden borne by each sector of the population;
 - Measuring inequality before and after taxes;
 - The impact of tax policy on human rights.

²⁶See CESR, Recovering Right Series, "Governments' obligation to invest "maximum available resources" in human rights", available at https://www.cesr.org/sites/default/files/CESR_COVID_Brief_1.pdf. See also Committee on the Rights of the Child, General comment No. 19 (2016) on public budgeting for the realization of children's rights (art. 4), CRC/C/GC/19, paragraphs 11 and 57.

²⁷ See, e.g., Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of Honduras, E/C.12/HND/CO/2; Committee on Economic, Social and Cultural Rights, Concluding observations on the combined second to fifth periodic of Kenya E/C.12/KEN/20/2-5, par.18

²⁸ Such as those contained in ICESCR, the UN Charter, and Universal Declaration on Human Rights (UDHR), articles 22 and 28.

²⁹ See CESR, Recovering Right Series, "Governments' obligation to cooperate internationally to realize human rights", available at https://www.cesr.org/sites/default/files/Issue%20Brief%202_.pdf

³⁰ To have an understanding of the gaps in budget transparency at the provincial level, the Independent Experts can refer to this [link](#).

³¹ See, in general, <https://www.economia.gob.ar/onp/>

- Barriers to access information that the State has or should have produced, such as information on the amounts and beneficiaries of tax forgiveness programs, or the socio-economic profile of the people benefited by these policies.
- The broad application of the figure of “tax secrecy”.
- The lack of institutionalized channels for participation in the design, implementation or evaluation of tax policy especially from a gender lens.
- Lack of systematic and public estimations of tax avoidance and evasion.

In the case of information on sovereign debt in particular, important gaps remain, and transparency is weaker than in other spheres of fiscal policy. For example, there is ongoing litigation to access the documents and evaluations done before entering the 2018 Stand-by agreement with the IMF, since the government provided no timely data on the precedents of the agreement.

In this context, the Independent Expert could consider looking into how to secure transparency and participation in the trimestral IMF **country reviews that are foreseen in the current agreement with the Fund**, where existing conditionalities could likely be increased³² with little or no information about them.

The already mentioned Principles for Human Rights in fiscal policy provide useful guidance on how to enhance transparency, participation and also accountability regarding financial issues in Argentina and align them with the country’s human rights commitments. Relevant standards include the following recommendations for States, under the assumption that fiscal policy must be transparent³³, participatory³⁴ and accountable:

- The State should produce, publish, and provide access to high quality fiscal information. This information must be structured clearly and comprehensively, and be made available for review by all persons. In particular:
 - It should publish clear and measurable objectives for fiscal policy, regularly report progress towards them, and explain any deviations from plans³⁵.
 - Publish information and data (regarding taxation, budget, and debt) that is reliable, timely, accessible, and comprehensive in open and reusable formats³⁶.

³² See

https://assets.nationbuilder.com/eurodad/pages/511/attachments/original/1590680908/Unhealthy_conditions.pdf?1590680908

³³ Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Guatemala E/C.12/GTM/CO/3 (2014); Burundi E/C.12/BDI/CO/1, par. 14; Honduras E/C.12/HND/CO/2 (2017), par. 20; Concluding Observations El Salvador E/C.12/SLV/CO/3-5 (2014); CRC: General Comment No. 19, par. 76. Report of the Special Rapporteur on extreme poverty and human rights, 22 May 2014, A/HRC/26/28, pars. 20–23.

³⁴ Committee on Economic, Social and Cultural Rights, Concluding observations on the combined third, fourth and fifth periodic reports of El Salvador, E/C.12/SLV/CO/3-5; Burundi E/C.12/BDI/CO/1; Guatemala, E/C.12/GTM/CO/3; Honduras, E/C.12/HND/CO/2; United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/6; Costa Rica, E/C.12/CRI/CO/5.

³⁵ High-Level Principles on Fiscal Transparency, Principles of Public Participation in Fiscal Policies by the Global Initiative for Fiscal Transparency, available at <https://www.fiscaltransparency.net/principles-and-guidance>

³⁶ Committee on the Rights of the Child, General Comment No. 19 (2016) on public budgeting for the realization of children’s rights (art. 4).

- Modernize its information systems and utilize the full potential of technology as a tool to make fiscal transparency effective.
- The State should ensure that fiscal information is based on classification and disaggregation criteria that enable an analysis with a gender and human rights perspective³⁷.
 - It should generate standardized information systems that enable updated assessments of the incidence of fiscal policy, and its impact on different people, groups and populations (i.e. data on utilization levels of social sector schemes for the current fiscal year with previous years to understand fund flow barriers). Information should recognize intersectionality and be disaggregated by sex and sexual orientation, race, age, language, ethnicity, religion, disability, belonging to an Indigenous community, income level, territorial scope, household structure and other relevant variables³⁸.
- The State should produce high quality indicators on government schemes and programmes, that include fiscal criteria, regarding the fulfillment of their human rights obligations. This should be done in accordance with their duty to submit reports to regional and international systems of human rights protection and promotion³⁹.
- The State should strictly justify exceptional limitations to the right to information and guarantee that those limitations are subject to review by impartial authorities, prioritizing access to fiscal information in case of doubt⁴⁰.
 - It should establish a presumption in favor of the public availability of fiscal information⁴¹, and balance tax secrecy regulations with the right to access public information. With that goal, the State should Interpret tax secrecy in the strictest way possible, only applying secrecy if it is legally or constitutionally stipulated. Tax secrecy should not cover information regarding tax amnesties or tax expenditures.
- The State should undertake independent, participatory, and regular impact assessments on the extraterritorial effects of financial secrecy policies, indicating their methodology⁴².

³⁷ By way of example see, Concluding observations of the Committee on Economic, Social and Cultural Rights, Spain, E/C.12/ESP/CO/5; for budgetary information, see also, indirectly, Report of the Secretary-General, "Compilation of guidelines on the form and content of reports to be submitted by States parties to the international Human Rights Treaties" (2009) HRI/GEN/2/Rev.6, para 43.

³⁸

³⁹ Protocol of San Salvador, Article 19, read together with the norms for submitting periodic reports as established in Article 19 of the Protocol and other documents.

⁴⁰ Inter-American Court of Human Rights, Case of Claude Reyes et al v. Chile, Judgement of September 19, 2006 (Merits, Reparations and Costs).

⁴¹ High-Level Principles on Fiscal Transparency, Principles of Public Participation in Fiscal Policies by the Global Initiative for Fiscal Transparency, available at <https://www.fiscaltransparency.net/principles-and-guidance>

⁴² Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of Switzerland, CEDAW/C/CHE/CO/4-5, par. 41.

- The State should ensure that fiscal policy decision-making processes are open to informed public debate⁴³, through inclusive, broad, transparent and deliberative social dialogue processes. These decision-making processes should be based on solid evidence from different sources and use accessible language⁴⁴. Participation must be equitable, comprehensive, significant, multisectoral⁴⁵ and inclusive.
 - It should include civil society and community based organizations in debates around fiscal policy, provide relevant training⁴⁶, and conduct communications campaigns.

⁴³ Report of the Special Rapporteur on extreme poverty and human rights, 22 May 2014, A/HRC/26/28, with reference to A/HRC/17/34/Add.2, pars. 36 to 38; General Comment No. 34 of the Human Rights Committee (CCPR/C/GC/34), par. 19. Report of the Special Rapporteur on extreme poverty and human rights, on the right to participation of people living in poverty, A/HRC/23/36.

⁴⁴ Guiding principles on human rights impact assessments of economic reforms, Report of the Independent Expert on the effects of foreign debt, A/HRC/40/57. Par. 11.6.f

⁴⁵ Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, “Effects of foreign debt and other related financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights”, A/73/179.

⁴⁶ Independent Commission for the Reform of International Corporate Tax (ICRICT), “Four ways to tackle International Tax Competition”, available at: https://static1.squarespace.com/static/5a0c602bf43b5594845abb81/t/5a25cdcbec212dbeed80d78c/1512426962658/ICRICT_Tax+Competition+Report_ENG_web+version+%281%29.pdf