Date: 27 October 2023

To:
The Independent Expert on the effects of foreign debt and other related international financial obligations on human rights.
The Special Rapporteur on the Right to Development.
The Special Rapporteur on extreme poverty and human rights.
The Independent Expert on the promotion of a democratic and equitable international order

Cc:
The Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance.
Special Rapporteur on the Right to Education
Special Rapporteur on the independence of judges and lawyers
Special Rapporteur on Freedom of opinion and expression
Special Rapporteur on Contemporary forms of slavery including its causes and consequences
Working Group on the use of mercenaries
Working Group on business and human rights
Special Rapporteur on human rights and the environment
Independent Expert on human rights and international solidarity
Special Rapporteur on the promotion and protection of human rights in the context of climate change
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
Special Rapporteur on the situation of human rights defenders
Working Group on Discrimination Against Women and Girls, its causes and consequences
Independent Expert on the enjoyment of human rights by persons with albinism

Subject: Communication requesting your intervention in the continuing violations of human rights by the Organization for Economic Co-operation and Development and its members due to their failure to reform global tax rules and the related policies and practices of the United States, the United Kingdom of Northern Ireland and Great Britain, France, Switzerland, Luxembourg and the Netherlands.th

Dear Mandate holders,

We, the undersigned organizations, write to request you to call for remedial action from governments who have failed to reform the global taxation system in line with their international human rights obligations. For the reasons we will further articulate, the conduct of these governments coupled with the global financial architecture, in its current form, undermine the achievement of substantive racial and gender equality both within and between states whilst undermining the fiscal capacity of states, especially in the Global South, to give effect to economic, social, cultural and environmental rights.

In this context, we are particularly concerned by the dynamics of negotiations under the Base Erosion and Profit Shifting initiative of the Organization for Economic Co-operation and Development (OECD). The OECD is an institution mandated to represent the interests of 38 of the most industrialized nations which, as such, is not an inclusive or representative forum for global negotiations on tax cooperation. We note the failure of the OECD to take corrective action on the concerns you have raised with it about the negative effects of its proposed 'Two-Pillar Solution' on the taxing rights of countries of the Global South and consequently on the availability of resources for the progressive realization of economic, social and cultural rights and the right to development. To the contrary, the OECD Outcome Statement,[1] adopted on 11 July 2023, includes rules that will further reduce the tax payable to Global South countries and erode their taxing rights. The OECD has also sought to undermine efforts under the aegis of the United Nations to develop more effective multilateral standards for strengthening international tax cooperation.

As pointed out in the letter sent to the OECD by the Independent Expert on the effects of foreign debt, the Special Rapporteur on the right to development, the Independent Expert on the promotion of a democratic and equitable international order, and the Special Rapporteur on extreme poverty and human rights,[2] the Two-Pillar Solution "*will reduce the ability of low and middle-income countries to mobilize sufficient resources to invest in essential public services and to ensure the realization of human rights, including the rights to health, social security, and food, all of which are guaranteed under the International Covenant on Economic, Social and Cultural Rights*." The letter also highlighted that "*the implementation of the Two Pillar Solution may constitute a retrogressive step in the implementation of the International Covenant on Economic, Social and Cultural Rights, if it results in reducing the tax revenues for developing countries. … and that the division in residual profits (subject to re-allocation) and other profits (subject to the existing transfer pricing system) provided under Pillar One results will facilitate aggressive tax optimisation strategies and tax evasion*."

The discriminatory impacts of the OECD's Two-Pillar Solution, if implemented, will have a strong gendered and racialized character. In reifying patterns of economic extraction with historical origins in systems of colonialism and slavery, the deal has the potential to prejudice the predominantly non-white nations of the Global South. The continuing siphoning of resources from public coffers in the Global South would foreseeably have a particularly pernicious impact on the human rights of women (in their diversity), racially marginalized communities, people with disabilities, indigenous peoples, minorities and other marginalized groups. As such the OECD's proposed deal is incompatible with the standards of dignity, substantive equality and intersectionality derived from the International Convention on the

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[1] Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from Digitalization of the Economy, 11 July 2023, available at: https://www.oecd.org/tax/beps/outcome-statement-on-the-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2023.pdf. It was approved by 138 of the 143 members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), see https://www.oecd.org/tax/beps/oecd-g20-inclusive-framework-members-outcome-statement-on-two-pillar-solution-to-address-tax-challenges-arising-from-digitalisation-july-2023.pdf.

[2] Letter from Several mandates to OECD, available online: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=27165.

Elimination of All Forms of Racial Discrimination (ICERD); and the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

We also wish to submit information about the harmful conduct of the following OECD member states in particular: France, the Netherlands, Luxembourg, Switzerland, the United Kingdom of Great Britain and Northern Ireland (UK) and the United States (US).

Following the tabling of a new resolution by Nigeria on behalf of the Africa Group to formally commence negotiations on a legally binding UN tax convention, deliberations are now underway at the UN.[3] A further vote will likely take place in late November to determine whether the process can meaningfully move forward, but a small number of powerful nations will likely seek to maintain the status quo. As such, the coming weeks represent a make-or-break moment for efforts to redress structural injustices embedded in the global financial architecture. It is with these facts in mind that we request you intervene. The negotiations now underway will determine the future ability of countries to raise much needed revenue to resource fundamental rights including the rights to health, education and social security. We believe this intervention could take the form of a joint allegation letter from the mandate holders acting as a collective.

I. Background

As you are aware, in October 2021, members of the OECD announced that they had finalized negotiations and agreed to establish a Global Tax Agreement consisting of Two Pillars:

- Pillar One changes where the largest multinationals (with revenues of EUR 20 billion or more and a profit margin of 10% or greater) pay tax, by developing a formula for allocating their taxable profits to countries where their consumers are located, when they don't meet the "physical presence" test in a jurisdiction. However, it covers a small proportion of companies and industries, will raise a miniscule amount of revenue for developing countries, and fails to address the challenges linked to the existing transfer pricing system.[4] In return, however, Global South countries are required to give up their rights to impose other forms of taxation, such as progressive digital services taxes and more importantly, 'significant economic presence' measures such as those of Nigeria and India, which will reduce rather than increase their fiscal space to realize rights. As such, the Pillar One proposals privilege the interests of former colonial powers at the expense of former colonized states, and in so doing reify the unjust distribution of resources both within and between states that is rooted in structures of historical racial oppression, slavery, and colonialism which largely remain unaccounted for today.

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[3] https://taxjusticeafrica.net/resources/press-release/draft-un-resolution-tax-cooperation-win-africa-and-global-south.

[4] For an in-depth critique of the OECD's proposed tax agreement, see: BEPS Monitoring Group, July 2023, Taxing Multinationals: The BEPS Proposals and Alternatives. Available at: https://static1.squarespace.com/static/5a64c4f39f8dceb7a9159745/t/64a59dac21100f1f90f38c41/1688575404801/The+BEPS+Proposals+and+Alternatives.pdf.

- Pillar Two subjects any company with over EUR 750 million of annual revenue to a 15% global minimum corporate tax, which is lower than what is currently in place in many Global South countries. As you highlighted in the aforementioned letter from special mandates to the OECD, this rate is much lower than what has been advocated by a number of international panels and experts. It could effectively set a ceiling rather than a floor and, as with Pillar One, will raise limited additional revenues at a time when countries need to maximize resources to address a global polycrisis which is disproportionately impacting marginalized communities in Global South countries.

The purpose of the original OECD/G20 project was to ensure taxation of multinational enterprises where their activities take place and to apportion their total global profits in proportion to their real activities for taxation in each country. It was meant to prevent multinational enterprises from taking advantage of loopholes in international tax rules which enable them to shift profits away from jurisdictions where they actually generate economic value to low or no tax jurisdictions (which are largely within OECD countries or jurisdictions under their political control). It was also meant to respond to new tax challenges for developing countries created by digitalization of the economy and to the pressing need for such reforms after a global pandemic which has increased inequalities and strained public resources particularly in Global South countries. The actual measures proposed under the Two-Pillar Solution have however failed to meet the original commitment to stop illicit financial flows, including corporate profit shifting, and are ineffective and unfair especially for countries in the Global South.

As your letter to the OECD pointed out:

"*The Two-Pillar-Solution may mainly benefit some high-income countries while lower-income countries will lose important shares of their revenues. Lower levels of revenue collection in developing countries would weaken the States' capacity to fulfil their human rights obligations due to their inability to adequately fund social policies and public services essential for human rights [such as the adequate standard of living, health, education and social security], disproportionately affecting the poorest segments of the population. The socio-economic impact of the COVID-19 pandemic has brought to the fore the importance of public services for which revenue in low- income countries is essential. In addition, the process and negotiation of the Two-Pillar Solution under the auspices of the OECD and the G20 are considered to have worsened already existing imbalances in taxing rights and in the effective participation of all States on equal footing.*"

In addition, negotiations and technical work have continued since October 2021, with the effect that the proposals are now significantly different in content and projected impact from the stage at which this loose political agreement was announced. In addition to Pillar One losing almost all of its ambition (rather than applying to all profits of all multinationals, as the G-24 intergovernmental group of countries had originally proposed, it will only apply to a small

part of the profits of fewer than 100 multinationals),[5] It is now clear that Amount A of Pillar One will not come into force because of a new rule which requires, in effect, US participation before further progress. Political deadlock in the US means such participation is currently impossible, and the revenue impact will therefore be zero. But even were US participation to be forthcoming eventually, the proposal will now only generate trivial amounts of revenue - in particular for countries of the Global South, many of which would suffer a net loss because of the simultaneous outlawing of existing measures.[6]

Turning to Pillar Two, the global minimum tax, the collapse in ambition and fairness has been even more pronounced. The latest analyses show that, far from the OECD's repeated claim that an increase of US$220 billion in annual revenues could be obtained, '[T]he evidence suggests that Pillar Two revenue gains fall in a range between $68 and $105 billion… Furthermore, developing countries will not be the main beneficiaries. High per capita income countries and investment hubs in the Americas, Europe, and Asia can count on more than 80 percent of additional tax revenue. If no-tax and low-tax jurisdictions implement qualified domestic-minimum top-up taxes (QDMTTs), the picture will be more skewed in favor of investment hubs'.[7]

For the reasons we will set out in more detail below, a few OECD member states play a particularly important role not just with regards to the Two-Pillar Solution but the broader transnational phenomenon of illicit financial flows, financial secrecy and tax havens which contribute to revenue losses for countries in the Global South.

Since you communicated with the OECD there have been several important developments. First, in November 2022, the UN General Assembly adopted a unanimous resolution to begin intergovernmental discussions on ways to strengthen international tax cooperation, including the possibility of developing a UN-led global tax negotiation process which could see global standard setting in taxation being shifted from the OECD to the UN.[8] In February this year, the UN Secretary-General (UNSG) made a call for submissions in order to present a report with recommendations to the General Assembly in accordance with this resolution. The UNSG's

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[5] BEPS Monitoring Group, 2023, 'The BEPS proposals and alternatives', *BMG Briefing*, https://www.bepsmonitoringgroup.org/news/2023/7/5/the-beps-proposals-and-alternatives; South Centre, 2023, 'Statement by the South Centre on the Two Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy', https://www.southcentre.int/sc-statement-two-pillar-solution-28-july-2023/#more-21951. '

[6] Mona Barake, Elvin Le Pouhaer, and Quentin Parrinello, 2023, 'The Long Road to Pillar One Implementation: Impact of Global Minimum Thresholds for Key Countries on the Effective Implementation of the Reform', *EU Tax Observatory Note*, https://www.taxobservatory.eu/publication/the-long-road-to-pillar-one-implementation-impact-of-global-minimum-thresholds-for-key-countries-on-the-effective-implementation-of-the-reform/.

[7] Felix Reitz, 2023, 'Revenue Effects of the OECD Corporate Tax Reform - An Updated Impact Assessment of Pillar Two', *IFF-HSG Working Paper* 2023-17, https://ile.unisg.ch/wp-content/uploads/2023/07/17-WP-Reitz.pdf.

[8] UN General Assembly resolution on Promotion of inclusive and effective international tax cooperation at the United Nations, available online: https://financing.desa.un.org/document/general-assembly-resolution-promotion-inclusive-and-effective-tax-cooperation-united.

report[9] was released on 28 August 2023 and the General Assembly is poised to deliberate on this report and potential reforms to international tax cooperation between October and December 2023. Most recently the Africa Group via Nigeria submitted a resolution calling for the commencement of formal negotiations on a legally-binding UN tax convention.[10] An upcoming vote at the UN General Assembly in November will determine whether or not the UN process can effectively move ahead, potentially opening the door to a genuine transformation of the governance of international taxation, but with deliberations already underway it has also become clear that powerful actors will seek to maintain the status quo.[11]

II. Human Rights Harms Documented

Since your engagement with the OECD last year, the negative human rights impact of abusive international tax practices and risks associated with the Two-Pillar Solution have only worsened.

Greater erosion of taxing rights and reduction of revenues within the Two-Pillar solution

Instead of addressing the concerns you flagged, the OECD has continued to develop the Two-Pillar solution in a way that undermines human rights and the fiscal space of Global South countries.

The Multilateral Convention (MLC) on Amount A[12] of Pillar One was published in October 2023.[13] The South Centre has highlighted that since the October 2021 Outcome Statement, the OECD Inclusive Framework has pursued the inclusion of various rules that directly reduce the tax payable to developing countries under Amount A of Pillar One. These include the introduction of a prior period test, pre-implementation loss carry-forward, the expansion of excluded entities, the multiple reapplications of the scope thresholds for extractives and regulated financial services. As a result, the number of companies in-scope and the tax these companies will pay has reduced yielding a small amount of revenue. In contrast, however, developing nations stand to gain more than twice as much revenue from the UN's proposed

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[9] UN General Assembly, Promotion of inclusive and effective international tax cooperation at the United Nations Report of the Secretary-General, 28 August 2023.https://financing.desa.un.org/sites/default/files/2023-08/A-78-235_advance%20unedited%20version_0.pdf.

[10] Nigeria: draft resolution on Promotion of inclusive and effective international tax cooperation at the United Nations. Available at: https://documents-dds-ny.un.org/doc/UNDOC/LTD/N23/300/69/PDF/N2330069.pdf?OpenElement.

[11] Tax Justice Network, 18 October 2023, Draft resolution brings world one step closer to UN tax convention. https://taxjustice.net/press/draft-resolution-brings-world-one-step-closer-to-un-tax-convention/.

[12] Amount A rules apply to the biggest and most profitable MNEs and allocate parts of their profits to the countries where they sell their products and provide their services. For more on this, see: OECD; July 2022, Progress Report on Amount A of Pillar One - Frequently asked questions. https://www.oecd.org/tax/beps/frequently-asked-questions-progress-report-on-amount-a-pillar-one-july-2022.pdf.

[13] Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from Digitalization of the Economy, 11 July 2023, available at: https://www.oecd.org/tax/beps/outcome-statement-on-the-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2023.pdf.

alternative on taxes from income from automated digital services (as set out under Article 12B of the UN Model Tax Convention).[14]

One of the pending items is the adjustments to withholding taxes in the Pillar One amount. It is unclear why the Inclusive Framework requires this adjustment as in practice withholding taxes are implemented on existing rights. The South Center in its analysis of the Outcome Statement, finds that the practical implementation of the impending changes of withholding taxes to a newly created right under the MLC would lead to an erosion, rather than increase of taxing rights of developing countries rendering Pillar One counterproductive.[15]

In terms of Pillar Two, the framework has failed to address issues regarding the continued possibility of tax avoidance through legal loopholes despite the adoption of minimum taxes.[16] It fails to address concerns around transfer pricing and the BEPS Monitoring Group has concluded that the methodology currently proposed under Pillar One, Amount B, would continue to allocate low levels of profit to countries where sales are made. The BEPS Monitoring Group has also reached the view that participation in the Global Anti-Base Erosion tax (GloBE) which will implement a minimum effective tax rate of 15% on eligible multinational enterprises is not appropriate for most developing countries due to its design and scope, and the complexities and constraints it would impose.[17]

Since Amount A under Pillar One involves a redistribution of taxing rights, Global South countries will only be able to collect taxes when high-income countries - where the in-scope companies are headquartered - agree to redistribute their taxing rights. The South Centre has flagged the risk that developing countries which ratify Amount A before developed countries do so will end up losing their taxing rights and gain nothing in return.[18] A particular concern in this regard is whether the US will sign the agreement given the attempt by the US House of Representatives Appropriation Committee to cut funding to the OECD due to its attempts to tax US businesses.[19] In the absence of other pre-existing commitments by the US, this casts further doubts about the US signing the Multilateral Convention despite all its demands being met and retained in the proposed agreement.

Uncertainty regarding US intentions to sign and adhere to the Two Pillar Solution and the Multilateral Convention creates an ambiguity regarding the very practical implementation of

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[14] South Centre (2023). Statement by the South Centre on the Two Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy [incomplete reference]

[15] Ibid.

[16] Ahmed, M. (2022). UN Model Tax Convention: Selective Territoriality – The Specter of Privileged Player in a Rigged Game. Tax Cooperation Policy Brief 25, 30 September 2022; Tandon, S. and Rao, C. (2022). Evaluating the Impact of Pillars One and Two. Research Paper 165, 4 October 2022.

[17] The BEPS Monitoring Group, Taxing Multinationals: The BEPS Proposals and Alternatives, July 2023, available at: https://www.bepsmonitoringgroup.org/news/2023/7/5/the-beps-proposals-and-alternatives.

[18] South Centre (2023). Statement by the South Centre on the Two Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, p. 2.

[19] Doug Swords, Taxnotes (2023). House Appropriators Vote to Defund OECD, available at: https://www.taxnotes.com/tax-notes-today-federal/global-intangible-low-taxed-income-gilti/house-appropriators-vote-defund-oecd/2023/07/13/7gz3h

Pillar One, as well as the taxation rights over multinational enterprises that fall under its jurisdiction.

Countries participating in the Inclusive Framework are required to refrain from imposing digital services taxes and other 'unilateral measures' to defend their tax bases against profit shifting, a fact which becomes even more significant in the light of the above. This requirement has already been put in place as the Outcome Statement provides that members agree to not impose newly enacted digital services taxes between 1 January 2024 and the earlier of two potential deadlines: the 31 December 2024 or the entry into force of the multilateral convention whichever occurs sooner. This is a risky tradeoff given that the members gain the right to tax only a small number of companies within the scope of Pillar One but have to give up the right to impose digital services taxes on all enterprises. This includes smaller enterprises that are not subject to Amount A, but which might nevertheless have a significant market presence and may be highly profitable.

Worse, these requirements to give up tax sovereignty have not yet been the subject of informed public policy debate in any country - in part because the OECD, which has unique access to much of the necessary data to provide country-level evaluation of its own and other proposals, has simply refused to publish this data or its own detailed evaluation. Coupled with the lack of transparency over decision-making within the OECD process, the effect is to set international tax rules in opposition to - rather than in support of - processes of effective political representation at the national level. This deeply undemocratic approach is starkly at odds with the importance of tax in bolstering both government accountability and effective, inclusive states that can deliver on human rights obligations.[20]

All of these factors highlight the failure of the OECD and its members to ensure the consistency of the Inclusive Framework with their international human rights obligations. Instead of addressing the concerns highlighted in the special mandates' letter, the rules under the Two-Pillar Solution have been modified since March 2022 to further erode the fiscal space of low- and middle-income countries to realize human rights. The OECD and the six states highlighted in this communication have chosen to neither change the design of the Two-Pillar Solution nor to adopt alternative measures such as alternative minimum taxes based on turnover and Article 12B in the UN Model Tax Convention which would result in fairer and better outcomes for Global South countries. It should also be noted that, in pursuing this course, the states highlighted in this communication are also likely to be undermining their own ability to raise the maximum available resources for the fulfillment of human rights, as they too will face an opportunity cost of lost tax revenue through the continued facilitation of abusive tax practices.

The UNSG concluded in his report that "*the changes being developed through that process [OECD/G20 Inclusive Framework on BEPS] would not address fully a broader discontent rooted in the long-standing conviction held by many countries and stakeholders that the*

[20] Liz Nelson, 2021, Tax Justice & Human Rights: The 4 Rs and the realisation of rights, London: Tax Justice Network, https://taxjustice.net/reports/tax-justice-human-rights-the-4-rs-and-the-realisation-of-rights/.

existing tax treaty rules do not reserve sufficient taxing rights to countries hosting multinational enterprises and constituting markets for their products".[21]

Worsening impacts of cross-border tax abuse

In its 2023 State of Tax Justice report, Tax Justice Network has estimated that at the global level, some US $480 billion of tax revenue is lost to abusive international tax practices each year.[22] This comprises US $311 billion in lost revenue due to cross-border tax abuse by multinational companies, together with US $169 billion lost due to the offshoring of wealth by high-net worth individuals.

The report makes clear the discriminatory and inequitable impact of this phenomenon between countries. For instance, although OECD countries lose the most amount of revenue in absolute terms, abusive international tax practices have a disproportionate impact on lower income countries who lose as much as 56% of their public health budgets as compared to 9.3% for higher income countries. Furthermore, as a percentage of their tax revenue, lower income countries lose 6.6% as compared to 2.6% for higher income countries.

The report also makes it clear that OECD countries are leaders in enabling abusive international tax practices. OECD countries and their dependencies are responsible for most global corporate tax abuse: 70 per cent in fact, costing the world US$219 billion in lost corporate tax a year. When including tax losses to offshore wealth tax evasion, OECD countries and their dependencies are responsible for 78 per cent of all tax losses suffered by countries around the world, costing countries about US$374 billion in lost tax every year.[23] The bulk of the harm inflicted by OECD countries stems from just four members: the UK, Netherlands, Luxembourg and Switzerland.[24]

The report also highlights the significant role played by the UK in facilitating this extraction of wealth and resources. It explains that, at the global level, the UK, together with its "second empire"[25] of Crown Dependencies and Overseas territories, is the single greatest enabler of global tax abuse. The State of Tax Justice 2023 reveals that over US$309 billion in profit is shifted into the UK's second empire by multinational corporations every year, costing the world

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[21] Report of the Secretary-General (2023), Promotion of inclusive and effective international tax cooperation at the United Nations (Advance unedited version), available at: https://financing.desa.un.org/sites/default/files/2023-08/A-78-235_advance%20unedited%20version_0.pdf

[22] Tax Justice Network, The State of Tax Justice 2023. Available at: https://taxjustice.net/reports/the-state-of-tax-justice-2023/#:~:text=Key%20findings,tax%20abuse%20by%20wealthy%20individuals See also, Tax Justice Network, 23 August2023. Correction: Countries are losing 1.7% more to tax havens than we reported. https://taxjustice.net/press/correction-countries-are-losing-1-7-more-to-tax-havens-than-we-reported/.

[23] Ibid.

[24] Ibid.

[25] The term "second empire" (also known as "UK spider's web") refers to the way the UK's Overseas Territories and Crown Dependencies often serve as satellite offshore jurisdictions, or nodes in a world spanning web for facilitating profit shifting and illicit financial flows. At the centre of the web sits the City of London, where corporations can shift their profits after rerouting them via the satellite jurisdictions in order to underpay tax elsewhere. The UK has full powers to impose or veto law-making in these Overseas Territories and Crown Dependencies, and the power to appoint key government officials in Overseas Territories and Crown Dependencies rests with the British Crown.

over US$84 billion in tax lost to corporate tax abuse. This makes the UK's second empire responsible for 27 per cent of the US$311 billion in tax the world loses to corporate tax abuse every year. When including tax losses to offshore wealth tax evasion, the UK's second empire is responsible for 35 per cent of all tax losses suffered by countries around the world, costing countries over US$169 billion in lost tax every year.

The UK is not the only OECD state that plays a crucial role in this extraction of wealth and resources. The UK together with the Netherlands, Luxembourg and Switzerland are collectively referred to as the "axis of tax avoidance" for their role in enabling the lion's share of global tax abuse. The State of Tax Justice 2023 reveals that US$597 billion in profit is shifted into the axis of tax avoidance by multinational corporations every year, costing the world US$163 billion in tax lost to corporate tax abuse. This makes the axis of tax avoidance responsible for more than half of the US$311 billion the world loses to corporate tax abuse every year, which is also in line with the Corporate Tax Haven Index 2021's findings. When including tax losses to offshore wealth tax evasion, the axis of tax avoidance is responsible for 57 per cent of all tax losses suffered by countries around the world, costing countries over US$274 billion in lost tax every year.

This is, therefore, an urgent issue. If governments had additional revenue equivalent to the foregone revenue lost to tax abuse, millions more would have access to the fundamental economic and social rights essential for survival.

Tax Justice Network's Financial Secrecy Index highlights how the US, UK and Switzerland are among the most pernicious and influential actors in maintaining a global financial architecture that makes abusive international tax practices relatively straightforward.[26] The Index notes that the UK and its dependent territories are responsible for fully one-third of the revenue lost each year at the global level,[27] while the US and Switzerland are the first and second largest providers of financial secrecy services to the world.[28]

The Government Revenue and Development Estimations (GRADE)[29] at St Andrew's and Leicester Universities provides concrete figures on the human rights impacts occasioned by the countries highlighted in this communication through their facilitation of abusive cross border tax practices.[30] Together, the UK and its dependent territories, the US, the Netherlands, Luxembourg and Switzerland are responsible for 61% of the global tax losses inflicted on other countries.

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[26] Tax Justice Network, Financial Secrecy Index 2022. Available at: https://fsi.taxjustice.net/; Tax Justice Network, the State of Tax Justice 2021, 2021. See: https://taxjustice.net/reports/the-state-of-tax-justice-2021/.

[27] OHCHR/A/77/169, 2022, Towards a global fiscal architecture using a human rights lens - Report by Independent Expert on Foreign Debt and Human Rights, Ms. Attiya Waris. Available at: https://www.ohchr.org/en/documents/thematic-reports/a77169-towards-global-fiscal-architecture-using-human-rights-lens-report.

[28] Tax Justice Network, Financial Secrecy Index 2023. Available at:https://taxjustice.net/wp-content/uploads/2023/07/State-of-Tax-Justice-2023-Tax-Justice-Network-English.pdf

[29] GRADE, University of St Andrews/University of Leicester. https://medicine.st-andrews.ac.uk/grade/

[30] GRADE, University of St Andrews/University of Leicester, The impact of five countries on human rights https://medicine.st-andrews.ac.uk/grade/wp-content/uploads/sites/39/2023/10/PB_big5-1.pdf

If governments had additional revenue equivalent to these losses (see table 1), the results in terms of human rights deprivations, every day, require urgent intervention:

- 9 million additional people would have their right to basic water, every day.
- 19 million additional people would access their right to basic sanitation every day.
- 1.9 million additional children would attend school every day.
- 61 additional children would survive every day: 22,406 each year.
- 7 additional mothers would not die during childbirth every day:2,428 each year.

Table 1 The human rights deprivations enabled by five countries

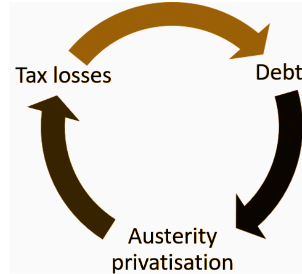
Global tax losses and human rights deprivations every						
		Additional people with basic water	Additional people with basic sanitation	Additional children who would attend school every day	Child deaths averted every day	Maternal deaths averted every day
Global total (161 countries)		**15,274,498**	**31,891,152**	**3,204,070**	**101 (36,900 every year)**	**11 (3999 every year)**
Share of the global tax losses and human rights deprivations inflicted on other countries every day by five countries						
The Netherlands	**12.27%**	1,874,181	3,913,044	393,139	12	1
Luxembourg	**5.58%**	852,317	1,779,526	178,787	6	1
The US	**4.20%**	641,529	1,339,428	134,571	4	0 (168 every year)
The UK and dependents	**35%**	5,346,074	11,161,903	1,121,425	35	4

Global tax losses and human rights deprivations every						
		Additional people with basic water	Additional people with basic sanitation	Additional children who would attend school every day	Child deaths averted every day	Maternal deaths averted every day
Switzerland	**3.67%**	560,574	1,170,405	117,589	4	0 (147 every year)
Deprivations attributable to five countries	**60.72%**	9,274,675	19,364,308	1,945,511	61 (22.406 every year)	7 (2,428 every year)

The revenue losses faced by countries in the Global South due to abusive international tax practices and the impact on their fiscal capacity to resource rights is exacerbated by the debt crisis they face. As the Independent Expert on the effects of foreign debt and other related international financial obligations on human rights (hereinafter Independent Expert on debt and human rights) has pointed out in her report on reforms to the international financial architecture: "In 2022, low-income countries are expected to pay $43 billion in debt servicing, an amount that exceeds spending on health care, education and social protection by 171 percent."[31] Meanwhile, The Center for Economic and Social Rights' (CESR's) research highlights that "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. This erodes their quality and their reach and widens the gap for communities at margins."[32]

[31] OHCHR/A/77/169, 2022, Towards a global fiscal architecture using a human rights lens - Report by Independent Expert on Foreign Debt and Human Rights, Ms. Attiya Waris. Available online: https://www.ohchr.org/en/documents/thematic-reports/a77169-towards-global-fiscal-architecture-using-human-rights-lens-report

[32] Key Concepts Series: Sovereign Debt and Human Rights, CESR, 2021, available online: https://www.cesr.org/sites/default/files/2022/Sovereign_Debt_and_Human_Rights.pdf



Undermining efforts to develop more effective multilateral standards for strengthening international tax cooperation.

In addition to facilitating abusive international tax practices, these six countries, along with the OECD itself, have all sought to prevent the UN from playing a meaningful role in standard-setting in international taxation.

Prior to discussions at the 77th General Assembly, the OECD took the unprecedented step of sending letters to ambassadors of various of its members questioning the UN's fitness to oversee international tax negotiations and pressing them to block the resolution.[33]

At the stage of the General Assembly discussions, the US then attempted at the Second Committee meetings to dilute the possible consequences of the Resolution by proposing an amendment to delete the phrase "including the possibility of developing an international tax cooperation framework or instrument that is developed and agreed upon through a United Nations intergovernmental process". Although the proposed amendment did not succeed, it was supported by the UK, Switzerland and 52 other nations. This positioning is reiterated in their submissions to the UNSG's report on the resolution to establish an intergovernmental body on taxation under the auspices of the UN. The submissions made by the US, UK, Netherlands, Switzerland, France and Luxembourg amongst others explicitly advocate against a new international regime, claiming unequivocally the sufficiency of the current OECD-led mechanism.

The UK for instance claims that a new intergovernmental tax body at the UN "would complicate the international tax system, duplicate efforts and divert scarce resources by requiring countries to engage with multiple tax bodies".[34] Switzerland's submission contends that a new intergovernmental tax body would "absorb scarce resources" and that developing countries would be disproportionately affected by such a process.[35] The US makes equally problematic claims including arguing that the Two Pillar Solution is responsive to the needs of

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[33] Sources told the Tax Justice Network that the move has backfired in some quarters as it was seen as "undiplomatic" and "highly unusual" to attack another international institution in this way, and may actually have bolstered support for the UN resolution. The letters the OECD sent to ambassadors have been discussed with the Tax Justice Network by multiple people who have seen them. The OECD did not respond to media requests at the time to make the letters public.

[34] UK Feedback on draft UN Secretary General UN Tax Report, 17 March 2023, available online: https://financing.desa.un.org/sites/default/files/2023-03/United%20Kingdom_Input%20Tax%20Report.pdf.

[35] Switzerland's input Promotion of inclusive and effective tax cooperation at the UN, available online: https://financing.desa.un.org/sites/default/files/2023-03/Switzerland_Input%20Tax%20Report_0.pdf.

developing countries (for instance by including the Subject to tax rule) and moreover that "the bulk of additional resources" for realizing the SDGs should not come from additional taxation from high-income countries but rather increasing the capacity of tax administrations of low-income countries.[36] The US submission is one amongst many submissions supporting the status quo while advocating for greater domestic resource mobilization instead of additional taxation. However, this ignores the loss of taxable revenue resulting from illicit financial flows, tax avoidance and evasion which cannot be resolved without reforms to the international tax rules.

While not generally considered a tax haven, France was instrumental in blocking more just reforms at the OECD. Proposals designed by the G24 and presented on behalf of Global South nations participating through the OECD's 'Inclusive Framework' mechanism were blocked by G7 nations in favor of a final agreement that was designed bilaterally by the United States (the OECD's largest contributor) and France (which hosts the OECD).

III. Violations of international human rights standards

In the last two decades an emerging body of analysis has documented the damage and entrenchment of inequalities between and within countries as a consequence of the failure to address and progressively reform the governance and design of international tax policy and financial transparency architecture.[37]

We note in this regard the continued failure of the OECD and the six member states to undertake any human rights impact assessment of the Two-Pillar Solution. They have also breached their obligations to ensure that the Two-Pillar Solution is developed in a manner consistent with their human rights obligations.[38] Through their conduct both in relation to the negotiations around the OECD Inclusive Framework and their attempts to block the development of more effective multilateral standards through the UN, they have breached their obligation to create an international enabling environment conducive to the fulfillment of economic, social and cultural rights.[39]

We would also like to highlight the discriminatory impacts of the failure of the OECD to reform international tax rules to stop tax abuses and illicit financial flows as a result of the policies and practices of the six states described above. The OECD's Two-Pillar Solution, if implemented, will aggravate such impacts. As previously mentioned, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);[40] and the International Convention

[36] United States Department of Treasury submission to the UN Secretary General UN Tax Report, available online: https://financing.desa.un.org/sites/default/files/2023-03/United%20States_Input%20Tax%20Report.pdf.
[37] Oxfam, 'Tax Havens: Releasing The Hidden Billions For Poverty Eradication', Tax Justice Network, 2000 See: https://www.taxjustice.net/cms/upload/pdf/oxfam_paper_-_final_version__06_00.pdf.
[38] Principle 17, Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.
[39] Principle 29, Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.
[40] International Convention on the Elimination of All Forms of Racial Discrimination, UN, 21 December 1965,https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial.

on the Elimination of All Forms of Discrimination Against Women (CEDAW)[41] codify the human rights standards of dignity, substantive equality and intersectionality.

The obligations imposed by ICERD require states to ensure the achievement of substantive racial equality and combat both *de facto* and *de jure* forms of discrimination.[42] In the case of international taxation, there is a strong racial characteristic to these violations because the loss of tax revenue has disproportionate impacts on communities who already face discrimination based on their gender, race, ethnicity, descendancy, and/or color.[43] In addition, the unjust international financial architecture which facilitates the unjust distribution of resources both within and between states has not occurred by accident but is rooted in structures of historical racial oppression rooted in slavery, colonialism and apartheid which remain largely unaccounted for today. Recent research for example demonstrates the way that the UK's financial centers and tax havens are strongly linked to its colonial past.[44] As noted earlier for example, the UK, together with its second empire of Crown Dependencies and Overseas territories, is the single greatest enabler of global tax abuse being responsible for 24 percent of all corporate tax losses.[45]

Furthermore, even the manner in which abusive international tax practices have been policed and enforced by the OECD are unmistakably racialized.[46] For instance in the year 2000, the OECD published a "blacklist" of states maintaining fiscal regimes that facilitate abusive tax practices yet countries like the US, UK and Switzerland were conspicuously absent despite the figures we have referred to earlier in this document. At the same time, the OECD pursued Liberia, a country whose tax policies pale in comparison to the aforementioned states.

CEDAW has expounded upon the relationship between taxation and gender inequality, especially the spillover effect of non-rights aligned tax policies on women in low- and middle-income countries. In its Concluding Observations in respect of Switzerland,[47] CEDAW found that the "*State party's financial secrecy policies and rules on corporate reporting and taxation have a potentially negative impact on the ability of other States, in particular those already short of revenue, to mobilize the maximum available resources for the fulfillment of women's rights*". It therefore called upon Switzerland to "*undertake independent, participatory*

[41] Convention on the Elimination of All Forms of Discrimination against Women, States Parties to the Convention, OHCHR, 3 September 1981, www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf.
[42] General Recommendation No. 32 of the CERD on the meaning and scope of special measures, available online: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FGC%2F32&Lang=en.
[43] OHCHR/A/77/169, 2022, Towards a global fiscal architecture using a human rights lens - Report by Independent Expert on Foreign Debt and Human Rights, Ms. Attiya Waris. Available at: https://www.ohchr.org/en/documents/thematic-reports/a77169-towards-global-fiscal-architecture-using-human-rights-lens-report.
[44] Tax as a tool for racial justice, Available at: https://decolonisingeconomics.org/2022/09/09/tax-as-a-tool-for-racial-justice-report/.
[45] Tax Justice Network, The State of Tax Justice 2023. Available at: https://taxjustice.net/reports/the-state-of-tax-justice-2023/#:~:text=Key%20findings,tax%20abuse%20by%20wealthy%20individuals
[46] Steven A. Dean & Attiya Waris, Ten Truths about Tax Havens: Inclusion and the "Liberia" Problem, 70 EMORY L.J. 1659 (2021).
[47] Concluding Observations of the Committee on the Elimination of Discrimination Against Women in respect of Switzerland, 25 November 2016.

and periodic impact assessments of the extraterritorial effects of its financial secrecy and corporate tax policies on women's rights and substantive equality, ensuring that such assessments are conducted impartially, with public disclosure of the methodology and findings." Switzerland has failed to implement this recommendation.

We would also like to emphasize the negative impacts of these failures on the abilities of low- and middle-income countries to mobilize much needed resources to realize the right to a healthy environment and address the climate crisis.

The ICERD guarantees at issue do not textually or otherwise territorially limit the corresponding human rights obligations of the Respondent States. This is congruent with the CERD Committee's own interpretations, as exemplified, for instance, by Concluding Observations urging Canada to take measures to prevent transnational corporations registered in that State from engaging in acts that would negatively impact the rights of indigenous people abroad.[48] Meanwhile The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights reinforce this point, as do numerous UN, scholarly, and civil society pronouncements. Furthermore, as the International Court of Justice stated in a CERD dispute between Georgia and Russia: "Whereas the Court observes that there is no restriction of a general nature in CERD relating to its territorial application; whereas it further notes that, in particular, neither Article 2 nor Article 5 CERD, alleged violations of which are invoked by Georgia, contain a specific territorial limitation; and whereas the Court consequently finds that these provisions of CERD generally appear to apply, like other provisions of instruments of that nature, to the actions of a State party when it acts beyond its territory."[49]

The UN Committee on Economic, Social and Cultural Rights (CESCR) has also detailed the textual basis for extraterritorial obligations emanating from the ICESCR, and the consonance of its views with those expressed in relevant pronouncements by the International Court of Justice and the UN Human Rights Council.[50]

According to the Committee, States' extraterritorial obligations to respect ICESCR rights: "…requires States parties to refrain from interfering directly or indirectly with the enjoyment of the Covenant rights by persons outside their territories. As part of that obligation, States

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[48] See, e.g., Report of the Committee on the Elimination of Racial Discrimination, UN Doc. A/62/18 (2007), para. 78; Concluding observations on the
combined nineteenth to twentieth periodic reports of Canada, CERD/C/CAN/CO/19-
20 (2012), para. 14; Concluding observations on the combined twenty-first to twenty-
third periodic reports of Canada, CERD/C/CAN/CO/21-23 (2017), para. 22)

[49] International Court of Justice, Order of 15 October 2008, Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Request For The Indication Of Provisional Measures, para. 109: https://www.icj-cij.org/public/files/case-related/140/140-20081015-ORD-01-00-EN.pdf. See also, International Court of Justice, Advisory Opinion, Case Concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004, paras. 109-113: https://www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.pdf.

[50] CESCR, General Comment 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, par. 27, available at: https://digitallibrary.un.org/record/1304491/files/E_C-12_GC_24-EN.pdf.

parties must ensure that they do not obstruct another State from complying with its obligations under the Covenant. This duty is particularly relevant to the negotiation and conclusion of trade and investment agreements."[51]

Furthermore, as to States' extraterritorial obligations to fulfill: "Article 2 (1) of the Covenant sets out the expectation that States parties will take collective action, including through international cooperation, in order to help fulfil the economic, social and cultural rights of persons outside of their national territories….Consistent with article 28 of the Universal Declaration of Human Rights, this obligation to fulfil requires States parties to contribute to creating an international environment that enables the fulfilment of the Covenant rights. To that end, States parties must take the necessary steps in their legislation and policies, including diplomatic and foreign relations measures, to promote and help create such an environment. States parties should also encourage business actors whose conduct they are in a position to influence to ensure that they do not undermine the efforts of the States in which they operate to fully realize the Covenant rights."[52]

These articulations of States' extraterritorial obligations are in line with the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.[53] Of particular note, apart from detailing States' extraterritorial obligations to respect, protect and fulfill ESCR, the Principles also provide, *inter alia*, that: "As a member of an international organisation, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extra-territorially. A State that transfers competences to, or participates in, an international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with the international human rights obligations of that State.States must elaborate, interpret and apply relevant international agreements and standards in a manner consistent with their human rights obligations. Such obligations include those pertaining to international trade, investment, finance, taxation, environmental protection, development cooperation, and security."[54]

IV. Request for intervention and recommendations

While the UNSG's report set out three options for UN Member States to consider - a multilateral convention, a legally binding framework convention, and a framework for

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[51] CESCR, General Comment 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, par. 29, available at: https://digitallibrary.un.org/record/1304491/files/E_C-12_GC_24-EN.pdf.
[52] CESCR, General Comment 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, par. 36-37, available at: https://digitallibrary.un.org/record/1304491/files/E_C-12_GC_24-EN.pdf.
[53] The ETO Consortium, Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, FIAN International, January 2013, par. 8-9, 13-35, available at: https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23.
[54] The ETO Consortium, Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, FIAN International, January 2013, par. 15, 17, available at: https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23.

international tax cooperation - the second of these represents the most meaningful and transformative option. As such, the Africa Group's tabling of a resolution calling for formal commencement of negotiations on the second option - a legally binding framework convention - presents an unprecedented opportunity to address the human rights shortcomings of the current global financial architecture.

As the negotiations continue ahead of a formal vote on the Africa Group resolution - likely in late November - it is important that special procedures caution the OECD and its member states to adhere to their obligations under human rights law as articulated in this submission. In this regard, it has already become clear that a limited number of Global North nations will seek to maintain the OECD's leadership of global tax negotiations and to weaken or prevent meaningful and equitable negotiations at the United Nations. As previously noted, the US, UK, Netherlands, Luxembourg, France and Switzerland all stated their reticence at the prospect of a UN-led process and reiterated strong support for the OECD process. It should be noted that similar reservations were expressed by numerous other OECD members, including Australia, Canada, Germany, Italy, Japan, and New Zealand, along with tax havens Liechtenstein and Singapore.[55]

Many of the same countries again expressed these reservations at the Financing for Development Forum in May this year. It is foreseeable that even if there is adequate strength in numbers of the member states to successfully resolve for the establishment of an intergovernmental tax cooperation process, the calls may fall prey to lengthy stalled negotiation processes at this stage. Additionally, any newly established mechanism/bodies that may be established in furtherance of the Resolution face the risk of getting starved of funding thereby immobilizing their operations.

The central argument has been that the UN should not risk 'duplication' of the OECD process, that could potentially undermine the benefits of the latter. But as the evidence shows, the benefits of the OECD proposals - should they even come to pass - will be much smaller than envisaged, and deeply skewed against countries of the Global South. There should therefore be no intention whatsoever to duplicate at the UN such an exclusionary and ineffective process. On the contrary, given that OECD members are also among the biggest losers from that organization's failures, it should be clear that UN negotiations offer an opportunity for (almost) all to benefit from a fairer and more effective process to set international tax rules.

An inclusive body providing a platform for voicing concerns and the issue of illicit financial flows are of particular importance to Global South countries as they bear the brunt of inadequate resource collection. It is essential that governments adopt a UN Tax Convention which increases the fiscal space of all governments to realize human rights and be able to combat debt distress, the climate crisis and rising inequalities.

[55] National Inputs to the Secretary General's forthcoming report, along with submissions from other key stakeholders, are listed on the UNDESA website here: https://financing.desa.un.org/inputs.

We hope that you are able to raise these issues as soon as possible with France, the Netherlands, Luxembourg, Switzerland, the UK, and the US and ask them to take corrective action including through:

> Supporting the development of a genuinely inclusive and comprehensive (i.e. including taxation of the digital economy) United Nations Tax Convention [instead of the failed OECD Two-Pillar Solution]

Meanwhile we ask that you urge the OECD to:

> Conduct a human rights impact assessment of the OECD Inclusive Framework including its racial and gender impacts and to make this assessment publicly available.

Given the gravity of our concerns, we also urge you to consider the issuance of a press statement in the near future to ensure the wider public is alerted to the allegations. Please contact us should you need additional information.

Sincerely,

1. Center for Economic and Social Rights (CESR)
2. Tax Justice Network.
3. Movement Law Lab.
4. Global Network of Movement Lawyers.
5. ESCR-Net.
6. Centro de Estudios Legales y Sociales (CELS)
7. Minority Rights Group International.
8. Red de Justicia Fiscal de América Latina y el Caribe
9. The Government Revenue and Development Estimations (GRADE) initiative, St Andrew's University.
10. Steven Dean, Professor of Law at Brooklyn University[56]

[56] Signed in his personal capacity.