

May 2024

Dear Mr Corman,

**Re: Failure to Respond to UN Special Procedures' Urgent Communication regarding the Potential Adverse Human Rights Implications of the OECD's Two Pillar Solution**

1. We, the undersigned organizations, write to you, expressing our concern that, as at the time of writing, the Organisation for Economic Cooperation and Development (OECD) **has failed to respond** to an urgent communication<sup>1</sup> issued to OECD Secretary-General Mathias Corman by eight UN Special Procedures in which they highlighted the potential adverse human rights implications of its proposed Two Pillar Solution to reform international tax cooperation. As organizations and networks, we are concerned about all of these issues, which have already been identified by 8 UN Special Procedures as problematic issues, and we are especially concerned that you have not responded to the urgent communication.

2. On 22 December 2023, a group of eight UN Special Procedures including the Independent Expert on the effects of foreign debt on human rights, the Special Rapporteur on Racism and the Special Rapporteur on the Right to Food, issued a communication to the OECD Secretary General which required him to respond promptly and expeditiously. In their communication, they warned that, if implemented, the Two Pillar Solution poses the following risks to human rights:

- 2.1. **Race and Gender Discrimination:** It “could have a discriminatory impact on the grounds of *gender, ethnicity and race*. 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*.”
- 2.2. **Economic, Social, Cultural and Environmental Rights:** The deal could adversely affect the fiscal capacity of states, especially in the Global South, to resource fundamental rights including “[an] *adequate standard of living, right to health, education and social*

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<sup>1</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28676>

*security disproportionately affecting the most vulnerable segments of the population.” This they argue, is because the deal would lead to considerably “lower levels of revenue collection” and that “the fair sharing of global revenue is crucial in order to ensure the future ability of countries... in the Global South to raise much needed revenue for the implementation of human rights... by ensuring there are resources available for their realization.”*

2.3. **The Right to Development and addressing structural imbalances in the global financial architecture:** They warn that the Two Pillar Solution will undermine the right to development particularly for countries in the Global South and that ongoing UN negotiations “represent an opportunity for OECD countries to redress structural injustices embedded in the global financial architecture and to ensure fair and effective tax cooperation by fixing an outdated international tax system.”

2.4. **Poverty and Inequality:** They warn that the deal would continue to widen levels of extreme poverty as well as wealth and income inequality both between and within states and therefore urge the OECD to support and “adopt feminist and human rights-based approaches to poverty and inequality to enable the creation of progressive, redistributive global financial governance frameworks.”

3. In conclusion, they urged the OECD to clarify all issues brought to their attention, and requested the OECD to provide them with the information on the following issues:

3.1. Any plans to conduct a human rights impact assessment of the Two Pillar Solution to address the tax challenges arising from the digitalisation of the economy, including its racial and gender impacts, and if there are plans to make this assessment publicly available.

3.2. Information on how your organization plans to engage in support of UN negotiations to establish a comprehensive UN Framework Convention on International Tax Cooperation.

4. The OECD has thus far refused to publish country-level evaluations of the impact of its proposals. Independent assessments, however, show the damage that implementation would do. Pillar One would be worse in revenue terms for many countries than a simple digital services tax; and much worse than following 'significant economic presence' approaches as e.g. India and Nigeria do. Pillar One also implies

a loss of tax sovereignty, over and above any immediate revenue losses.<sup>2</sup> Pillar Two, meanwhile, is now projected to generate much lower revenues than the OECD had claimed, and now with the majority of the benefits going to corporate tax havens - and almost nothing to developing countries.<sup>3</sup>

5. As members of civil society advocating for rights-aligned reforms to the global financial architecture which are critically important to help address the poly-crisis the world faces, we believe coherent holistic policy solutions connecting the issues of tax justice, debt justice, climate justice and human rights are needed. We believe that a UN Framework Convention on International Tax Cooperation is one of the essential ingredients to achieve this.

6. With some \$480 billion in tax revenue lost to abusive international tax practices each year,<sup>4</sup> most of which is due to the policies of OECD member states, we urge you to ensure the OECD acts in good faith to support the UN tax negotiations. In this regard we note that the OECD itself, as an intergovernmental institution, is subject to international law and must respect human rights and fulfill all obligations imposed by the general rules of international law.<sup>5</sup>

7. We therefore call on you to ensure the OECD responds to the UN Special Procedures promptly and expeditiously. In addition, and in the spirit of transparency and accountability, we urge you to make any such communication public in order for

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<sup>2</sup> EU Tax Observatory, 2023, The Long Road to Pillar One Implementation: Impact of Global Minimum Thresholds for Key Countries on the Effective Implementation of the Reform [https://www.taxobservatory.eu/www-site/uploads/2023/07/EUTO\\_Note\\_The-Long-Road-to-Pillar-One-Implementation\\_20230712.pdf](https://www.taxobservatory.eu/www-site/uploads/2023/07/EUTO_Note_The-Long-Road-to-Pillar-One-Implementation_20230712.pdf) ; The South Centre, 2023, Beyond the Two Pillar Proposals: A Simplified Approach for Taxing Multinationals. <https://www.southcentre.int/tax-cooperation-policy-brief-no-36-26-october-2023/>

<sup>3</sup> Felix Reitz/St Gallen University, 2023, Revenue Effects of the OECD Corporate Tax Reform - An Updated Impact Assessment of Pillar Two. <https://ile.unisg.ch/wp-content/uploads/2023/07/17-WP-Reitz.pdf>

<sup>4</sup> Tax Justice Network, 2023, The State of Tax Justice. <https://taxjustice.net/reports/the-state-of-tax-justice-2023/>

<sup>5</sup> Committee on Economic Social and Cultural Rights, Substantive Statement: Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights, 2016. See: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=E%2FC.12%2F2016%2F1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=E%2FC.12%2F2016%2F1&Lang=en) ; See also: OHCHR, 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, Report: Responsibility for complicity of international financial institutions in human rights violations in the context of retrogressive economic reforms, 2019. <https://www.ohchr.org/en/documents/thematic-reports/a74178-responsibility-complicity-international-financial-institutions> ; See also, International Law Commission, Draft articles on the responsibility of international organizations, 2011. [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_11\\_2011.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_11_2011.pdf),

the citizenry of your member states and international civil society to scrutinize your actions and hold you accountable.

Sincerely,

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