

Mandates of the Special Rapporteur on the right to development; 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 Independent Expert on the promotion of a democratic and equitable international order and the Special Rapporteur on extreme poverty and human rights

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(Please use this reference in your reply)

4 November 2022

Dear Mr. Saint-Amans,

We have the honour to address you in our capacities as Special Rapporteur on the right to development; 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; Independent Expert on the promotion of a democratic and equitable international order and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 51/7, 34/3, 45/4 and 44/13.

In this connection, we would like to follow-up on your response of 27 April 2022, to our letter ([OTH 21/2022](#)) of 30 March 2022. While we are grateful for your consideration of our letter, we would like to raise some of the questions already mentioned and some others that take into consideration the recent developments.

According to the information received:

OECD/G20 Pillar One

Under the current proposed implementation framework of the Two-Pillar solution, Pillar One intends to allocate taxing rights on a portion of global profits accrued by multinational corporations in countries where they have little to no physical presence. The current proposal on implementation however allocates only a small portion of the residual profits of the 100 largest multinational companies. Further, this does not cover companies who may have a sizeable regional economic presence in developing countries thus affecting their ability to collect revenues effectively. The revenue implications of Amount A in the OECD/G20 Pillar One appear to be far lower for the 84 developing countries analysed over the comparable revenues achievable under Article 12B of the UN Model Treaty.¹

In combination with the evidence presented in the initial letter, and the continuing absence of a public assessment from the OECD itself, there is a risk

¹ Vladimir Starkov and Alexis Jin, 2022, 'A Tough Call? Comparing Tax Revenues to Be Raised by Developing Countries from the Amount A and the UN Model Treaty Article 12B Regimes', *South Centre Research Paper* 156: <https://www.southcentre.int/research-paper-156-1-june-2022/>; and Irene Ovonji-Odida, Veronica Grondona & Abdul Muheet Chowdhary, 2022, 'Two Pillar Solution for Taxing the Digitalized Economy: Policy Implications and Guidance for the Global South': https://www.southcentre.int/wp-content/uploads/2022/07/RP161_Two-Pillar-Solution-for-Taxing-the-Digitalized-Economy_EN.pdf.

that the OECD/G20 proposals may undermine rather than support revenue mobilisation in many countries – and with it, the realisation of human rights, in particular, economic, social and cultural rights.

In addition, developing countries are afforded neither an effective voice nor a vote within the OECD/G20 process. The agreement delivered by the OECD/G20 process may exacerbate, rather than mitigate, the existing inequalities in taxing rights between countries at differing levels of per capita income.

Negotiations for a UN Tax Convention

As you are aware, there is a growing support for negotiations to be opened on a UN tax convention which could establish a globally inclusive, intergovernmental body under UN auspices to set tax rules. We note the May 2022 ministerial declaration of the member countries of the United Nations Economic Commission for Africa, in which more than a quarter of UN Member States call jointly for negotiations to begin.²

Further support is seen in the UN Secretary-General's August 2022 report to the General Assembly which recalls that “developing countries should be allowed to mobilize, rather than borrow, their way to development. This includes revisions of global trading and tax regimes to promote structural transformation and support domestic resource mobilization. Of special importance is the establishment of a United Nations Tax Convention with universal participation, as recommended by the High-level Panel on International Financial Accountability, Transparency and Integrity.”³

We also take this opportunity to draw your attention to the relevant international norms and standards that are applicable to the issues brought forward by the situation described above.

In compliance with article 2.2 of CESCR, and the provision on progressive realization of these rights, States should not adopt impermissible retrogressive measures, unless strictly justifiable. As the Committee on Economic, Social and Cultural Rights has clarified, retrogressive measures, meaning taking steps that would reduce the enjoyment of economic, social and cultural rights, are only permissible under certain strict circumstances.

Highlighting the Guiding Principles on human rights impact assessment of economic reforms (A/HRC/40/8), in particular:

Principle 13: States have an obligation to provide international assistance and cooperation in order to facilitate the full realization of all rights. As part of their obligations with regard to international cooperation and assistance, States

² Economic Commission for Africa, 2022, E/ECA/CM/54/4/Rev.1: *Conference of African Ministers of Finance, Planning and Economic Development, Fifty-fourth session: Report on the meeting of the Committee of Experts*: https://www.uneca.org/sites/default/files/com/2022/E_ECA_CM_54_4_Rev.1_E.pdf (Annex I); endorsed in E/ECA/CM/54/5: *Ministerial Statement*; https://www.uneca.org/sites/default/files/com/2022/CoM%2022_Eng_%20Final%20Ministerial%20statement.pdf.

³ UN General Assembly, 2022, *External Debt Sustainability and Development* A/77/206, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/433/91/PDF/N2243391.pdf>.

have an obligation to respect and protect the enjoyment of human rights of people outside their borders. This involves avoiding conduct that would foreseeably impair the enjoyment of human rights by persons living beyond their borders, contributing to the creation of an international environment that enables the fulfilment of human rights, as well as conducting assessments of the extraterritorial impacts of laws, policies and practices.

We call your attention to reports of the Independent Expert on foreign debt, other international financial institutions and human rights. In particular, we recall the report (A/77/169) which addresses the issue of international tax governance through the creation and development of a global United Nations-led tax convention and a global tax body using a human rights lens.

Since it is our duty, under the mandates provided to us by the Human Rights Council, to clarify all issues brought to our attention that fall within our mandates, we would be grateful for your observations on the following matters. Further, we would be grateful for your response to the questions raised in our letter of 30 March 2022 ([OTH 21/2022](#)), particularly in the light of the new information submitted in this letter.

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned matters.
2. Please explain the economic basis of the calculation of residual profits.
3. As requested in the previous letter, please explain if an assessment of the extraterritorial impact of the OECD/G20 tax deal on the resources necessary in developing countries in order to realize human rights in line with their obligations and commitments was conducted.
4. As requested in the previous letter, please provide information on your Organization's views about the proposal of a UN Tax Convention.

We would be grateful for your response to these questions, as well as to the questions raised in our letter of 30 March 2022 ([OTH 21/2022](#)), within 60 days.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Organization will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Mr. Saint-Amans, the assurances of our highest consideration.
Attiya Waris

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