

**Mandates 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 Special Rapporteur on the right to education; the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Independent expert on the promotion of a democratic and equitable international order; the Independent Expert on human rights and international solidarity; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Working Group on discrimination against women and girls**

Ref.: OL OTH 145/2023  
(Please use this reference in your reply)

22 December 2023

Dear Mr. Cormann,

We have the honour to address you in our capacities as 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; Special Rapporteur on the right to education; Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Independent expert on the promotion of a democratic and equitable international order; Independent Expert on human rights and international solidarity; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 52/17, 53/7, 49/13, 51/21, 45/4, 53/5, 52/36 and 50/18.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 60 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we write as a follow-up to our letter of 4 November 2022 ([OTH 107/2022](#)), responding to your organization's letter of 27 April 2022, and

our letter of 30 March 2022 ([OTH 21/2022](#)). While we are grateful for your consideration of our letters, we would like to raise some of the questions already mentioned which we notice remain unaddressed and some additional ones that take into consideration the recent developments in this matter.

In this context, we have been informed about the dynamics of negotiations under the Base Erosion and Profit Shifting (BEPS) initiative of the OECD that aims to create a single consensus-based international framework to combat tax avoidance by multinational enterprises using base erosion and shifting tools. We note that what we have raised about the potential negative effects the 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 remains valid today. We are concerned that the Outcome Statement, on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, adopted on 11 July 2023, may further reduce the tax payable to Global South countries and erode their taxing rights. The Two-Pillar Solution, if implemented, 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. The negotiations related to the newly adopted resolution on the UN Convention on International Tax Cooperation, and the positions that some OECD member states under the aegis of the UN could undermine the development of more effective multilateral standards for strengthening international tax cooperation.

### **OECD’s Two-pillar solutions and potential adverse human rights implications**

#### *Potential erosion of taxing rights and reduction of revenues within the Two-Pillar solution*

We note information that the OECD has continued developing the Two-Pillar Solution in a way that may undermine human rights and the fiscal space of Global South countries. In particular, the potential effect may be to set international tax rules in opposition to – rather than in support of -processes of effective political representation at the national level.

#### *A more effective multilateral standards for strengthening international tax cooperation.*

We welcome information that the Second Committee has adopted a Resolution A/C.2/78/L.18/Rev.1 establishing a UN intergovernmental committee to draft terms of reference for a UN Framework Convention on International Tax Cooperation. This resolution was recommended by the High-Level Panel on International Financial Accountability, Transparency and Integrity. 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 therefore encourage all OECD states to constructively engage in good faith in international cooperation and assistance in this comprehensive legal instrument and as a system of global financial integrity. As such, these 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. The fair sharing of global revenue is crucial in order to ensure the future ability of all countries including those in the Global South to raise much needed revenue for the implementation of human rights, including the rights to vote, food, fair trial, health, education, environment and climate protection and social security by ensuring there are resources available for their realisation within states.

We would like to reiterate that the Two Pillar solution, as it stands, would significantly undermine the revenue collection and taxing rights of low and middle-income countries. 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, right to health, education and social security), disproportionately affecting the most vulnerable segments of the population. As a result, 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 (ICESCR). As such the OECD's proposed Two-Pillar solution may also be incompatible with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); and the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

In terms of tax evasion and illicit financial flows, as already noted before, the division in residual profits and other profits provided under Pillar One results may facilitate aggressive tax optimisation strategies and tax evasion.

Considering the fact that this year's UN negotiations represented a once-in-a-lifetime opportunity to fix the discriminatory and regressive international tax rules, we encourage all member states, including OECD Member States, to support the process towards an effective, transparent and participatory UN Framework Convention on International Tax Cooperation. We hope that OECD will raise these issues as a matter of urgency with their member states 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 Convention on International Tax Cooperation.

In connection with the above matters, we would like to draw the attention of your Excellency's Government to the following human rights norms and standards that should guide the Two Pillar Solution:

### **International Covenant on Economic, Social and Cultural Rights**

One of the pillars of the protection of economic, social and cultural rights under article 2 of the International Covenant on Economic, Social and Cultural Rights is the obligation to progressively realize the rights set out in the Covenant, making use of the maximum of available resources.

In compliance with article 2.2 of the Covenant, and the provision on progressive realisation of these rights, States should not adopt impermissible retrogressive measure, 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. Furthermore, the onus is on the various Governments to demonstrate that their proposed measures will meet all their human rights obligations, notably by ensuring that measures are, among other characteristics, necessary, in that they must be justifiable after the most careful consideration of all other less restrictive alternatives; reasonable, in that the means chosen are the most suitable and capable of achieving the legitimate aim; not discriminatory, aimed at mitigating the inequalities that can emerge in times of crisis; and ensuring that the rights of disadvantaged and marginalized individuals and groups are not disproportionately affected; and subject to meaningful review and accountability procedures.

The Committee has also provided its authoritative interpretation on State obligations under the Covenant in the context of business activities in its general comment no. 24 (2017). In paragraph 37, the Committee states, inter alia, that: “States should combat transfer pricing practices and deepen international tax cooperation, and explore the possibility to tax multinational groups of companies as single firms, with developed countries imposing a minimum corporate income tax rate during a period of transition. Lowering the rates of corporate tax solely with a view to attracting investors encourages a race to the bottom that ultimately undermines the ability of all States to mobilize resources domestically to realize Covenant rights. As such, this practice is inconsistent with the duties of the States parties to the Covenant.”

### **Declaration on the right to development**

We recall that the UN Declaration on the right to development (A/RES/41/128) declares that States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development; that they have the duty to co-operate with each other in ensuring development and eliminating obstacles to development, and that they should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and cooperation among all States, as well as to encourage the observance and realization of 9 human rights (articles 3.1 and 3.3).

The Declaration further states that sustained action is required to promote more rapid development of developing countries and that effective international cooperation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development (article 4.2). We are concerned about information that, contrary to these commitments, the concerns of low- and middle-income countries in relation to the establishment of the new international taxation rules have not been taken into consideration in a meaningful manner.

We refer to the Guidelines and recommendations on the practical implementation of the right to development (A/HRC/42/38), which urge states to guarantee social protection floors and welfare, even in times of economic and financial crisis, in line with the Social Protection Floors Recommendation, 2012 (No. 202), of the International Labour Organization (para 60). The Guidelines also request States to enhance accountability in the private sector, by publishing the taxation rates and revenues generated by major economic actors (para 65); and recommend that

Governments should develop a global and a regional taxation architecture with a view to countering the race to the bottom fueled by tax policies that are increasingly in favour of capital to the detriment of people's welfare (para 81).

### **Guiding Principles on human rights impact assessment of economic reform policies**

We also refer to report A/HRC/40/57 of the Independent Expert on foreign debt, international financial obligations and human rights, which contain the Guiding Principles on human rights impact assessment of economic reform policies. In particular, we highlight principle 11 entitled Policy coherence, notably 11.b: "Fiscal policy should be used as a countercyclical tool to prevent and/or manage crises, as well as to equalize opportunities and maximize the realization of human rights". In the commentary, the Independent expert noted "[f]iscal policy can play a major role in achieving equality, tackling discrimination and strengthening governance and accountability, as well as combating poverty and funding development. Fiscal policy also has a clear and well documented effect on economic growth: while pro-cyclical contractionary fiscal policy reduces economic growth, expansionary fiscal policy during downturns increases growth."

### **Guiding Principles on Business and Human Rights**

We would like to highlight the Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011.

These Guiding Principles are grounded in recognition of:

- a) "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c) The need for rights and obligations to be matched to appropriate and effective remedies when breached."

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. The obligation to protect, respect, and fulfil human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, general comment no. 31 para. 8).

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory, including by taking appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication" (guiding principle 1). This requires States to

“state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (guiding principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (guiding principle 3).

In particular, principle 10 states that “when acting as members of multilateral institutions that deal with business-related issues, should: (a) seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights; (b) encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising; (c) draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

### **Guiding Principles on Extreme Poverty and Human Rights**

Furthermore, when adopting the UN Guiding Principles on Extreme Poverty and Human Rights, States agreed that adequate resources should be raised and used to ensure the realization of the human rights of persons living in poverty. In particular, “fiscal policies, including in relation to revenue collection, budget allocations and expenditure, must comply with human rights standards and principles, in particular equality and non-discrimination” (UN Guiding Principles on Extreme Poverty and Human Rights, para. 53).

States also agreed, in para. 63, to ensure policy coherence, by taking into account all international human rights obligations when designing and implementing policies and acknowledged that some international and national policies and decisions may result in conditions that create, sustain or increase poverty, domestically or extraterritorially. Therefore, they decided that “before adopting any international agreement, or implementing any policy measure, States should assess whether it is compatible with their international human rights obligations”.

Moreover, paras. 96-98 indicate that:

“96. States must take deliberate, specific and targeted steps, individually and jointly, to create an international enabling environment conducive to poverty reduction, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection and development cooperation. This includes cooperating to mobilize the maximum of available resources for the universal fulfilment of human rights.

97. Even when a member of an international organization, a State remains responsible for its own conduct in relation to its human rights obligations within and outside its territory. This includes identifying the possible human rights impact, including on persons living in poverty, of measures agreed at the international level.

98. A State that transfers competences to or participates in an international organization must take all reasonable steps to ensure that the relevant organization acts

in accordance with the international human rights obligations of that State and in a manner conducive to poverty reduction.”

### **Gendered inequalities of poverty: feminist and human rights based approaches**

In addition, we wish to draw your attention to the 2023 report of the Working Group on discrimination against women and girls on the gendered inequalities of poverty ([A/HRC/53/39](#)). In this report, the Working Group underscores that women’s and girls’ inequality and poverty are the result of historical and continuing economic policy choices at the global, regional and national levels. These policy priorities are not gender-neutral, as they have been developed within patriarchal political, legal and socioeconomic systems and institutions that ignore the specific experiences and rights of girls and women while privileging the dominant forms of male and corporate power that perpetuate existing hierarchies. The strengthened neoliberal turn of the past forty years, reflected in the policies of international economic institutions and national Governments, has demonstrably increased poverty and inequality both between and within nations. Rampant global socioeconomic inequality, characterized by the concentration of wealth in the hands of a few people (mostly men), corporations in a limited number of countries, and developed States, has diminished the resources available for policies, services and programmes to advance women’s rights and gender equality. The Working Group calls on States and international organizations to adopt feminist and human rights-based approaches to poverty and inequality to enable the creation of progressive, redistributive global financial governance frameworks.

As it is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all issues brought to our attention, we would appreciate receiving the following:

1. Any additional information and any comments you may have on the aforementioned matters including those raised in our previous communications;
2. Information on 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. Recognizing the adoption of Resolution A/C.2/78/L.18/Rev.1 which mandates the commencement of negotiations on a comprehensive UN Framework Convention on International Tax Cooperation, please provide information on how your organization plans to engage in support of this UN process.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s Government 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. Cormann, the assurances of our highest consideration.

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