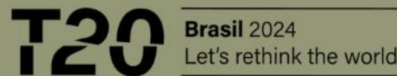
T20 Policy Brief



Task Force 03

REFORMING THE INTERNATIONAL FINANCIAL ARCHITECTURE

How The G20 Can Support Rights-Aligned Tax Reforms Which Enable Human Rights, Racial Justice and Gender Justice

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Abstract

Drawing on research from the Tax Justice Network and the Center for Economic and Social Rights, this policy brief examines the human rights failures of the OECD's stewardship of international tax negotiations and demonstrates why rights-aligned reforms to the global financial architecture are required. It sets out the key human rights obligations that international organizations such as the OECD and G20, along with the members states of which they are comprised, are required to take into consideration when negotiating international agreements. The brief also examines arguments made by a group of UN human rights experts who issued a formal communication to the OECD demanding it answer for the negative human rights impacts of its proposed 'two-pillar solution', warning that it could widen inequality both within and between states and exacerbate racial and gender-based inequalities rooted in the legacy of colonialism and slavery. The brief also argues that the G20 can support more progressive and effective reforms by supporting the development of an inclusive and comprehensive UN Tax Convention

Keywords: United Nations Tax Convention, OECD, Human Rights, Equality, Racism

Diagnosis

Negotiations on a new framework tax convention are moving forward at the United Nations following the approval of a resolution brought forward by the Africa Group in November 2023 (UNGA 2023). This development effectively breaks the Organisation for Economic Cooperation and Development's 60-year dominion over standard setting in international taxation.

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 of international tax cooperation (Oxfam, 2000). Efforts to deliver a just and inclusive global tax convention come at a critical juncture, as the world grapples with multiple enmeshed crises, including climate change, the cost-of-living emergency, growing poverty and wealth inequality both within and between countries, and a catastrophic debt crisis, all of which are impacting countries in the Global South disproportionately. The success or failure of the UN process will determine the capacity of governments across the Global South to raise revenue to tackle these issues, and concomitantly on their ability to advance the human rights of millions of people.

Last year, a group of eight UN special procedures issued a letter to the OECD challenging it to account for the human rights shortcomings of both the 'two pillar solution', which it has presented as a deal to definitively confront international tax abuse, and the exclusionary character of negotiations that went into delivering the same (IE Debt et al, 2023).

As argued in the letter, the OECD deal would serve only to reify structures of racial discrimination by maintaining massive outflows of revenue from Global South nations and into the financial centers of the Global North. What meagre impact it would have in

curbing cross-border tax abuse by multinational corporations would accrue almost entirely to the same OECD member states which are responsible for facilitating the vast majority of international tax abuse in the first place (TJN, 2019).

By constraining the fiscal space of governments, the OECD tax deal systematically prevents countries – especially those in the Global South – from meeting the responsibility of progressive realization of economic, social, cultural and environmental rights (CESCR, 1990). Independent evaluations of the proposed agreement demonstrate that it is likely to exacerbate inequalities both within and between countries (ICRICT, 2019) and, in so doing, further exacerbate racial inequalities.

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 and will raise a minuscule amount of revenue for developing countries (BMG, 2023). In return, Global South countries are required to give up their rights to impose other forms of taxation, such as progressive digital services taxes. Pillar Two subjects any company with over EUR 750 million of annual revenue to a 15 percent effective global minimum corporate tax, which is lower than the statutory rate that is currently in place in many Global South countries. 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.

Moreover, a range of carveouts[1] insisted on by corporate tax havens in the EU now mean that effective rates even below 10% are likely to still be possible.

Under Pillar One, developed economies would receive 77 percent of additional revenue collected - with the G7 economies accounting for 71 percent – while developing countries would collect 23 percent and the benefit for least developed countries would be null (Barake et al, 2023). High-income countries and investment hubs would likewise be the big winners under Pillar Two, with over 80 percent of revenue gains accruing to these two groupings (Reitz et al 2023).

Low-income countries would receive just 0.03 percent of additional revenue, which is significantly lower than their share of corporate income tax in 2019 (0.3 percent) (Reitz et al, 2023). Similarly, most of the revenue gained by developing countries under Pillar Two would accrue to China (Reitz et al, 2023).

Recent estimates show the overall revenue gained under Pillar One would be approximately US $24 billion (Barake et al, 2023), while the gain under Pillar Two would fall in a range between $68 and $105 billion (Reitz et al, 2023). Meanwhile, $311 billion is lost to abusive cross-border tax practices by multinational corporations each year (TJN, 2023). As such, the bulk of the revenue lost to tax abuse by MNCs would remain untouched, and the benefits that would arise would accrue to some Global North nations and China.

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[1] A ’carveout’ is effectively a partial exemption determined according to certain criteria. See: Gabriel Zucman, Mona Barake, Paul-Emmanuel Chouc, and Theresa Neef, Minimizing the Minimum Tax? The Critical Effect of Substance Carve-Outs, (EU Tax Observatory, 2021). https://www.taxobservatory.eu/publication/minimizing-the-minimum-tax-the-critical-effect-of-substance-carve-outs/

In the letter addressed to the OECD, the UN Special Procedures have sharply criticized the OECD's two-pillar solution, warning that it could have adverse consequences for the realization of human rights.

The intervention is notable because it grounds its analysis of human rights against the contemporary effects of the historic racial injustices of slavery, colonialism and apartheid which remain largely unaccounted for today. In a similar vein to a 2022 statement on vaccine inequality issued by the UN Committee on the Elimination of Racial

Discrimination (CERD, 2023), the Special Procedures warn that "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". They argue that the two-pillar solution has the potential to undermine the achievement of substantive gender and racial equality. This finding is groundbreaking from a human rights perspective, because it shifts the narrative about what is required to enable a truly anti-racist, feminist and decolonial financial architecture which is fit for purpose.

Second, the UN Special Procedures critiqued the impact of the two-pillar solution on the fiscal capacity of countries, especially in the Global South, to resource rights such as health, food, water, education, social security and an adequate standard of living. In this regard, they found that the proposal might constitute a "retrogressive step", and, therefore, be incompatible with the human rights obligations set out in the International Covenant on Economic, Social and Cultural Rights.

Third, the UN Special Procedures illustrated the structural factors which impede the realization of human rights and the structural reforms necessary to transform the global financial architecture. In their letter, they highlight "the strengthened neoliberal turn of the past forty years," which, they argue, "has demonstrably increased poverty and

inequality both between and within nations." As for structural reforms, they call for "feminist and human rights-based approaches" that "enable the creation of progressive, redistributive global financial governance frameworks." and call upon "the OECD and its member states to support ongoing efforts for UN-led global tax reforms, which represent a once-in-a-lifetime opportunity to fix discriminatory and regressive international tax rules".

The UN Special Procedures also called upon the OECD to conduct a human rights impact assessment of its two-pillar solution, including its racial and gender impacts. At the time of writing, the OECD has still not responded to the concerns raised in the Special Procedures' letter, even though explanation and clarification were explicitly requested. It should be noted that, despite the criticisms of the OECD process, G20 member states were split at the vote to carry forth tax negotiations at the United Nations. As such, the current G20 presidency of Brazil – a country among those to have voted in favor – is strongly positioned to advocate for a more just and inclusive process, that effectively addresses the human rights shortcomings of the OECD process, under the auspices of the UN.

Recommendations

Debate over principles for negotiation of the new UN tax convention is ongoing, with Terms of Reference expected to be delivered in August. Brazil's presidency of the G20 should seek to ensure these principles place a strong emphasis on genuine participation in agenda setting and decision-making, considering the distinct needs and capacities of all countries.

Both the UN process and the convention which it delivers should be firmly anchored in human rights principles and should establish strong links with the sustainable development, environmental justice and substantive equality agendas. Brazil, as one of the G20 members which voted in favor of the UN tax convention, should use its presidency of the G20 to drive support for a fully rights-aligned approach to both the negotiations and the convention itself. Having been among the co-convenors of the Regional Tax Cooperation Platform for Latin America and the Caribbean (PTLAC), the country has already taken on a leadership role in delivering more effective and just tax cooperation at the regional level. Moreover, Brazil itself currently loses in excess of US $10 billion a year to cross border tax abuse (TJN, 2023). In addition to supporting ambitious negotiations for the UN tax convention, it would be valuable for Brazil and the G20 to emphasise the importance of countries being able to take unilateral actions to protect their tax bases in the meantime (Picciotto et al., 2023) – unconstrained by any coercive pressures to commit to inappropriate OECD measures.

One of the key demands from Brazil in this regard is reforming the international financial architecture to address wealth inequality (G20 Brasil, 2024). Introducing a coordinated internationally agreed approach to taxing wealth is consistent with rights-

aligned reforms which seek to tackle poverty and inequality, particularly along the lines of race, gender and class.

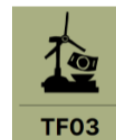
In addition to advancing climate justice as well as substantive racial and gender equality, the following human rights principles could form the basis for a progressive agenda to reforms to international taxation under Brazil's presidency of the G20:

- The principle of maximum available resources: namely, that the purpose of international taxation must be to ensure that countries can devote the maximum of available resources to the progressive realization of economic, social, cultural and environmental rights.
- The principle of extraterritorial obligations: that states have a duty to promote the realization of human rights to those who live beyond their borders and this duty includes their comportment in multilateral fora such as the IMF, World Bank, OECD or UN. This accords with the idea of a coordinated international approach to wealth taxation, especially if such revenue is fairly allocated to countries in the Global South to redistribute wealth and resources in a way which enables the realization of economic and social rights whilst reducing gender and racial inequality both within and between countries.
- The principle of non-retrogression: that states must not, without sufficient justification, reduce the minimum core enjoyment of rights; this also entails avoiding austerity.

The G20 should seek to ensure the UN process delivers a global tax governance structure in the form of a Conference of the Parties, similar to the existing 'COP' for climate negotiations, through which all countries can dialogue and negotiate on an equal footing. By delivering a more transparent and accessible forum for international tax

negotiation and decision-making, this new structure should also serve as a meaningful step toward democratization of international taxation, fostering participation and allowing citizens to hold their governments to account.

Those nations which are members of both the G20 and the OECD (Australia, Canada, France, Germany, Japan, United Kingdom, United States) are uniquely positioned to ensure the success of the UN process. They should likewise push for the OECD itself to foster the negotiations, rather than seeking to limit or impede them, by putting its significant technical capacity at the service of its member states within the process. In accordance with the letter of the UN independent experts, they should also call for the OECD to provide a thorough and independent human rights impact assessment of the BEPS process and make this publicly available.

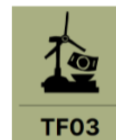


Scenario of Outcomes

As argued in the UN Special Procedures' letter to the OECD, if the global economy is to be transformed from one that fuels inequalities and rights-deprivations to an alternative model that can confront the polycrisis whilst also advancing human rights, meaningful structural reforms are necessary to address imbalances which have their origins in historical racial injustices including slavery, colonialism and apartheid. If brought to fruition in line with human rights principles, the UN Tax Convention can become a pillar in redressing the patterns of neocolonial extraction which characterize the current global economy. In so doing, it can also become a driver for the realization of human rights in all countries.

While a thoroughgoing analysis of the full spectrum of potential outcomes from these negotiations is beyond the scope of this briefing – given that it would need to unpack procedural considerations and governance structures, along the substantive content of the convention itself – there is an urgent need to ensure the process effectively includes all member states in both decision-making and in the benefits of those decisions. A fully-participative process will remedy a distribution of taxing rights that systematically prejudices lower-income countries and, in so doing, reifies and exacerbates racial and gender inequalities anchored in the legacy of colonialism and slavery.

In a worst-case scenario, those member states seeking to impede meaningful progress through the UN process might succeed in effectively maintaining the status quo, which could prove devastating for the countries of the Global South. As things currently stand, the world is on course to lose nearly US $5 trillion to cross border tax abuse over the next 10 years (TJN, 2023). These losses would be equivalent to losing an entire year of global health spending. Moreover, while the losses experienced by the Global North are



significantly higher in absolute terms ($433 billion per year, equivalent to 9 percent of public health budgets), the annual losses faced by developing nations is far greater in relative terms (US $47 billion, reflecting 49 percent of their public health budgets) (TJN, 2023).

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