



JOINT SUBMISSION ON THE ZERO DRAFT OF TORS FOR A UN FRAMEWORK TAX CONVENTION

BACKGROUND

The Africa Coalition on Public Services brings together Africans and organisations passionate about public services in Africa with a guiding manifesto, [The Africa We Want](#). The Coalition is coordinated by the Initiative for Social and Economic Rights (ISER), a Ugandan based non-profit organisation working for social and economic justice.

In 2023, the [Africa Coalition on Public Services](#) and ISER [called for](#) states to support the Africa groups' call for the adoption of a UN Tax Convention arguing it is necessary to redefine the financial architecture to ensure sustainable financing of public services in Africa.

Public services are integral to combat inequality and live in dignity but they are threatened by a broken tax system.¹ The quest for better public services in Africa, is hampered by inadequate funding, a consequence of a tax system skewed in favor of wealthier nations.

A promising development has emerged through the United Nations' initiative to forge a new era of international tax cooperation.² Following the approval of a resolution 78/230 in November 2023 by member states to embark on the negotiations of an international framework convention on tax, the Chair of the Adhoc intergovernmental committee has produced a zero draft of Terms of Reference that would guide the negotiations of this convention after the committee's first session from April 26th to May 8th.

¹ The Africa Coalition on Public Services calls on the USA and EU to Support the 2023 UN Tax Resolution, <https://iser-uganda.org/wp-content/uploads/2023/11/The-Africa-Coalition-on-Public-Services-call-to-Support-the-2023-UN-Tax-Resolution.pdf> (last accessed 11 June 2024).

² ISER(2023) UN Members Agree to a Framework Convention on International Tax Matters: Here is Why it Matters for Public Services in Africa, <https://iser-uganda.org/wp-content/uploads/2023/11/UN-Member-agree-to-a-Framework-Convention-on-International-Tax-Matters-1.pdf> (last accessed 11 June 2024).



We welcome this historic step towards democratizing rule making on tax and the provision of timelines indicating it is possible to have a UN Framework Convention on International Tax Cooperation by 2026. This brief responds to the call for written comments by the Chair of the Ad Hoc Committee on the zero draft of TORs.

2.0 KEY ISSUES MENTIONED IN THE ZERO DRAFT TORS THAT SHOULD BE FURTHER AMPLIFIED

2.1 Illicit Financial Flows (IFFs): Over the last 50 years, Africa is estimated to have lost in excess of \$1 trillion in Illicit Financial Flows (IFFs), a sum roughly equivalent to all of the official development assistance received by Africa during the same time frame.³ The High Level Panel on Illicit Financial Flows reported that Africa continues to lose 50 billion dollars annually in IFFs.⁴ The financial losses in reality far exceed these figures because of the secret and closeted nature of IFFs.⁵ Women bear the brunt. The amount Africa loses in IFFs could put 18.8 million girls back in school.⁶

This lack of resources makes it difficult to adequately fund essential public services like healthcare, education, social protection. Since 65% of Africa's IFFs stem from commercial activities,

³ United Nations Economic Commission for Africa, Report of the High Level Panel on Illicit Financial Flows from Africa, 2015, http://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf.

⁴ Ibid

⁵ Right to Development and Illicit Financial Flows from Africa: Dynamics, Perspectives, and Prospects: Annelie De Man: Advocating for a Human Rights Perspective for Combatting Illicit Financial Flows Pg 121.

⁶ The Transforming Education Financing in Africa: A Strategic Agenda for the African Union Year of Education briefing, https://actionaid.org/sites/default/files/publications/Transforming_Education_Financing_in_Africa_report.pdf (last accessed 11 June 2024).



particularly abusive transfer pricing, effective solutions under a binding agreement, such as the proposed framework convention on tax, are needed.⁷

The global nature of transfer pricing necessitates coordinated international responses, including enhanced cooperation on transfer pricing regulations, information exchange, and enforcement practices. The UN Tax Convention should establish mechanisms for such cooperation, including standardized audit procedures and capacity-building initiatives for developing country tax administrations.

The draft TORs mention a separate Protocol on IFFs will concurrently be discussed alongside the UN Framework Convention on Tax. While further more detailed guidance can be provided in the Protocol, it is important curbing IFFs is also emphasised within the draft UN Framework Convention on Tax.

2.2 Taxing the Digital Economy: The digital economy's growth challenges the traditional tax system, which relies on physical presence to levy taxes. The regulatory foundations of taxation presuppose a permanent establishment (i.e. physical presence) to levy taxes on business profits. In contrast, the digital economy allows businesses to reach a global customer base without physical presence. This borderless trade paradigm requires a redefinition of international taxation rules.

Digitized companies such as Google, Amazon, Uber and Facebook that conduct business and supply services to African countries without necessarily having physical office or personnel there and consequently make substantial revenue and profits without a penny paid in taxes.

The convention therefore, should address the challenges of taxing these businesses and ensure that a fair share of tax revenue is going to source countries to enable them to finance public services and meet development needs of their people. It should go beyond the OECD limited solutions to this. The draft TORs notes that a separate protocol on taxation of the digitalized and globalized

⁷African Union (AU) and United Nations Economic Commission for Africa (UNECA). 2015. "Tackling Illicit Financial Flows for Sustainable Development in Africa." unctad.org.



economy should be developed simultaneously with the UN Framework Convention on Tax which we welcome.

2.3 Taxation and the Climate Crisis: The urgency of combating climate change has never been more apparent. The escalating climate crisis represents one of the most significant challenges of our time, requiring urgent and coordinated global action including through taxation approaches. The climate crisis is undermining public services, for example the flooding in Kenya that resulted in the closure of all schools and destruction.

The UN Framework Convention on Tax presents an opportunity to address this issue. The Convention's relevance and necessity stem from the growing recognition that effective climate change mitigation requires not only regulatory measures and technological advancements but also innovative fiscal policies. Taxation, in particular, holds immense potential as a tool for influencing behaviours, financing sustainable initiatives, and promoting a transition towards a low-carbon economy.⁸

Africa, despite being a low emitter of greenhouse gases, faces significant climate change impacts due to its reliance on natural resources.⁹ It is being forced to accept weak climate finance goals under the guise that there is no money. Yet just raising tax to GDP ratios by 4% in developed countries can raise over us\$2 trillion per year for climate finance.¹⁰

To bridge the above challenges, the UN Tax Convention must prioritize tax reforms that support climate action such as environmental taxes like carbon pricing that embody the “polluter pays” principle, incentivizing cleaner technologies and practices. Taxes levied on fossil fuels, carbon

⁸ Ibid

⁹ Ibid

¹⁰ Action Aid (2024), *Finding the Finance: Tax Justice and the Climate Crisis*, <https://actionaid.org/publications/2024/fair-taxes-can-raise-over-us2-trillion-yearly-climate-vulnerable-communities-says> (last accessed 11 June 2024).



emissions, or environmentally harmful products serve as disincentives for their use.¹¹ By imposing taxes on activities that contribute to pollution or environmental degradation, governments can discourage unsustainable consumption and production patterns.¹² A joint submission by 170 civil society organisations on draft zero had called for polluter pays to be among the principles undergirding the UN Framework Convention on Tax Cooperation.¹³ This suggestion was not incorporated in the zero draft although the zero draft TORs note that it may be necessary to develop a separate Protocol on this.

3.0 ADDITIONAL ISSUES TO BE INCLUDED IN THE TORS AND DISCUSSED AT THE SECOND SESSION

3.1 A human rights based approach with human rights as a guiding principle

A number of human rights principles are at play when it comes to tax cooperation. The duty to devote maximum available resources in line with article 2 of the International Covenant on Economic Social and Cultural Rights and other human rights instruments,¹⁴ the duty to cooperate internationally,¹⁵ and states' extraterritorial obligations.¹⁶ Human rights principles like equality and non-discrimination, transparency, participation, access to information should similarly underpin measures proposed. We welcome some of these principles being included in the zero

¹¹Organisation for Economic Co-operation and Development. "Green Growth and Taxation." <https://www.oecd.org/greengrowth/greengrowthandtaxation.htm>. last accessed 11 June 2024)

¹² Ibid

¹³ https://financing.desa.un.org/sites/default/files/2024-03/Civil%20Society%20Financing%20for%20Development%20Mechanism_Input_AHC%20Tax_2.pdf (last accessed 11 June 2024).

¹⁴ See also Art. 32 of the Convention on the Rights of Persons with Disabilities

¹⁵Articles 3 and 4 of the United Nations Declaration on the Right to Development, https://www.ohchr.org/sites/default/files/Documents/Issues/Development/RTD_booklet_en.pdf last accessed 11 June 2024)

¹⁶ The Maastricht Principles on Extraterritorial Obligations



draft. Drawing on extensive guidance already provided by human rights law¹⁷ and the U.N increasingly endorsing the approach for a rights based economy¹⁸ would strengthen the UN Framework Convention on Tax Cooperation.

3.2 Addressing Externalities of Bilateral Investment and Tax Treaties: Many African countries rely on bilateral treaties for development, often inherited from colonial periods, that prioritize attracting foreign investment over domestic resource mobilization.¹⁹ Typically, BITs followed a standard template that did not consider the unique realities and developmental goals of individual African nations.²⁰ BITs signed by developed countries like the United States and Canada often had clauses favoring their investors' interests disproportionately.²¹

The absence of universal standards and guidelines in the form of an international instrument on taxation competition, by which states contracting such treaties would refer to only, served to worsen the situation. This vacuum of regulation prompted many of the developing countries to race to the bottom by providing lower tax rates in a bid to attract as many FDI deals within their countries as possible.

¹⁷ For further discussion on this, see Joint Submission by CESR, ISER et al to ad Hoc Committee tasked with drafting the Terms of Reference for the [United Nations Framework Convention on International Tax Cooperation \(UNTC\)](https://financing.desa.un.org/sites/default/files/2024-03/Center%20for%20Economic%20and%20Social%20Rights%20%28CESR%29_Input_AHC%20Tax.pdf) on vital need to incorporate human rights within terms of reference, https://financing.desa.un.org/sites/default/files/2024-03/Center%20for%20Economic%20and%20Social%20Rights%20%28CESR%29_Input_AHC%20Tax.pdf (last accessed 11 June 2024)

¹⁸ <https://www.ohchr.org/en/stories/2023/04/building-economies-place-peoples-human-rights-center>;

¹⁹ Johnson, Alec R. "Rethinking bilateral investment treaties in Sub-Saharan Africa." *Emory LJ* 59 (2009): 919; Hailu, Zenegnaw Abiy. "Impact of foreign direct investment on trade of African countries." *International Journal of economics and Finance* 2, no. 3 (2010): 122-133. (last accessed 11 June 2024)

²⁰ *Ibid.*

²¹ Johnson, Alec R. "Rethinking bilateral investment treaties in Sub-Saharan Africa." *Emory LJ* 59 (2009): 919.



A 2020 report by the *Independent Commission for the Reform of International Corporate Taxation (ICRICT)* highlights how these treaties, with their focus on low withholding taxes have created revenue losses for developing countries .²²

The UN Tax Convention presents an opportunity to address the challenges posed by bilateral tax treaties. It should include provisions for an international minimum corporate tax rate to prevent harmful tax competition and ensure a baseline level of revenue for African governments. It’s interesting to see that this has already been presented in the zero draft TORs just published by the Adhoc committee. The establishment of minimum corporate tax rates for all signatory countries would be key in preventing a race to the bottom and ensuring a baseline level of revenue generation for African governments.

4.0 Conclusion

Addressing IFFs, digital economy taxation, climate change, and bilateral tax treaty reforms are crucial for African countries to mobilize resources for public services. We urge the Ad Hoc Committee to prioritize these issues in the finalization of the TORs and the subsequent negotiations and to utilize the already extensive guidance provided by a human rights framework.

Signatories

- Initiative for Social and Economic Rights (ISER) Uganda
- Plan for Hope Initiative Uganda Uganda
- Good Health Community Programmes Kenya
- Uganda Society for Disabled Children Uganda

²² Independent Commission for the Reform of International Corporate Taxation (ICRICT). August 2020. "Assessment of the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalization of the Economy." p.20 <https://www.southcentre.int/wp-content/uploads/2020/12/Assessment-of-the-Two-Pillar-Approach-to-Address-the-Tax-Challenges-Arising-from-the-Digitalization-of-the-Economy-reduced.pdf> last accessed 11 June 2024)



- Uganda Consortium on Corporate Accountability Uganda
- Citizen watch Côte d'Ivoire
- Rights4Her Uganda Uganda
- Nakawa home based care givers alliance Uganda
- The East African Centre for Human Rights (EACHRights) Kenya
- Palliative Care Association of Uganda (PCAU) Uganda
- Akina Mama wa Afrika Uganda
- Economic and Social Right Centre-Hakijamii Kenya
- Plan for Hope Initiative Uganda Uganda
- Resource Rights Africa (RRA) Uganda
- FIDA Uganda Uganda
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