



**Mr. Ramy Youseff**  
**Chair of the Ad Hoc Committee**  
**to Draft Terms of Reference for a**  
**United Nations Framework Convention on International Tax Cooperation**

**CC: Organizations of the Initiative for human rights in fiscal policy**

**I. Introduction and purpose of the submission**

The organizations of the Initiative for human rights in fiscal policy<sup>1</sup> are pleased to make this submission to the open call for inputs on the zero draft terms of reference (ToRs) for a United Nations Framework Convention on International Tax Cooperation (the Convention). The organizations would like to congratulate the Committee for its work so far. It would especially like to highlight the important advances made through the work of the Committee to introduce debates on issues of taxation with a highly redistributive potential, such as taxation of high net-worth individuals; and to connect taxation and climate financing.

The main objective of the submission is to re-state the importance of reflecting on the ToRs States' legal obligations under international human rights law, which are relevant for international taxation. The submission builds mostly on human rights norms emerging from several United Nations legal instruments, and on the "Principles for Human Rights in Fiscal Policy" (the Principles), a document developed by the aforementioned organizations and a group of experts from the fields of law and economics after a three-year long participatory process<sup>2</sup>. The Principles systematize and distill existing normative standards emerging from international

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<sup>1</sup> ACIJ, CELS, CESR, Dejusticia, Fundar, GI-ESCR, Inesc, and the Red de Justicia Fiscal de América Latina y el Caribe.

<sup>2</sup> See, in general, <https://derechosypoliticafiscal.org/en/the-project>



human rights law that apply to taxation. The submission finally builds on our experience as members of the Civil Society Council of the Tax Platform for Latin America and the Caribbean.

The inputs are organized in accordance with the different sections suggested in the zero draft:

### A. Objectives

The zero draft recommends that the Convention includes a clear statement of its purposes. We would like to suggest that the purpose of establishing an “...inclusive, fair, transparent, efficient, equitable, and effective international tax system for sustainable development” is expanded to also include references to:

1. A **participatory** international tax system. The ToRs should include a clear commitment to ensuring that the work related to the Convention is open to informed public debate, through inclusive, broad, transparent and deliberative social dialogue. Participation must be equitable, meaningful, multisectoral and inclusive<sup>3</sup>. This is particularly relevant given the current crisis of multilateralism, and the need to enhance legitimacy in international institutions.
2. A tax system **designed “for sustainable development and human rights”**<sup>4</sup>. The protection and promotion of human rights is one of the pillars of the Organization of the United Nations<sup>5</sup>; human rights provide a binding framework of a permanent nature, which complements commitments assumed under the sustainable development agenda, and should therefore be explicitly mentioned in the Convention.

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<sup>3</sup> The recent experience with public participation of the Latin American Tax Platform can be used as valuable guidance on how participation can be deployed in practice.

<sup>4</sup> Importantly, realizing rights and sustainable development goals as the final goal and overarching framework of taxation was recognized in the founding meeting of the PT-LAC (See Ministry of Finance of Colombia, at [https://www.minhacienda.gov.co/webcenter/ShowProperty?nodeId=/ConexionContent/WCC\\_CLUSTER-226994](https://www.minhacienda.gov.co/webcenter/ShowProperty?nodeId=/ConexionContent/WCC_CLUSTER-226994) ).

<sup>5</sup> UN Charter, art. 1.3 and preamble, inter alia.



## B. Principles

The zero draft suggests that the Convention includes a clear statement of its guiding principles, which should cover the following standards for States' actions:

1. *take a holistic, sustainable development perspective that covers in a balanced and integrated manner economic, social and environmental policy aspects. **We would suggest including a reference to “sustainable development and human rights”, for the reasons stated above;***
2. *recognize that every Member State has the sovereign right to decide the policies and practices of its domestic tax system, and the responsibility to ensure that such policies and practices do not undermine the effectiveness of the tax base or system of other Member States. We suggest making clear that **Member States not only have “the responsibility” but rather the “extraterritorial obligations”** to ensure that such policies and practices do not undermine the effectiveness of the tax base or system of other Member States and to, overall, abstain from any conduct that undermines another State's capacity to mobilize resources to fulfill their human rights' obligations.*
3. *require transparency and accountability of all taxpayers, while respecting the rights to privacy and other fundamental human rights. While we celebrate that human rights are referenced, we regret that they are limited to the right to privacy of taxpayers, rather than framed in a more holistic manner that protects all rights-holders. We therefore suggest “mainstreaming” human rights as suggested above, and urge careful evaluation of each country's characteristics to determine which right —the right to privacy vs. transparency— should prevail in a particular situation, always seeking a fair and equitable balance that respects and protects human rights.*

We would also like to suggest adding the following three guiding principles for this section:



1. “**Non-discrimination and equality**”, to recognize horizontal and vertical equity, equality, non-discrimination, ability to pay, and progressiveness as interpretive and guiding principles of international taxation, in line with States human rights commitments to ensure that tax systems promote substantive equality with an intersectional approach.
2. **States’ duty to mobilize the maximum of available resources to progressively achieve the full realization of economic, social, cultural and environmental rights**, which often requires increasing revenues through just and efficient taxation. Mobilizing resources for realizing rights calls for addressing practices that drain States’ budgets such as tax evasion and avoidance, illicit financial flows, the underutilization of progressive taxation, and poorly designed tax benefits.
3. **Address and compensate for historical discrimination and power imbalances among States**, including colonialism and its manifestations. Decolonizing standards on taxation calls for adopting criteria, measures and mechanisms which promote equity among countries and regions; consider processes of exclusion by gender, race, ethnicity, religion, caste or culture, among others, and compensate for power imbalances between countries.

#### C. Capacity building

The zero draft recommends that the Convention includes “provisions regarding the entity or entities that have primary responsibility for, and funding for, supporting Member States, especially developing countries, in their efforts to build capacity...”. We would suggest adding a line that stresses **States’ duty to cooperate internationally<sup>6</sup>, under which the most developed countries shall commit to providing economic and technical assistance**, guided by the spirit

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<sup>6</sup> The duty emerges from several normative sources, including article 2 of the International Covenant on Economic, Social and Cultural Rights, which states that in order to realize rights States commit themselves to take measures “...individually and through international assistance and cooperation, especially economic and technical...”. Furthermore, the UN Charter (specifically relevant for the obligations of States parties during these negotiations) further reinforces such obligation in its articles 55 and 56.



of cooperation, solidarity and good faith, to enhance the capacities of tax authorities in least developed countries.

#### D. Structural elements of the Framework Convention

The zero draft suggests that the structural elements of the Convention include “data collection and analysis”. We would like to suggest that this reference is expanded to include “data production”, to at least generate the data needed for accountability and assessment purposes. It is of special relevance that under the Convention timely, detailed **revenue estimates of proposed measures** are conducted, which take into account the financing needs for climate, human rights and sustainable development; and that **data is sufficiently disaggregated to assess the consequences of measures on different persons and groups**.

#### E. Substantive elements of the Framework Convention

We welcome the inclusion of several issues on which the Convention should make commitments and would like to note the importance of maintaining and expanding those references in the final ToRs. We would like to stress the importance of including commitments on the effective taxation of high-net-worth individuals and ensure that tax measures contribute to addressing environmental challenges.

We suggest that **commitments on environmental challenges include a reference to the need to harmonize provisions of the Convention with existing environmental legal instruments, particularly climate commitments under the Paris Agreement**. The Convention should therefore respect and reflect principles emerging from climate instruments, such as the polluters pay and common but differentiated responsibilities principles.

We further suggest including **States' extraterritorial obligations in the substantive elements**. It is crucial to recognize how a State's fiscal policies can impact the tax bases of others, thereby affecting their ability to meet obligations in human rights and sustainable



development. Integrating these obligations will strengthen international cooperation and promote global tax equity<sup>7</sup>.

#### F. Approaches and time frame for negotiation

We suggest including a reference to the **need to ensure participation during the negotiation of the Convention**. This not only aligns with general United Nations principles and human rights standards discussed above, but also with the previous resolutions and practices applicable to this process, which have highlighted the importance of “...the contribution of international organizations and civil society, in accordance with established practice...”<sup>8</sup>.

While we understand the importance of taking into “...consideration the work of other relevant forums, potential synergies and the existing tools...”, we would like to recommend that negotiations are conducted with the primary goal of **promoting inclusive and equitable initiatives that equally benefit all States, and that relevant adjustments are made to existing tools when taken into account, to insure inclusivity**.

#### G. Resources to support the work of the negotiating body

The zero draft urges Member States in a position to do so to assist in ensuring the full and effective participation of developing countries in the negotiation of the Convention, including by covering travel and local expenses and through capacity-building. We suggest that this recommendation is framed as part of the duty that States have, under international law, of international assistance and cooperation to secure enough resources to realize human rights. This duty, as discussed above, not only requires negotiating in good faith but also offering assistance and cooperation in fiscal matters; and when able to do so, providing economic and technical assistance to strengthen the capacity of tax authorities in developing countries. Overall, State

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<sup>7</sup> UN Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC/24

<sup>8</sup> See, e.g., A/RES/78, par. 4.



parties must take all the necessary measures (including diplomatic and foreign relations measures) to promote an international environment that enables the effective realization of human rights. This duty is particularly relevant to the negotiation of international tax treaties. As an additional measure, we suggest that the negotiation sessions be facilitated so that member States that cannot be physically present in New York can participate virtually, to ensure the contribution of all countries.

The Initiative welcomes the opportunity to make this submission and would like to thank the Committee for its work. Its members are fully available to provide further information as needed.

Yours sincerely;

