

For the kind attention of:

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: Permanent Representatives and Observers to the UN in New York

RE: Submissions on the Zero Draft Terms of Reference for the Development of a UN Framework Convention on International Tax Cooperation

We, the undersigned Civil Society Organizations commend the Ad hoc Committee Bureau for presenting the zero draft of the Terms of Reference to establish the Framework Convention on International Tax Cooperation. This draft reflects a commendably forward-thinking approach, incorporating the development aspirations and concerns of the countries in the Global south. We urge all member states to participate in the negotiation and discussion with sincerity and a commitment to achieving the outcomes that are consistent with the principles and commitment of the Addis Ababa Action Agenda that seek to address and rectify the systematic inequalities and unfair international tax systems that have historically impeded the development aspiration of the Global South countries.

Southern and Eastern Africa Trade Information and Negotiations Institute (SEATINI)-Uganda and The Tax Justice Alliance Uganda (TJAU) align with the positions and submissions presented by the Tax Justice Network – Africa, the working group of the African CSO on the UN Tax Convention and the Global Alliance for Tax Justice. In addition, we wish to make the following observations and submissions.

PRINCIPLES OF THE TORS

We wish to draw your attention to **Clause 9** and make the following suggestion;

Bullet Point 7: “ *Ensure fairness in allocation of taxing rights under the international tax system to jurisdictions where economic value is generated and activities take place, contributing to achieving sustainable development.*”

This principle seeks to rectify the historical imbalances that have favoured capital exporting nations to erode that tax base of developing countries by allocation of taxing rights premised on residence rules. This aims at empowering the developing countries to mobilize adequate domestically raised revenues to finance the sustainable development goals with less dependence on Official Development Aid thereby promoting self-reliance and fostering long term economic stability.

Mainstreaming the gender and human rights approach to form bullet 9

We urge the ad hoc committee to prioritize gender and human rights as overarching principles of the Guiding Framework. This includes ensuring equal representation and participation in the formulation, negotiation and implementation of international tax policies and measures to rectify systematic imbalances and inequalities while at the same time addressing historical barriers that impede realisation of gender equality. The FCITC should prioritize the principles of inclusivity and fairness to respond to the needs of all demographics irrespective of gender, race or socio – economic status. The ToRs should acknowledge the role of progressive taxes in resourcing the public goods and advancing human rights. This is critical in empowering the marginalized groups and the observance of the international human rights principles as envisioned under the principles of the UN Charter, the Universal Declaration of Human Rights, the Declaration on the Right to Development, the UN Guiding Principles on Business and Human Rights, the binding obligations of the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

*Underlining that the **participation of civil society** is essential.*

The participation of civil society is essential to the development of the Framework Convention, as it ensures a comprehensive and inclusive evaluation of member states' policies and practices. Engaging civil society organizations enhances transparency, accountability, and legitimacy, providing diverse perspectives and valuable insights that complement governmental efforts. This inclusive approach fosters greater public trust and cooperation, ensuring that the process not only addresses technical and policy aspects but also considers social and ethical dimensions, thereby promoting more effective and equitable outcomes.

COMMITEMENTS UNDER CLAUSE 10

We draw your attention to **Clause 10** and make the following suggestion.

*Bullet 3 “ Ensuring that tax measures contribute to addressing **environmental challenges while upholding the precautionary and polluter pays principle** ” ¹*

We note that tax measures play a critical role in addressing environmental challenges, aligning economic activities with the Sustainable Development Goal targets as envisioned in SDG 13. Particularly, upholding the precautionary and polluter pays principles will not only hold polluting industries accountable for their environmental impacts but also generates revenue to fund environmental restoration and conservation efforts (EEA, 2020).² This approach will significantly reduce the global carbon footprint and addresses climate change-related risks, promoting sustainable development and long-term environmental stability fostering a transition towards a greener global economy.

¹ Rio Declaration on Environment and Development https://www.iau-hesd.net/sites/default/files/documents/rio_e.pdf

² The European Environment State and Outlook 2020

Bullet 4 Transparency and exchange of information for tax purposes including *public beneficial ownership registries, global asset registries, public country by country reporting, public regular tax expenditure reporting and evaluation*

We note that developing countries particularly African countries continue to face significant challenges in adhering to transparency standards as these often are misaligned with their unique priorities, realities and development needs. Despite the introduction of various measures such as: the domestication of various international tax instrument - including the convention of Mutual Administrative Assistance in tax matters, Beneficial Ownership legal frameworks, periodic tax expenditure reporting and country by country reporting, systematic barriers and challenges to accessing to critical information have impeded the effectiveness and responsiveness of these efforts to curb tax abuse and related Illicit Financial flows. Therefore, we advocate for qualifications by way of ensuring that they incorporate the contextual realities of the developing countries, enhancing capacity building initiatives, improving information sharing mechanisms and fostering international cooperation to make them more inclusive and reflective of the specific challenges faced by these nations.

SUBSTANTIVE ELEMENTS OF THE FRAMEWORK CONVENTION

We further wish to draw you attention to **Clause 13** to make the following suggestion for inclusion in the text

Insert *enforcement, peer reviews and monitoring mechanisms*

Drawing inspiration from existing enforcement, reporting and monitoring mechanisms under other UN Instruments, the ToRs should put in place a mechanism that operationalize a structured and systematic evaluation process where member countries evaluate each other's policies, practices, and performance in the implementation of the FCITC. This mechanism should ensure compliance with agreed-upon standards and principles through mutual assessment and constructive criticism. Furthermore, we call upon for the establishment of multi – stakeholder and intergovernmental working groups to oversee the implementation and evaluate the progress of each member state through the requirement of member states to submit perioding progress reports. This will facilitate the review and analysis of areas of improvement drawing lessons that can be translated into policies, future amendments, protocols and practices promoting individual and collective development of policy framework and systems are fit for purpose and promote policy effectiveness.

SPECIFIC PRIORITY AREAS TO BE ADDRESSED IN EARLY PROTOCOLS

We draw your attention to **clause 14 and 15** and make the following suggestions

Moving and inclusion of the following the 'prevention, and resolution of tax disputes, taxation on of high-net worth individuals to clause 15.

We wish to note that although all specific topics as sighted in clause 14 are of urgency and topmost priority, some can be taken into consideration for future protocols. Negotiating the early Protocols alongside the Framework Convention will require substantial financial and human resources to support the negotiations of these protocols, therefore, it is prudent to limit the number of early Protocols to be negotiated, prioritizing the most urgent and crucial ones to ensure efficient use of limited resources. This strategic focus will ensure leveraging the limited resource and allocation of sufficient time in the negotiation of such protocol to ensure that all perspectives and dimensions are taken into consideration ensuring that critical issues are addressed promptly and comprehensively.

APPROACHES AND TIME FOR NEGOTIATION

*We draw your attention to **Clause 18** and categorically recommend that the entire clause should be deleted.*

We observe that the appointment of three vice-chairs in the bureau is irregular and deviates from established United Nations practices. Typically, the constitution of bureaus of subsidiary bodies of the General Assembly is designed to ensure equitable geographical representation, often through the appointment of co-chairs to balance the interests of both developed and developing countries. During the discussions of the First Substantive Session, it was noted that there was insufficient justification for the inclusion of a third vice-chair in the bureau of the negotiating committee. While subsidiary bodies possess the authority to determine their own constitution and modalities, this power rests squarely with the relevant subsidiary body. In this instance, it appears that the Ad Hoc Committee is exceeding its mandate by pre-determining the constitution of the negotiating committee. According to UN procedures, it is within the exclusive purview of the negotiating committee to decide how to constitute its bureau, and such determinations should not be pre-empted by the Ad Hoc Committee.

We recommend the insertion of the following clause

Insert the following new clause so that it becomes **clause (21)**: *The elaboration of the framework convention and early Protocols shall be a Member States-led process that shall be open to the contribution of international organisations and civil society, in accordance with established practice as provided in Article 71 of the UN Charter and ECOSOC Resolution 1996/31.*

Upholding the principles of Article 71 of the United Nations Charter, and in line with UNGA resolution 78/230 and other established mechanisms of stakeholder engagement, the participation of the CSO, Academia and thinktanks should be enhanced considering their diversity and their capacity to support effective negotiation and policy formulation. This will require review of the internal structure to grant stakeholder participation in the negotiation of the Framework Convention of the International Tax Cooperation and early protocols to enhance the transparency, openness and accountability of the process.

CONCLSION

We appreciate the opportunity granted to various stakeholders and groups to submit to input into this landmark process. We look forward to being part of forthcoming opportunities, both in observing the negotiations and actively participating in subsequent engagements with the Secretariat as well as with Member States on some of the aspects that have been raised in this submission. Lastly, we wish to reiterate our call for an ambitious UN Framework Convention on International Taxation that will enable greater resourcing and alignment with the needs of developing nations. Such a framework should facilitate and foster sustainable tax practices, mitigate unhealthy tax competition, and promote equitable distribution of taxing rights thereby uplifting the global economic landscape.

On behalf of SEATINI – Uganda and Tax Justice Alliance – Uganda

Ms Jane Nalunga
Executive Director SEATINI – Uganda
jnalunga@seatiniuganda.org