

Submission from the UN Office of the High Commissioner for Human Rights

Comments on the Zero Draft Terms of Reference

For the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

Introduction

We very much welcome the Zero Draft Terms of Reference and the efforts of Member States to move towards fairer and more inclusive and effective international tax cooperation at the United Nations through the development of a UN Framework Convention on International Tax Cooperation.

We note that Member States in the UN Human Rights Council have recognized the need for reform of the global taxation system and for addressing tax evasion by multinational corporations, noting in particular how illicit financial flows are depriving countries of resources to realize economic, social and cultural rights (A/HRC/RES/52/21).

All States have an obligation under the [International Covenant on Economic, Social and Cultural Rights](#) to realize **economic, social and cultural rights**, to the **maximum of available resources**, including through an **obligation of international cooperation and assistance**. The duty of international cooperation requires all States “**contribute to creating an international environment that enables the fulfilment of these rights**” (E/C.12/GC/24). The [Declaration on the Right to Development](#) also provides that States have a “**duty to cooperate with each other in ensuring development and eliminating obstacles to development**” (Art 3.3). This means that all States should negotiate together in good faith under the UN for the Framework Convention on International Tax Cooperation.

International human rights law principles and obligations should guide the design and development of international tax cooperation, so that tax policies and systems respect, protect and fulfil all human rights for all people in all countries, rather than infringe them. The ToR should emphasize that the UN Framework Convention on International Tax Cooperation should be fully aligned with international human rights law and States’ existing commitments under all the international human rights conventions. The human rights obligations and principles of **equality and non-discrimination, participation, transparency and accountability** must help **shape fairer and more transparent international tax governance and** more equitable tax rules that serve all people in all countries.

We are concerned that there is currently only one narrow, inadequate reference to human rights in the zero draft TOR. We therefore propose the following suggestions to strengthen the ToR:

Comments on the Zero Draft

Preamble	<p>The TOR should be clear that the Framework Convention will be grounded in the purposes and principles of the UN, making specific reference to the UN Charter:</p> <ul style="list-style-type: none"> • The framework convention should be guided by all the purposes and principles of the UN Charter, especially those relating to international cooperation in solving international problems of an economic, social,
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	<p>cultural, environmental or humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms for all, without discrimination of any kind.</p> <ul style="list-style-type: none"> It should also be grounded in the Universal Declaration of Human Rights which establishes that “everyone is entitled to a social and international order in which the rights and freedoms set forth in that Declaration can be fully realized” and the Declaration on the Right to Development which calls for “the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom”. It should also recognize that States have a duty to mobilize the maximum of available resources to progressively achieve the realization of economic, social and cultural rights, as well as “extraterritorial obligations” to ensure that their own tax policies and practices do not undermine those of other Member States under the International Covenant on Economic, Social and Cultural Rights and all other international human rights Conventions.
Objectives	<p><u>Para 7</u></p> <ul style="list-style-type: none"> Ensure the tax governance structure has equal participation of all States <ul style="list-style-type: none"> 7b. Establish a system of governance for international tax cooperation that ensures equal participation of all Member States, capable of responding to existing and future tax and tax-related challenges on an ongoing basis, while respecting the tax sovereignty of each Member State. Add “participatory”, “accountable” and “realization of human rights” into para 7c: <ul style="list-style-type: none"> 7c. Establish an inclusive, fair, transparent, efficient, equitable, participatory, accountable and effective international tax system for achieving sustainable development and realizing human rights, with a view to enhancing the legitimacy, certainty, resilience, and fairness of international tax rules, while addressing tax-related illicit financial flows and other challenges to strengthening international and domestic resource mobilization. The objectives should also underline the clear link between tax policies and the commitments of all States to Sustainable Development Goals, human rights and climate commitments. The objectives of the framework convention should focus not only on the promotion of more effective and equitable tax rules, but also on the prevention of harmful cross-border tax practices, including tax-related illicit financial flows, tax avoidance and evasion, transfer pricing, financial secrecy and tax havens.

Principles	<p><u>Para 8</u></p> <ul style="list-style-type: none"> • A clear statement of the guiding principles grounded in human rights should be included here, including the principles of progressivity, equality and non-discrimination, transparency, accountability, and participation, as well as the duty to use the ‘maximum available resources’ for the progressive realization of economic, social, and cultural rights.
	<p><u>Para 9</u></p> <ul style="list-style-type: none"> • Maintain a focus on developing countries and their specific needs, as well as countries in special situations, in line with the resolution: <ul style="list-style-type: none"> ○ -be universal in approach and scope and should fully take into account the different needs, priorities, and capacities of all countries, in particular developing countries and countries in special situations • Take account of the extra-territorial obligations and duties of States to avoid negative impacts on other States under international human rights law: <ul style="list-style-type: none"> ○ - recognize that every Member State has the sovereign right to decide the policies and practices of its domestic tax system, and the responsibility duty to ensure that such policies and practices do not have harmful cross-border effects that undermine the effectiveness of the tax base or system of other Member States; • Add a focus on role of taxation in ‘reducing inequalities’ into this principle: <ul style="list-style-type: none"> ○ -ensure fairness in allocation of taxing rights under the international tax system that contributes to achieving sustainable development and in the distribution of the benefits of international tax cooperation to reduce inequalities within and between States; • Correct the wording on right to privacy, to ensure that this right is not given primacy or used to undermine transparency and the duty of taxpayers and corporations to share tax information (as has occurred in previous legal cases) <ul style="list-style-type: none"> ○ -require transparency and accountability of all taxpayers stakeholders, ensuring that the right to privacy is not used to undermine transparency or other fundamental human rights. • Add additional principles to fill clear gaps in this text on transparency, participation and equality and non-discrimination <ul style="list-style-type: none"> ○ Ensure transparency, including rules of procedure and decision-making processes that are transparent and fair, and ensure records of deliberations are made publicly available: As set out in the SG’s report, legally established rules and transparent decision-making structures will be critical for global tax governance. A core principle of transparency should be included, with a commitment to using the

	<p>established rules, procedures and ways of working of the UN, including allowing for broad participation of stakeholders, public webcasting and public records of deliberations.</p> <ul style="list-style-type: none"> ○ Facilitate the broad and meaningful Participation of all stakeholders: As well as States, relevant stakeholders, including specialized agencies, funds and programmes of the United Nations system, other international organizations, regional and national institutions and non-governmental organizations and trade unions with ECOSOC consultative status should be able to meaningfully participate in the negotiations of the Framework Convention and its implementation. ○ Reduce inequalities through facilitating fair and progressive tax rules for all, recognising the disproportionate burden of regressive/consumption taxes on women, and taking account of unpaid care and domestic work, in line with the principles of equality and non-discrimination, including gender equality.
Substantive elements of the Framework Convention	<p><u>Para 10</u></p> <ul style="list-style-type: none"> • Add additional wording into the commitments as highlighted in red: <ul style="list-style-type: none"> ○ Effective and progressive taxation of high net worth individuals ○ Transparency and exchange of information for tax purposes, including effective and inclusive Automatic Information Exchange, public Beneficial Ownership registers, public Country by Country Reporting ○ Effective prevention and fair resolution of tax disputes, in line with international human rights standards <p>In addition:</p> <ul style="list-style-type: none"> • Instead of highlighting only ‘commitments’, this paragraph should also include all the current gaps and issues that need to be addressed in international tax rules, listing under para 10 at least all the key substantive issues currently listed under para 14 and 15, otherwise the TOR risks resulting in those issues not being seen as central to the main purposes of the Framework Convention - for example, if the list of protocols is later annexed, rather than a part of the main text. • This should address substantive issues, including issues related to tax related illicit financial flows, tax evasion and avoidance and the measures to address them (such as automatic exchange of information, beneficial ownership registers, country by country reporting etc). • It should also highlight new issues including mobilizing international resources for climate financing through a global wealth tax and environmental taxes as well as fair taxation of extractive industries, with

	<p>special attention to the needs of developing countries. It could also move towards a new approach of unitary taxation where multinational groups of companies are taxed as single firms on the basis of their total global profits, with the tax then apportioned fairly amongst all countries where its activities take place. This has been foreshadowed by the Committee on Economic, Social and Cultural Rights which suggested that “To combat abusive tax practices by transnational corporations, States should combat transfer pricing practices and deepen international tax cooperation, and explore the possibility to tax multinational groups of companies as single firms.” (E/C.12/GC/24, para 37).</p> <p>Other issues to be addressed include:</p> <ul style="list-style-type: none"> • Special provisions and safeguards for developing countries of countries with special needs • Digital Economy and emerging Challenges related to the taxation of digital economy (including digital services taxes, nexus rules, and profit allocation methods for digital multinational corporations operating across borders)
Structural elements of the Framework Convention	<p>Para 13</p> <p>The framework convention should also include the following additional substantive and procedural elements: definitions; relationship with other agreements, instruments and domestic law, Including international human rights law; review and verification; exchange of information (for implementation of the framework convention); data collection and analysis; financial resources and mechanisms; Conference of the Parties; Secretariat; subsidiary bodies; dispute settlement mechanisms; and procedures for amendments and adoption of protocols.</p>