

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

The Center for Economic and Social Rights (CESR) welcomes the opportunity to provide inputs on what specific problems could be addressed by a United Nations Framework Convention (the Convention) on international tax cooperation.

I. Introduction

Even before the COVID-19 pandemic, the United Nations (UN) estimates flagged \$2.5 trillion in yearly financing shortfalls for meeting the Sustainable Development Goals in developing countries – 60 percent comprising external funding gaps requiring international cooperation¹. Since 2019, over 90 million people have fallen into extreme poverty. Climate change and unsustainable debt are further endangering another 143 million individuals, primarily in lower-income nations². Urgent collective action is necessary to mitigate these problems. Negotiations on international tax cooperation present a unique opportunity to make a positive contribution towards financing for development goals, climate mitigation and adaptation, fighting inequality and gender injustice, and realizing human rights.

The purpose of this submission is, consequently, to propose the inclusion of human rights norms in the terms of reference for the Convention. A fair tax system is the cornerstone of gathering the necessary resources to uphold human rights. By leveraging taxes to resource rights and public services, redistribute wealth to reduce inequality, re-price goods and services to disincentivize harmful practices, and enhance representation to improve democratic governance, States can foster a fairer society.

The inclusion of human rights as a binding framework for the Convention is critical because human rights constitute an integral aspect of the international legal framework, being one of the three pillars of the UN. All member States are bound by obligations set out in the human rights treaties they have ratified, and therefore, rights standards offer a benchmark against which to assess tax systems. Moreover, human rights strengthen the need for cooperation to close inequalities within and between countries and ensure governments have resources to respect, protect, and fulfill human rights.

II. Human rights standards and the Framework Convention

¹ UNCTAD (2014), World Investment Report 2014

² United Nations, The Sustainable Development Goals Report 2022

A. Human rights as guiding principles

CESR's previous work has highlighted what a just fiscal framework can achieve to realize rights³. Several UN bodies have increasingly recognized the relevance of human rights norms in taxation⁴ and vice versa. Amongst many others, the Committee on Economic, Social and Cultural Rights [recognized](#) that corporate tax dodging is inconsistent with governments' duties to guard against business rights abuses, even when carried out beyond their borders. The Committee on the Elimination of All Forms of Discrimination against Women [held](#) financial secrecy laws and lax corporate reporting standards inconsistent with human rights duties under international treaties. Most recently, several [UN Experts called out the OECD tax reforms](#) to risk violating human rights law for being retrogressive to the implementation of social rights and incompatible with the Convention on the Elimination of All Forms of Racial Discrimination.

Despite the close interlinkages, the commitments that States undertake upon ratifying human rights treaties are often overlooked in tax cooperation. The Convention should, therefore, *include **resourcing and realizing human rights as one of its key goals***. Human rights standards should also be *listed as **guiding and interpretative principles of the Convention***. The Convention must also embed operational commitments on climate justice and gender equality.

B. States' duty to mobilize their maximum available resources

Human rights norms require that every State mobilizes its "maximum available resources" towards progressively realizing economic, social, and cultural rights⁵. There is broad agreement that this obligation encompasses resource generation, allocation, and expenditure to generate "sufficient" revenue. The duty requires States to mobilize additional resources when needed (such as those lost to illicit financial flows or tax abuse) and to demonstrate compliance with this obligation. To increase domestic resources, a progressive and equitable tax system is essential. The Convention must ensure that countries in the Global South can raise their fair share of taxable revenues.

Therefore, the terms of reference *must recognize this obligation* and compel urgent multilateral reviews of all rules and practices undermining the capacities of lower-income countries to mobilize resources adequately. Appropriate measures include setting *objective criteria to grant **tax incentives or exemptions*** promoting transparency and accountability. The Convention should also commit its parties to conduct *timely, detailed, and appropriate*

³ See, e.g., Principles for Human Rights in Fiscal Policy.

⁴ See <https://www.ohchr.org/en/press-releases/2022/11/human-rights-experts-support-call-un-tax-treaty>

⁵ E.g., art. 2.1, ICESCR; art. 4, CRC.

revenue-raising **estimations** of proposed measures, which fully assess their impact on the capacity of low and middle-income countries to mobilize resources. The convention should also commit to ensuring “minimum tax rates” agreed upon through tax cooperation are **sufficiently high** to mobilize adequate resources and do not encourage a race to the bottom⁶.

C. States’ duty to cooperate internationally

Another bedrock human rights principle is States’ duty to cooperate. This principle is rooted in the UN Charter⁷. The Charter explicitly recognizes the obligation of States to proactively cooperate globally, without prejudice, towards collectively realizing rights-based development priorities universally, not merely for narrow national economic interests. Since then, this principle has been embedded in many international agreements aimed at realizing human rights⁸. This duty holds particular salience in international taxation. A fundamental reason for re-writing international tax rules emanated from States lowering their corporate tax rates to attract multinational corporations and corporations abusing a poorly coordinated system, all of which undermined States’ -especially developing countries- capacity to realize rights. Furthermore, the outcomes stemming from OECD processes are inadequate for Global South countries and instead disproportionately benefit wealthier nations (e.g., by giving their jurisdictions priority in taxing the undertaxed profits of multinational enterprises).

The duty of cooperation must therefore be *explicitly recognized and emphasized* in the terms of reference. Cooperation should guide proposals around global corporate minimum taxes and collaboration among tax authorities. The duty to cooperate should also commit States to negotiate the terms of reference in *good faith*.

D. States extraterritorial obligations

States also have extraterritorial obligations under international law, meaning they must realize rights within their borders, but also have duties prohibiting them from engaging in behavior that violates rights beyond their borders. This obligation stems from the articles of the UN Charter mentioned above and Article 22 of the Universal Declaration of Human Rights. Extraterritorial obligations are imposed even more explicitly in the International Law Commission’s Articles of State Responsibility.⁹ The Maastricht Principles on Extraterritorial Obligations, while not binding, further reinforce these expectations, unequivocally prohibiting States from facilitating, enabling, or benefiting from transnational tax evasion,

⁶ Unlike the 15% global minimum corporate tax rate advanced by the OCDE.

⁷ Art. 55, Art. 56.

⁸ See, e.g., ICESR, art. 2;RD, Art. 28; CRDP, Art. 32.

⁹ 16-18

avoidance, or mitigation practices by resident multinational corporations or high-net-worth taxpayers that cumulatively lead to revenue losses reducing available fiscal space abroad.

Including reference to States' extraterritorial obligations in the terms of reference is crucial because the international tax regime is deeply extraterritorial. Tax laws enacted by a state hold profound implications for others. If extraterritorial responsibilities are not recognized, a state might avoid accountability for the damage this causes to the international community. The Convention should, therefore, include a *commitment to **conducting assessments** of the extraterritorial effects of decisions* that may restrict the fiscal space of other States.

E. Equality and non-discrimination

The principles of equality and non-discrimination are at the core of international human rights law. They appear explicitly in the UN Charter and the Universal Declaration of Human Rights¹⁰ and have subsequently featured in almost every major human rights instrument¹¹. Authoritative interpretations of these provisions have argued for tax policies that are progressive and socially equitable¹².

The principles of equality and nondiscrimination must be explicit and essential within the Convention and be at the center of effective tax cooperation that leads to progressive tax reforms. Increasing wealth inequality and low tax/GDP ratios can hinder the adequate financing of non-discriminatory public services. Progressive tax reforms should include wealth taxes, windfall and excess profit, review, renegotiation, or cancellation of harmful tax treaties and tax incentives, and progressive spending. This would redistribute wealth and reduce socioeconomic inequality sustainably while preventing corrosive tax competition. It would similarly promote gender equality and combat other expressions of intersectional discrimination.

F. Transparency

Transparency has gained widespread recognition as a fundamental human right. The Universal Declaration of Human Rights guarantees the right to “seek, receive and impart information and ideas,”¹³ and similar language has later been reflected in the International Covenant on Civil and Political Rights (Art. 19) and many regional human rights treaties.

¹⁰ Universal Declaration of Human Rights Art. 7

¹¹ Including the ICCPR (Art. 26) and the ICESCR (Art. 2). There are also treaties written solely for the purpose of outlawing discrimination, such as the Convention on the Elimination of All Forms of Discrimination against Women.

¹² E/C.12/GBR/CO/6; E/C.12/GTM/CO/3; E/C.12/SLV/CO/3-5; E/C.12/PRY/CO/4; E/C.12/BDI/CO/1.

¹³ Universal Declaration of Human Rights Art. 19

The United Nations General Assembly has also recognized it in many documents, such as Resolution 59/201, which identifies transparency as an “essential element of democracy.”

The international tax regime has failed to uphold this vital principle. Empirical evidence has demonstrated wholly inadequate actions undertaken by wealthy OECD countries and their connected offshore financial centers to uphold transparency¹⁴. The Panama and Paradise Papers similarly revealed how developing countries cumulatively lose hundreds of billions as multinationals systematically concentrate profits through sophisticated legal and accounting techniques into European low-tax offshore financial centers, enabled by tax opacity.

Binding legal instruments should require large multinational corporations and wealthy investors to *expand country-by-country financial reporting* alongside *open public beneficial ownership registries* within reasonable timelines. Proposed legal or regulatory changes with extraterritorial human rights risks must undergo inclusive ex-ante independent rights impact assessments, gender analyses, and rights scrutiny from experts before administrative approvals.

G. Inclusiveness, participation, and the right to self-determination

The Convention must *acknowledge* the fundamental principle that groups affected by fiscal decisions (especially from historically disadvantaged groups) have *the right to meaningfully participate*. Tax-related procedures must be democratic, and all technical tax cooperation and norm-setting processes in the Convention must integrally enable and protect full, informed democratic participation.

On top of public participation, inclusivity calls for equal footing in decision-making for all countries, which requires *taking measures to recognize their different capacities and interests*, for instance, allocating sufficient financial resources for capacity-building. This was one of the foremost reasons for the call for a UN Convention. The OECD tax process violated rights’ principles by exhibiting an almost total lack of formal rules regarding decision-making and procedure¹⁵, which inhibited criticism and input from less influential countries. The right to self-determination recognized in several instruments requires instead that any global tax reforms secure a democratic and inclusive process to determine fiscal policies that are cognizant of power imbalances between States in the North and the South. Ensuring that power is shared equally among all sovereign States, which must be

¹⁴ See, e.g., TJN, *The State of Tax Justice*.

¹⁵ Ovonji-Odida et al. (2020) *Assessment of the Two Pillar Approach to Address the Tax Challenges Arising from the Digitalization of the Global Economy*.

able to engage *meaningfully* in decision making, is also aligned with States' duty to cooperate Internationally, in good faith, to realize rights.

III. Conclusion

Considering the above principles, emerging from binding UN norms, essential international tax reform commitments must fully dismantle all legal financial structures that facilitated tax injustice over past decades. The Convention should build new transparent, inclusive, and participatory mechanisms that prevent the unjust enrichment of powerful States and entities due to historical imbalances.

To achieve these goals, human rights mechanisms are an indispensable tool of guidance that must be brought to the center of tax cooperation. The GA resolution 77/244 and the Secretary General's related report both recognize the need to frame international tax cooperation in a more holistic, sustainable development context concerning inequality, the environment, health, gender, and intergenerational aspects. The Framework Convention on Tax presents a critical opportunity to recognize human rights norms in taxation as binding standards with concrete implications for state action.