



**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 policy¹ are pleased to make this submission to the open call for inputs for the first substantive session of the Ad Hoc Committee to Draft Terms of Reference (ToR) for a United Nations Framework Convention on International Tax Cooperation (hereinafter, the Framework Convention). The main objective of the submission is to identify the critical issues to be included in the ToR, building 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 process². The Principles systematize and distill existing normative standards emerging from international human rights’ law that apply to taxation. The submission also builds on the Initiative’s experience as a member of the Civil Society Council of the Latin American Platform on Tax (PT-LAC), launched in 2023.

Overall, the Principles indicate that States' decision-making around taxation, both domestically and internationally, must be guided by their human rights’ commitments. There are several legal provisions, including from several United Nations (UN) Treaties, that recognize this connection. Indeed, based on different legal provisions, a wide range of human rights’ mechanisms at the United Nations have developed more precise standards to understand what human rights’

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

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



duties mean for tax policy³. The advances in connecting tax policy and human rights have now been so significant that relevant UN human rights' mechanisms have noted the relevance of the Framework Convention⁴. It is crucial for the Committee to acknowledge these developments and understand relevant frameworks -which complement and differ from those used by the OECD-, among other things to ensure policy coherence within the UN.

II. Specific problems that could be addressed in a framework convention

The framework convention could address a myriad of issues, including the distribution of taxing rights to counter the power imbalance among jurisdictions and address challenges of the digital economy, exchange of information, or the prosecution of fiscal crimes, the protection of whistle-blowers who report tax abuses, and assistance for tax matters⁵. Yet the focus of this section are the key principles to promote global tax governance that enables the full realization of human rights. As such, the following are some of the provisions contained in human rights' instruments that are particularly relevant in the field of tax cooperation, in their connection to substantive and procedural issues that could be included in the ToRs:

A. Substantive issues

a. General goals of taxation (Principle 1)

Human rights provide the key reasons for why states should cooperate internationally in the tax realm. 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-LAC⁶.

We therefore suggest that the convention includes a general principle to recognize *the realization of human rights, the promotion of sustainable development, and addressing the climate emergency* as key goals of tax cooperation (even when recognizing that tax cooperation could

³ See, e.g., A/HRC/26/28

⁴ See statement available at: <https://www.ohchr.org/en/press-releases/2022/11/human-rights-experts-support-call-un-tax-treaty#:~:text=%E2%80%9CInternational%20tax%20reforms%2C%20like%20a,making%2C%E2%80%9D%20the%20experts%20said.>

⁵ Guideline 2, Principle 13.

⁶ See Ministry of Finance of Colombia, at

https://www.minhacienda.gov.co/webcenter/ShowProperty?nodeId=/ConexionContent/WCC_CLUSTER-226994



similarly pursue other legitimate goals). Such a general principle would call for tax rules that allow for adequate and sufficient funding for human rights *across all countries*, and should be further distilled into guiding principles for the Convention that: i) ensure policy coherence and coordination (for instance, coordinating decision making within the convention and climate financing); ii) set interpretative criteria that binds parties to the Convention to interpret its provision in consistency with their human rights' obligation, giving prevalence to the latter if necessary⁷.

b. States duty to mobilize their maximum available resources (Principle 10)

States must 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 call 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.

We therefore suggest that the ToRs include: i) a commitment to ensure robust transparency around tax benefits⁸, and to justify and assess benefits stringently and in accordance with clear procedural and substantive criteria; ii) a commitment to conducting timely and careful estimates of the revenue raising potential of the measures advanced within the Convention that take into account the financing needs for climate, human rights and sustainable development done by other UN agencies.

c. States' extraterritorial obligations and duty to cooperate internationally (Principle 13)

States must promote international cooperation with human rights focus and support national efforts to realize rights and promote equality. This 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

⁷ Principles 1.2., 1.3., and 1.4.

⁸ A proposal on what information shall be made public, and through which channels, can be found in guideline 6, Principle 10.



“...individually and through international assistance and cooperation, especially economic and technical...”. Relatedly, States have extraterritorial human rights obligations (ETOs), according to which they must abstain from any conduct that undermines another State’s capacity to fulfill their own obligations (for example, by facilitating tax abuse or promoting aggressive tax). Importantly, States must observe their ETOs and their duty to cooperate when they act as members of an international organization.

In consequence, we suggest that the ToRs include States duty to undertake assessment of the extraterritorial effects of their tax decisions that could foreseeably restrict other States’ capacity to fulfill their human rights obligations; that most developed countries commit to providing economic and technical assistance, *guided by the spirit of cooperation and solidarity*, to enhance the capacities of tax authorities in least developed countries; and that countries advance in their efforts to exchange information -to include, for instance, *significant information on assets*- to fight tax abuses which disproportionately affect lower income countries.

d. Substantive equality (Principles 3, 5 y 6)

In line with their human rights’ commitments, States must ensure that tax systems promote substantive equality (with an intersectional approach). They must therefore recognize that everyone shall comply with their duty to pay taxes in accordance with their *ability to pay*, establishing appropriate tax thresholds and refraining from adopting measures that manifestly worsen the situation of those who lack the resources to live with dignity.

We therefore suggest that the ToRs: i) recognize horizontal and vertical equity, equality, non-discrimination, ability to pay, and progressiveness as guiding principles of international taxation; ii) include and prioritize, in the content of the Convention and the agenda of the entities that may emerge from it, taxation with a highly redistributive potential, such as wealth taxes. Overall, States should commit to taxing the main sources of income for the population at the top of the income scale similar to or higher than other sources. As shown in previous work by the



Initiative⁹, this type of taxation has a great potential to promote gender equality, and redistribute income and wealth among men and women (centrally, as men are overrepresented at the upper income groups).

States should also include in the ToRs a commitment to assess with sufficiently disaggregated data the consequences of the decision advanced within the Convention on different persons and groups, considering the direct and indirect discriminatory effects and contemplating multiple, intersectional forms of discrimination.

- e. Reparation of environmental harms through international tax policies and policy coherence (Principles 4 and 15).

The ToRs should incorporate a mechanism to track tax measures to disincentivize the consumption of fossil fuel energies and other sources of energy with high greenhouse gas emissions; and contribute to monitoring climate financing and its alignment with financial flows in accordance with the Paris Agreement¹⁰.

B. Procedural issues

a. Transparency (Principle 7)

Transparency is a key principle of the human rights' framework. In connection to tax transparency, human rights standards provide various guidelines on which information shall be produced, how it should be produced and published, and how to reach an interpretative balance between publicity and its exceptions. Among the many issues that could be included in connection to tax transparency in the ToRs, we suggest including commitments towards:

- Establishing a *presumption* in favor of the public availability of tax information, and to interpret tax secrecy restrictively.
- Producing and publishing clear and measurable objectives for tax measures advanced within the Convention, and regularly report progress towards them.

⁹ See, e.g., “Los Principios de Derechos Humanos en la Política Fiscal en el contexto de la pandemia: análisis de casos de Latinoamérica”, at <https://derechosypoliticafiscal.org/es/recursos/documentos-complementarios-y-fuentes/129-politica-fiscal-en-el-contexto-de-la-pandemia.html>

¹⁰ https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf



- Publishing information in reliable, timely, and accessible manners, and in open and reusable formats.
- Ensuring that information is sufficiently disaggregated to enable its rights-based analysis (including criteria such as gender, ethnicity and race when relevant).
- Advancing in exchanging assets information and advancing in creating relevant asset registries.
- Enhancing their use of beneficial ownership registries, and advancing towards their transparency (so that they are effectively used to detect tax abuse, corruption, etc.)

b. Participation (Principle 7)

States should include in the ToRs a clear commitment to ensuring that the work related to the framework convention is open to informed public debate, through inclusive, broad, transparent and deliberative social dialogue. Participation must be equitable, meaningful, multisectoral and inclusive. 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.

c. Decision making within the framework convention

In light of the democratic and inclusiveness deficits of current international tax architecture¹¹, which are particularly worrisome in a context of global poly-crisis that calls for enhanced accountability and legitimacy of all public institutions, the framework convention should ensure all participating countries have equal footing to participate, deliberate, and decide within the Convention. Procedures should genuinely ensure that the interests and capacities of all states, as sovereign entities with populations that hold a right to self-determination, are properly considered and addressed. Additional measures should be taken, when necessary, to support the participation of low-income countries, who face the biggest challenges in connection to international taxation and related issues of climate financing, rights' realization, and foreign debt.

¹¹ As summarized in the UN Secretary General Report A/78/235.



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;

Initiative for principles for human rights in fiscal policy

