

**Bogotá, Colombia. March 14, 2024**

**Mr. Ramy Youseff**

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

Subject: Contributions to the Work of the United Nations Tax Convention Committee

## **1. General considerations**

The full realization of human rights requires the existence of strong institutions that manage, allocate, and utilize public resources transparently, participatory, and responsibly. This principle is grounded in the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>1</sup>, which acknowledges the importance of maximizing the mobilization of available resources as a crucial step towards the progressive realization of human rights.

As part of the open call for contributions to the first substantive session of the Ad Hoc Committee for the Drafting of Terms of Reference (ToRs) for a United Nations Framework Convention on International Tax Cooperation (hereinafter, the Framework Convention), from the Center for Law, Justice, and Society Studies (Dejusticia)<sup>2</sup>, we believe that the primary objective is to seek the optimal mobilization of state resources to strengthen their revenues through efficient tax collection that allows progress towards the full realization of human rights.

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<sup>1</sup> United Nations (1966). International Covenant on Economic, Social and Cultural Rights. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

<sup>2</sup> See: <https://www.dejusticia.org/>

In this context, promoting international tax cooperation emerges as a vital component. This entails ensuring equity, transparency, and progressivity of tax systems, as well as combating illicit financial flows related to taxation. By achieving these objectives, not only does it contribute to reducing inequality within and among countries, but it also facilitates the mobilization of financing necessary for governments to meet their international goals, obligations, and commitments. This includes not only those related to human rights but also those linked to environmental protection, equality, and the achievement of the Sustainable Development Goals.

## 2. Structural elements of the framework convention

There are numerous relevant topics that could be included in a Framework Convention, such as the distribution of tax competencies among jurisdictions, the responsibilities of various actors regarding information exchange, the interests of low- and middle-income countries regarding climate change financing, and the pursuit of tax evasion and avoidance. However, all these aspects converge on a cross-cutting challenge: ***the fight against illicit financial flows to provide resources to address the needs of states, such as those related to climate change.***

In many countries of the Global South, evidence has revealed that the lack of capacity to reduce illicit flows hinders the mobilization of available resources. In several instances, this situation does not necessarily require acquiring additional resources but rather leveraging existing state capacities more efficiently<sup>3</sup>.

In this context, we can raise substantive as well as procedural issues that can be included in the ToRs:

### 2.1. Substantive elements:

#### (i) Extraterritorial obligations of states:

This is an issue that has been consolidating as one of the jurisprudential developments by international human rights bodies, especially by the

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<sup>3</sup> Abugre, C., Cobham, A., Etter-Phoya, R., Lépissier, A., Meinzer, M., Monkam, N., & Mosioma, A. (2019). Vulnerability and Exposure to Illicit Financial Flows risk in Africa. *Tax Justice Network, August, 20*. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3440066](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3440066)

United Nations treaty bodies, such as the Committee on Economic, Social and Cultural Rights<sup>4</sup>.

The essential idea is that states, in accordance with Articles 55 and 56 of the United Nations Charter, must contribute to the achievement of the purposes of the United Nations, one of which is the promotion of human rights worldwide. Consequently, states have the responsibility not only to respect and contribute to the guarantee of human rights within their own territory but also beyond it.

Additionally, the ICESCR establishes that, to progressively achieve the full enjoyment of social rights, States commit to adopting measures “both individually and through international assistance and cooperation, especially economic and technical, to the maximum of their available resources”<sup>5</sup>. This implies not only that each state may resort to such international cooperation when its resources are insufficient, but also that, within certain limits, more powerful states have a certain duty of cooperation so that less developed states can achieve the full realization of the rights of their population.

Consequently, states must actively collaborate with other countries and international organizations to effectively address this issue and strengthen the integrity of the international financial system. A fundamental measure to achieve this is to establish obligations for the exchange of information about individuals and companies operating within their jurisdictions, such as those resting on beneficial ownership registries. Additionally, accountability mechanisms should be established regarding tax treaties and agreements, fiscal expenditures, and nominal and effective tax rates<sup>6</sup>, especially for multinational corporations.

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<sup>4</sup> General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities. Un Symbol: E/C.12/GC/24

<sup>5</sup> United Nations (1966). International Covenant on Economic, Social and Cultural Rights. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>. Art. 2, paragraph 1.

<sup>6</sup> Ryding, T. (2022). Proposal for a United Nations Convention on Tax. Page 14. <https://assets.nationbuilder.com/eurodad/pages/2852/attachments/original/1654678410/un-tax-convention-final.pdf?1654678410>

## **(ii) Control of tax competition:**

The practice whereby multinational corporations transfer profits to subsidiaries in low-tax or secretive jurisdictions is one of the largest individual sources of illicit financial flows<sup>7</sup>.

Several international human rights bodies of the United Nations, such as the Committee on Economic, Social and Cultural Rights, as well as the Committee on the Rights of the Child, have concluded that tax competition constitutes a violation of states' extraterritorial obligations in human rights matters<sup>8</sup>. The most extreme and pernicious form of these tax competition strategies is evident in so-called tax havens. These are places that not only impose minimal, almost non-existent tax rates but also promote banking secrecy and show reluctance to cooperate with other countries in combating tax evasion and avoidance. This, in turn, facilitates the laundering of profits derived from criminal activities, thereby exacerbating the challenges associated with global tax justice.<sup>9</sup>

In this context, the Terms of Reference (ToRs) should consider combating tax havens and tax competition as substantive aspects. This could be achieved through the implementation of a global minimum corporate tax rate on profits that all multinational corporations are required to pay in the locations where they operate. Such a rate should be equitable and fair, to not only benefit the wealthiest countries but also promote tax fairness globally.

## **(iii) Tax progressivity to combat climate change:**

According to a study conducted by the World Inequality Lab<sup>10</sup>, the wealthiest 10% of the world is responsible for half of global carbon emissions, while the poorest half of the population contributes just 12%

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<sup>7</sup> Union Commission/United Nations Economic Commission for Africa (2015). Report of the High Level Panel on Illicit Financial Flows from Africa <https://repository.uneca.org/bitstream/handle/10855/22695/b11524868.pdf?sequence=3&isAllowed=y>

<sup>8</sup> General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities. Paragraph 37. Un Symbol: E/C.12/GC/24

<sup>9</sup> Uprimny, R. (2022). Por una justicia tributaria global. <https://www.dejusticia.org/column/por-una-justicia-tributaria-global/>

<sup>10</sup> Chancel et al. (2023). Climate inequality report 2023, fair taxes for a sustainable future in the global south. <https://wid.world/news-article/climate-inequality-report-2023-fair-taxes-for-a-sustainable-future-in-the-global-south/>

of the global total, averaging 1.6 tons of carbon per person. These findings highlight a significant inequality in contributions to the climate problem. In response to this, Chancel proposes the implementation of progressive ecological taxes based on wealth.

In response to the climate urgency, it will be necessary for the ToRs to include as an objective the implementation of progressive global tax measures that address the problem of climate change affecting all countries. By establishing a progressive tax framework, it could be ensured that those who contribute most to the climate crisis bear a proportionally higher burden, while protecting the most vulnerable sectors of states. This approach would not only promote economic equity and combat poverty<sup>11</sup>, but also offer significant incentives for technological innovation and the adoption of responsible environmental policies globally.

## 2.2. Procedural elements

### (i) Equitable intergovernmental forum:

“Governments should establish solid and coordinated national governance mechanisms that efficiently reinforce financial integrity for sustainable development, in addition to publishing national assessments of their own performance”<sup>12</sup>. Therefore, it is important to establish a globally inclusive intergovernmental forum that can bring together various states within the global system to create equitable tax norms and address coordination and overload issues<sup>13</sup>.

Currently, the process of developing international tax norms and standards is largely led by the OECD and the G20, who have developed two important frameworks to address tax cooperation: the Inclusive Framework on BEPS (Base Erosion and Profit Shifting) and the Global Forum on Transparency and Exchange of Information for Tax Purposes. However, countries' participation in these frameworks is conditioned on the implementation of the underlying standards and norms, which has

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<sup>11</sup> De Schutter, O., Lusiani, N. J., & Chaparro, S. (2021). Re-righting the international tax rules: operationalising human rights in the struggle to tax multinational companies. *Human Rights and Economic Policy Reform*, 124-152.

<sup>12</sup> Financial, Accountability, transparency & Integrity [FACTI] (2021). Report of the High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda. Page 12. [https://factipanel.org/docpdfs/FACTI\\_Panel\\_Report.pdf](https://factipanel.org/docpdfs/FACTI_Panel_Report.pdf)

<sup>13</sup> Ibid.

largely excluded developing countries from the negotiation and development process of such frameworks.

**(ii) Mechanism for information transparency:**

The implementation of a standardized mechanism ensuring equitable access to disaggregated and comprehensive information<sup>14</sup> for all signatory parties of the Convention is crucial to fostering transparency and international cooperation in tax matters. This approach aims to eliminate dependence on bilateral agreements and ensure that all countries, regardless of their economic power, have equal footing in information exchange.

This standardized mechanism will not only promote the disclosure of tax agreements from all nations but also facilitate multilateral negotiations and help prevent tax evasion and illicit flows through access to information such as beneficial ownership registries. This would enable the identification of the true owners of companies or organizations and their effective taxes, facilitating authorities in tracking and mitigating illicit financial activities, thereby promoting ethical and responsible business practices.

**(iii) Adequate dispute resolution mechanism:**

An effective mechanism for dispute resolution through diplomatic channels and with competent authorities will be necessary<sup>15</sup>, allowing for equal treatment, participation, and equitable adoption by all member states while considering states' human rights obligations. This will ensure consistent interpretation and application of the provisions agreed upon in the Framework Convention, thereby promoting cooperation and trust among countries and ensuring that international tax standards are applied fairly and equitably for all states.

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<sup>14</sup>Initiative for human rights in fiscal policy (2021) Principles for Human Rights in Fiscal Policy. Page. 34

[https://derechosypoliticafiscal.org/images/ASSETS/Principles\\_for\\_Human\\_Rights\\_in\\_Fiscal\\_Policy-ENG-VF-1.pdf](https://derechosypoliticafiscal.org/images/ASSETS/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf)

<sup>15</sup> Ryding, T. (2022). Proposal for a United Nations Convention on Tax. Page 14.

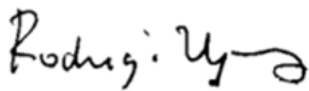
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**(iv) Monitoring and evaluation mechanisms:**

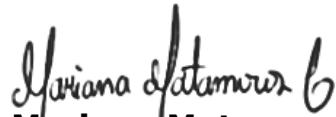
This would enable the identification of areas where the convention could be adjusted to better address global fiscal challenges related to combating illicit financial flows. Furthermore, the disclosure of monitoring and evaluation results would promote transparency in the implementation of the convention, thereby fostering trust among member countries.

We remain at your disposal should you require further information and contributions.

Sincerely,



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