

The need for climate mainstreaming in International Tax Cooperation
Joint Submission to the Ad Hoc Committee, 15 March 2024

Global tax abuse (estimated to be \$480B p.a.) deprives states, particularly those in the Global South, from the necessary resources to finance climate responsive public services. Global tax regimes are historically and systematically biased against global South countries and their ability to mobilize revenue to finance actions towards mitigation, adaptation, and loss and damage. Due to the ever worsening of the climate emergency, some global North states are engaging in unilateral actions to tax cross-border carbon intensive resource flows, while also designing international tax rules to suit their own objectives of domestic revenue mobilisation to fund their own recovery and just transition pathways - e.g. in the G20 / OECD Inclusive Framework, which allocates taxing rights predominantly to global North countries from the global minimum tax, and taxing of untaxed revenue in secrecy jurisdictions.

As a result of the lack of fulfillment of international climate finance commitments, public resources continue to be the primary source of financing for public goods and services and for addressing climate change in both the primary flows, as well as ensuring a just transition takes place, through compensation for short-term economic losses or subsidies for adopting more climate friendly technologies and energy sources, with the overall goal of phasing out polluting technologies and energy sources.

For global South countries to expand their public resources to meet climate finance obligations, it is vital to ensure that international tax norms and rules are set in a multilateral space that is representative of global South countries, and other stakeholders in a transparent, effective and equal manner. The UN Tax Convention fulfils these criteria, as a space where global South countries can participate on an equal footing to global North countries. The TOR must recognise and provide the basis for a binding policy and regulatory framework that will redress the climate related impacts of regressive taxation and tax abuse (including IFFs, profit-shifting, and the unequal distribution of taxing rights stemming from colonization).

This statement seeks to build on the Article 6(b) of Resolution 78/230, which underlines the importance of a holistic, sustainable development perspective that considers interactions with other important economic, social and environmental policy areas. Multiple issues related to environmental taxation are now emerging on the international tax agenda. These include windfall profit taxes for fossil fuel corporations, cross-border applications of carbon taxes, or proposed surtaxes for fossil fuel companies. In this context, the UN FCITC should promote progressive green taxes, which combine the pursuit of environmental objectives and the aim to reduce inequalities.

Progressive environmental taxation is pivotal to making progress on the ecological transition, as well as on social and economic justice. The current tax systems continue to support the linear 'take-make-waste' economy, in which the throughput of products is maximised and products become waste after a short life cycle. A tax system designed to reduce inequalities and to operationalise the 'polluter pays principle' can serve to internalise the external costs of nature destruction, promoting behavioural change, contributing to achieving environmental and social objectives, and catalysing the transition to socially just and environmentally sound economies. The revenues raised through environmental taxation - subject to equity

assessments to avoid regressive impacts on societies - must contribute to the global mobilisation of finance for a just and equitable transition.

From a tax and fiscal justice perspective, the ToR should consider:

1. The creation of taxes that have an impact on mitigating or adapting to climate change, setting broad norms concerning their application, including in context of cross-border dynamics of avoidance and evasion, or where international agreements may need to be reached before a tax can be applied (e.g. shipping, aviation);
2. International tax rules to allocate taxing rights in accordance with climate action commitments including the Paris Agreement, and determine the international norms concerning cross-border elements of environmental taxes in a multilateral, transparent and fair manner;
3. Curbing illicit financial flows (IFFs) arising from activities that are harmful to biodiversity and the environment, such as natural resource crimes and abuses that deplete carbon sinks including illegal, unreported and unregulated (IUU) fishing, forestry, mining and fossil fuel industry. Key measures include beneficial ownership registries, and asset registries that enable accountability of those behind these IFFs.

Tax and Climate Finance

The UNFCCC is the main multilateral legal and policy framework for global action on climate change,¹ and the ToR should ensure the norm setting on tax through the FCITC aligns with this framework. This includes Article 2.1(c), which specifies that all financial flows should be “consistent with a pathway towards low greenhouse gas emissions and climate resilient development”. Implementation of commitments under the UNFCCC are based on the principles of equity and common but differentiated responsibilities and respective capabilities (CBDR-RC)--which should also be explicitly named in the ToR as a guiding principle for the FCITC. Examples have already arisen of climate-related taxation efforts that may contradict the principle of CBDR-RC, notably the EU carbon tariff on certain imports to the EU - the EU Carbon Border Adjustment Mechanism (CBAM). The CBAM, a tax on the CO₂ emissions of products imported to the EU, is likely to negatively impact some developing countries and vulnerable economies.²

According to the UNFCCC, climate finance refers “to the financial resources dedicated to mitigating and adapting to climate change globally, including in the context of financial flows to developing countries”.³ Article 9(3) specifically “not[es] the significant role of public funds, through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts.”

¹ United Nations Framework Convention on Climate Change - UNFCCC, 1992.

https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf

² Nalunga, Jane, Peninnah Mbabazi, and Kafeero Herbert. Carbon border adjustment mechanism (CBAM): Its implications on Africa-EU trade and on Africa's sustainable development, 11 September 2023. <https://seatiniuganda.org/download/carbon-border-adjustment-mechanism-cbam-its-implications-on-africa-eu-trade-and-on-africas-sustainable-development/>.

³ https://unfccc.int/sites/default/files/resource/54307_1%20-%20UNFCCC%20BA%202020%20-%20Report%20-%20V4.pdf

These norms are already being shaped at the regional level. The Economic Commission for Latin America and the Caribbean (ECLAC) defined the scope of environmental taxation to include taxes on production, consumption and investment, and to disincentivise harmful activities and incentivise socially and environmentally beneficial activities (CEPAL, 2019). The main focus is on three types of taxes: energy taxes, transport related taxes, and other (CEPAL, 2019). In the category of 'other' taxes, some taxes regarding windfall profits of fossil fuel companies did exist, but these were often seen as difficult to implement given international agreements on investor protection in bilateral investment treaties or indeed as part of trade agreements. International cooperation is required to progress these environmental taxes, and to make them more progressive.

Similar conclusions have been made by the African Tax Administration Forum (ATAF) in the African context. Many African states are creating new taxes mostly on the consumption side of energy and transport where they are related to fossil fuels, or even more commonly removing subsidies in these areas where they are subsidising a polluting energy source or means of transport. Environmental taxation must be progressive and focus on polluters, rather than consumers, of environmentally harmful resources.

To progress in implementing more progressive taxes regarding polluting industries such as windfall taxes, climate damages taxes on fossil fuel companies, or permanent surtaxes on fossil fuel companies requires greater international agreement to remove barriers that make it difficult to implement new tax regimes that may be seen as contradicting existing investor protection or indeed trade agreements. There are proposals for more progressive ways of taxing environmentally polluting activities, both by sharing taxing rights and sharing revenue collected based on climate and environmental commitments.⁴ Similarly, wealth taxes could raise significant revenue to address gaps in financing climate action: a wealth tax of merely 1.5% on individuals possessing more than \$100 million would levy nearly \$300 billion annually.⁵

IFFs and Resource Extraction

The overarching focus on fossil fuel subsidies on the consumption side by some international organisations providing tax advice such as the International Monetary Fund (IMF) has further skewed this landscape, as the advice rarely mentions the need for progressive taxation to finance climate action through expanded domestic public resource mobilisation.

In particular the taxation of the extractives sector often falls short of providing appropriate revenues for governments, not least due to numerous types of tax incentives, inadequate fiscal policies and a global tax system (including the transfer pricing system) that opens the door to large-scale aggressive tax planning by multinational corporations. As a

⁴ See Tax Justice Network's outline of a "cap and share" plan in which tax revenues raised would land in an international fund and then would then be re-distributed based on need to climate-vulnerable, low-polluting nations in the Global South:

<https://taxjustice.net/2023/10/26/carbon-tax-for-global-justice-cap-and-share-as-a-progressive-alternative-for-taxing-fossil-fuels>

⁵ <https://wid.world/document/climate-inequality-report-2023/>

consequence, the tax system is failing to internalise the external costs that the extractive sector is causing to the environment and society.

The concern over rising Illicit Financial Flows (IFFs) is also relevant in the field of climate action and environmental action, especially regarding natural resource related Illicit Financial Flows in the areas of Illegal, Unreported and Unregulated (IUU) fishing which accounts for an estimated annual Illicit Financial Flow of US\$ 23.5 billion out of mostly Global South countries into consumer markets often in the Global North. Of this global figure, it has been estimated that up to US\$11.5 billion relate to West African States alone due to the highest incidence of illegal fishing vessels. Meanwhile, illegal logging accounts for up to \$US 152 billion in lost resources, and the illegal wildlife trade up to US\$23 billion.⁶ These estimates have a wide scale due to the difficulty of detecting these crimes.

The UN Tax Framework Convention should consider ways in which natural resource crimes can be tackled through the application of greater tax transparency and also financial transparency in particular beneficial ownership transparency on a public registry, or indeed wider asset ownership registries of vessels, land, property. These registries should be public, and freely accessible to all. They should also be general in scope, not limited to specific sectors like fisheries, forestry, wildlife or extractives to be most effective in combating Illicit Financial Flows. The link is often made between natural resource crimes and also tax crimes, and in this sense we see that without defining both under the wider umbrella of Illicit Financial Flows we may end up with separate norm setting from tax related IFFs.

Though the commitment to tackle Illicit Financial Flows is not explicitly mentioned under the UNFCCC, many environmental and climate targets are also part of the 2030 Agenda. We therefore conclude that tackling illicit financial flows to enable greater availability of funds for climate and environmental action (not strictly climate change) is an international commitment.

Human Rights Law as a Foundation for the FCITC

We request the UN Tax Framework Convention to align with international human rights law and build on previous commitments that states have made. The TOR must align with and contribute to states' obligation to raise and use the maximum available resources for the realization of economic, social and cultural rights, including the right to enjoy a clean, healthy, and sustainable environment.⁷

In addition, we request the Ad Hoc Committee to consider the following:

- ICESCR Art. 12(2)(b) directs states to adopt measures necessary for the “improvement of all aspects of environmental and industrial hygiene,” to fully realize the right to health.

⁶ <https://thedocs.worldbank.org/en/doc/482771571323560234-0120022019/original/WBGReport1017Digital.pdf>

⁷ A/76/L.75

<https://undocs.org/Home/Mobile?FinalSymbol=A%2F76%2FL.75&Language=E&DeviceType=Desktop&LangRequested=False>

- FACTI Panel Report, Recommendation 1C: “Making financial integrity instruments consistent with human rights principles, including gender equality, is a way to ensure they have legitimacy in the eyes of individuals.”
- FACTI Panel Report, Recommendation 3C: “The 2015 Addis Ababa Action Agenda on Financing for Development provides the framework for aligning all financing flows and policies with the economic, social and environmental priorities set out in the 2030 Agenda. The Addis Agenda makes clear that success depends not only on national policies and regulations, but also on an international environment that would enable such transformation.”
- FACTI Panel Report, Preamble to Recommendation 11: “Efforts to improve financial integrity are severely impeded by the absence of neutral and authoritative bodies with the responsibility of collating and analysing data (including gender disaggregated data)”, this is linked to the issue that: “There is no neutral, authoritative body tasked with publishing comprehensive global tax data.”
- Availability of data should extend to collection of data on environmental taxation, and creation of norms and definitions in this area, in close cooperation with the UN Regional Economic agencies and other bodies that represent all country groups of the UN.

SIGNATURES

Financial Transparency Coalition

Center for Economic and Social Rights

ActionAid International

Women’s Environment and Development Organization (WEDO)

Additional Resources

Illicit Financial Flows and climate change

<https://taxjustice.net/2023/09/06/beneficial-ownership-and-climate-crimes-a-fishy-business/>

COP reflections from a tax and climate angle

<https://taxjustice.net/2023/12/14/fight-tax-abuse-for-a-fighting-chance-on-climate-reflections-on-cop28/>

ATAF on carbon taxes in Africa

https://events.ataftax.org/includes/preview.php?file_id=199&language=en_US#:~:text=A%20carbon%20tax%20is%20a,in%20environmental%20benefits%20as%20well.

ATAF on defining environmental taxes in Africa

https://events.ataftax.org/includes/preview.php?file_id=143&language=en_US

LATINDADD report on tax, IFFs and climate justice in LAC

<https://www.latindadd.org/wp-content/uploads/2022/07/Tributacion-ambiental-financiamiento-climatico-y-flujos-ilicitos-en-America-Latina.pdf>

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