

Ms. Attiya Waris
Independent Expert on effects of foreign debt and human rights

**PROPOSED UN TAX CONVENTION
TERMS OF REFERENCE(TOR)**

“What are some specific problems that could be addressed by a UN framework convention on international tax cooperation?”

<p>Background</p>	<p>The following draft terms of reference pertain to the proposed UN Tax Convention, which was adopted in 2023 by the United Nations General Assembly under Resolution 78/230¹, titled “Promotion of inclusive and effective International Tax Cooperation at the United Nations”. This resolution was championed by the African Union Delegation.</p> <p>In the report of the Independent Expert on Foreign Debt and Human Rights A/77/169², titled "Towards a Global Fiscal Architecture Using a Human Rights Lens," the Independent Expert highlighted the following pertinent recommendations:</p> <p><i>(a) Reform the global taxation system as part of genuine efforts to combat illicit financial flows, in line with human rights law and standards, including extraterritorial obligations.</i></p> <p><i>(e) Create an international authority, global tax body or world tax organization.</i></p> <p><i>(f) Launch the negotiation of a United Nations-led global tax convention.</i></p> <p>The report addresses the issue of international tax governance by creating and developing a global United Nations-led tax convention.</p>
--------------------------	--

¹ <https://documents.un.org/doc/undoc/gen/n23/431/97/pdf/n2343197.pdf?token=AmR9tTfR4djOsZOw6s&fe=true>

² <https://documents.un.org/doc/undoc/gen/n22/427/11/pdf/n2242711.pdf?token=bMdXvkP0eDbK75J55r&fe=true>

Principles of Global Taxation	
<p>Parties and Stakeholders <i>*the framework convention would expand the scope of the OECD/G20 forums by recognizing mandates from all countries that are parties to the United Nations system</i></p>	<p>The proposed establishment of a global tax body is to be under the auspices of the United Nations, this referred to as the “UN Tax Convention”. This designation underscores the imperative for equal participation among all nations to contribute to decision-making processes concerning tax norms, rule-setting, and negotiation on a global scale.</p> <p>Central to this endeavor is the establishment of a multilateral, inclusive and democratic fiscal body that can effectively address tax-related matters. As parties to the Tax Convention, States will possess both rights and obligations within this framework, ensuring their active participation and commitment.</p> <p>Moreover, clear distinctions and provisions must be articulated to the diverse needs and circumstances of different groups of States. These include: developed countries, developing countries, least developing countries, landlocked countries and small island developing countries.</p> <p>Recognizing the nature of global finance and development, stakeholders encompass an array of entities, including the global and regional financial institutions, regional trading blocs, UN aid agencies, UN agencies, bilateral aid agencies and development financial institutions, the Human Rights Council, and the Office of the High Commissioner of Human Rights. Each stakeholder group must have its obligations towards the implementation of the UN Tax Convention clearly outlined, thereby ensuring coherence and alignment across the global tax architecture.</p>
<p>Substantive Issues to be addressed:</p>	
<p>1. Illicit Financial Flows</p>	<p>Tax and commercial-related illicit financial flows encompass a ray of activities, including particularly those resulting from tax avoidance and evasion, as well as the planning activities of transnational</p>

	<p>corporations. These activities include trade mis invoicing, transfer pricing and the shifting of profits into or through low-tax offshore jurisdictions.</p> <p>Definition, Scope and States obligation towards combating these issues.</p>
<p>2. MultiNational Corporations (MNC's) and High Net Worth Individuals (HNWI)</p>	<p>This includes corporate tax-related illicit financial flows by MultiNational Corporations (MNCs) and the offshore transfer of wealth by High-Net-Worth Individuals (HNWI) and corporations.</p> <p>The establishment of a definition of MNCs and HNWIs and highlight the various forms it takes as well as the role of MNCs and HNWIs.</p> <p>The establishment of State obligations and rights addressing these issues.</p>
<p>3. ABC (automatic information exchange, beneficial ownership transparency, and public country-by-country reporting)</p>	<p>This will lay the groundwork for establishing a global asset registry ensuring consistent aggregate statistics and analysis facilitated by a center for monitoring taxing rights. This was proposed by the <i>High-level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda</i>. This will also serve as a foundation for shifting towards unitary taxation with a genuine and fair minimum effective corporate tax rate.</p> <p>Establishing mechanisms for reporting involves establishing clear guidelines regarding who can report, setting timelines, forums for reporting, and determining the extent of reporting.</p> <p>Obligation of State and other stakeholders in ABC.</p>

<p>4. Dispute Resolution and Human Rights</p>	<p>Ensuring the realization of human rights stands as a fundamental objective of fiscal policy. The obligations of States to respect, protect and fulfill human rights demand a proactive and conscientious role for the State in guiding tax decision-making processes.</p> <p>The Convention should be firmly grounded in human rights-underpinned reflecting government commitments and obligations concerning human rights.</p>
<p>5. Debt and International Financial Obligations</p>	<p>Debt is paid relies on taxpayer funds, underscoring the need to consider the purpose of taxation and the impact of debt within the framework of the multilateral Convention.</p>
<p>Procedural Issues:</p>	
<p>1. Decision-making Rules: Principled Based Approach</p>	<p>The Convention should adopt a new approach, shifting its focus from political and economic strength but rather to embrace a principles/based methodology. This approach, as advocated in the report of the Independent Expert on Foreign Debt and Human Rights A/55/54,³ titled "Fiscal legitimacy through human rights: a principles approach to financial resource collection and allocations for the realisation of human rights".</p> <p>In the report, States, international institutions, and regional trade blocs are invited to integrate the principles of fiscal legitimacy in their decision-making processes while keeping all financial decisions focused on the realisation of human rights and raising the standards of living.</p>
<p>2. Treaty Shopping Rules</p>	

<p>3. Dispute Resolution Forums</p>	<p>The Convention would prioritize dispute prevention as a proactive measure aimed at reducing the necessity for dispute resolution, as emphasized in the report of the Independent Expert on Foreign A/77/169⁴, titled "Towards a Global Fiscal Architecture Using a Human Rights Lens,"</p> <p>Furthermore, the establishment of the UN Tax Tribunal will be intricately linked with other Dispute Resolution Forums, such as the proposed UNCITRAL Working Group 3 Proposal of a Multinational Investment Court.</p> <p>This framework needs to highlight the roles of parties involved in a dispute, including State and non-State parties, and State-State parties, among others. It should delineate the types of dispute to be adjudicated, the jurisdictional scope, and provisions for alternative dispute resolution mechanisms such as arbitration and negotiations. Additionally, it needs to clarify whether decisions rendered by these forums are binding in lieu of the Convention or Treaties.</p>
<p>4. Remedies</p>	<p>The various remedies available for the various parties to the dispute.</p>
<p>5. Commissions and Registries</p>	<p>The granting of mandates to existing international tax governance forums such as the Committee of Experts on International Cooperation in Tax Matters, the Inclusive Forum and the Global Forum on Transparency and Exchange of Information for Tax Purposes.</p> <p>Moreover, an important aspect of the convention will be the establishment of an international beneficial ownership registry. This registry will</p>

⁴ <https://documents.un.org/doc/undoc/gen/n22/427/11/pdf/n2242711.pdf?token=bMdXvkP0eDbK75J55r&fe=true>

	<p>adhere to human rights principles of transparency and accessibility to information, ensuring the registration of ultimate beneficial owners of assets worldwide.</p> <p>Furthermore, the establishment of a global beneficial ownership registry dedicated to tracking illegal financial activities such as tax evasion, corruption, money laundering, and terrorist financing will facilitate the identification and prosecution of perpetrators involved in such illicit activities.</p>
--	---