



Submissions on the Zero Draft Terms of Reference for the Development of a UN Framework Convention on International Tax Cooperation

Introduction

Tax Justice Network Africa (TJNA), a network of African civil society organisations and the convenor of a working group on the UN Tax Convention, forwards its views and those of the undersigned members of the working group. TJNA aligns with the submissions made by the African Group, the African Union, the African Tax Administration Forum and the Global Alliance for Tax Justice.

We note that bureau members did not unanimously agree on the zero draft of the TORs and encourage Member States to negotiate in these proceedings in *good faith*.

We humbly make the following submissions:

Preamble

1. Human Rights

Proposed Amendment: Add a new paragraph under **clause 6**:

Recognise the importance of progressive taxation in affirming the values and principles of the UN Charter, the Universal Declaration of Human Rights, the Declaration on the Right to Development, the UN Guiding Principles on Business and Human Rights and the binding obligations of the International Covenant on Economic, Social and Cultural Rights in realising these rights through public goods and services and realising the Sustainable Development Goals including the maximum use of resources and the extra-territorial duty of not violating the rights of people in other States by infringing on their ability and that of other States to mobilise resources to realise these rights'

Justification: Taxation is critical towards financing for development and realising human rights. It is important that States and rights duty-bearers like multinational enterprises(MNEs) re-affirm this in this process.

Principles

2. Special and differential treatment

Proposed amendments: Add the words in **clause 9 paragraph 1**: '*... to substantially participate in effective international tax cooperation and to meaningfully contribute to the norm-setting processes, without undue restrictions, and support them in doing so, including giving them an opportunity to participate in agenda-*



setting, debates and decision-making, either directly or through country groupings, according to their preference.'

Replace the words *'in particular countries in special situations'* with the words *'in particular least developed countries, countries in conflict and post-conflict situations and other developing countries'*

So that it reads as follows: - be universal in approach and scope and should fully take into account the different needs, priorities, and capacities of all countries to substantially participate in effective international tax cooperation and to meaningfully contribute to the norm-setting processes, without undue restrictions, and support them in doing so, including giving them an opportunity to participate in agenda-setting, debates and decision-making, either directly or through country groupings, according to their preference in particular least developed countries, countries in conflict and post-conflict situations and other developing countries'

Justification: In line with Resolution 78/230, special and differential treatment for least developed and developing countries will improve the effectiveness of international cooperation. This principle must be reflected in the substance and process of making tax rules. [Special situations](#) is a wide grouping of different countries. Caution should be exercised to ensure that countries that have been perpetrators of harmful tax practices such as low tax jurisdictions, secrecy jurisdictions and tax havens do not unduly benefit from this principle.

3. Right to privacy of taxpayers

Proposed amendment: Delete : *'... while respecting the rights to privacy and other fundamental human rights'* in **clause 9, paragraph 8** so that it reads as:

require transparency and accountability of all taxpayers, ~~while respecting the rights to privacy and other fundamental human rights.~~

Justification: We acknowledge the importance of observance of human rights and make suggestions on how this can be captured separately in other sections. However, taxpayers are both natural and legal persons. The latter includes corporate entities including multinational enterprises (MNEs) within the context of international tax cooperation and transparency. The right to privacy under the International Covenant on Civil and Political Rights (ICCPR) applies to *natural* rather than legal persons. Even within the General Data Protection Regulation (GDPR), data protection of personal data is for natural persons. Protecting the privacy of MNEs has *harmed* the public good and been detrimental to investors, minority shareholders and creditors which is why corporate entities are subject to public disclosure requirements. The right to privacy should be balanced with transparency, access to information and other human rights. It should not be used as a barrier towards access to information on country by country reports, beneficial ownership information and public reporting of tax information.



Proposed amendment: Add the following **new paragraph** :

4. Gender

Proposed amendment: Add the following **new paragraph** under **clause 9**:

Ensure that every member state implements progressive and redistributive tax systems to address and rectify systemic inequalities by prioritizing inclusive and just tax policies that centre women's needs, full participation, and inclusion."

Justification: Global tax systems have been biased against achieving human rights for women and gender equality. Structural and systemic barriers have hindered women's equal participation in tax policy decision-making processes. States have made commitments towards ensuring that tax systems, and more broadly resourcing towards development is towards the realisation of human rights and gender equality. These are enshrined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Beijing Declaration and Platform for Action (BDPfA). These commitments remain unfulfilled. It is crucial to address tax and gender issues in the negotiations of the Tax Convention.

Substantive Elements of the Framework Convention

5. Addressing Tax Transparency Adequately

Proposed amendment: In **clause 10**, insert: '*including public beneficial ownership registries, global asset registries, public country by country reporting, public regular tax expenditure reporting and evaluation ...effective exchange*' so that it reads as:

Transparency including public beneficial ownership registries, global asset registries, public country by country reporting, public regular tax expenditure reporting and evaluation and effective exchange of information for tax purposes;

Justification: African countries struggle to meet tax transparency standards that are not consistent with their realities. In 2022, [only 4 African countries](#) had been able to implement country-by-country reporting fully. [Only 4 countries accounted for 84% of all exchange of information requests sent in 2023](#). In 2023, only 5 African countries as of 2023 benefit from automatic exchange of information. Barriers to access to beneficial ownership information for tax administrations continue to exist limiting the ability to address tax-related illicit financial flows (IFFs). Additionally, tax expenditure reporting remains opaque, irregular and inconsistent leading to [significant revenue losses](#). For capital-importing countries that use tax



expenditures to attract foreign direct investment (FDI), regular tax expenditure reporting and evaluation is crucial to protect their tax bases.

Capacity building is touted as the panacea to these. The reality is that tax transparency standards must be revisited. For instance, the revenue threshold of CbCR is so high that many MNEs are not subject to it within developing countries. The confidentiality standards of AEOI continue to be an administrative challenge. All these have led to *ineffective* international tax cooperation in tax transparency.

6. Ensuring that tax measures contribute to addressing environmental challenges

The following changes should be made under **clause 10**:

Add: *'and adhere to the polluter pays principle'* so that it reads as:

'Ensuring that tax measures contribute to addressing environmental challenges and adhere to the polluter pays principle through measures

Justification: Tax measures that address environmental challenges should not be punitive towards those who contribute less and are vulnerable towards climate change. They should adhere to the environmental principle of polluter pays. In the case of the extractives sector, 'source' countries bear environmental costs in the value chain. In capital-importing/source countries, activities such as mining result in the degradation of soil and water sources, risking climate disasters. However, proposals for global taxation prioritise residence countries in the reallocation of under-taxed corporate income – despite the great need for source countries to raise revenues to prevent, manage, and recover from these risks.

The financial transaction tax is an example of how to address environmental challenges while adhering to the polluter pays principle. 75% of all commodity and financial markets trading and speculation occurs in the Global North, underscoring the colonial and uneven nature of global wealth and trade. Tax measures such as the FTT should be grounded on the moral and ethical imperative of reparatory justice, which means revenue raised must be redistributed in Africa and elsewhere in the global south to finance those most vulnerable.

Structural Elements of the Framework Convention

7. Enforcement

We make the following proposals under **clause 13** :

Proposed amendment: Insert the word: *'enforcement'* so that it reads as:

13. The framework convention should also include the following additional substantive and procedural elements: ...domestic law; enforcement; review and verification...



Justification: We draw inspiration from existing enforcement mechanisms including monitoring and reporting mechanisms from UN instruments such as the ICCPR, ICESR, CEDAW amongst others. This will entail the establishment of a structured mechanism for accountability such as a committee to oversee the enforcement and implementation of the Convention. It will also include the requirement of member states to submit implementation reports. The participation of accountability stakeholders in these processes should be encouraged.

8. Specific priority areas to be addressed in early protocols

The following changes should be made under **clause 14**:

Proposed amendment: Delete the following words from **clause 14** as follows: *'prevention and resolution of tax disputes; ...and taxation on of high-net worth individuals'*

Justification: We reiterate that taxation of the digital economy, income from cross-border services and addressing tax-related IFFs remain of highest importance to African countries. Addressing IFFs is expressly within the mandate of the UN through the Sustainable Development Goal (SDG) target 16.4: “[b]y 2030, significantly reduce illicit financial flows and arms flows..’ whose Progress is measured by indicator 16.4.1. “Total value of inward and outward IFFs”. Efforts have been made in Africa to define, estimate and track *tax-related* IFFs in Africa. Preliminary results in 6 African countries were [released on this in 2023](#). Tax-related IFFs also adequately cover the issue of harmful tax practices.

Statistics show that Africa is [a net importer of services](#) unlike other regions, meaning Africa imports more than it exports services. The taxation of non-resident service providers is then important yet remains a considerable challenge for Africa. This is further complicated by increased globalisation and digitalisation. Taxation of the digital economy has been especially challenging for market jurisdictions such as Africa since new business models allow for MNEs to operate without any physical presence in market jurisdictions. Furthermore, efforts to come up with multilateral approaches to digital taxation have stalled. The UN Framework Convention provides an opportunity to develop a mechanism that is *mutually beneficial* for all states.

The negotiation of the early Protocols simultaneously with the Framework Convention will demand financial and human resources. It is then important to consider limiting the number of early protocols and to prioritise the *most urgent and crucial* Protocols. This will ensure that limited resources are leveraged efficiently. Dispute prevention and resolution should also be covered within these Protocols.

We believe the other protocols should be addressed as future protocols.

9. Future Protocols



Proposed amendment: This list should be non-exhaustive. Insert the following words in **clause 15**:

'Ensuring that tax measures contribute to addressing environmental and climate challenges and adhere to the polluter pays principle;

Fair prevention and resolution of tax disputes; Effective taxation of extractives; Gender transformative taxation; and

Taxation on of high-net worth individuals

Justification: Please see the explanation in the previous sections above.

10. Institutionalised participation of civil society organisations and intergovernmental organisations

Proposed Amendment: Insert the following new clause so that it becomes **clause (21)**: *The elaboration of the framework convention and early Protocols shall be a Member States-led process that shall be open to the contribution of international organisations and civil society, in accordance with established practice as provided in Article 71 of the UN Charter and ECOSOC Resolution 1996/31.*

Justification: In line with UNGA resolution 78/230 and other established mechanisms of stakeholder engagement, the participation of civil society and non-governmental organisations is crucial to enhancing the transparency, openness and accountability of this process.



Undersigned Members of the African Working Group on the UN Tax Convention

1. Halley Movement Mauritius
2. Policy Forum (PF) Tanzania
3. CRADEC (Centre Régional Africain pour le Développement Endogène et Commuautaire) Cameroon
4. Tanzania Business News (TZBN)
5. Revolutionary Reparations
6. Southern and Eastern Africa Trade Information and Negotiations Institute (SEATINI -Uganda)
7. Tax Justice Alliance – Uganda
8. Youth For Tax Justice Network (YTJN) Uganda
9. African Parliamentary Network on Illicit Financial Flows and Taxation (APNIFFT)
10. Institute for Economic Justice (IEJ) South Africa
11. Women Lens Africa
12. Akina Mama wa Afrika
13. Alternative Information & Development Centre (AIDC) South Africa
14. The African Women's Development and Communication Network (FEMNET)
15. National Sudanese Women Association
16. Institute of Public Finance (IPF) Kenya
17. CRADD
18. Initiative Locale pour le Développement Intégré-ILDI/RDC (Godefroid MBOYO)
19. Council of Churches in Zambia
20. Zimbabwe Coalition on Debt and Development
21. Economic Justice Network of FOCCISA
22. Christian Council of Mozambique
23. Network for Women's Rights in Ghana (NETRIGHT)
24. Council of Churches Botswana
25. Pan African Lawyers Union (PALU)
26. All Africa Conference of Churches (Dr. Tinashe Gumbo)
27. Observatoire Tunisien de l'Economie (OTE)
28. African Regional Organisation of the International Trade Union Confederation (ITUC-Africa)
29. Initiative pour la Justice Sociale, la Transparence et la Bonne Gouvernance en Côte d'Ivoire (RCI).
30. Bench Marks Foundation
31. Integrity Watch Liberia
32. Agenda Participation Initiative (API) Tanzania
33. Malawi Economic Justice Network (MEJN)
34. Zimbabwe Environmental Law Association (ZELA)
35. Greenpeace Africa (GPAF)



36. International Women's Rights Action Watch Asia Pacific (IWRAW Asia Pacific)
37. No-Vox Côte d'Ivoire
38. Tax Education Alliance
39. Action Aid International