

Mr. Ramy Youseff

Chair of the Intergovernmental Negotiating Committee

to draft a United Nations Framework Convention on International Tax Cooperation

Re: input in connection Draft Issue Note of Workstream I

Abstract

This submission responds to some of the matters raised in the “Draft Issue Note” elaborated by the co-leads of the Workstream I of the Intergovernmental Negotiating Committee on the United Nations Framework Convention on International Tax Cooperation (the Committee). It focuses mostly on: 1) the need to promote coherence of the Convention’s commitments being discussed by the Committee with additional commitments assumed by State parties in other fora; 2) the implications of the “human rights” principle contained in paragraph 9.c of the Convention’s Terms of Reference for the drafting of the treaty’s commitments.

The incorporation of human rights to the Convention’s principles provides negotiating parties with a powerful tool to both guide negotiations and interpret the future treaty in ways that serve the main goal of the process: pursuing more inclusive and effective tax cooperation. Core principles embedded in international human rights law such as the duty to mobilize the maximum available resources for rights’ realization, equality and non-discrimination, the duty to cooperate internationally and extra-territorial obligations, as well as procedural guarantees of transparency and participation, are directly relevant. They have a huge potential to advance the Convention’s goals of establishing an inclusive, fair, transparent, efficient, equitable, and effective international tax system for sustainable development.

The concrete implications of international human rights law for the Tax Convention are further distilled in the Center for Economic and Social Rights technical note available [here](#)¹.

Submission

The Center for Economic and Social Rights (CESR) and the signatory organizations welcome the opportunity to input on the Draft Issue Note of Workstream I (the issue note). We welcome the ongoing work of the Committee and are pleased to see member States making progress to ensure effective and inclusive tax cooperation.

¹ See CESR, Technical note: Aligning tax cooperation with human rights in the UN Tax Convention, at <https://cesr.org/technical-note-aligning-tax-cooperation-with-human-rights-in-the-un-tax-convention/>

This submission relates mainly to how the Convention commitments should be drafted in order to be fully “aligned with States’ obligations under international human rights law” (paragraph 9.c. of the Convention’s Terms of Reference, hereinafter the ToRs). Under international human rights law, States have committed to mobilize the maximum of available resources for rights realization, and to observe the principles of equality, non-discrimination, transparency and participation. These standards are crucial in establishing an “international tax system for sustainable development”, one of the Convention’s goals. International human rights law also binds States to cooperate internationally for rights’ realization, and places extra-territorial obligations on States, all of which are foundational to multilateral cooperation. Therefore, these standards should guide the treaty negotiations and its future interpretation, including the drafting of the Convention’s commitments.

The issue note claims that the work plan prioritizes drafting of the commitments before developing other contents of the Convention. While this approach is understandable, we would like to stress the importance of observing the Convention’s **objectives and principles when drafting commitments**. General principles should give direction and general criteria for subsequent normative development and interpretation of the treaty², and **it is therefore crucial that they are developed and observed during debates on the Convention’s commitments**. Concrete examples of the implications of the “human rights principle” for commitments are outlined below.

Similarly, negotiating parties should ensure coherence with relevant commitments assumed in other United Nations process, most notably: 1) the recently adopted “**Compromiso de Sevilla**” or “Seville’s Commitment”, where States have pledged to promote tax progressivity, strengthen the voice of developing countries in the international tax architecture, and to enhance tax transparency, including beneficial ownership transparency; 2) obligations derived from the **Paris Agreement**, including the commitment to make finance flows consistent with low greenhouse gas emissions and climate-resilient development; 3) obligations emerging from core United Nations human rights’ treaties.

1. Tax cooperation approaches that promote sustainable development and human rights

The ToRs include a commitment to pursuing international tax cooperation approaches that will contribute to the achievement of sustainable development. The issue note poses the question on “whether there are additional aspects of international tax cooperation approaches that contribute to sustainable development that should be addressed”.

² Idem

First, we stress the importance of the issue note's reference to "Taking into account (States) different capacities" in paragraph 17. This reference should be maintained and strengthened to **include references to the principles of common but differentiated responsibilities and polluters pay. The reference should similarly be expanded to include a reference to *the need to ensure fairness in allocation of taxing rights*** to achieve sustainable development, as stated in paragraph 9.f. of the ToRs.

The achievement of sustainable development could additionally be **related to the achievement of the full realization of human rights, in particular economic, social and cultural rights and including the right to development**. As discussed, according to the ToRs, efforts to achieve the Convention's objectives should "...be aligned, in the pursuit of international tax cooperation, with States' obligations under international human rights law". Many goals of the sustainable development agenda overlap with those of international human rights law³, and therefore Convention's commitments should serve both to achieve sustainable development *and* the full realization of human rights including, precisely, the right to development.

2. Commitments on additional subjects: gender and tax

The issue note states that the workstream may consider including commitments on additional subjects, in line with the ToRs (paragraph 10, listing subjects "inter alia"). As human rights law explicitly protects women rights (including their right to substantive equality), we believe that **a commitment to pursue gender equality via tax cooperation should be added**.

Indeed, via its reference to international human rights law, equality and non-discrimination should be guiding principles to the Convention. These are core principles in the UN Charter and the Universal Declaration of Human Rights, and have subsequently featured in almost every major human rights instrument, including the UN Convention on the Elimination of all forms of Discrimination Against Women.

Gender discrimination is exacerbated by "gender-blind" tax rules, where inequalities - with their intersectionalities- are mostly not considered. As a result, gender-based inequality in ownership of wealth and income is fueled through current tax regimes. The Convention must provide the basis for a framework to redress the gendered impacts of regressive taxation and tax abuse (including illicit financial flows, profit-shifting, and the unequal distribution of taxing rights). Mobilizing the maxim available resources in equitable and progressive manners (for example, by curbing tax avoidance and evasion by high-net worth

³ See CESR supra note 1.

individuals, discussed below) could further increase States' fiscal space to invest in gender-responsive public services.

3. Future work on ensuring taxation of high-net worth individuals

The issue note stresses that the workstream will continue to work on the other subjects covered in paragraph 10 of the ToRs, including tax evasion and avoidance by high-net worth individuals (HNWIs). We believe that this commitment could well **be both intended to provide support for future protocols and to include some stand-alone actions** (see issue note, paragraph 3). Including stand-alone commitments and the basis for future protocols should not therefore be considered an “either-or” alternative. The commitment on HNWIs should consequently be drafted to allow for both ways forward⁴.

The commitment could include a recognition that HNWIs are currently not effectively taxed, a statement on the importance of addressing this gap, and a pledge to achieve a more equitable outcome. Its ultimate goals could include “improving domestic resource mobilization”, ensuring tax progressivity, and that HNWIs pay taxes in accordance with their ability to pay. In line with commitments made elsewhere, the Convention could enumerate a non-exhaustive list of measures to cooperate internationally to prevent that HNWIs effective taxation is undermined by tax avoidance and evasion (see G20 declaration below). Other Convention articles could establish definitions of HNWIs (absolute and/or relative), to allow the future Conference of Parties to advance efforts in this agenda.

A robust commitment on the issue is **of essence both in light of longstanding human rights' obligations and of increasing international agreement on the need to cooperate in this regard**. Human rights law binds States to avoid discrimination and to ensure substantive equality. It therefore recognizes 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 worsen the situation of those who lack the resources to live with dignity. Indeed, human rights mechanisms have recently argued that in light of States' obligations under the International Covenant on Economic, Social and Cultural Rights, States could consider introducing “a globally coordinated minimum income tax for ultra-high-net-worth-individuals”⁵.

⁴ On the wide discretion states have to decide on the level of detail appropriate for a Framework Convention, see generally, Initiative for Human Rights in Fiscal Policy, “Protocols to the United Nations Framework Convention on Tax Cooperation”, at <https://derechosypoliticafiscal.org/en/resources-en/protocols-to-the-united-nations-framework-convention-on-tax-cooperation/>

⁵ See Committee on Economic, Social and Cultural Rights Statement on Tax Policy and the International Covenant on Economic, Social and Cultural Rights, E/C.12/2025/1.

Furthermore, member States have committed in other international cooperation spaces within the United Nations and beyond to advance in this agenda. The Compromiso de Sevilla commits countries to “enhance efforts to address tax evasion and avoidance by high-net-worth individuals and ensure their effective taxation, supported by international cooperation, while respecting national sovereignty”. This aligns with previous commitments of G20 members to “...engage cooperatively to ensure that ultra-high-net-worth individuals are effectively taxed”, for example by “exchanging best practices, encouraging debates around tax principles, and devising antiavoidance mechanisms, including addressing potentially harmful tax practices”.

4. Coherence on definition of tax "fairness"

The issue note states that “fair taxation” is a subjective notion, and that “it is likely that elements of such a concept will emerge as the Framework Convention and its protocols address aspects of the current system that many view as unfair”. In application of paragraph 9.c of the ToRs, which calls for alignment of tax cooperation with international human rights’, we would like to note that some **human rights treaty bodies have already used the term “fair” in their monitoring work of member states’ policies, providing interpretative guidance on the scope of fair taxation.** The Committee on economic, social and cultural rights has found that tax systems were not fair when tax revenue was too low⁶; when the application of tax exemptions and the inadequate prevention of tax fraud reduced States capacity to mobilize the maximum of available resources, and fiscal policy was inadequate in addressing the adverse effects social inequality (for example due to the excessive share of indirect taxes as a proportion of total State revenue⁷); or when tax policies were not sufficient to combat the growth of inequalities in a State party⁸. **Coherence with these interpretations should be ensured within the Convention.**

5. Meaningful participation of civil society

The approved ToRs encourage civil society to contribute to the work of the Committee in accordance with established practices. Participation is a core principle in international human rights law. As a further implication of paragraph 9.c of the ToRs on aligning tax cooperation with international human rights law, we ask the Committee to ensure participation in a rights-respectful manner. This includes **ensuring participation is meaningful and timely.** All groups

⁶ See, e.g., E/C.12/SLV/CO/3-5.

⁷ See, e.g., E/C.12/ESP/CO/6.

⁸ See, e.g., E/C.12/CRI/CO/5.

who are affected by fiscal decisions have a right to participate in the process by which those decisions are made.

As a result, all the work related to the framework convention should be open to informed public debate, through inclusive, broad, transparent and deliberative social dialogue. Participation must be equitable, 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.

6. Enhancing the language of the “human rights principle”

Beyond observing the “human rights principle” contained in paragraph 9.c of the ToRs when drafting the Convention’s commitments, the Committee could consider enhancing and adapting the language of the ToRs in connection with international human rights law. Initially, references to core human rights instruments, mainly the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights -the treaty most extensively interpreted in connection to taxation and human rights within the United Nations- should be referenced in the Preamble.

Furthermore, the current text of paragraph 9.c of the ToRs could be expanded to clarify: 1) the scope of “international human rights law”, making and explicit reference to law “as laid down” in core United Nations human rights treaties (as regional human rights’ systems have significant divergences amongst them, and cannot be taken as a common denominator in a global Convention); 2) that the main aim of the principle is to ensure global tax cooperation enables, and does not undermine, the full realization of human rights, especially economic, social and cultural rights, mobilizing adequate resources in an equitable manner for this end⁹. A more detailed discussion of implications of international human rights law for the Tax Convention are further distilled in the Center for Economic and Social Rights available [here](#)¹⁰.

Signatory organizations

Center for Economic and Social Rights -CESR

Akina Mama wa Afrika

Amnesty International

Asociación Civil por la Igualdad y la Justicia- ACIJ

Centro de Estudios de Derecho, Justicia y Sociedad - Dejusticia

⁹ On the role of the “human rights” principle and the ToRs, and potential ways to enhance its language, see CESR, *supra* note 1.

¹⁰ *Idem*.

CENTER for **ECONOMIC** and **SOCIAL RIGHTS**

Centro de Estudios Legales y Sociales- CELS

Fundar, Centro de Análisis e Investigación

Inesc - Instituto de Estudos Socioeconômicos (Brasil)

Iniciativa por los derechos humanos en la política fiscal

Red de Justicia Fiscal de América Latina y El Caribe

Sindicato Nacional Empleados Impuestos y Aduanas Colombia

Sustainable Strategic Solutions