



**14<sup>th</sup> March 2024**

**To the kind attention of:**

**The Chairperson,**

Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation,  
United Nations Headquarters,

Sir,

**Re: Call for Inputs to the first substantive session of the Ad Hoc intergovernmental committee to Draft Terms of Reference for the UN Framework Convention on International Tax Cooperation**

The Tax Justice Network Africa (TJNA) is a network of African civil society organizations working on tax justice and illicit financial flows (IFFs). We associate ourselves with the submissions of the Africa Group and the African Union Commission (AUC) as well as those by the Global Alliance for Tax Justice (GATJ) that have been made in response to the call for inputs. In addition to these, TJNA would like to make the following submissions:

**1. Substantive elements**

TJNA recommends that the Ad Hoc Intergovernmental Committee includes the following substantive elements in its draft TORs:

**a. Objectives**

In shaping the objectives, we recommend that the TORs outline that the intended purpose of the Framework Convention is to establish a system of international tax governance that is universal and inclusive. Broad and wide-reaching objectives concerning strengthening international tax cooperation should be included within the text of the Framework Convention, creating minimum legal standards that must be adhered to by all UN member states.

**b. Guiding Principles**

The TORs should make provision for the inclusion of guiding principles within the Framework Convention. These shall guide the implementation of the Framework Convention and the subsequent Protocols. Some of these guiding principles may include:



**i) Special consideration for the interests of least developed countries and other developing states**

About 45 countries that are UN member states are least developed countries with 33 of them being African countries.<sup>1</sup> This impacts their capacity, and capabilities to negotiate and implement international treaties.<sup>2</sup> The extension of special consideration as a principle should be codified within the TORs and the text of the Framework Convention. This extension should include making provision for least developed countries and developing countries to negotiate and implement as blocs.

**ii) Transparency**

The processes undertaken by the committee and under the Framework Convention should not only be just but also be *seen* to be just. The Ad Hoc Intergovernmental Committee should ensure that the sessions and resulting documents are publicly accessible. Under the Framework Convention, similar transparency processes should be institutionalized.

**iii) Institutionalized participation of stakeholders**

We recommend that the TORs outline a requirement that the committee drafting the text of the convention adopt modalities for stakeholder engagement in the process. We also recommend that the text of the convention include express provisions setting out stakeholder engagement as an important approach in the work of the governance structures of the convention. These stakeholders should include civil society organizations (CSOs) already accredited to the UN, CSOs in consultative status with the Economic and Social Council as well as CSOs who wish to be accredited as observers. Other stakeholders should also be allowed to participate such as academic institutions and intergovernmental agencies.

**c. Scope**

In defining the scope of the convention, we recommend that the Ad Hoc Intergovernmental Committee considers the following core issues:

**i) A new system of corporate taxation**

There is a pressing need for a new paradigm in corporate taxation. The (TORs for the convention must delineate a comprehensive process aimed at fundamentally reforming the existing system of corporate taxation. Presently, the taxation landscape for multinational enterprises is characterized by a mosaic of national-level legislations, hundreds of bilateral tax treaties, and multiple multilateral instruments. This fragmented approach has failed to ensure equitable tax

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<sup>1</sup> For more information: <https://www.un.org/ohrlls/content/list-ldcs>

<sup>2</sup> [https://www.wto.org/english/res\\_e/booksp\\_e/casestudies\\_e/case27\\_e.htm](https://www.wto.org/english/res_e/booksp_e/casestudies_e/case27_e.htm)



contributions from corporations, particularly in fulfilling obligations in both source and market jurisdictions. Consequently, a shift is imperative to rectify this pervasive inequity and foster a fair and efficient global tax framework.

The envisioned convention must prioritize the establishment of a robust framework within the text of the convention and through a more specific implementing protocol that addresses the inadequacies of the current corporate tax regime. The process towards the convention should endeavor to forge a new era of corporate taxation characterized by fairness, accountability, and sustainability.

**ii) Address Issues with Different Types of Taxes**

The TORs for the Convention should underline the importance of an approach that addresses the challenges associated with taxing diverse types of income, capital gains, and profits. This comprehensive approach will help to secure the commitment of UN member states to deal with broader tax issues through implementing a progressive taxation approach for handling complexities of taxing cross-border transactions, the allocation of profits between different jurisdictions, different models of taxing digital services and other crucial types of taxes such as wealth and property taxes.

**iii) Intersectionality of international Tax cooperation and other issues**

The TORs should elaborate that one of the key foundational tenets for the convention should include an acknowledgment and a commitment to continually analyse and include other global issues interconnected with tax issues such as tax justice, climate change, sustainable development, and inequality even as states work on addressing the challenges of international tax cooperation.

**iv) International tax issues and illicit financial flows (IFFs)**

The TORs should include a requirement that the convention be built on an analysis of the relationship between international tax cooperation and illicit financial flows highlighting how effective international tax systems can contribute to sustainable development and reduce illicit financial flows. The definition of IFFs should rightly include tax avoidance and evasion.

**v) Taxation of Mineral Resources**

The TORs should include in the scope a requirement that the convention includes a commitment to continually investigate the unique challenges and considerations associated with taxing mineral resources, including the volatility of commodity



prices, the environmental impact of mining activities, and the need for sustainable resource management. This commitment should include a proposal for a priority protocol to guide the taxation of mineral resources which is a matter of urgent importance for developing countries, especially those in Africa. The Convention and this priority protocol must also address the legacy issue of Stability and Development Agreements.

**vi) Future of Taxation**

The convention should examine emerging trends and developments in international taxation, including the impact of digitalization, the rise of e-commerce, and the increasing interconnectedness of the global economy. The convention should support the exploration of potential reforms and innovations in tax systems to adapt to changing economic realities and ensure that taxation remains effective and equitable in the future. The framework convention should also secure the commitment of member states to continually evaluate the role of technology in improving tax administration and compliance and enhancing the efficiency of tax collection.

**vii) Double Taxation Agreements**

The TORs for the convention should include a recommendation for all existing double tax agreements (DTAs) be evaluated, documented and an early protocol developed to guide the process of aligning all DTAs with the principles and the spirit of the UN Tax Convention. The Convention should specify the treatment of DTAs that are found to be inconsistent with the Convention.

**2. Procedural elements**

**a. Governance structure**

TJNA proposes that the Ad Hoc Intergovernmental Committee make provision within the TORs for the establishment of three institutional structures under the Convention. This includes the establishment of a Conference of Parties (COP) as the plenary decision-making body in which decisions on further Protocols will be made.

Additionally, we recommend the establishment of a Secretariat that will assist the Conference of Parties in the implementation of the Convention. We also recommend the establishment of an Advisory Body that will provide technical assistance and advice to the Conference of Parties. Considering the record of accomplishment of the Committee of



Experts on International Cooperation in Tax Matters (UN Tax Committee) in providing technical assistance on matters of international tax cooperation, we recommend its reconstitution into an Advisory Body.

**b. Agenda setting and voting**

Agenda setting and voting are key procedural issues that impact the inclusivity and universality of international tax cooperation.

We further submit that voting modalities should not be limited to consensus-based modalities that have placed undue pressure on developing countries to accede to tax deals that are unfavourable to them. Voting solely via consensus has been proven to be undemocratic.

TJNA therefore requests the Committee to mandate the committee drafting the convention to provide a mechanism within the Rules of Procedure that will ensure that the agenda-setting processes will allow developing countries and least-developed countries to bring their most pressing international taxation matters to the forefront of the tax agenda. Voting modalities that will ensure the equal participation of all countries taking into consideration the limited resources of least developed countries should be developed.

**c. Financial resources**

TJNA proposes that the committee incorporate a provision within the TORs addressing the importance of sustainable financing for its program of work. In this context, it is essential to not only outline funding mechanisms for the committee's TOR drafting process but also to extend the focus to drafting the text of the convention and encompass the work of the proposed governance structures responsible for executing the comprehensive program of work under the convention. Provision should also be made for financial support to enable all countries especially developing countries to fully participate in the processes.

TJNA proposes the incorporation of a multifaceted financing approach, encompassing both voluntary and assessed contributions from member states, to ensure the adequacy and stability of funding for the envisioned governance structures. This financial strategy not only fosters a sense of collective responsibility among member states but also acknowledges the diverse capacities and commitments each state brings to the table. Our recommendation is the crafting of financial mechanisms that not only address immediate funding needs but also promote equitable and predictable contributions from member states to sustain the long-term work.



#### **d. Enforcement mechanisms**

TJNA strongly proposes the inclusion of robust provisions for the enforcement of mutually agreed-upon issues within the convention. The text of the convention should encompass overarching enforcement mechanisms, while concurrently recognizing the necessity for implementing protocols to specify enforcement mechanisms tailored to the unique commitments outlined in each protocol.

To fortify the efficacy of enforcement, TJNA proposes the integration of peer review and monitoring mechanisms into the convention's enforcement framework. These mechanisms should operate on a predetermined cycle of review through a Conference of Parties (CoP), ensuring a systematic assessment of member state compliance with the obligations mutually agreed upon. By emphasizing both broad enforcement mechanisms in the convention's core text and protocol-specific measures, coupled with a structured peer review system, the UN can establish a comprehensive and resilient framework for the effective implementation and enforcement of international commitments.

#### **e. Dispute resolution**

The Convention should provide for a dispute resolution mechanism among member state parties. While historically disputes arising from UN conventions can be referred to the International Court of Justice, tax disputes are unique because they often involve private persons who don't have standing before the ICJ.<sup>3</sup> Therefore the committee should mandate the drafting committee to investigate the possibilities of setting up a multilateral international tax court. Preferably, the Convention should enshrine the jurisdiction of state parties to address tax disputes in their local courts.

### **3. Supplementary provisions**

In addition to the structural elements TJNA proposes these supplementary provisions be considered within the TORs and the drafting of the Framework Convention:

- i. Define the Convention's relationship with existing platforms of international tax cooperation and other forms of tax multilateralism.
- ii. Provide reasonable entry into force requirements that do not place excessive powers in the hands of individual parties or blocs.
- iii. Provide Rules of Procedure for the negotiation of Protocols and how they will be adopted

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<sup>3</sup>For more information, please see: <https://www.cambridge.org/core/journals/leiden-journal-of-international-law/article/settlement-of-tax-disputes-by-the-international-court-of-justice/29FF123CC7C79BD435B267BE3D04A902>



#### **4. Consideration of early protocols**

TJNA proposes that in the development of early Protocols, the following issues be given top priority:

- i. Illicit Financial Flows (IFFs)
- ii. Double Taxation Agreements (DTAs)
- iii. Taxation of Natural Resources
- iv. Tax Transparency and Exchange of Information
- v. Environmental and Carbon Taxation
- vi. Wealth taxation including the Taxation of High-Net-Worth Individuals
- vii. Simplification of transfer pricing regimes

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