

Useful resources:

- **Submissions made in this process by the UN Human Rights Office (OHCHR) - [first session](#) & [second session](#).**
- Statement on the Framework Convention [“Human rights experts support call for UN tax treaty”](#)
- Recent [statement](#) of several human rights experts and organizations supporting the inclusion of human rights in the TORs.
- Statement of over 30 independent experts of the Human Rights Council noting the relevance of tax cooperation for human rights, in the context of the launch of [PTLAC](#); and of the Special Rapporteur on Economic, Social and Cultural rights of the IACHR, [also on PTLAC](#).
- [Statement](#) of the Commissioner for Human rights of the CoE referring to “human rights-based fiscal policies”.
- [Document](#) summarizing PT-LAC’s initial agreements.

Addressing some of the concerns expressed in the July 30th session

1. What do we mean by human rights in tax related matters? If we mention human rights, should we also reference other frameworks relevant to the United Nations?

- Taxation and tax cooperation are critical to fulfilling human rights. Given that progress on SDGs, socio-economic rights, the right to development, and the fight against poverty are at risk, while States lose billions to tax abuse, States need to connect their efforts to mobilize resources to the realization of human rights. The framework convention presents a pivotal opportunity to expand States’ fiscal space to finance public policies.
- Not only taxes matter for socio economic rights; rights also matter for taxes, as a set of core human rights principles have been increasingly interpreted as relevant for taxation. While these do not prescribe detailed policy choices¹, they do provide broad, general guidelines to inform state action around taxation. For example:
 - a. Through international treaties to which virtually all if not all States are a party to², they have a duty to “take steps, individually and through international assistance and cooperation (...) **to the maximum of its available resources**” to achieve the full realization of economic and social rights. This has been interpreted as a **duty to mobilize resources, and expand States’ fiscal space in accordance with social rights needs**, for example, by combating tax evasion and avoidance³, illicit financial flows, or carefully
 - b. designing and reviewing tax benefits⁴. States have been required under human rights’ oversight procedures, for example, to assess and evaluate the extent to which they are mobilizing resources⁵. In the context of tax cooperation, this could require, for example, conducting timely estimates of the revenue potential of suggested measures.

¹ Less repeatedly, human rights entities have recommended more concrete measures, such as combating transfer pricing and exploring the possibility to tax multinational groups of companies as single firms (E/C.12/GC/24).

² ICESCR (art. 2.1); ICRPD (art. 4.2); CRC (art. 4) -very high levels of ratification, especially CRC. Mainstreaming human rights here would **promote policy coherence** with the offices of Member States which, at present, already deal with the obligations emerging from these treaties.

³ CESCR, E/C.12/HND/CO/2; E/C.12/KEN/20/2-5, para 18.

⁴ CESCR, E/C.12/ARG/CO/4.

⁵ See, e.g., CESCR, E/C.12/ARM/CO/2-3, para 9; E/C.12/ALB/CO/2-3.

- c. International human rights norms repeatedly enshrine the principles of **equality and non-discrimination**. Human rights mechanisms have recommended States to pursue tax policies which are progressive and socially equitable⁶. In the context of the convention this could also require producing data sufficiently disaggregated to assess the consequences of measures on different groups, and include distributional impacts to ensure that the tax rules work to reduce inequalities within and between countries.
 - d. Under the same covenants and the UN Charter and the Declaration on the Right to Development, States have a **duty of international cooperation to realize rights, including the right to development**. This requires all States “contribute to creating an international environment that enables the fulfillment of these rights” including through “...diplomatic and foreign relations measures, to promote and help create such an environment”⁷, which is not only relevant for the Convention but also to “guide its drafting” (par. 9 of the ToRs). As such, States have been called by human rights mechanisms to deepen international tax cooperation.
 - e. Procedural human rights’ standards on participation, transparency and accountability are also relevant.
2. **Why do we need an explicit reference to HR? If we do not mention human rights in the convention, won’t human rights be applicable anyway?**
- The framework convention is the constitutive instrument for governing international tax cooperation. It has to clarify the scope of the obligation to cooperate internationally on tax matters. This is an obligation that stems from various sources of international law. One of these sources is international human rights law, which entails binding obligations and robust accountability mechanisms.
 - The fact that tax treaties do not mention human rights law (as Nigeria mentioned in the session on Tuesday) does not mean that human rights law is not important as a relevant source for determining the scope and content of the obligation to cooperate internationally on tax matters.
 - All relevant sources of law to clarify the obligation to cooperate internationally on tax matters -including human rights law- should be considered by the Drafting Committee. This is why it is very important from a normative standpoint to include a reference to HR.
 - One added value of bringing international tax cooperation under the UN lies *precisely* in aligning tax cooperation with the key values, norms and standards of the UN.
 - While human rights would *theoretically* still be applicable to States even if deleted of the ToRs, this would hardly happen in practice. Indeed, one of the delegates rightly noted “never seeing a reference to human rights in tax instruments before⁸”. Eliminating human rights from the ToRs risks continuing the “blindness” of tax cooperation to ongoing rights & tax debates with significant implications in the way the Convention will establish the framework for governing international tax cooperation. This would mean not only ignoring a critical area of law that is essential to consider in the mandate of the Ad Hoc Committee but also losing the opportunity to

⁶ E/C.12/GBR/CO/6; E/C.12/GTM/CO/3; E/C.12/SLV/CO/3-5; E/C.12/PRY/CO/4; E/C.12/BDI/CO/1; E/C.12/DOM/CO/4; E/C.12/DOM/CO/4.

⁷ E/C.12/GC/24

⁸ Nigeria’s concern.

use human rights principles to make tax cooperation more inclusive and fair, which is the core goal of this process.

3. Referring to human rights vs. taxpayers rights

- This is a false dilemma, as the bulk of international human rights' standards related to tax matters do not relate to taxpayers' privacy, but instead to issues of resource mobilization and expanding fiscal space, and equality and nondiscrimination, etc. (see above).
- As the chair rightly pointed out there is an established body of international law that provide clarity on the scope of human rights obligations, whereas that's not the case for taxpayers rights.
- Human rights are of *universal* nature: they are broader in scope than "taxpayers" rights (and to some extent encompass them); and they include protections on many more rights than the right to privacy. A section on "principles" by definition shall not be too detailed and list each specific right, but rather use overarching, comprehensive language (such as "all human rights for all people in all countries").
- Furthermore, the overall idea of including human rights in a principle section is not protecting individuals by reiterating provisions that already exist domestically, but to guide the text and interpretation of the convention in accordance to broader goals.