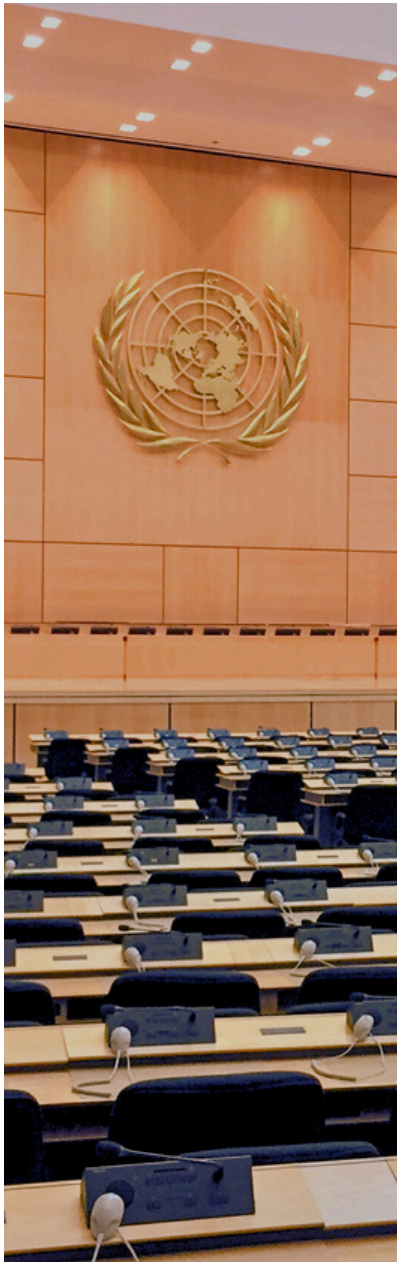


ALIGNING TAX COOPERATION WITH HUMAN RIGHTS IN THE UN TAX CONVENTION

TECHNICAL NOTE



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1. Introduction

This note explores the implications of introducing ‘international human rights law’ to the Framework Convention on International Tax Cooperation, being currently negotiated at the United Nations (UN). It addresses key questions emerging from the Convention’s Terms of Reference (ToRs) regarding the relevance and scope of international law, the contributions human rights can make to a tax cooperation treaty, and the intersection between human rights and taxpayers’ rights—particularly the right to privacy.

Structured around six guiding questions, the note offers answers grounded in legal standards and arguments that have emerged during the negotiation of the ToRs. It is primarily intended for non-governmental organizations following the negotiations, human rights mechanisms working on the topic, and interested country representatives.

The United Nations Framework Convention on International Tax Cooperation (UNTC or the Convention) is a recently-proposed normative instrument under discussion by UN Member States. It aims to enhance effectiveness and inclusiveness in tax cooperation. This initiative follows decades of demands to overhaul the international taxation architecture, a system that, in its current form, fails to promote effective tax cooperation or prevent tax abuse within and between countries.¹ At the end of 2022, through the leadership of the Africa Group, the UN General Assembly approved a resolution to begin intergovernmental discussions on ways to strengthen the inclusiveness and effectiveness of international tax cooperation. Since then, the ToRs for the future Convention have been approved by an increasingly overwhelming majority of States and the formal treaty negotiation process has recently begun.

The process provides a unique opportunity for States—particularly in the Global South—to increase the resources available to fulfill their human rights’ obligations, achieve sustainable development and finance climate action (for instance, by effectively combating transnational tax abuse or pursuing a fairer allocation of taxing rights). Indeed, the UN has recognized the need for a “holistic approach” to tax cooperation—one that moves beyond traditional trade and investment considerations to encompass issues of development, climate and inequality.²

Human Rights in the Convention

The treaty under negotiation will take the form of a framework convention—establishing institutional mechanisms and broad substantive commitments, with more specific obligations to be articulated in supplementary protocols.³ As an international tax cooperation treaty, it will, arguably, focus mostly on relationships among States. This focus is crucial: within the UN system, all Member States have committed to cooperating in solving international problems of an economic and social character and

¹ See generally Independent Expert on the effects of foreign debt et al, letter to the Organisation for Economic Co-operation and Development, at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27165>

² See, e.g., A/78/235, para. 5.

³ Although existing framework conventions show a variety of approaches ranging from largely procedural treaties to others, such as the UN Framework Convention on Climate Change, that contain more detailed provisions. For an analysis of approaches to framework conventions and their protocols, see https://derechosypoliticafiscal.org/images/Protocols_to_the_United_Nations_Framework_Convention_on_Tax_Cooperation.pdf. Currently, two protocols (one on Prevention and resolution of tax disputes, and one the provision of cross-border services in an increasingly digitalized and globalized economy) have been selected as “early” protocols, to be negotiated in tandem with the Convention.

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promoting human rights. The duty to cooperate is enshrined in the UN Charter⁴ and UN human rights treaties⁵, making it a foundational principle for any norm-setting effort under UN auspices. Accordingly, the Convention must align with States' existing human rights obligations.

The approved ToRs of the Convention⁶ include principles that will guide the Convention's objectives. **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."** This principle connects and supplements references in the ToRs to sustainable development⁷, as many of the goals and objectives of the sustainable development agenda overlap with those of international human rights law.⁸

The bureau of the ad hoc committee tasked with drafting the ToRs included the "human rights principle" in its updated draft proposal for the terms of reference.⁹ The inclusion of this language was made after submissions from several organizations that explained how human rights mechanisms within the UN had called, *inter alia*, for equitable and transparent tax policies.¹⁰ Similarly, formal and informal statements from the States that advanced the inclusion of the human rights principle in the ToRs show that they envisioned the principle as a tool to increase tax equity, fairness and inclusivity within the Convention.¹¹

General principles of this nature are routinely included in framework conventions. While they normally do not impose immediate obligations on the parties to the treaty, they give direction and general criteria for subsequent normative development¹² and interpretation. In practice, this means that parties to the Convention will be expected to take their existing human rights obligations into account when making decisions under the new treaty framework.

This is especially significant since, while human rights mechanisms have for years explained the connection between human rights and taxation, tax norms have only sparsely recognized the link.¹³

⁴ Articles 1, 55 and 56.

⁵ See, e.g., International Covenant on Economic, Social and Cultural Rights, arts. 2.1, 11.

⁶ See A/79/333.

⁷ For example, they include references to the need for the convention to adopt a "sustainable development perspective", or the goal of establishing a tax system "for sustainable development".

⁸ See Latindadd & RJFALC, working paper, "La convención marco de las naciones unidas sobre cooperación tributaria internacional y los derechos humanos. Una mirada desde América Latina"

⁹ The drafting of this section of the ToR suffered several modifications. For the bureau's proposal, see https://financing.desa.un.org/sites/default/files/2024-07/Revised%20draft%20ToR_18%20July%202024.pdf. For other versions see <https://financing.desa.un.org/un-tax-convention/second-session>

¹⁰ See, e.g., submissions made by OHCHR [here](#) and [here](#), the UN independent expert on debt [here](#); the Center for economic and Social Rights and allies [here](#) and [here](#); the Tax Justice Network [here](#); and the Initiative for Human rights in Fiscal Policy [here](#) and [here](#).

¹¹ The introduction of the human rights principle follows an important precedent made by countries in Latin America and the Caribbean, when they recognized in 2023 that an ultimate goal of taxation was ensuring human rights and enabling sustainable development, as they launched the Latin American Platform on Tax Cooperation (PT-LAC). This precedent may explain why some Latin American countries were advocates for the inclusion of the human rights' provision in the ToRs, and their good command of what "international human rights law" in connection to taxation meant.

¹² See Koen De Feyter, Type and Structure of a legally binding Instrument on the Right to Development.

¹³ As many negotiators noted during the sessions of the Committee, they had never seen a reference to human rights in a tax treaty.

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The explicit inclusion of human rights therefore constitutes a major step forward in closing the gap between areas of law, and in ensuring policy coherence. It similarly exemplifies one of the numerous benefits of moving tax cooperation to the UN –a forum with a broad mandate and mission that allows for better consistency and harmonization of legal principles.

Against this background, **a series of questions have emerged around how to interpret the scope of the human rights principle in the Convention.** The following sections of this document address these issues.

2. Why are human rights relevant to international tax cooperation, and vice versa?

First and foremost, taxation is “a major determinant in the enjoyment of human rights”¹⁴, especially economic and social rights. Taxation and tax cooperation are critical to fulfilling human rights. Given that progress on sustainable development goals, 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 urgently connect their efforts to mobilize resources via tax cooperation with their unfulfilled obligations to realize human rights.

As expressed by some country delegations in the deliberations leading to the approval of the ToRs, “Taxes are collected for many purposes, and one of those purposes is ensuring human rights, such as the right to education.”¹⁵ Indeed, when countries explain why they fail to fully achieve their human rights obligations in international fora, they often cite resource constraints –constraints frequently linked to inequitable, inefficient, and non-inclusive tax systems at both the domestic and international levels.

But the relationship is not one-directional: just as taxes matter for rights, rights also matter for taxation and tax cooperation.¹⁶ A growing body of interpretation—particularly from UN human rights mechanisms—has identified core human rights principles as directly relevant to tax matters (as further discussed below). In brief, “international human rights law sets obligations for States to respect, protect and fulfil human rights in all the ways that they exercise their functions, and the design, implementation and monitoring of revenue-raising policies is no exception.”¹⁷ While these standards do not prescribe detailed policy choices¹⁸, they do offer overarching guidelines to inform State action around taxation (as general principles typically do in framework conventions).

¹⁴ UN Special Rapporteur on Extreme Poverty, A/HRC/26/28.

¹⁵ See <https://x.com/TaxJusticeAfric/status/1821169382854127723>

¹⁶ See OHCHR’s submission at https://financing.desa.un.org/sites/default/files/2024-03/UN%20Office%20of%20the%20High%20Commissioner%20for%20Human%20Rights%20%28OHCHR%29_Input_AHC%20Tax.pdf

¹⁷ UN Special Rapporteur on Extreme Poverty, A/HRC/26/28.

¹⁸ Less repeatedly, human rights entities have also 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).

3. How has “international human rights law” evolved around taxation?

Previous discussions in the Convention process signal that there are different readings on the scope of the ToRs reference to “international law”. Some stakeholders interpret it as referring to only UN law, while others assume the ToRs could refer to any other supra-national source of law, such as regional human rights norms. In the future, **the text could be enhanced for clarity**, with formulations that refer, for example, to “international human rights law as laid down in the Universal Declaration of Human Rights and United Nations human rights treaties”. For the purposes of this document, we adopt the view that a reference to “international human rights law” in a UN treaty should initially be read as making reference to instruments developed within the UN itself.

Different realms of law recognize a wide catalogue of rights; and rights, broadly speaking, connect to taxation in many ways. States have a right or power to tax, and those who pay taxes -the taxpayers- have both duties¹⁹ and rights in connection with how they are taxed. Often, taxpayers’ rights equate to constitutional or fundamental rights, such as the rights to property, privacy or due process.²⁰ These rights are mostly interpreted by and claimed before national courts and other domestic authorities as a matter of administrative, constitutional, criminal, or commercial law.²¹ Constitutions also normally contain other norms relevant to taxation, including procedural guarantees and provisions to ensure equity and fairness.²²

In parallel to these constitutional protections, international human rights law within the UN has followed a traceable and strong evolution in connection to taxation. Notably, some authors argue that there is some parallelism between the stories of national constitutions and the development of international human rights law in relation to public finances.²³ The Inter-American Court of Human Rights has relatedly found that most State parties to the American Convention of Human Rights also recognized in their constitutions some of the rights covered under said convention, for example for entities not protected under this regional system (such as legal persons).²⁴

¹⁹ For an example of taxpayers’ duties under regional human rights law, see African Charter on Human and Peoples’ Rights, American Declaration establishing the duty of individuals to pay taxes to finance public services and in the interest of their societies (see articles 29 and 36 respectively).

²⁰ For the catalogue of taxpayers “fundamental” rights in the IRS in the United States, see <https://www.irs.gov/taxpayer-bill-of-rights>

²¹ See below for a discussion on how, in the specific case of the European Union, these issues are also part of European Union Law.

²² For a summary of relevant constitutional provisions in Latin America, see Olivia Minatta, María Emilia Mamberti, and Sergio Chaparro, “Constitutional Principles of Public Finance Law and Comparative Jurisprudence”, at <https://derechosypoliticafiscal.org/en/resources/documents-and-sources-en/105-constitutional-principles-of-public-finance-law-and-comparative-jurisprudence.html>

²³ See Horacio Corti, “La política fiscal en el derecho internacional de los derechos humanos: presupuestos públicos, tributos y los máximos recursos disponibles.”

²⁴ Inter American Court of Human Rights, Advisory Opinion 22/16, paragraph 64 and related footnotes.

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The core obligation anchoring the development of international human rights law in relation to taxation is States' duty to mobilize their maximum available resources for the realization of economic, social and cultural rights (further discussed below). This provision is included in some of

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the core UN human rights treaties, widely ratified by States across regions.²⁵ The reading of this clause by the bodies tasked with their authoritative interpretation has been the building block of the current development of international human rights' law in connection with taxation (and with fiscal policy more broadly) at the UN.

The Committee on Economic, Social and Cultural Rights (CESCR), which monitors implementation of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), has led the interpretation of the maximum available resources' duty. Since its 1990 General Comment N^a 3 on the Nature of State Parties' obligations, it has systematically elaborated on the meaning of the duty, noting early on that it "was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance."²⁶ The Committee has expanded on its interpretation of the covenant's provisions in further general comments, concluding observations, statements, and other documents. The work of other UN human rights mechanisms, such as the independent expert on debt and human rights and the special rapporteur on extreme poverty, have further solidified this work.

As a result, **standards on taxation under international human rights law have been connected mostly to economic, social and cultural rights, and therefore aimed at supporting -rather than preventing- States' power to tax** (unlike what may be the case with domestic fundamental rights of taxpayers, which relate more directly to civil and political rights and may set limits on what is permissible from States). Similarly, the important developments on human rights and tax policy made within the Inter-American Commission on Human Rights have been strongly supported by its Special Rapporteur on Economic, Social, Cultural and Environmental Rights²⁷, or made in connection to social rights such as the right to health.²⁸

Many other human rights mechanisms in the UN have followed the CESCR's path, particularly after the 2007-2008 financial crisis, and expanded on other international human rights' law standards relevant to taxation.²⁹ General Comment 24 of the CESCR³⁰ provides a good illustration of the evolution of international human rights law in relation to international taxation issues.

The statement of the Committee on Economic, Social and Cultural Rights on "Tax Policy and the International Covenant on Economic, Social and Cultural Rights", issued in February 2025, is the ultimate expression of how international human rights law has been interpreted as relevant for taxation, and for tax cooperation.³¹ The statement, aimed "to assist States

²⁵ See, e.g., art. 2.1 of the ICESCR; art. 4 of the Convention on the Rights of the Child; art. 4.2 of the Convention on the Rights of Persons with Disabilities.

²⁶ UN Economic and Social Council, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), E/1991/23, UN Committee on Economic, Social and Cultural Rights (CESCR), 14 December 1990, <https://www.refworld.org/legal/general/cescr/1990/en/5613> [accessed 09 January 2025]. See specially para. 13.

²⁷ See, e.g., OEA/Ser.L/V/II CIDH/REDESCA/INF.1/19; OEA/Ser.L/V/II. Doc.191/18; OEA/Ser.L/V/II CIDH/REDESCA/INF.1/19.

²⁸ See, e.g., IACHR, resolutions 1/2020 and 3/2021.

²⁹ The UN Independent Expert on extreme poverty report A/HRC/26/28, is a flagship example of these efforts.

³¹ See <https://www.ohchr.org/en/press-releases/2025/02/fair-and-effective-tax-policies-needed-advance-economic-social-and-cultural>

parties in better aligning their decision-making” in the Tax Convention and elsewhere with the obligations of the Covenant, concludes that: “Aligning tax cooperation with the obligations under the Covenant can contribute to the effective mobilization of resources and redistribution of wealth, thereby addressing high levels of inequalities and facilitating substantial investments in the institutions, public services and programs essential for the realization of economic, social and cultural rights for all.”

4. What are the main international human rights law obligations the Tax Convention should be aligned with?

The UN core human rights treaties contain different provisions that are relevant to international tax cooperation. These provisions have been interpreted to provide broad guidelines for State action, and are thus well suited to inform the general principles of a framework convention (as agreed in the ToRs, which reference human rights as a guiding principle).

As anticipated, through international treaties to which virtually all States are parties, 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, through combating tax evasion, avoidance³² and illicit financial flows, or carefully designing and reviewing tax benefits.³³ States have been required, under human rights’ oversight procedures, to assess and evaluate the extent to which they are mobilizing resources.³⁴ In the context of tax cooperation, this would require, for example, conducting timely estimates of the revenue potential of suggested measures in connection with human rights financing needs; and committing to effectively tackle tax abuse.

Under international human rights law, States are also obliged to observe the principles of **equality and non-discrimination**. Reading these standards, human rights mechanisms that interpret international human rights law have authoritatively recommended that States pursue tax policies which are progressive and socially equitable.³⁵ In the context of the Convention, this could require producing data sufficiently disaggregated to assess the impact of tax measures on different groups, ensuring that they work to reduce inequalities within and between countries. These principles also

³¹ See <https://www.ohchr.org/en/press-releases/2025/02/fair-and-effective-tax-policies-needed-advance-economic-social-and-cultural>

³² CESCR, E/C.12/HND/CO/2; E/C.12/KEN/20/2-5, para 18.

³³ CESCR, E/C.12/ARG/CO/4.

³⁴ See, e.g., CESCR, E/C.12/ARM/CO/2-3, para 9; E/C.12/ALB/CO/2-3.

³⁵ 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.

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stress the importance of bringing inequality issues to the tax cooperation agenda, in line with recent G20 efforts.³⁶

Under the core human rights' treaties, the UN Charter, and the Declaration on the Right to Development, States also have **a duty of international cooperation to realize rights, including the right to development**. This duty is especially important for addressing cross-border tax abuse, as it requires proactive global collaboration to achieve rights-based development. The duty to cooperate also requires all States to "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."³⁷

Similarly, under international human rights law, States not only have obligations within their borders but also **extraterritorial obligations** –that is, obligations for the human rights impact of their decisions in other States. In the context of the Convention, this would mean refraining from actions that undermine other States capacities to effectively mobilize resources for rights' fulfilment (by facilitating, for example, tax abuse or tax related illicit financial flows), and conducting human rights impact assessments of such actions.³⁸

Human rights' standards also include **procedural guarantees of participation, transparency and accountability**. Transparency has been interpreted to guide States' production and publication of information on their tax policies (for example, noting the need for sufficiently disaggregated data, or the publication of information in accessible formats). The right to participation and self-determination also stresses the need for inclusiveness in international tax cooperation, and highlights that all groups affected by fiscal decisions, especially historically disadvantaged groups, must have a meaningful say in decisions that impact them.

A summary of these and other relevant standards (such as the duty to ensure essential levels of socioeconomic rights and the prohibition to take retrogressive measures) is available in the Principles for Human Rights in Fiscal Policy.³⁹

5. What can human rights specifically add to a Tax Cooperation Convention?

The inclusion of human rights as general principles in the Convention can, first, perform an important interpretative role. Second, it can have concrete implications for the functioning and mechanisms of the Convention itself.

³⁶ See, e.g., G20 Rio de Janeiro Leaders' Declaration, available at <https://www.consilium.europa.eu/en/press/press-releases/2024/11/19/g20-rio-de-janeiro-leaders-declaration/>. For proposals on how the G20 could promote gender and racial justice in connection to tax, see <https://www.cesr.org/cesr-and-allies-call-for-the-g20-to-implement-rights-based-tax-reforms-for-race-and-gender-justice/>

³⁷ E/C.12/GC/24

³⁸ On the issue, see generally CESR at https://www.cesr.org/sites/default/files/downloads/switzerland_cedaw_submission_2nov2016.pdf

³⁹ See Initiative for Human Rights in Fiscal Policy website, at <https://derechosypoliticafiscal.org/es/>

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Human rights can be a useful tool, particularly for Global South countries, to advance interpretations that lead to fairer international taxation terms that do not restrict their ability to mobilize resources to fulfil social and economic rights (for example, arguing for a fair distribution of taxing rights or curbing tax competition). Human rights principles can also enhance fiscal systems' legitimacy⁴⁰ and facilitate reading within the guiding principles of the Convention some issues on which the ToRs are currently silent, such as extraterritorial obligations, tax progressivity, or gender justice.⁴¹ Referencing human rights explicitly conveys the broader message that more justice needs to be achieved in tax cooperation (to ensure core human rights values, such as solidarity, inclusivity, accountability and equality), and stresses the importance of mobilizing resources to ensure a decent standard of living for all.

Beyond this broad interpretative function, the reference to human rights in the Convention can have concrete implications for the mechanisms of the future treaty. While the precise scope of the Convention is still uncertain and the ToRs provide only broad guidance on what the treaty will cover, the following examples can illustrate what "alignment with international human rights law" could mean. Paragraph 13 of the approved ToRs stipulates that the Convention should cover "data collection and analysis". To align with human rights commitments, data should be produced, collected, and analyzed with sufficient disaggregation and with criteria that allows member States to understand the impacts of measures on different groups (including their distributional consequences). It should also be made available to the public in an accessible, timely manner.

Some human rights treaty bodies have repeatedly applied certain terms currently used in the ToRs (particularly under paragraph 7.c) and interpreted them in connection with the tax policies of specific countries.⁴² For example, they have made recommendations for tax systems to be "equitable"⁴³, "just/fair"⁴⁴ or "effective"⁴⁵. These interpretations, made by UN entities, connect to the goals of a tax convention (paragraph 7.c of the ToRs) and to its definitions (paragraph 13 of the ToRs)⁴⁶ and therefore should be harmonized with the future definitions of those terms under the Convention.

International human rights obligations to cooperate internationally for the realization of human rights, especially economic, social and cultural rights, are also relevant to define the "institutional mechanisms to support Member States, especially developing countries, in their efforts to build capacity on relevant international tax practice and related issues" (paragraph 12 of the ToRs).

⁴⁰ See generally Waris, Attiya. Financing Africa. Langaa RPCIG, 2019. <https://doi.org/10.2307/j.ctvx07801>.

⁴¹ As developed, for example, under the UN Convention on the Elimination of All Forms of Discrimination against Women.

⁴² Some of the "tax matters" that the Committee has found of concern for tax equity and states' capacity to ensure social and economic rights include: increase in the threshold for the payment of inheritance tax and the increase of the value added tax; gradual reduction of the tax on corporate incomes; certain economic sectors, such as the mining sector, enjoying tax privileges; insufficient tax collection; unjustified tax exemptions; inability of the tax system to reduce inequalities; inadequate prevention of tax fraud; the reduction of the tax burden for high-income social groups.

⁴³ See, e.g., E/C.12/GBR/CO/6; E/C.12/GTM/CO/3; E/C.12/SLV/CO/3-5.

⁴⁴ See, e.g., E/C.12/SLV/CO/3-5; E/C.12/ESP/CO/6; E/C.12/CRI/CO/5.

⁴⁵ See, e.g., E/C.12/DOM/CO/4.

⁴⁶ Some member States have asked during discussions, for example, what "fair" would mean in the context of the ToRs, so being mindful of these interpretations could be of special importance.

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Procedural guarantees of participation, transparency and accountability will also be relevant to the rules and functioning of the Conferences of Parties to the Convention.

6. How are human rights different from taxpayers rights?

A question that emerged during the negotiations of the ToRs was that of the difference between human rights and taxpayers' rights, and more specifically whether human rights protect legal entities or corporations, as a subset of taxpayers. Initially, it is important to note that international human rights law is referenced in the ToRs as a general principle for guiding tax cooperation (see paragraph 9 of the terms of reference), and not as a recognition of individual rights in connection to tax. Arguably, the reference should be read as a "human rights-based approach to tax cooperation", rather than as a clause on the rights of individuals vis a vis tax cooperation.

Having clarified this, the starting point is that human rights are inherent to all human beings. Human rights are therefore universal in nature: they are broader in scope than taxpayers' rights (and to some extent encompass them⁴⁷). Furthermore, human rights include protections for many more rights (such as the right to health, freedom of association, or the right to vote) than those that could pertain to taxpayers specifically (such as the right to property or privacy).

In Europe, it is not uncommon nowadays for taxpayers to frame their rights-claiming as a matter of "fundamental" or sometimes even "human" rights.⁴⁸ Overall, taxpayers can have human or fundamental rights, primarily in accordance with constitutional law.

However, the idea of international human rights, specifically within the UN, has a history and political connotation of protecting certain values and situations that typically and historically do not include matters related to taxpayers. For instance, while human rights are universal, UN core human rights treaties do not make any reference to taxpayers, although they do explicitly provide strengthened protections to other groups such as migrant workers, persons with disabilities, or girls and women.

To the contrary, and as discussed above, the bulk of UN international human rights law development in connection to tax cooperation does not relate to taxpayers' individual rights, but instead to issues of resource mobilization for social and economic rights. These provide general policy guidance to steer (rather than constrain) State action. While there is an established body of international law at the UN level that provides clarity on broader human rights obligations, the same is not true for taxpayers' rights (there is, for example, no "taxpayers' rights declaration" akin to the Universal Declaration of Human Rights). Since the human rights' clause in the ToRs, as currently drafted, does not seek to

⁴⁷ See generally Fareed Moosa, "Are taxpayers' rights classifiable as human rights?".

⁴⁸ Some argue that this strand of work could have been initially sparked by the OECD's Committee of Fiscal Affairs "Taxpayers' rights and obligations—A survey of the legal situation in OECD countries" document. Yet, some note that "the discussion for greater protection of taxpayers' rights at the OECD was not a discussion on the protection of taxpayers' rights per se; rather, this was viewed as a necessary step (or tool) in order to enhance taxpayers' perceptions of the fairness of the tax system and ultimately encourage voluntary tax compliance". See generally Robert Attard, Paulo Pinto de Albuquerque, Taxation at the European Court of Human Rights, *Human Rights Law Review*, Volume 24, Issue 1, March 2024.

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create additional obligations for States (but rather to align the mechanisms of the future Convention to existing obligations), it should not be read to create new rights that do not yet exist within the UN.⁴⁹

Furthermore, while States parties to the future Convention surely recognize taxpayers' rights in different legal and semi-legal instruments in force at the domestic level, a framework convention on tax cooperation does not appear to be the appropriate instrument to explicitly deal with taxpayers' rights. Arguably, the aim of including human rights in the principles section of the Convention is not protecting individuals, but to guide the interpretation of the convention and the functioning of its mechanisms in accordance with broader goals (see para. 8 of the ToRs referring to "principles that guide the framework convention in achieving its objectives"; see also question 2 above). Again, the ToRs are more naturally read as pursuing a "human rights-based approach to tax cooperation."

In connection with the question of whether legal entities have rights under international human rights law, the answer varies in different regional human rights' systems, and within the UN. Negotiators of the Convention **should therefore not assume that legal entities have human rights as a matter of international human rights law.**

Within the UN the Human Rights Committee (which oversees the application of the International Covenant on Civil and Political Rights, the treaty most naturally protecting the rights that taxpayers could claim) has found that only individuals are protected by the Covenant.⁵⁰ It has interpreted more broadly that "the beneficiaries of the rights recognized by the Covenant are individuals."⁵¹ Within the UN, discrete exceptions to this rule may be in place. For example, for racial discrimination⁵² there are protections that benefit persons, "groups of persons or institutions."⁵³

The question on legal entities' rights has probably emerged in the negotiation process from divergent criteria in regional human rights mechanisms in this regard. For example, the Inter-American Court has established⁵⁴ that legal entities do not hold rights under the Inter-American Human Rights System, as the American Convention only recognizes rights for natural persons (with limited exceptions, for example, for indigenous communities or unions under the San Salvador Protocol). This does not mean that countries cannot give legal entities similar protections at the constitutional level (see question 2 above). To the contrary, in Europe, rights' claims are accepted from legal entities both before the European Court of Human Rights in application of the European Convention on Human Rights, and the European Court of Justice. In the African System, the African Commission on Human and Peoples' Rights can hear complaints submitted by nongovernmental organizations on behalf of (groups of) individual victims.⁵⁵ Standing requirements in this system are very broad, so while there is

⁴⁹ See Latindadd and RJFALC, *supra* note 8.

⁵⁰ CCPR/C/103/D/1749/2008

⁵¹ Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).

⁵² Importantly, within the UN discrimination against indigenous peoples has been consistently interpreted as a form of racial discrimination. See Committee on the Elimination of Racial Discrimination, General Recommendation No. 23: Indigenous Peoples: .08/18/1997. Gen. Rec. No. 23. (General Comments).

⁵³ International Convention on the Elimination of All Forms of Racial Discrimination, art. 2.

⁵⁴ Inter American Court of Human Rights, Advisory Opinion 22/16.

⁵⁵ See generally From Piet Hein Van kempen, 'The Recognition of Legal Persons in International Human Rights Instruments: Protection Against and Through Criminal Justice?', in: M. Pieth & R. Ivory (eds.), *Corporate Criminal Liability. Emergence,*

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no cutting-clear doctrine on whether private legal entities could make claims on their own behalf, some cases would indicate that they may. However, in these cases natural persons were also affected (arguably making the protection of corporations “instrumental” to the protection of natural persons).⁵⁶

7. How do taxpayers’ claims on privacy and other rights relate to human rights in the Tax Convention?

Discussions leading to the adoption of the ToRs made it evident that some country representatives read “international human rights law” as protecting taxpayers’ rights. Debates emerged specifically around taxpayers’ right to privacy, largely in light of the 2022 ruling of the European Court of Justice (ECJ) regarding beneficial ownership transparency. In that case, the ECJ invalidated a public beneficial ownership registry—a measure aligned with the UNTC’s commitments to tax transparency—on the grounds that it violated protections for private life under the European Charter of Fundamental Rights.⁵⁷

Even under a stretched reading that considers European Court of Justice’s decisions as “international human rights law”⁵⁸, the fact is that **there is no clear-cut interpretation that indicates that the right to privacy under international law would automatically be infringed by tax transparency measures, such as public beneficial ownership registries. Indeed, there are only a few standards fully settled as part of the right to privacy, which largely refer to the possibility of limiting this right under strict circumstances and adhering to principles such as legality, necessity and non-arbitrariness.**

Overall, international human rights law provides a comprehensive framework that strongly supports and enables tax transparency while respecting legitimate privacy interests. The right to privacy is recognized in international human rights law⁵⁹, and in some regional human rights systems (on top of national constitutions, not assessed in this document). Yet, **under international and regional human rights law, the right to privacy is not absolute and is subject to restrictions.**

Language on permissible restrictions varies across systems. Overall, restrictions must be lawful, non-arbitrary, and serve a legitimate aim that is necessary in a democratic society. **Legitimate aims**

Convergence, and Risk, *Ius Gentium: Comparative Perspectives on Law and Justice* 9, New York/Dordrecht/Heidelberg/London: Springer 2011, p. 355-389.

⁵⁶ Idem.

⁵⁷ Decision of 22 November 2022 in Joined Cases C-37/20 and C-601/20

⁵⁸ The inclusion under “international human rights law” of this and related decisions of the European Court of Justice and standards emerging from European Union Law is contestable. Unlike other entities, the European Union has the capacity to create “European Union law” for its members. As a result, the European Court of Justice and the European Charter of Fundamental Rights (applied in the privacy case in question) constitute a different legal system to that of the European Convention on Human Rights (ECHR) and its European Court of Human Rights, the most obvious source of “international human rights law” in Europe. The European Charter of Fundamental Rights applies only when States are implementing European Union law (art. 51 of the Charter). As a result, the European Court of Justice’s decisions, based on such charter and other norms, pertain to the European Union and not “international human rights” law. Indeed the European Court of Justice’s decision discussed above does not even mention “human rights” as such a single time as part of its arguments to decide the Beneficial Ownership case.

⁵⁹ See, e.g. Article 12 of the Universal Declaration of Human Rights protects against “arbitrary interference” with privacy, family, home, or correspondence, and article 17 of the International Covenant on Civil and Political Rights

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include preventing financial crime, ensuring democratic accountability, or protecting the “economic well-being of the country” (which arguably includes mobilizing resources and combating tax abuse). Under this approach, the objectives of the Tax Convention, which include seeking to combat illicit financial flows, enhance tax cooperation, and support sustainable development, would provide a legitimate aim when balancing privacy rights against the public interest in tax transparency. Indeed, courts have often found that combating tax abuse is a legitimate aim for the purposes of restricting privacy rights.

International and regional legal systems demonstrate variations in interpreting in practice when limitations of privacy rights are permissible, as limitations must be assessed on a case-by-case basis.⁶⁰ This is crucial, as tax transparency measures can be designed in many different ways.

Regional courts in Europe are mostly the ones that have had the chance to apply general privacy protections to concrete cases involving tax-related measures (probably because, as discussed above, in other systems taxpayers are not normally considered victims of human rights violations). They have adopted largely restrictive approaches to transparency measures as limitative of privacy protections. Notably, however, these interpretations emerge not from straightforward readings of international law or treaty clauses, but from very detailed assessments of the specific circumstances of each case. For example, the proportionality test that the European Court of Justice used in the beneficial ownership case referenced above was made to assess specifically the European Union directives involved in the case. Therefore, interpretations of European Courts in relevant decisions should not be taken as an “across the board” reading of the right to privacy under any circumstance, and do not equate to an ex-ante, “facial” incompatibility of “international human rights law” with relevant tax transparency measures.

Adding further nuance, international human rights law also includes principles related to transparency and access to information—elements that can inform and reinforce the scope of tax transparency. The principle of transparency, and relatedly the right to access information, have been recognized as an “essential component” of democracy.⁶¹

Under transparency considerations, for example, human rights mechanisms at the United Nations have found that States need to produce fiscal information with sufficient disaggregation to allow for human rights assessments.⁶² They have also asked States to ensure that tax decision-making processes are open to an informed public debate⁶³ that is inclusive, transparent, and evidence-based.⁶⁴ The Inter-American Court of Human rights has been particularly prone to reading progressive transparency standards within other human rights, such as the right to access information.⁶⁵ Standards emerging from these interpretations—such as maximum disclosure, a

⁶⁰ CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation.

⁶¹ UN res 59/201, and the Inter-American Democratic Charter, Article 4. It is also recognised in multiple international instruments, including UDHR (article 19) and the ICCPR (article 19).

⁶² See, e.g., E/C.12/ESP/CO/5; HRI/GEN/2/Rev.6, para 43.

⁶³ A/HRC/26/28, citing A/HRC/17/34/Add.2, paras. 36 a 38; CCPR/C/GC/34, párr. 19; A/HRC/23/36.

⁶⁴ A/HRC/40/57. Párr. 11.6.f

⁶⁵ See, e.g., “Claude Reyes vs. Chile”.

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presumption of publicity, and broad standing for information requests—are not tailored specifically to tax issues, they apply across all areas of State activity. These standards support the development of robust, rights-consistent tax transparency measures.

To find out more, see:

- Committee on Economic, Social and Cultural Rights, [Statement](https://bit.ly/4moVRnN) on Tax Policy and the International Covenant on Economic, Social and Cultural Rights (<https://bit.ly/4moVRnN>).
- Office of the United Nations High Commissioner for Human Rights, Submissions made to the ad hoc committee to draft the Convention's terms of reference: [first session](https://bit.ly/3FaNP55) (<https://bit.ly/3FaNP55>) and [second session](https://bit.ly/3ZskYMM) (<https://bit.ly/3ZskYMM>).
- Independent Expert on debt and human rights, Special Rapporteur on extreme poverty and human rights, Special Rapporteur on the right to development, Independent Expert on the promotion of a democratic and equitable international order, Statement on the Framework Convention "[Human rights experts support call for UN tax treaty](https://bit.ly/4moVRnN)" (<https://bit.ly/4moVRnN>).
- Center for Economic and Social Rights, [webinar](https://bit.ly/4kNRaIZ) on tax transparency and privacy within the Convention (<https://bit.ly/4kNRaIZ>).
- Independent Expert on effects of foreign debt and human rights, [submission](https://bit.ly/4kfwvac) on the terms of reference of the Tax Convention (<https://bit.ly/4kfwvac>).
- [Principles for Human Rights in Fiscal Policy](https://bit.ly/43ITUOe) (<https://bit.ly/43ITUOe>).

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