

Technical Report
PROMOTING INCLUSIVE AND EFFECTIVE TAX COOPERATION AT THE UNITED NATIONS

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**The present document is being issued without formal editing*

INTRODUCTION

In the fight against illicit financial flows (IFFs), the pursuit of a fair and effective international tax cooperation to address these flows is pivotal. This technical report aims to provide a seminal analysis and strategic roadmap that aims to empower Africa to assert its voice and agency in shaping inclusive and transformative international tax cooperation and governance. This report provides African policymakers and leaders with a nuanced blueprint to recalibrate international tax cooperation, underscoring principles of inclusivity, equity and transparency.

Since the establishment of the AU-ECA High Level Panel on IFFs in 2011, Africa has been at the forefront of addressing the detrimental impact of IFFs, which drain the continent of much-needed resources and hinder sustainable development efforts. The international community has also recognized the importance of addressing IFFs in the context of sustainable development. Sustainable Development Goal 16.4 specifically targets the reduction of illicit financial flows and emphasises the need for international cooperation to achieve this goal. Additionally, the United Nations General Assembly's adoption of Resolution 77/244, promoting inclusive and effective tax cooperation, signifies a significant step towards advancing international tax reform.¹ The subsequent report of the United Nations Secretary-General, contained in document A/78/235, lays out three options for how Member States can make international tax cooperation fully inclusive and more effective.

This report builds upon the invaluable contributions of the AU-ECA HLP report on IFFs², incorporating key findings and recommendations that reflect the urgency and imperative for Africa to shape the international tax agenda on its own terms. It recognises the historical dynamics of colonial dominance that have hindered equitable cooperation and calls for a paradigm shift towards a globally inclusive and intergovernmental process at the United Nations. Drawing first from the expertise and contributions of esteemed African institutions, including the African Union Commission, the ECA, the African Tax Administration Forum, and the Tax Justice Network-Africa, alongside reports from Fiscal Policy Forum, UN FACTI Panel, UN tax committee, UNCTAD on illicit financial flows and tax, the UN Secretary-General's report on 'International Coordination and Cooperation to Combat Illicit Financial Flows'³ and the public submissions to the forthcoming 'Tax Report 2023',⁴ relevant research, policy briefings and position statements from intergovernmental organisations from across the global South; and key contributions from civil society, such as the Global Alliance for Tax Justice's proposed draft UN tax convention⁵ and the range of research from civil society organisations, followed by an examination of the recent UNSG's report (A/78/235) in which he presents 3 options to inform the discourse going forward on international tax cooperation, this report critically assesses these 3 options, and describes the institutional features and substantive issues that need to be addressed to create a fully inclusive and more effective international tax cooperation.

Furthermore, this report takes a pragmatic and results-oriented approach, proposing an accelerated timeline for action. It advocates for the adoption of a UN resolution during the 78th session of the General

¹ United Nations General Assembly, *Promotion of inclusive and effective international tax cooperation at the United Nations*, 30 December 2022 A/RES/77/244.

² AU-ECA (2015). *Illicit Financial Flows: Report of the AU-ECA High-Level Panel on Illicit Financial Flows from Africa*.

³ UN Secretary General, *International coordination and cooperation to combat illicit financial flows: report of the Secretary General*, 19 August 2022, A/77/304, <https://digitallibrary.un.org/record/3988481?ln=en>

⁴ UN, *Tax Report 2023*, <https://financing.desa.un.org/tax-report-2023>

⁵ Ryding, T.M. (2022) *Proposal for a UN Convention on Tax (EURODAD)*.

Assembly in late 2023, setting a clear timetable for negotiations on a framework convention on international tax cooperation to commence in January 2024. The framework convention described in this report can serve as a foundation to elaborate upon and enhance Option 2 as proposed by the UNSG. With the aim of presenting a draft instrument for signature at the proposed 2025 Financing for Development summit, this timeline emphasises the need for expeditious progress that reflects the realities, aspirations, and priorities of African nations. To achieve this ambitious vision, effective collaboration between all agencies within the IFFs ecosystem is paramount. A strong African voice on these issues can drive meaningful change, demanding a seat at the table and shaping the global tax agenda to benefit the continent's development aspirations.

The structure of this report is designed to provide a comprehensive analysis of the historical legacy of international taxation and its implications for Africa. It is divided into several key sections to explore different aspects of the topic. The first section delves into the historical evolution of international taxation, tracing its origins from the early efforts at the United Nations level to the subsequent dominance of the OECD. It examines the role of various models and conventions in shaping tax norms, highlighting the limited representation of Africa throughout this process. The second section focuses on the challenges and shortcomings of the existing international tax architecture, emphasizing the disparities and power imbalances that have marginalized Africa and other developing regions. It critically examines the asymmetries in decision-making processes and the hegemony of certain countries, shedding light on the inherent inequities within the system. The third section explores the current debates and discussions surrounding the establishment of fully inclusive and more effective international tax cooperation, including the suggestions for an intergovernmental process to be led by a body other than the OECD. It analyses the role of Africa in advocating for effective tax cooperation, examining the efforts of regional bodies such as the African Union and the Economic Commission for Africa in advancing the African agenda.

Furthermore, the report assesses the critical institutional features that international tax cooperation should embody, considering the demands for effective inclusion and the need to address post-colonial dominance. It also outlines the key criteria for tax rules and transparency standards that should be embedded in reforming international tax cooperation to promote fairness and equity. Lastly, the report presents recommendations and next steps for Africa to actively engage in shaping the future of international tax cooperation.

I. HISTORICAL INEQUALITIES

The historical legacy of international taxation is marked by a complex evolution that has seen the formulation of tax norms at various stages and through different global institutions. From its origins rooted in colonial economic exploitation to the present day, international taxation has served as a tool for domination, enabling wealthier countries to assert control over the economic affairs of less powerful nations.⁶

During the colonial era, major powers imposed extractive tax regimes on their colonies, siphoning off resources and capital to fuel their own development while stifling economic growth in the colonised territories.⁷ This asymmetrical tax system, coupled with unfair trade practices, laid the foundation for the

⁶ David Vital, *The Inequality of States: A Study of the Small Power in International Relations* (Clarendon Press, 1967) 7–8; Alan K Henrikson, 'Great Powers, Superpowers, and Global Powers: Managerial Succession for a New World Order' in Dimitris Bourantonis and Marios Evriviades (eds), *A United Nations for the Twenty-First Century: Peace, Security and Development* (Kluwer Law International, 1996) 65, 65–6.

⁷ Okanga, Ogbu, and L. A. Latif. 'Tax Vulnerabilities in Africa: Revisiting Inclusivity in Global Tax Governance'. *African Journal of International Economic Law*, Vulnerabilities in International Economic Law, 1 (2). 2021.

economic disparities that persist in the world today. Even after the formal end of colonialism, the legacy of unequal taxation remained intact.⁸ The international tax architecture, largely shaped by Western powers, favoured the interests of multinational corporations, and facilitated tax avoidance and profit shifting.

Aggressive tax planning strategies, facilitated by tax havens and opaque financial systems, allowed corporations to exploit loopholes and shift their profits to low-tax jurisdictions, depriving developing nations of much-needed revenue.⁹ Moreover, international tax rules, predominantly based on the arm's length principle, have proven inadequate in capturing the economic realities of an interconnected global economy.¹⁰ Multinational corporations, through transfer pricing and other mechanisms, have manipulated their financial flows to minimise tax liabilities, exacerbating the revenue shortfalls experienced by developing countries. The historical legacy of international taxation also reflects a power imbalance in decision-making processes. Institutions such as the OECD have wielded significant influence in shaping global tax norms, with limited representation and participation from developing countries.¹¹ This lack of inclusivity has perpetuated a system where the interests of powerful nations and multinational corporations take precedence over the needs and priorities of the most vulnerable.

In the early 20th century, the League of Nations established financial and fiscal committees, which played a crucial role in formulating early international tax norms.¹² The Geneva Model of 1927,¹³ the Mexico Model of 1943, and the London Model of 1946¹⁴ were significant milestones in shaping international tax principles during that time. However, Africa, along with many other developing regions, was not adequately represented in these discussions and decision-making processes. The voices and perspectives of African nations were largely ignored, perpetuating the historical exclusion and power imbalances within the international tax arena. As the century progressed, the focus shifted to the OECD, which became the primary platform for the development of international tax rules and standards. The OECD Model Tax Convention, first established in 1963, has served as a blueprint for bilateral tax treaties and influenced the tax policies of nations worldwide.¹⁵ However, recognising the limitations of the OECD Model, especially for developing countries, the United Nations introduced the Model Double Taxation Convention between Developed and Developing Countries (commonly known as the UN Tax Model) in 1980. Crafted to address the distinct needs of developing countries and to balance the OECD's residence-based taxation approach, the UN Tax Model emphasised greater taxing rights for source countries, a shift particularly significant for regions like Africa. Despite these advancements, the lack of representation from Africa and other developing regions in the OECD continued to restrict their influence in shaping these norms, resulting in a system that predominantly serves the interests of the most economically powerful nations.

⁸ Latif, L., 'Imperilled Welfare States of Eastern Africa: A Comparative Analysis of the Policy Legacies of Taxation Politics in Kenya and Uganda', in G Onyango (ed) *State Politics and Public Policy in Eastern Africa: A Comparative Perspective* (Palgrave Macmillan, 2023).

⁹ Ndikumana, L., and Boyce, J.K. *On the trail of capital flight from Africa* (OUP, 2022).

¹⁰ Parks, B. Arm's Length: Principle of Cult? *taxnotes*, 26, Oct, 2020.

¹¹ Fung, S. 'The Questionable Legitimacy of the OECD/G20 BEPS Project', *Erasmus Law Review*, 2, (2017):76-88.

¹² Letter from Hill to Gerig, 11 March 1943, UNOG:PO—C.1633/529/17/3 (proposing that the 'World Economic Council' would have the scope to deal with, inter alia, 'double taxation, fiscal evasion and other fiscal problems'); Preparatory Commission of the United Nations, *Report by the Executive Committee to the Preparatory Commission*, UN Doc PC/EX/113/Rev.1 (12 November 1945).

¹³ Committee of Technical Experts on Double Taxation and Tax Evasion, *Double Taxation and Tax Evasion: Report*, League Doc C.216.M.85.1927.II (April 1927) 6, 9 ('1927 Report')

¹⁴ Fiscal Committee, *London and Mexico Model Tax Conventions: Commentary and Text*, League Doc C.88.M.88.1946.II.A (November 1946) 6, 26.

¹⁵ OEEC Council, Recommendation of 25 February 1955: see Organisation for Economic Co-operation and Development (OECD), *Model Tax Convention on Income and on Capital 2017 (Full Version)* (2019) vol 1, I-1 [4] ('OECD 2017 Model').

Undoubtedly, the AU-ECA HLP report on IFFs has been a significant catalyst for Africa's push against the OECD-centric international tax system.¹⁶ Chaired by former South African President Thabo Mbeki, the panel was established in 2011 by the African Union (AU)-United Nations Economic Commission for Africa (ECA) Conference of Ministers of Finance, Planning and Economic Development to address the issue of IFFs from Africa, which were severely affecting the continent's development and governance. The AU HLP on IFFs shed light on the pressing issue of illicit financial flows and their detrimental impact on African economies. It highlighted the severe loss of revenue due to aggressive tax avoidance strategies by multinational corporations and the exploitation of tax treaties. Prompted by the findings of the AU-ECA HLP on IFFs, African nations have become more assertive in international tax discussions, challenging the norms and practices established by OECD countries that disproportionately favour wealthier nations and multinational corporations.

The AU HLP on IFFs 's efforts in the fight against IFFs and for tax justice have paved the way for a new era of engagement in international tax matters. They represent a decisive move towards the establishment of a globally inclusive and equitable tax system that respects the needs and realities of all nations, not just the economically powerful ones. Africa's continuing struggle for tax justice, highlighted by the work of the AU HLP on IFFs is a testament to the continent's resilience and determination to challenge the status quo and shape a fairer future.

Africa is in a unique position as it is only continent which has a common position on IFFs. The High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel), which was established by the President of the UN General Assembly and President of ECOSOC produced its report in March 2021. The report built on the findings and recommendations of the AU HLP on IFFs from Africa. The FACTI Panel updated the diagnosis for the global developments since 2015 and extended the scope of action to the entire world in the context of the need for raising resources for investment in the 2030 Agenda for Sustainable Development.

The Africa-led call upon the international community to undertake appropriate actions at the national, regional and global levels would express the need to ensure that illicit financial flows are treated as a systemic challenge at the global level and that the international community, as reiterated by the FACTI Panel, adopts a mechanism for global coordination to systematically monitor illicit financial flows, overcome a siloed approach to addressing IFFs.

II. THE EXISTING INTERNATIONAL TAX ARCHITECTURE: CHALLENGES AND OPPORTUNITIES

A. CHALLENGES

African countries are often underrepresented in international forums that shape global tax governance policies. This has led to policies that are not in line with the interests of African countries and has even harmed their economies.¹⁷ The political influence of the global north is also a persistent challenge for African countries. The dominance of developed countries in international organisations and forums has meant that their interests often take priority over those of African countries. This has been particularly

¹⁶ ECA (2015) *Illicit Financial Flows: Report of the AU-ECA High-Level Panel on Illicit Financial Flows from Africa*.

¹⁷ Oelofsen, J. 'Global South Perspectives on International Tax Reform,' *Global South Project on Combatting Profit Shifting and Illicit Financial Flows* (2022).

evident in the area of tax governance, where policies have often been shaped to protect the interests of developed countries and their multinational corporations.¹⁸

Many of these challenges have been addressed by the AU HLP on IFFs and the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (the FACTI Panel). One of the critical challenges that these panels have identified is the lack of transparency in international financial transactions. This opacity enables illicit financial flows and hinders efforts towards international tax cooperation. The skewed balance of power in the global tax architecture is another challenge pointed out by both panels. As it stands today, this architecture largely favours high-income, developed nations, especially those within the OECD, often leading to the marginalization of lower-income and developing countries. Furthermore, the current international legal and policy frameworks fall short in their attempts to prevent illicit financial flows. These frameworks often do not adequately address aggressive tax planning strategies and weak regulation of multinational corporations. There's also the issue of capacity constraints. Low-income countries often do not possess the technical capacity, resources, and infrastructure necessary to combat illicit financial flows and to implement complex tax systems effectively. Despite these challenges, there are numerous opportunities for significant advancements.

Both panels underscored the necessity of a more inclusive, equitable, and transparent global tax system. This system would allow all nations to participate in the decision-making process, ensuring that the needs of developing nations are acknowledged and respected. Revamping international legal and policy frameworks offers another opportunity to prevent tax evasion and aggressive tax planning more effectively. Additionally, international cooperation could significantly contribute to capacity building in developing countries. This cooperation would support these countries in implementing effective tax systems and combating illicit financial flows. The implementation of more robust standards for transparency and accountability in international financial transactions could substantially reduce opportunities for illicit financial flows. This could be achieved through efforts such as automatic exchange of tax information, ensuring transparency in beneficial ownership, and instituting country-by-country reporting by multinational corporations.

The potential benefits of digitalisation have also been recognised. Digital tools and technologies could greatly improve tax administration and compliance. They could also be utilised in detecting and preventing illicit financial flows. By addressing these challenges and harnessing these opportunities, the AU HLP on IFFs and the FACTI panel emphasise the potential to significantly reduce illicit financial flows, enhance tax cooperation, and mobilise domestic resources for sustainable development.

The outcomes and recommendations of the First African Fiscal Policy Forum, jointly organised by the Coalition for Dialogue on Africa (CoDA) and the South Centre, also present a comprehensive overview of Africa's challenges and opportunities in international tax cooperation.¹⁹ The overarching theme of the forum is the need for more inclusive and transformative international tax cooperation that would allow Africa and other developing regions to have a greater say in setting global tax norms and reduce IFFs. The forum recognised that the international tax system is characterised by inequalities that exacerbate IFFs, tax evasion, and tax avoidance. These inequalities have left Africa and other developing countries at a disadvantage, leading to substantial revenue losses. At the same time, international aid has stagnated, and

¹⁸ Johannesen, N and others, 'Are Less Developed Countries More Exposed to Multinational Tax Avoidance? Method and Evidence from Micro-Data,' *The World Bank Economic Review*, Volume 34, Issue 3, October 2020, Pages 790–809; Latif, L.A., The Evolving 'Thunder': The Challenges Around Imposing the Digital Tax in Developing African Countries, *International Journal of Digital Technology & Economy* (Vol 4, Number 1, 2020).

¹⁹ CoDA/South Centre (2021) *Outcomes and recommendations of the First African Fiscal Policy Forum*. <https://www.southcentre.int/outcomes-coda-south-centre-dialogue-series-on-iffs-1-june-2022/>

foreign direct investment has declined, further emphasising the need for domestic resource mobilisation. The forum's acknowledgement that the ongoing OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) has not been beneficial to African and other developing countries is significant. The digitalisation of the economy has introduced new challenges in taxing Multinational Enterprises (MNEs), and the solutions proposed in the two-pillar solution offer minimal benefits to developing countries. This reality calls for a rethinking the current international tax cooperation, pushing for a fully inclusive and transformative approach.

The forum emphasises the need for increased representation and participation of African countries in international processes to address taxation issues and IFFs. The forum also identifies the two-pillar solution as a source of concern, as it offers limited benefits to developing countries, especially in the context of their existing corporate tax rates. The forum calls for the need for African countries to find alternative ways to increase tax revenue from activities taking place in their jurisdictions. The forum also highlights the need for a well-coordinated and coherent approach for Africa in global processes to curb IFFs and ensures that the processes are inclusive and address the peculiarities of African countries. South-South cooperation is identified as a critical strategy in this regard. The recommendation to bring tax negotiations to the United Nations where voices of developing countries would be stronger underscores the forum's push for fully inclusive and transformative international tax cooperation. Establishing an intergovernmental body on tax matters at the UN would provide an avenue where negotiations take place on an equal footing.

While the AU HLP on IFFs, the FACTI panel, and the First African Fiscal Policy Forum have identified potential avenues for reform, including the implementation of a global minimum corporate tax rate, enhanced transparency measures, and an expanded mandate for the UN Tax Committee, they have found the current OECD proposals to be somewhat lacking. Their concerns signal a disconnect between the international tax cooperation frameworks advanced by the OECD and the unique needs and circumstances of developing nations.

i. Unsuitability of OECD proposals

The existing asymmetries in international tax norm and rulemaking, chiefly guided by the OECD, represent a recurring pattern where the interests of wealthier nations and multinational corporations often take precedence over those of less economically developed countries. A pertinent example of this is the recent development of the two-pillar approach proposed by the OECD as part of its Base Erosion and Profit Shifting (BEPS) project. In the context of global taxation, an asymmetry arises when certain conditions or practices inadvertently create a lack of balance or equality between parties. This often manifests in the distribution of power, status, or opportunities, which tend to disproportionately favour one group over another. Applying this concept to the two-pillar framework designed by the OECD, we can see such asymmetries in play, particularly when analysing their impact on developing economies, including African nations. *Annex 1 provides a detailed discussion of the flaws of the two-pillar approach, and its lack of suitability for most African and many other countries.*

In summary, the OECD proposals fall very far short of the original ambition. The first pillar was intended to go 'beyond arm's length pricing' and introduce a unitary approach – so that multinationals' profits could be taxed in the jurisdiction of the real economic activity from which they arise, instead of being shifted to a lower-tax jurisdiction elsewhere. The second pillar was supposed to introduce a minimum tax rate to end the race to the bottom on corporate tax rates once and for all.

In practice, the OECD proposals deliver little of either. Pillar 1 will go 'beyond' the obsolete arm's length approach only for a small fraction of the profits of less than a hundred large multinationals. Most of their profits, and all the profits of all other multinationals, will remain subject to the complex and unworkable transfer pricing arrangements that badly need replacement. Worse than this, if countries wish

to participate in Pillar 1, they will be forced to give up a range of other measures including digital sales tax and broader, more effective alternatives. Many countries will gain little, or even lose revenues if they go ahead with the OECD approach. Revenue assessments for the 84 combined Member States of the African Union and the South Centre show that for the year 2020 these countries will get a total of \$5 billion from Amount A with an EUR 20 billion threshold and \$12 billion from Article 12B of the UN Model Tax Convention.²⁰

Pillar 2 has also been harshly assessed. The OECD's version of "a global minimum tax (the GloBE), aims to ensure that MNE [multinational entity] profits are taxed at an effective minimum rate of 15% in each country to which they are attributed, by allocating rights to apply a top-up tax to other countries where they have a taxable presence. However, this right is given in priority to the home country or countries of residence of the MNE by applying an income inclusion rule (IIR), while the host country's right to top-up tax on profits at source (undertaxed payments rule - UTPR) is only a fall-back. An additional right for a domestic minimum top-up tax (DMTT) has now been included but would benefit countries where MNEs already attribute high levels of profit under current rules - jurisdictions which act as investment hubs or conduits for profit-shifting. Estimates show that most developing countries would gain little or no additional tax revenue directly from the GloBE, and since its rules are highly complex, joining the scheme would not be cost-effective for most of these countries."²¹

Not only does the GloBE proposal fail to curb profit shifting or deliver meaningful revenues for host countries, it also sets such a low minimum that it may be counterproductive in this regard also. A 15% global minimum tax rate is substantially lower than the current corporate tax rates of 25-35% commonly seen across African countries. While such a low global minimum tax rate has been proposed to gain consensus among as many countries as possible, it could also have significant implications for African countries.

Firstly, setting the global minimum tax rate at 15% could erode the tax base of African countries if multinational corporations adjust their tax strategies to take advantage of the lower rate. This could potentially result in substantial losses of corporate tax revenues. Secondly, if the global minimum tax is set below the corporate tax rates of African countries, it could diminish their ability to attract foreign direct investment (FDI). Corporations might lean towards investing in countries where they can pay the global minimum, rather than the higher domestic corporate tax rate. Thirdly, it could affect African countries' fiscal sovereignty. Setting tax rates is a significant aspect of a nation's economic policy, enabling it to balance between attracting FDI and generating revenue for public goods and services. A global minimum tax rate that is substantially lower than the existing corporate tax rates might limit African nations' ability to manage their tax policies effectively.

ii. Unsuitability and exclusionary nature of OECD process

In light of challenges identified above, African policymakers, as well as groups like the AU HLP on IFFs, FACTI Panel, the First African Fiscal Policy Forum, and the UN Tax Committee have advocated for more inclusive and equitable solutions in international tax cooperation. They have stressed the need for greater representation of African countries in international tax norm-setting, and for the consideration of alternatives to the arm's length principle, among other things. However, these concerns have not been adequately addressed in the BEPS project.

²⁰ See Appendix E and F: <https://www.southcentre.int/research-paper-156-1-june-2022/>

²¹ Picciotto et al., 2023, 'The BEPS proposals and alternatives', *BEPS Monitoring Group*, <https://www.bepsmonitoringgroup.org/news/2023/7/5/the-beps-proposals-and-alternatives>.

Many African nations and other developing countries lack the necessary expertise and resources to effectively participate in the discussions. The complexities of international tax rules and the implementation of the subject to tax rule can make it difficult for these countries to fully comprehend and contribute to the negotiation process. Developing countries, including African nations, may face a disproportionate burden in terms of compliance costs and administrative challenges. This can create a compliance gap between developing and developed countries, potentially widening the disparity between them. These asymmetries underscore the need for a more inclusive and equitable approach to tax treaty negotiations. It is crucial to consider the specific circumstances and capacity constraints of developing countries, including those in Africa, to ensure that international tax reforms, such as the subject to tax rule, do not further disadvantage them. Addressing these asymmetries is essential to achieving fair and balanced global tax governance.

Also, the process of reaching a consensus within the Inclusive Framework, particularly under the pressures of an expedited timeline, contributes to the asymmetry in global tax governance by disproportionately affecting developing nations. The essence of this asymmetry lies in the differences in capacity between developed and developing countries to comprehend, negotiate, and implement such complex reforms within a tight timeframe. The OECD's two-pillar approach is a complex reform of international taxation norms, which requires detailed understanding and careful consideration of implications, particularly for countries with diverse and unique economic contexts like many in Africa. The expedited timeline for these reforms may not afford these countries the requisite time to fully digest the proposals, assess their potential impact, and constructively contribute to the discussions.

Furthermore, countries need sufficient time and resources to develop potential alternatives that would better align with their unique economic realities. An accelerated timeline might undermine this process, pressuring countries to agree to provisions that may not serve their best interests. Given that developed countries typically have greater resources, including expert human capital in tax law and international relations, they are likely better equipped to handle such expedited processes. On the other hand, developing countries, many of which are already resource-strained, may struggle to keep pace. This scenario exacerbates the existing power imbalance between developed and developing countries in global tax governance. It accentuates the asymmetry by potentially side-lining the voices of less-resourced nations, thereby reinforcing the necessity for more inclusivity and fairness in shaping global tax reforms.

The pillars' potential conflicts with existing domestic laws and tax treaties can lead to legislative and implementation challenges. For countries with limited administrative capacity, these conflicts add another layer of complexity, further widening the gap between developed and developing nations. In essence, while the OECD's two-pillar framework aims to curb global tax avoidance, the way it's designed and implemented may inadvertently disadvantage developing nations. This results in clear asymmetries in global tax governance, reinforcing the urgent need for a more equitable approach.

Even with the implementation phase of the OECD's two-pillar framework already underway, concerns surrounding the expedited process remain pertinent for several reasons. Firstly, the repercussions of such profound tax reforms may not be immediate and could require several years to fully manifest. As such, countries need ample time and resources to assess these effects on their economies and formulate appropriate responses. This need is more acute for resource-strained nations that could find the rapid timeline of these reforms overwhelming. Secondly, the global tax landscape is perpetually evolving. The burgeoning digital economy and the emergence of new business models demand the continuous refinement and modification of tax policies. This necessitates nations to remain engaged with the reforms, understand their implications, and devise alternatives if required. The haste associated with the reforms' initial timeline may set an undesired precedent for future policy amendments, potentially placing developing countries at a sustained disadvantage.

Thirdly, the complex nature of these reforms could pose challenges for developing countries in preparing for the implementation phase. Addressing these challenges necessitates substantial capacity-building efforts. The swiftness of the reform process may not provide adequate time for such capacity enhancement, possibly affecting these countries' ability to effectively implement and reap the benefits of the reforms. Lastly, the principle of tax policy sovereignty stands threatened by the accelerated timeline of the OECD's reforms. Countries should have the freedom to devise tax policies that best align with their unique economic conditions. An expedited reform process could pressure countries into accepting provisions that may not resonate with their needs or preferences, thereby undermining their tax policy sovereignty.

iii. Exclusionary nature of OECD leadership on the ABC of tax transparency

The 'ABC of tax transparency' relates to three key policy elements in the fight against IFF: the Automatic exchange of information on financial accounts, to address offshore tax evasion by individuals with undeclared accounts; Beneficial ownership transparency, through public registers of the ultimate owners and controllers of companies, trusts and other legal vehicles, recognising that anonymous ownership has a critical role in almost all IFF except perhaps corporate tax abuse; and public, Country by country reporting for multinational companies, so that profit shifting away from the locations of their real economic activity is exposed. In each case, the OECD and the related Financial Action Task Force (FATF) have played a major role. But in each case, the results have been far from inclusive.

The automatic exchange of information (AEOI) is designed to enhance transparency in tax matters, but its effective implementation under the OECD Common Reporting Standard (CRS) demands substantial administrative and technological capabilities that many developing countries lack. The CRS allows countries to automatically exchange non-resident financial account information with the account holders' countries of residence. This is a core requirement acknowledged under the AU-ECA HLP report on IFF.²² However, the implementation of OECD CRS is a resource-intensive process. It demands a sophisticated administrative and technical infrastructure capable of collecting, storing, and transmitting vast amounts of sensitive financial data securely. Specifically, the CRS requires that for countries to participate in multilateral information exchange, they reach detailed technical and confidentiality standards, and are able to reciprocate fully. Even then, there is no guarantee that other CRS participants will provide any information, since becoming a signatory does not require exchange with all (or even any) other participants - with the effect that developing country signatories often receive less information than others.

In addition, the capacity requirements imposed by the OECD hinders developing countries from joining the CRS, thus undermining the intended level playing field in international tax cooperation.²³ For many African countries lacking such resources, the full participation in AEOI remains an uphill task. Moreover, issues around reciprocity can pose a significant challenge, as information may flow primarily from developing to developed countries, without a similar flow in the opposite direction.²⁴ The reciprocity demand is particularly problematic given consistent research findings that it is high-income countries and their dependent territories that are responsible for the vast majority of undisclosed offshore wealth and IFF risk. Demanding that Malawi be able to provide information on British holders of Malawian bank accounts before the UK will even consider providing information to Malawi seems to run clearly against both natural justice and any rational prioritisation for effectiveness against IFFs.

²² AU/ECA Conference of Ministers of Finance, Planning and Economic Development (2015) *Report of the High-Level Panel on Illicit Financial Flows from Africa*, p. 84.

²³ Global Forum on Transparency and Exchange of Information for Tax Purposes, "Reinforcing Multilateral Cooperation in Tax Matters for a Fair and Inclusive Recovery" (Global Forum Annual Report 2021) Annex C.

²⁴ UN FACTI Panel *Financial Integrity for Sustainable Development* (UN, 2021) at 17 and at 43.

According to the UN Financing for Sustainable Development Report 2023, only 10 out of 54 African countries have been able to participate in the OECD CRS to date. In total, 122 jurisdictions participate.

The report by the AU-ECA HLP on IFF's proposed to base the application of AEOI on the principle of 'common but differentiated responsibilities.'²⁵ This principle recognises that countries have different levels of capacities and responsibilities in addressing global challenges. It acknowledges the need to take into account the varying circumstances and capabilities of countries when implementing international agreements or initiatives. On the contrary, the OECD's current approach to AEOI is based on a more uniform standard of automatic exchange of financial account information among participating jurisdictions. The OECD's Common Reporting Standard (CRS) establishes a global standard for AEOI, promoting the automatic and systematic exchange of financial information between countries to combat tax evasion and promote transparency. Many African countries face significant capacity constraints in terms of resources, infrastructure, and technical expertise. Implementing the CRS requires establishing comprehensive systems for collecting, storing, and exchanging large amounts of financial data. African tax administrations often lack the necessary infrastructure and expertise to handle the complexities associated with CRS implementation effectively.

The effectiveness of the CRS depends on the accuracy and reliability of the reported financial information. African countries may face challenges in ensuring the quality of the data received from financial institutions within their jurisdictions. Issues such as limited resources for data verification and the potential for inaccurate or incomplete reporting can undermine the integrity of the exchanged information. While many African countries have committed to implementing the CRS, the global participation is not yet universal. Some jurisdictions, including certain tax havens and non-cooperative jurisdictions, have not joined the CRS initiative or have not fully committed to reciprocity in sharing information. This limited participation can create gaps in the effectiveness of the CRS and potentially allow individuals and entities to continue evading taxes by exploiting jurisdictions that do not fully participate in the exchange of information. In this regard, ATAF has emphasised the importance of adopting a phased or staggered implementation of AEOI, allowing countries to start with a more manual and request-based approach to information exchange, and gradually transitioning to the automatic model as their capacities develop.

Beneficial ownership transparency (BOT) is another area with its unique challenges. BOT is critical for curbing illicit financial flows and tax evasion, but its enforcement requires a robust regulatory environment and sophisticated technical infrastructure, which many African countries may lack. Issues such as lack of legal and regulatory frameworks for BOT, difficulties in identifying the actual beneficial owners, and challenges in verifying the accuracy of the reported information further complicate its implementation. BOT is a critical tool in combating illicit financial flows, tax evasion, and other financial crimes. However, creating and maintaining a BOT registry requires a robust legal and regulatory framework, a well-functioning administrative system, and a commitment to ensuring the accuracy and timeliness of the data.

These requirements pose significant challenges for many developing countries. Without proper implementation and enforcement mechanisms, BOT efforts may result in a database filled with outdated or inaccurate information, undermining its effectiveness. These challenges, which underscore the asymmetries in the current international tax system, further illustrate the necessity for fully inclusive and more effective international tax cooperation that caters to the unique needs and circumstances of developing countries.

²⁵ AU/ECA Conference of Ministers of Finance, Planning and Economic Development (2015) *Report of the High-Level Panel on Illicit Financial Flows from Africa*, p. 46.

And once again, while African countries should continue their solid progress towards establishing public registries of beneficial ownership, the evidence is clear that global IFF risks related to anonymous ownership stem predominantly from high-income countries and their dependent territories. Progress should be prioritised there, and the standard should require public registers for all legal vehicles – in contrast to the current FATF recommendation which still falls short of this. This again emphasises the need for a more representative body for international tax cooperation, one which accounts for the perspectives and priorities of all nations, not just the most economically powerful.

Finally in the ABC, public country by country reporting (CbCR) is a transparency mechanism introduced under the OECD's BEPS Action Plan to curb tax abuse by multinational enterprises, stemming from a draft international accounting standard promoted by the Tax Justice Network since 2003.²⁶ Despite its intended purpose, CbCR presents several challenges for African countries. The high thresholds for reporting often exclude many multinationals operating in these countries, leaving significant economic activities unreported. Moreover, the restrictions on the use of the information disclosed under CbCR can hamper effective tax administration in developing countries.

African countries again are much less able to access data under OECD exchange of information arrangements here also. Participation is limited to 9 African countries out of 93 worldwide. The OECD's opposition to having CbCR data be made public, despite evidence of benefits is the reason why convoluted information exchange arrangements are needed – with the result that a transparency mechanism introduced to help tax administrations gain a more comprehensive understanding of multinational corporations' activities has actually worsened the inequalities in taxing rights faced by African and other countries.

The implementation of the OECD standard presents several challenges for developing countries. Firstly, the reporting threshold for CbCR under the OECD's framework is an annual consolidated group revenue of 750 million Euros, which can exclude many multinationals that have significant operations in developing countries. Secondly, the information in CbCR is often not sufficiently detailed for effective risk assessment, especially in complex sectors. Lastly, there are restrictions on how the information disclosed under CbCR can be used, which could potentially hamper effective tax administration in developing countries. As the AU-ECA HLP report (2015, p.45) made clear, public reporting is what is needed: "Country-by-country reporting, publically available, will help to show where substantial activity is taking place and the relative profits generated and taxes paid."

B. OPPORTUNITIES

Countering these asymmetries requires inclusive and equitable tax governance. One way to achieve inclusive and equitable tax governance is by implementing the recommendations by the AU-ECA HLP report on IFFs which requires stronger cooperation, focusing on strengthening independent institutions, facilitating information sharing, and increasing oversight of financial institutions. These measures aim to bolster domestic resource mobilisation and curb IFFs, improving fiscal self-reliance and reducing dependency on foreign aid. In line with this, the UN Resolution 77/244 advocates for fully inclusive and more effective tax cooperation at the international level, which inherently involves mitigating the asymmetries that currently exist in the global tax governance. The same themes of inclusivity, effectiveness, and equity echo through the UN resolution.

²⁶ Cobham, A., Janský, P. & Meinzer, M. 2018, 'A half-century of resistance to corporate disclosure,' *UNCTAD Transnational Corporations Journal* 25(3), United Nations Conference on Trade and Development.

The Africa Agenda 2023²⁷ identifies the need for Africa to recognise and consider its unique circumstances and constraints in so far as domestic resource mobilisation is concerned. African nations, understanding the critical need for this, have started taking steps. Kenya, for instance, has been proactively involved in negotiations at the OECD level to ensure its interests are represented. It has also implemented digital service taxes to ensure tech multinationals contribute their fair share, showing it can adapt to the rapidly changing economic landscape.²⁸ Nigeria has been engaging robustly in capacity-building and technical assistance programs to strengthen its tax administration and has initiated measures to expand its tax base and improve tax collection efficiency.²⁹ The Nigerian government has also expressed commitment to engage in and contribute to global tax policy dialogues, indicating a willingness to actively participate in shaping global tax reforms. Such initiatives from African nations are an encouraging sign of their determination to counter these asymmetries and ensure their interests are well-represented in global tax governance. However, to truly level the playing field, the international community must work towards providing these nations the necessary support and capacity-building opportunities to actively participate in and benefit from global tax reforms.

Given the challenges and limitations of the current OECD process, it is crucial to explore alternative institutional models and recommendations to achieve meaningful progress in international tax cooperation. The UN Tax Committee, while limited in its advisory capacity, has demonstrated its potential in proposing alternative models. To advance the policy debate on corporate tax, it is imperative to prioritise Africa's active participation and ensure that its unique needs and realities are considered. African countries should actively engage in decision-making processes and advocate for policies that align with their development goals. Therefore, in terms of institutional recommendations, there is a need to strengthen and empower at present the UN Tax Committee to play a more influential role in international tax policymaking. This would require expanding its mandate and ensuring representation from influential finance ministries to bridge the gap between technical expertise and policy implementation. Moreover, the international community should encourage the exploration and adoption of alternative measures by individual countries and regions. Unilateral measures, such as countering permanent establishment (PE) avoidance, strengthening withholding taxes, and considering alternative minimum taxes (AMTs), can provide a catalyst for change. Coordinated action among countries can mitigate the risks associated with political, economic, and legal pressure.

The Eurodad report on the proposal for a UN convention on tax³⁰, is highly relevant to the discussions surrounding international tax cooperation and the challenges faced by African countries. The report emphasises the need for a transformative and inclusive approach to address the asymmetries and shortcomings in the current international tax system. The discussions above, including the challenges faced by African countries in international tax cooperation, the push for fully inclusive and transformative international tax cooperation, and the call for increased representation and participation of African nations, aligns closely with the proposals outlined in the Eurodad report. The report advocates for the establishment of a UN tax convention as a way to shift the power dynamics in international tax matters and create a more democratic and equitable global tax system. It recognises the inequalities that have marginalised African countries and highlights the importance of bringing tax negotiations to the United Nations, where the voices of African countries and other developing nations would have stronger representation and influence.

²⁷ African Union Commission. *Agenda 2063. The Africa We Want. A Shared Strategic Framework for Inclusive Growth and Sustainable Development. First Ten-Year Implementation Plan 2014-2023* (2015).

²⁸ Government of Kenya, *Income Tax (Digital Service Tax) Regulations 2020* (Nairobi: National Council for Law Reporting).

²⁹ IMF. *Nigeria's tax revenue mobilisation: Lessons from successful revenue reform episodes* (2023).

³⁰ Ryding, T.M. (2022) *Proposal for a UN Convention on Tax (EURODAD)*

The proposal for a UN tax convention is rooted in the principle of sovereign equality and common but differentiated responsibilities. It seeks to address the challenges faced by African countries, such as limited participation, unequal bargaining power, and the need for tailored solutions that consider the unique circumstances and capacities of developing nations. The Eurodad report supports the idea that a UN tax convention would provide a more inclusive and relevant platform for discussions on tax norms, rules, governance, and cooperation. It recognises the need for coordination among member states to ensure a coherent and coordinated approach to international tax matters.

The global pursuit of fully inclusive and more effective international tax cooperation has been a pivotal discussion point across numerous high-level summits and agreements, illustrated by the Doha Declaration (2008),³¹ and the Addis Ababa Action Agenda (2015).³² An analysis of these agreements unveils a comprehensive discourse on fiscal reform, tax system modernisation, and the containment of tax evasion, domestically and internationally. As we deconstruct these documents further, we also observe a call for making tax systems more ‘pro-poor’, alluding to tax regimes that do not disproportionately impact the economically disadvantaged. A salient point from the aforementioned documents is the urgent appeal for bolstered international cooperation in navigating complex international tax matters. These encompass intricate issues of double taxation, the eradication of tax evasion, and the elevation of transparency within tax systems. The appeal in resolution 77/244 for an international tax cooperation framework or an instrument resonates with these agreements, effectively setting the stage for a more globalised approach to tax policy.

The 2030 Agenda for Sustainable Development also lays the foundation for tax cooperation. A commitment to the significant reduction of illicit financial flows (Goal 16.4) and the strengthening of domestic resource mobilization (Goal 17.1) underscores the inherent link between effective tax cooperation and sustainable development.³³ A judiciously crafted international tax cooperation framework would play a critical role in diminishing illicit financial flows and augmenting domestic resource mobilisation, particularly in the context of developing nations. Simultaneously, Goal 10 of the Sustainable Development Goals calls for a reduction in inequalities. Herein, an effective international tax system becomes instrumental. By ensuring a fair distribution of tax burdens, such a system can have far-reaching impacts on intra- and inter-country income and wealth disparities. The development of an international tax cooperation framework through a United Nations intergovernmental process, possibly embodied by the proposed UN Convention on Tax, aligns seamlessly with the principles laid down in these pivotal international agreements. A framework of this nature holds immense potential to address a broad spectrum of tax-related and financial issues, thereby contributing significantly to global efforts toward sustainable development.

Taking all this into consideration, the passing of UN Resolution 77/244, titled ‘Promoting Inclusive and Effective Tax Cooperation at the United Nations,’ has sparked a debate regarding the possibilities for a fully inclusive and more effective international tax cooperation. This resolution highlights the need to enhance global tax cooperation, particularly in addressing tax evasion, profit shifting, and other forms of IFFs. The United Nations provides a platform for fully inclusive participation, allowing all Member States, regardless of size or income level, to have an equal voice in shaping international tax norms. This inclusivity

³¹ United Nations, ‘Doha Declaration on Financing for Development’, adopted 2008, https://www.un.org/esa/ffd/wp-content/uploads/2014/09/Doha_Declaration_FFD.pdf

³² United Nations, ‘Addis Ababa Action Agenda of the Third International Conference on Financing for Development’, adopted 2015, https://sustainabledevelopment.un.org/content/documents/2051AAAA_Outcome.pdf

³³ United Nations General Assembly, ‘Resolution adopted by the General Assembly on 25 September 2015. 70/1. Transforming our world: the 2030 Agenda for Sustainable Development’, A/RES/70/1, 2015, <https://sdgs.un.org/2030agenda>

addresses the criticism that the current international tax system is dominated by a few powerful nations. UN-based tax cooperation could better take into account the diverse needs and realities of countries worldwide, ensuring that international tax rules are not skewed in favour of developed economies. It would promote a more balanced and equitable approach to tax cooperation. At the UN, developing countries would be able to better influence the global tax agenda and advocate for measures that align with their specific development priorities. This could help address existing imbalances and ensure a fairer distribution of taxing rights. The G77 and China group of developing countries have consistently called for upgrading the status of the UN Tax Committee to an intergovernmental tax body to provide a forum to counterbalance the prevailing asymmetries in global tax matters.

The report by the AU-ECA HLP on IFFs provides a clear a vision for Africa, a continent with robust tax collection, minimal tax evasion and avoidance, and strong fiscal sovereignty. However, the current international architecture is not aligned. To take just one example, the proposition of a 15% global minimum tax rate, substantially lower than the prevailing corporate tax rates across the African continent, threatens to undermine this vision. The OECD two-pillar proposals are not as a whole suitable for most African countries, and signing up would risk undermining sovereignty and revenues at the same time. More generally, the exclusionary nature of the OECD processes and decisions – including around access to crucial information to fight IFFs, whether on financial accounts or multinationals’ activities – suggests that the organisation is not appropriate to lead global standard-setting and rule negotiations.

In this complex and challenging landscape, the Africa’s leadership can play significant roles, using the proposal for a UN intergovernmental tax body as a lever to address these pressing concerns.

- Firstly, it can support member states to pursue better alternatives than the OECD’s two pillar proposal, and also champions the call for a higher global minimum tax rate that aligns more closely with the tax rates of African nations. Armed with data and research, it can lay bare the potential detrimental impacts of the proposals on African economies, advocating for justice in global taxation.
- Secondly, it can continue to call for international tax cooperation that is fully inclusive and gives every nation, especially those from Africa, an equal say in decision-making on international tax matters. Inclusion in this arena is paramount in ensuring that African voices are not just heard, but also shape global tax policies.
- Thirdly, they can extend their reach to African nations, by facilitating partnerships or collaboration with specialised bodies or institutions that can provide technical assistance to help them build robust tax systems and policies. Such initiatives could empower these nations to optimise tax collection, minimise tax evasion, and effectively implement suitable policies. Fourthly, by using the intergovernmental tax body as a platform for dialogue and cooperation, they can foster an environment of transparency, ensuring fair tax competition and reducing IFFs.

III. CURRENT DEBATES, ISSUES AND DISCUSSIONS SURROUNDING THE ESTABLISHMENT OF A GLOBALLY INCLUSIVE AND INTERGOVERNMENTAL PROCESS ON INTERNATIONAL TAX COOPERATION

The progress made at various international platforms has played a crucial role in advancing the opportunity for a fully inclusive, intergovernmental process at the UN in the realm of tax cooperation. Several key initiatives and declarations have contributed to raising awareness, fostering dialogue, and shaping the discourse around international tax governance. Firstly, the report by the AU-ECA HLP on IFF, has been instrumental in highlighting the detrimental effects of illicit financial flows and the need for global cooperation to address them. The panel's recommendations, particularly its emphasis on transparency

measures such as automatic information exchange, beneficial ownership transparency, and country-by-country reporting, have gained continental recognition and support. The panel's work underscores the significance of tackling tax-related issues as part of broader efforts to achieve sustainable development, including SDG 16.4, which aims to significantly reduce illicit financial flows by 2030.

The African Conference of Ministers of Finance, convened by the United Nations Economic Commission for Africa (ECA), has also played a vital role in shaping Africa's stance on tax cooperation. The declaration 990.LIV adopted by the ministers of finance in May 2022 emphasises the importance of mobilising domestic resources, strengthening tax administrations, and combatting illicit financial flows in Africa. This declaration reflects the commitment of African countries to address the challenges they face in the realm of taxation and underscores the need for a coordinated and inclusive approach. Building on these initiatives, the African Group within the UN General Assembly has been actively engaged in advancing the agenda for a UN intergovernmental process on tax cooperation. The African Group's draft resolution and the subsequent adoption of resolution 77.244 demonstrate Africa's determination to challenge the dominance of the OECD and advocate for a more inclusive and equitable global tax governance framework. The resolution calls for the development of an international tax cooperation instrument through a UN intergovernmental process, marking a significant milestone in Africa's push for a stronger voice in global tax policy discussions.

These collective efforts reflect Africa's recognition of the importance of addressing tax-related challenges and ensuring that global tax governance serves the interests of African countries and contributes to sustainable development on the continent. They highlight the continent's commitment to mobilising domestic resources, combating illicit financial flows, and creating an enabling environment for inclusive economic growth.

While Africa's coordinated efforts and participation in the existing tax governance structures have yielded some successes, they also reveal the urgent need for a fully inclusive, more effective, and fairer international tax system. This brings us to a crucial point of contention: the debates surrounding the potential establishment of a new global tax body or of a framework convention on tax cooperation at the UN.

From the proposals put forth by UNTC members, UNCTAD, AUC, ATAF, Africa Group, South Centre, G24, ICRICT, and other stakeholders (see Annex 2 for a summary table and extended discussion of these), several key insights and recommendations emerge that can inform the recommendations to advance international tax cooperation under the UN:

1. **Inclusiveness and Effectiveness:** There is a consensus among stakeholders that international tax cooperation should be fully inclusive, involving the participation of all countries, particularly developing nations, to ensure a level playing field. The new body or instrument under the UN should aim for universal participation and ensure that the voices and perspectives of all countries, including small countries and least developed countries, are adequately represented in the decision-making process.
2. **Governance and Structure:** Stakeholders propose a governance framework that reflects the principles of inclusiveness, fairness and effectiveness. Many proposed the establishment of an intergovernmental body, such as an intergovernmental subsidiary body of the Economic and Social Council (ECOSOC), to facilitate enhanced international cooperation and provide a platform for meaningful engagement and participation by all countries. Others have proposed an international tax convention or framework convention at the UN, which through the negotiation process would determine governance structures.

3. **Capacity Building and Support:** Recognising the disparities in resources and capacities among countries, there is a call for capacity-building initiatives, including regional briefings and debriefings, to ensure effective participation and understanding of complex international tax issues. Adequate financial and technical resources should be allocated to new mechanisms of international tax cooperation at the UN to support the work, while more resources also need to be dedicated to training developing country tax officials to more effectively participate in international tax norm setting.
4. **Transparency and Bottom-Up Participation:** Stakeholders emphasise the importance of transparency in the decision-making process and advocate for the early involvement of diverse stakeholders, including academics, civil society, and the business community. Their input should be sought before proposing solutions to ensure a more inclusive and transparent process.
5. **Broadening the Scope:** There is a consensus that the scope of international tax cooperation should be expanded beyond the current focus in OECD processes on digital taxation. It should include other crucial aspects such as addressing tax avoidance, division of taxing rights, illicit financial flows, wealth taxation, and asset registries. A fully inclusive international tax cooperation mechanism should comprehensively review of existing norms and explore simplified and administrable approaches that are suitable for the global South.
6. **Moving Away from OECD Dominance:** Stakeholders express concerns about the limitations, complexities, and inequalities associated with the current OECD-dominated international tax regime. There is a clear call for shifting the centre of international tax cooperation away from the OECD to the UN. The UN process should take into account the failures and limitations of the OECD/G20 agreement and offer an equitable, fully inclusive and more effective platform for reforming the global tax system.
7. **Advocacy and Support:** African policy makers can benefit from the technical and advocacy support offered by various stakeholders, including organisations like ICRICT and ATAF. Collaboration with these organisations and leveraging their expertise can strengthen the AU's engagement in international tax cooperation and enhance its influence in shaping the new body under the UN.

By considering these recommendations, the African negotiators can contribute to the transition from the OECD to a fully inclusive and more effective international tax cooperation under the UN. It can advocate for the establishment of a new intergovernmental body that addresses the shortcomings of the current system and ensures the full participation and representation of all countries, particularly those from the global South. By advocating for advancing tax cooperation at the UN, African countries aim to have a more significant say in setting global tax standards and achieving a fairer distribution of taxing rights. The adoption of UN Resolution 77/244 reflects a broader commitment to multilateralism and global solidarity in addressing global challenges which have been identified in the 2021 UN FACTI Panel Report.³⁴ The resolution acknowledges the importance of international cooperation and partnerships in overcoming these issues and underscores the role of the UN as a platform for fostering dialogue, collaboration, and consensus-building among nations.

³⁴ UN FACTI Panel report (2021) Executive Summary, p. vii.

A. CRITICAL INSTITUTIONAL FEATURES AND TAX RULES OF A FRAMEWORK CONVENTION FOR INTERNATIONAL TAX COOPERATION

i. Institutional features

To promote legitimate, inclusive decision-making and democratisation of international tax cooperation, African policy makers and leaders, and other UN Members States should consider the following recommended features in developing fully inclusive and more effective international tax cooperation:

- a) **Representation of African and Global South Countries:** International tax cooperation should ensure fully inclusive representation of African and Global South countries in decision-making bodies. This includes establishing mechanisms to address the historical dominance of core OECD members and promote a more equitable distribution of power and influence.
- b) **Equal Participation and Influence:** International tax cooperation should guarantee equal participation and influence for all countries, irrespective of their size or economic power. It should provide opportunities for meaningful engagement, consultations, and input from African countries, enabling them to actively shape international tax policies.
- c) **Strengthening the Role of the United Nations:** Countries should recognise the importance of the United Nations in tax matters and seek to strengthen its role in shaping international tax norms. This could include supporting the establishment of a new intergovernmental body under the UN, or the development of a UN tax convention or UN Framework tax convention.
- d) **Capacity Building and Technical Assistance:** Capacity building and technical assistance for African and Global South countries is important to enhance both their tax administration capabilities and their capacity to effectively participate in international tax cooperation negotiations. This includes coordinating with existing institutions to provide resources, training, and knowledge-sharing platforms to support greater allocation of resources.
- e) **Peer Learning and Knowledge Sharing:** Peer learning and knowledge sharing among countries, particularly between African countries and other developing countries with more advanced tax systems, can be incredibly helpful. This can be achieved through regional workshops, exchanges, and platforms that promote collaboration and the transfer of good practices.

To strengthen the recommended features, it is important to consider additional aspects such as:

- a) **Adequate Resources:** African countries need adequate financial and technical resources to support their participation and engagement. This includes securing funding for capacity-building initiatives, research, and the effective functioning of UN intergovernmental processes.
- b) **Transparency and Accountability:** Transparency and accountability in decision-making processes will ensure that all stakeholders have access to information and can hold decision-makers accountable. Transparency measures should be implemented at both the global and national levels.
- c) **Inclusivity of Stakeholders:** The active involvement of various stakeholders, including civil society organisations, academia, and the business community, can strengthen international tax cooperation. Their expertise, perspectives, and inputs should be considered in the formulation of norms and standards.

- d) Policy coherence: Address the need for policy coherence and coordination across different international initiatives and frameworks related to tax cooperation. There is a need to build on existing effective practices and ensure a cohesive and comprehensive approach to international tax cooperation.

By advocating for the incorporation of these features into international tax cooperation, particularly within the discussions surrounding Option 2, African policy makers and leaders, and UN Member States can promote a fully inclusive, more effective, and equitable approach that addresses the specific needs and concerns of African countries, while promoting cooperation and collaboration among all nations.

The report of the UN Secretary General finds that enhancing the UN role in tax-norm shaping and rule setting, fully taking into account existing multilateral and international arrangements, appears the most viable path for making international tax cooperation fully inclusive and more effective. In this regard, the report identifies for consideration three options, each of which would need to be developed and agreed upon through a United Nations, Member State-led process: i) a multilateral convention on tax; ii) a framework convention on international tax cooperation; or iii) a framework for international tax cooperation.

Given the desired institutional features listed above, of these three options only the first two – a multilateral convention on tax or a framework convention on international tax cooperation – are likely to meet the criteria. A non-binding framework is unlikely to deliver the level and commitments from Member States and the accountability for delivery on those commitments that is needed. The two options for formal legal instruments would provide greater certainty in meeting the requirements and creating fully inclusive and more effective international tax cooperation. Either a UN multilateral convention or a UN framework convention are likely to create fully inclusive governance mechanisms, such as a conference of parties that can serve as the appropriate venue for further discussions. Choosing between them then should be based on the effectiveness of the rules that will result.

With this criterion in mind, Option 1 offers a comprehensive "regulatory" treaty encompassing enforceable obligations and rules. In contrast, Option 2 provides a balanced "constitutive" convention, emphasizing core principles, governance structures, and the potential for supplemental protocols. The latter, Option 2, particularly stands out as most viable for empowering African countries to correct historical imbalances and assert their influence on international tax regulations.

ii. Tax rules

In addition to the critical institutional features, African member States should also consider promoting a set of tax norms and transparency standards that are fair, equitable, and aligned with the objectives of the 2030 Agenda for Sustainable Development. These criteria will guide the formulation of norms and standards, ensuring that they address key issues such as profit shifting, base erosion, transfer pricing abuses, and the promotion of transparency and information exchange and address the specific challenges faced by developing countries:

a) Fair and equitable taxation:

- Addressing profit shifting and base erosion: International tax cooperation should focus on preventing multinational corporations from artificially shifting profits to low-tax jurisdictions, ensuring that profits are taxed where economic activities take place.
- Revisiting transfer pricing rules: Efforts should be made to revise transfer pricing rules to prevent abusive practices that erode tax bases, ensuring that transactions between related entities are in line

with the G24 proposals for fractional apportionment. International tax norms could shift towards a comprehensive unitary taxation approach that eliminates the use of transfer pricing for transaction among related entities, ensuring a fair and equitable allocation of taxing rights among jurisdictions. By adopting fractional apportionment or unitary taxation, profit shifting and base erosion can be addressed more effectively, promote transparency, and contribute to a more balanced and inclusive international tax system. It will also support the sustainable development goals by preventing unfair tax practices and ensuring that multinational corporations pay their fair share of taxes in the jurisdictions where economic activity occurs.

- Allocation of taxing rights: International tax norms should aim to establish a fair allocation of taxing rights between source and residence countries, considering both demand and supply factors in the generation of profit. Presently taxing rights are allocated to residence countries, which are most capital exporting developed countries, by default, with no clear basis or rationale. This must be altered for a more equitable allocation which incorporates the role of demand. No good or service can generate a profit if there is no demand for it. Developing countries are often net importers of goods, services and capital. Thus, the incorporation of demand into profit allocation rules in particular and the allocation of taxing rights in general will give capital importing developing countries a fairer share of taxing rights.

b) Transparency and information exchange:

- Exchange of financial information: Through the UN, a global standard can be established for exchange of information for tax purposes. This could include automatic exchange that mandates countries to automatically share of financial account data, enhancing transparency and facilitating detection of tax evasion and IFFs. However, recognising capacity constraints in many developing countries and varying risks posed by different legal and economic systems, the automatic sharing of information may proceed in a phased approach with jurisdictions committing to provide data on varying time scales. Donors can assist developing nations in building the necessary infrastructure and capacity, both in terms of technology and human resources, to implement this automatic information provision in accordance with an agreed, risk-based timetable.
- Beneficial ownership transparency: A UN-backed global requirement for beneficial ownership transparency is can help prevent the misuse of legal vehicles (covering both legal entities and legal arrangements) for illicit purposes. However, given the complexity of collecting and verifying such data, particularly for developing nations, differentiated implementation phases should again apply. Developed nations can provide technical assistance, capacity building, and financial support to help developing countries meet this requirement.
- Comprehensive country-by-country reporting: Requiring multinational corporations to publish comprehensive country-by-country reporting would help tax authorities assess tax fairness and detect potential tax avoidance. Implementing this at a global scale under a UN umbrella could mean including all countries in this effort, ensuring a level playing field. Developing nations may need help from their more developed counterparts to implement this norms and analyse the resulting data effectively. This could involve capacity building, technological assistance, or the provision of other necessary resources.

c) Combating tax havens and tax evasion:

- Strengthening measures against illicit financial flows: Efforts should be made to strengthen measures that detect and deter illicit financial flows, including anti-money laundering regulations, cross-border cooperation, and capacity building for tax authorities.
- Cooperation on tax enforcement: It is essential to promote cooperation among tax authorities, facilitating the information provision, coordinating audits, and enforcing tax laws effectively.
- Consequences for tax evasion facilitators: International norms could establish consequences for countries and entities that facilitate tax evasion or act as tax havens, such as imposing sanctions or

promoting non-cooperative jurisdiction lists – but, crucially, on the basis of globally inclusive agreement about what constitutes behaviour posing a risk to others, and not according to opaquely and unfairly constructed lists put together by partial groups only.

d) Development-oriented approach:

Alignment with the Sustainable Development Goals (SDGs): Tax rules and policies should contribute to the achievement of the SDGs, promoting poverty reduction, sustainable development, and social justice. Tax is identified in SDG 17.1 as the primary means of implementation for the entire framework. It is past time that this key policy area had a globally inclusive process to ensure standards and rules that work for the sustainable development of all countries and people.

- Pro-poor and inclusive tax policies: Tax policies should be designed to reduce inequality and promote inclusive growth. This may include progressive taxation, targeted tax incentives for vulnerable populations, and the use of tax revenues for social programs and infrastructure development.
- Addressing the challenges of developing countries: The specific tax challenges faced by developing countries should be taken into account, including capacity constraints and vulnerabilities to tax evasion and illicit financial flows. Support should be provided to enhance their capacity in tax administration, policy formulation, and international cooperation.

Given the desired substantive outcomes listed above, it is clear to see the potential trade-offs of picking either a multilateral convention on tax or a framework convention on international tax cooperation. The first option for a UN multilateral tax convention could provide an effective way to set binding norms with effective implementation review. However, the negotiation of a comprehensive convention that addresses all the issues listed and on which the full UN membership can agree is likely to be very difficult and time-consuming. The OECD Inclusive Framework has tried already to create a binding agreement for a smaller subset of countries on one aspect of taxation – Pillar 1 will include a multilateral instrument to address the allocation of taxing rights on a small portion of the profits of only the largest multinational enterprises – yet agreement has been difficult and there are significant chances that major economies will not ratify the resulting multilateral instrument.

A framework convention, with substantive issues covered in protocols, provides a high degree of flexibility for all Member States to introduce and address issues of concern. A full multilateral convention might produce the feeling of zero-sum negotiations making concessions by vested interests difficult, while the framework convention with its flexible protocols could achieve faster progress on issues that are relevant to developing countries but at the risk of lower levels of ratification, implementation and enforcement for any specific protocol.

B. CALL FOR ACTION

A number of organisations have highlighted the importance of creating a level playing field for African countries in the global governance of tax. For example, UN FACTI Panel, UNECA, AU, UN, ICRICT, ATAF and the South Centre have argued that tax governance should be based on the principles of equity and fairness, ensuring that African countries are able to assert their interests and shape international tax policies in a manner that works in their favour. Additionally, they have recommended the establishment of an intergovernmental tax body at the UN and a UN tax convention, which would provide a platform for African countries to advocate for their interests and participate in the shaping of global tax governance.

The adoption of by the UN General Assembly of resolution 77/244 is a response to the perceived limitations of existing international tax governance mechanisms. The resolution was put forth by African

nations, with Nigeria leading the way, and was unanimously adopted by all UN member states, reflecting the collective leadership of the African nations. This outcome can be seen as a clear indicator of a shift towards globally inclusive, intergovernmental tax rule-setting at the UN. The push for international tax cooperation at the UN aligns with the priorities and aspirations of many developing countries and in particular African countries pursuant to the recommendations adopted during the three-day meeting in 2023 of the Sub-Committee on Tax and Illicit Financial Flows of the Specialized Technical Committee on Finance, Monetary Affairs, Economic Planning and Integration under the theme ‘Tax in Africa: contemporary issues affecting the continent’.

With the options presented by the UN Secretary-General in hand, African countries should lead again to propose a new resolution in the General Assembly to launch negotiation on a fully inclusive and effective UN framework convention on international tax cooperation. By fostering a more open and inclusive atmosphere, the proposed UN framework convention on international tax cooperation could contribute to fair and equitable tax rules, particularly for nations that have been historically marginalized in tax policy discussions.

The resolution could also begin to set out substantive areas of concern for African and other developing countries. For example, it could elevate work on standards for tax transparency and international administrative and enforcement cooperation as priorities for negotiation as the initial protocols to the framework convention. To also serve as a crucial component of broader efforts to combat IFFs, one the initial protocols to the convention could focus on tax-related IFFs. As the intergovernmental discussions commence, there is a shared recognition that the substantive content of the UN framework convention on international tax cooperation and the structure and function of the proposed global tax governance body need thorough and inclusive deliberations. While the substantive details of what can be agreed in the protocols needs to be the result of negotiations, having a more significant role in global tax rule-setting could empower African nations to better safeguard their interests.

Despite the promising developments so far, successful advancement of these proposals will hinge on the engagement of and cooperation from countries worldwide. The upcoming 78th session of the UN General Assembly presents a crucial opportunity for Member States to agree to launch negotiations on a UN framework convention on international tax cooperation. However, there is strong opposition to the African position. Africa needs to work collectively to assemble a global coalition of countries that will strongly back the proposal for a framework convention. The first Latin America and Caribbean Summit for an Inclusive, Sustainable, and Equitable Global Tax Order, held in July 2023, helped generate collaborative efforts between continents. This summit provided a platform for shared dialogue that reflected the aspirations and interests of both regions, laying the foundation for advancing the UN framework convention on international tax cooperation. A next step is to work with the G77 and China group of countries in New York, to table a draft resolution that is supported by the entire group.

This report provides some recommendations on the substance of the UN framework convention on international tax cooperation and outlines a proposed structure of the global tax body that should be created. These proposals will set the stage for further consideration and deliberation by African policy makers to examine and advance these proposals, recognizing the importance of addressing illicit financial flows and establishing a more inclusive and equitable global tax order. Their engagement will be vital in generating agreement to launch negotiations on the framework convention and ensuring the integration of African perspectives and priorities.

These proposals should serve as a starting point for discussions and provide a foundation for further deliberations at the upcoming 78th session of the UN General Assembly and subsequent forums.

i. SUBSTANCE OF THE PROPOSED UN FRAMEWORK
CONVENTION ON INTERNATIONAL TAX COOPERATION

A UN Framework Convention on International Tax Cooperation should aim to address both principles of tax cooperation and essential substantive aspects of international tax cooperation, promoting fairness, transparency, and effective taxation systems worldwide. What follows is a draft proposal outlining the key areas that the convention should cover.

Section I: Purpose

Introduction and purpose of the convention:

The framework convention should recognise the importance of international tax cooperation in promoting fair allocation of taxing rights, financial integrity, fairness, transparency, and effective international taxation systems worldwide.

Recognition of the importance of international tax cooperation:

The framework convention should acknowledge the significant impact of cross-border taxation on global economic stability and sustainable development and affirm international commitment to promote financial integrity and foster cooperation and coordination in international tax matters.

Affirmation of commitment to reallocate taxing rights, combat tax evasion, and avoidance and other forms of illicit financial flows, and promote global tax fairness:

The framework convention should reaffirm international commitment to re-allocate taxing rights, combat tax abuse and aims to establish a comprehensive framework that promotes global tax fairness, transparency, and cooperation.

Clear definitions of key terms and concepts used throughout the framework convention:

To ensure a common understanding and interpretation

Section II: Objectives

Objectives of the framework convention:

To enhancing international tax cooperation and coordination among member states, regional organizations, and international bodies to address global tax challenges collectively.

To reallocate taxing rights on a fairer basis between developed and developing countries.

To address tax base erosion, profit shifting, harmful tax practices, treaty abuse, and aggressive tax planning on fiscal sustainability, and to provide measures to combat these practices effectively while ensuring a level playing field for businesses.

To combat tax avoidance and evasion, money laundering, and other forms of illicit financial flows by establishing mechanisms for information sharing.

To promote inclusiveness, transparency, fairness, and equity in international taxation.

Section III: General Principles

Principle of sovereignty and non-discrimination: respecting the sovereignty of member states, this principle emphasizes non-discrimination and the equal treatment of taxpayers.

Principle of effective provision of tax information: member states to establish mechanisms for the effective provision of tax information to combat tax evasion, money laundering, and illicit financial flows.

Principle of fair allocation of taxing rights: Recognizing the importance of fair tax allocation, this principle emphasizes that profits should be taxed where economic activities occur.

Principle of mutual assistance and cooperation: Member states to provide mutual assistance and cooperate in tax matters to ensure effective tax administration and enforcement.

Principle of transparency and disclosure: Transparency and disclosure to be promoted to prevent tax evasion, combat illicit financial flows, and enhance accountability in international tax matters.

Section IV: Capacity Building and Technical Assistance

Provision of technical assistance and capacity building support to developing countries: Recognizing the varying capacities of member states, particularly developing countries, emphasize the importance of providing technical assistance and capacity building support to enhance their international tax administration and policy capabilities.

Collaboration with international organizations and regional bodies: Member states to collaborate with international organizations and regional bodies to leverage expertise and resources for effective capacity building and technical assistance.

Section V: Review and Monitoring

Establishing a mechanism for regular review and monitoring: To ensure the effective implementation of the convention, regular review and monitoring of member states' progress and compliance.

Reporting requirements for member states: Member states to report on their progress and compliance with the convention's provisions, facilitating transparency and accountability.

Peer review processes: to assess the effectiveness of the convention's implementation, identify areas for improvement, and promote knowledge sharing among member states.

Section VI: Establishment of a Conference of Parties

The UN Framework Convention must establish a centralised mechanism to steer the implementation and enforcement of the convention.

The mandate, procedures, schedule and other functional details for the Conference of Parties should be established.

In addition to the main sections, the framework convention should also contain protocols that address some of the substantive matters.

Protocol A: Provision of Tax Information

Mechanisms for automatic cross-border provision of tax information: Member states to establish mechanisms and procedures for the automatic provision of tax information, complying with international standards and ensuring confidentiality and data protection.

Procedures and standards for the exchange of information, including the timelines, formats, and relevant safeguards.

Schedule of commitments and implementation timelines based on risks posed by economic and financial activity in each jurisdiction.

Protocol B: Allocation of Taxing Rights

Rules and guidelines for the allocation of taxing rights between member states: To ensure a fair distribution of taxing rights, provides rules and guidelines for determining the presence of a significant economic presence, taxation of digital economy activities, formulaic apportionment of profits, and measures to prevent treaty abuse and tax treaty shopping.

Protocol C: Dispute Resolution

Procedures for the resolution of tax disputes between member states including mutual agreement procedures,

Protocol D: Combating Tax-related Illicit Financial Flows

Measures to prevent and combat tax avoidance and evasion, money laundering, corruption, and other forms of illicit financial flows:

Member states to implement ownership transparency measures, enhancing good governance practices and transparency in financial transactions.

Promoting transparency through public reporting requirements for multinational enterprises.

Promoting good governance practices and transparency in financial transactions to prevent illicit financial flows and enhance the integrity of the international financial system.

Strengthening international cooperation and coordination in recovery of assets derived from tax-related illicit financial flows.

ii. STRUCTURE AND FUNCTION OF A CONFERENCE OF PARTIES

One of the main advantages of a UN framework convention is its potential to provide a fully inclusive and democratic approach to global tax governance. A Conference of Parties to a UN framework convention would include all signatory countries. This would provide a more equitable representation of the interests of developing countries, particularly African countries, in the shaping of international tax policies. This is important because the international tax system has historically been dominated by the interests of developed countries, which has resulted in policies that are not favourable to developing countries. Another advantage of a UN framework convention is its potential to provide a more effective mechanism for addressing tax avoidance and evasion by multinational corporations. Currently, the

international tax system is plagued by these issues, which result in billions of dollars in lost revenue for developing countries. A UN framework convention could provide a more effective mechanism for addressing these issues by coordinating the efforts of countries around the world to prevent tax avoidance and evasion.

Existence of hegemony or asymmetries in decision-making can occur due to power imbalances among member states and the influence of major economies. Decision-making can also be influenced by geopolitical dynamics. Situating the secretariat and the Conference of Parties within the UN System would provide ready-made procedures, as well as potentially the presence of political groupings (such as the G77) that could negotiate together. This may be one way to help level the playing field for negotiations.

It is important to navigate these dynamics to ensure a fair and inclusive international tax cooperation framework. Political nuances play a crucial role in shaping the functioning and influence of these institutions. The decision-making processes within these bodies can be influenced by the political dynamics and power struggles among member states. Major economies often exert significant influence, which can affect the priorities, policies, and outcomes related to international tax cooperation. Smaller and developing economies may face challenges in having their voices adequately represented and their interests effectively addressed. Political considerations can impact the institutional dynamics, decision-making authority, and resource allocation of these bodies. It is important to be cognizant of the power dynamics and strive for a more inclusive and balanced approach that takes into account the diverse political perspectives and interests of all countries, particularly those from the Global South. Collaborative efforts that involve multiple institutions and stakeholders can help navigate these political nuances, foster dialogue, and work towards more equitable and effective international tax cooperation.

Another challenge is the potential for the Conference of Parties to be dominated by the interests of developed countries, just as the OECD is currently. It would be subject to the same political influences that exist in the UN, including the influence of developed countries, which could result in policies that are not favourable to developing countries. Ensuring decision-making by majority voting, full transparency of decision-making, including clear roles for civil society so that governments can also be held accountable for their roles, is vital for collectively owned policy decisions. Happily, the UN has long experience of providing just such transparency and open voting processes and is well placed to take on this role. Additionally, the cost of establishing and maintaining this new architecture could be significant. The UN has existing mechanisms for establishing burden sharing and fair contributions.

Member States will also need to consider the appropriate secretariat for the work of the Conference of Parties. The table below provides a non-exhaustive list of international institutions that could serve as the Secretariat to a Conference of Parties. The final decision on the selection of the should be made through careful consideration and consultation among member states and relevant stakeholders.

Table 1: Potential institutions to Assume the Role of Secretariat of the conference of Parties

Institution	Pros	Cons	Political Nuances
United Nations Department of Economic and Social Affairs (UNDESA)	Technical expertise in tax, economic and social matters.	Limited existing capacity because of Member-State imposed budget constraints	UNDESA operates within the broader UN framework, where political dynamics can influence decision-making

	Coordination and support role in global tax cooperation initiatives		
International Monetary Fund (IMF)	Economic expertise and technical assistance capabilities	Dominated by advanced economies	IMF decision-making is influenced by major economies, potentially reflecting their own political and economic interests
Global Forum Secretariat	Considerable experience in implementation review of tax agreements Existing capacity drawn from a wide global network of countries	Housed at the OECD without independent status as a global legal entity. Dominated by developed country staff.	Existing secretariat is formally accountable to OECD and thus to primarily developed countries. The FACTI Panel recommended moving Global Forum staff into the UN Secretariat.
New independent secretariat	Start with a fresh slate and ability to recruit new staff from a global talent pool. Broader representation and inclusion of different perspectives and regions	Would significantly delay establishment of the secretariat. Potential difficulty in agreeing budget and contribution levels.	Could be sped up by moving existing UNDESA tax cooperation staff to a new entity

The Framework Convention may wish to spell out the functions of the Secretariat, such as:

Administrative Support: The Secretariat will provide administrative support to the Conference of Parties, ensuring the smooth functioning of its operations, including logistical arrangements for meetings, record-keeping, and documentation.

Technical Expertise: The Secretariat will offer technical expertise on international tax issues, assisting member states and the Conference of Parties in policy development, implementation, and enforcement.

Coordination: The Secretariat will facilitate coordination among member states, regional organizations, and international bodies, ensuring effective collaboration, exchange of information and the operation of the implementation review mechanism.

Information Exchange: The Secretariat will serve as a hub for the exchange of tax-related data, information, and best practices among member states, promoting knowledge sharing and collaboration.

Research and Analysis: The Secretariat shall conduct research and analysis on emerging tax issues, trends, and challenges, providing evidence-based policy recommendations to member states.

Data, Monitoring and Reporting: The Secretariat shall compile and publish implementation progress reports, and data based on the information of parties to the framework convention and the operation of the implementation review mechanism. It will preparing periodic reports and assessments on the effectiveness of international tax cooperation.

Implementation Support: The Secretariat will assist member states in implementing the decisions and recommendations of the Conference of Parties, providing guidance, technical assistance, and capacity building support.

Reporting and Communication: The Secretariat will prepare reports, assessments, and communications on behalf of the Conference of Parties, disseminating information to member states and relevant stakeholders.

Liaison with Stakeholders: The Secretariat will establish and maintain relationships with relevant stakeholders, including international organizations, civil society, and the private sector, fostering dialogue and cooperation in international tax matters.

An additional question relates to whether Member States choose to continue the functions of existing tax cooperation bodies and frameworks. The continued functioning of the UN Committee of Experts on International Cooperation in Tax Matters would be up for debate. It could be retained as an expert body, with experts continuing to operate in the personal capacity, that provides recommendations to the Conference of Parties. Alternatively, many Member States have called for the upgrading of the UN Tax Committee, essentially turning it into the Conference of Parties so that it serves as the global tax body. Similar questions could be raised about the Global Forum plenary, the OECD/G20 Inclusive Framework, and the core OECD committees and working parties and their potential relationship to the Conference of Parties for a UN Framework Convention. However, altering the mandates and structures, or abolishing, these bodies may present challenges. It may be difficult to achieve consensus among countries with divergent interests. They could continue to develop norms and standards applicable only to their members. The future of these bodies would need to be left to their memberships to determine through their existing governance mechanisms.

IV. AFRICA'S ROLE GOING FORWARD

To frame measures recommending the place and role of Africa in the processes leading to the drafting of the UN framework convention on international tax cooperation, it is important to consider the evidence and realities within the current global architecture. The establishment of an inclusive and effective African position on international tax matters will require effective collaboration between various agencies and organisations in the ecosystem of IFFs and crucially, African leaders and policy makers. Together they can play crucial roles in addressing IFFs and promoting tax justice in Africa. Here are some key agencies involved:

- i. **African leaders and policy makers:** At the forefront of defining Africa's stance are its leaders and policymakers. Their vision, commitment and active engagement in global dialogues are paramount. They have the mandate to represent their nation's interests, ensure that the continent's unique challenges are addressed, and drive the enactment of resultant policies. They could leverage and reinforce the existing Africa Group. They can do so by introducing a specialized sub-committee or working group focused on international tax matters. This approach would enhance the Group's capacity in tax-related negotiations and policies. By drawing on expertise from academic institutions and tax professionals within the continent, the specialized wing would ensure that Africa's unique economic challenges and opportunities are holistically integrated into global tax discussions. This would amplify Africa's voice and influence, using the established weight of the Africa Group, while honing its focus on pivotal tax issues.
- ii. **Secretariat of the High-Level Panel on IFFs:** The Secretariat of the High-Level Panel on IFFs in Africa provides technical support and coordination for the panel's activities. It plays a vital role in facilitating dialogue, research, and policy development on IFFs, including tax-related issues. The Secretariat can contribute to shaping the discussions and providing insights into Africa's specific challenges and priorities.

- iii. African Union Commission (AUC): The AUC is the continental organisation responsible for promoting unity, cooperation, and development among African nations. It can play a crucial role in advocating for Africa's interests in international tax cooperation discussions. The AUC can facilitate coordination and collaboration between African countries, regional economic communities, and other stakeholders to promote a unified African voice on tax matters.
- iv. Economic Commission for Africa (ECA): The ECA is a United Nations regional commission that supports African countries in their pursuit of inclusive and sustainable development. It conducts research, provides policy advice, and facilitates knowledge-sharing on various economic and development issues, including taxation. The ECA can contribute by providing evidence-based research, technical expertise, and policy recommendations on international tax cooperation, tailored to the African context.
- v. African Tax Administration Forum (ATAF): ATAF is an organisation that promotes cooperation and capacity building among African tax administrations. It facilitates the sharing of best practices, technical assistance, and collaboration on tax-related matters. ATAF can play a significant role in enhancing African countries' capacity to engage in international tax cooperation processes and implement effective tax policies.
- vi. Tax Justice Network-Africa (TJN-A): TJN-A is a regional network that advocates for tax justice, transparency, and accountability in Africa. It conducts research, campaigns for policy reforms, and engages in advocacy efforts to address tax-related challenges in the region. TJN-A can contribute by providing critical analysis, policy recommendations, and civil society perspectives to shape the discussions on international tax cooperation.

Collaboration among these agencies, along with other stakeholders such as regional economic communities, national tax administrations, civil society organisations, and academia, is crucial. Effective collaboration will ensure coordinated efforts, knowledge sharing, and alignment of strategies to promote Africa's interests and address the challenges related to IFFs and international tax cooperation. It will enhance the collective voice of Africa, strengthen the evidence base, and facilitate the implementation of inclusive and effective tax measures to combat IFFs and promote tax justice on the continent.

In addition to the agencies mentioned earlier, there are other key entities and organisations involved in the ecosystem of IFFs and international tax cooperation in Africa. These include:

- i. African Development Bank (AfDB): The AfDB plays a crucial role in supporting Africa's economic development and addressing governance challenges. It can contribute to the discussions on international tax cooperation by promoting policies and projects that foster transparency, accountability, and good governance, including in the tax arena.
- ii. African Peer Review Mechanism (APRM): The APRM is a self-assessment and monitoring tool for African countries' governance and socio-economic performance. It can play a role in promoting transparency, accountability, and good governance in tax matters, and assess the progress of African countries in implementing international tax cooperation measures.
- iii. Regional Economic Communities (RECs): Africa has several RECs, such as the East African Community (EAC), Southern African Development Community (SADC), and Economic Community of West African States (ECOWAS), among others. These regional bodies can contribute by aligning their policies, coordinating efforts, and promoting harmonization of tax systems within their respective regions.

- iv. National Tax Administrations: African countries' tax administrations play a critical role in implementing tax policies, combating tax evasion and illicit financial flows, and ensuring effective revenue collection. Close collaboration between national tax administrations and regional/international bodies is essential to share best practices, enhance capacity, and implement coordinated measures.

The involvement of these additional entities strengthens the multi-stakeholder approach in addressing IFFs and advancing international tax cooperation in Africa. Their contributions in terms of research, policy advocacy, capacity-building, and knowledge-sharing are crucial for informing the discussions, ensuring accountability, and driving meaningful reforms.

A. WAY FORWARD

The establishment of a fully inclusive and more effective international tax cooperation is essential to address the challenges of IFFs and ensure fair and equitable taxation globally. Africa, with its unique perspective and experiences, has been at the forefront of advocating for a more inclusive and balanced approach to international tax matters. The existing initiatives and recommendations, such as those put forward by the AU-ECA High-Level Panel on IFFs, provide a solid foundation for shaping the future of international tax cooperation. This report has argued that Africa should galvanize a global coalition to propose the negotiation of a UN Framework Convention on International Tax Cooperation.

To achieve this, it is crucial that African leaders and policy makers consider the following next steps:

- i. Strengthening Collaboration: Effective collaboration among relevant stakeholders is paramount. This includes agencies within the IFFs ecosystem in Africa, such as the Secretariat of the High-Level Panel on IFFs, the African Union Commission, the Economic Commission for Africa, African Tax Administration Forum, and Tax Justice Network-Africa. Engaging in meaningful dialogue, knowledge sharing, and joint efforts will help drive the agenda forward.
- ii. Regional Cooperation: African countries should enhance regional cooperation and coordination to harmonize tax policies, combat tax abuse and other forms of IFFs, and promote transparency. Regional Economic Communities (RECs) can play a vital role in facilitating this process by aligning tax systems, sharing best practices, and establishing common standards.
- iii. Active Participation in Global Forums: Africa should actively participate in global forums and platforms where international tax cooperation is discussed. This includes engagement with the United Nations, IMF, World Bank, and other relevant international organizations. African countries should assert their perspectives, advocate for their interests, and push for meaningful reforms that address the specific challenges they face.
- iv. Knowledge Building and Capacity Development: Investing in research, data collection, and capacity-building initiatives is crucial. This will enable African countries to strengthen their understanding of IFFs, international tax issues, and effective policy measures. Academic institutions, think tanks, and research organizations should be supported in generating evidence-based research and policy recommendations.
- v. Leveraging Existing Networks: Africa can leverage existing networks, such as the African Tax Administration Forum, to enhance cooperation, share experiences, and develop common strategies. Collaboration with other regional and international networks focused on tax justice and transparency can also provide valuable insights and support.

- vi. **Advocacy and Public Awareness:** Continuous advocacy efforts are needed to raise awareness about the impact of IFFs and the importance of international tax cooperation. Civil society organizations, media, and other stakeholders should play an active role in advocating for transparency, accountability, and fair taxation practices.

By taking these next steps, Africa can contribute significantly to shaping an international tax cooperation framework that is inclusive, equitable, and responsive to the needs and priorities of all countries. It is an opportunity to address the historical asymmetries in global tax governance and establish a more just and sustainable international tax system.

In addition to the next steps mentioned earlier, it is important to consider the possibility of an accelerated feasible timeline for enhancing international tax cooperation. This timeline could be as follows:

1. UN Resolution in 2023:

- **Mobilise African Consensus:** African countries should engage in extensive consultations and negotiations to solidify a unified African position on proposing the UN Framework Convention on International Tax Cooperation. This can involve convening regional meetings, consultations with stakeholders, and engaging with civil society organisations to gather diverse perspectives and build consensus.
- **Galvanize Global Support:** to successfully overcome opposition to a UN Framework Convention, there is a need to develop a global network of allies and supporters, including countries of different size, income level, capacity, and geopolitical position. African countries must use all their diplomatic resources to achieve such a result – activating bilateral relationships and making use of platforms that can provide venues to generate support. This requires action at the high levels of government.
- **Establish a Dedicated Regional Working Group:** Create a dedicated working group consisting of representatives from the African Union High Level Panel on IFFs from Africa, African Union Commission, African Group, the Economic Commission for Africa, African Tax Administration Forum, Tax Justice Network-Africa, and other relevant stakeholders. This working group will be responsible for coordinating efforts, conducting research, and formulating strategies to advance the agenda for international tax cooperation.

2. Negotiations on the substance of the framework convention in 2024 and beyond:

- **Develop Africa-Specific Proposals:** Africa should develop its own proposals and recommendations for international tax cooperation, taking into account the continent's specific challenges, priorities, and development needs. This can include addressing issues such as resource exploitation, transfer pricing, harmful tax practices, and capacity building for tax administration.
- **Leverage International Partnerships:** Africa should seek partnerships and continue to build alliances with other regions and countries that share similar goals and concerns regarding international tax cooperation. This can include collaborating with G77 countries, engaging with the Global South-South Cooperation initiatives, and leveraging existing political and economic partnerships such as the BRICS and Forum on China-Africa Cooperation. At the same time African countries may need to coax opponents of a UN Framework Convention to join negotiations and not stonewall progress at the UN.

- Engage in Negotiations: African countries should actively participate in negotiations on the substance of the framework convention. They should assert their interests, and push for protocols that address their specific needs and capacities.

3. Draft Framework Convention for Signature in 2025:

- If the draft framework convention serves African interests and provides a solid basis for advancing fully inclusive, more effective and fair international tax cooperation, African countries should enthusiastically sign and ratify the convention and press other countries to do so.
- African countries can also press that a potential Fourth International Conference on Financing for Development endorse the draft convention and encourage all countries to sign and ratify it.

In the run up to 2025 there are several critical steps that are also proposed to steer the direction in building momentum on agreeing on the substantive content of the UN framework convention:

Step 1: Submission to the Conference of African Ministers of Finance, Planning, and Economic Development in March 2024. This conference, convened by UNECA, serves as a platform for high-level discussions and decision-making on key economic issues. The proposal will be deliberated, and its endorsement sought from the ministers. The proposal for an African position on the substance to be included in a UN Framework Convention on International Tax Cooperation, will then be formally submitted to the AU Sub Committee on Tax and IFFs.

Step 2: Deliberation and Refinement by the AUC Sub-Committee on Tax and Illicit Financial Flows of the of the Specialised Technical Committee on Finance, Monetary Affairs, Economic Planning & Integration. This committee, composed of technical experts from member states, will review and analyse the proposal, providing their expert insights and recommendations. Upon review by the AU Sub Tax Committee, the proposal will be presented to the STC on Finance, Monetary Affairs, Economic Planning & Integration, which is the is the AU Conference for African ministers responsible for finance, economy, planning, integration and economic development, and central bank governors, to discuss matters about the development of Africa. The STC will engage in in-depth deliberations on the proposal, considering its alignment with Africa's priorities, its impact on sustainable development, and its coherence with existing AU policies. The STC will then provide recommendations for endorsement by the AU Summit of Heads of State and Government.

Step 3: African member states, led by their designated expert representatives participating in the negotiations, will advocate for the inclusion in the UN Framework Convention of Africa's priorities. Africa's position will be presented with the aim of garnering support from the international community.

It is important to note that the timeline outlined above is ambitious but feasible with strong political will and commitment from all parties involved. However, challenges may arise if some OECD members seek to block progress. In such a scenario, the G77 countries, including African nations, could explore the possibility of moving forward collectively, leveraging their collective strength and unity. By forging ahead as a united front, G77 countries can demonstrate their determination to achieve meaningful international tax reform and counter the influence of dominant OECD members. This approach would highlight the importance of inclusivity and ensure that the voices and perspectives of developing countries, particularly those from Africa, are not marginalised or overshadowed in the negotiation process. By pushing for an accelerated timeline and considering alternative pathways, if necessary, Africa and other G77 countries can

assert their agency and influence in shaping the international tax agenda. This proactive stance will help to ensure that international tax cooperation is fully inclusive, effective, and responsive to the needs of all nations, particularly those that have historically been marginalized in global tax governance.

ANNEX 1

FLAWS IN OECD ‘TWO-PILLAR’ PROPOSALS

i. Arm’s length principle

However, the OECD has not accepted this approach as a replacement for the ALP. Instead, the OECD's Base Erosion and Profit Shifting (BEPS) project has focused on modifications to the ALP and related rules in order to address some of their deficiencies. For example, Action 1 of the BEPS project, dealing with the tax challenges of the digital economy, recognises that the digitalisation of the economy and the rise of multinational digital businesses pose significant challenges to the existing international tax rules, including the ALP. In response, the OECD has proposed a two-pillar solution. The first pillar (Pillar One) includes elements that deviate from the traditional ALP by allocating some profits of multinationals to market jurisdictions, regardless of physical presence. However, this is a limited and specific measure and does not represent a full shift away from the ALP.

ii. Reallocation of taxing rights

Pillar 1 of the OECD proposals focuses on reallocating taxing rights to markets where multinational enterprises (MNEs) conduct significant business activities, while Pillar 2 proposes a global minimum tax for MNEs to curb tax competition and profit shifting. While these pillars appear to address global tax issues, the approach disregards the socio-economic context of African countries in setting tax parameters. For instance, Pillar 2 sets the global minimum corporate income tax rate at 15%. While this rate aims to eliminate the under-taxation of MNEs, it overlooks the fact that the average corporate tax rate across African countries is around 27%, significantly higher than the suggested minimum³⁵. The unilateral³⁶ decision to set the global minimum rate at 15% puts African countries at a disadvantage as it potentially limits their taxing rights and could lead to significant revenue losses. It fails to consider that African countries rely heavily on corporate income tax, which, on average, contributes about 18.6% of their total tax revenues, compared to 9.3% in OECD countries³⁷.

iii. Digital taxation

The current digital tax proposals under Pillar One primarily target highly digitalised businesses and large multinational enterprises (MNEs) with substantial global turnovers. However, this narrow focus may not adequately capture the digital activities and revenue generated by smaller businesses in African economies³⁸. In contrast, UN Article 12B presents a broader framework that encompasses a wider range of digital businesses, including those with lower revenue thresholds. Several countries have introduced a new taxable nexus based on ‘significant economic presence’, as proposed by the G-24 group of countries, targeting digital businesses making sales in their jurisdiction without a physical base. Nigeria defined a significant economic presence through a combination of user-based criteria and a sales threshold, requiring

³⁵ ATAF, A new era for international taxation rules - what does this mean for Africa (2021).

³⁶ McCarthy, J., ‘A bad deal for development: Assessing the impacts of the new inclusive framework tax deal on low- and middle-income countries,’ Brookings Global Working Paper 174, 2022

³⁷ OECD, Corporate Tax Statistics (2020).

³⁸ Latif, L.A., The Evolving ‘Thunder’: The Challenges Around Imposing the Digital Tax in Developing African Countries, International Journal of Digital Technology & Economy (Vol 4, Number 1, 2020)

affected multinationals to register and comply with their tax obligations in Nigeria. Such a measure would be outlawed under Pillar 1, despite the OECD approach yielding typically much smaller revenues³⁹.

Implementing the Pillar One proposals, as they stand, could also introduce administrative complexities for African tax administrations. The calculations and criteria involved in determining taxable digital presence and profit allocation may be more intricate, requiring a higher level of administrative capacity. This can pose challenges for African countries with limited resources and technical expertise in tax administration.

Data collection and availability pose another challenge. Accurately assessing the digital activities and revenue generated by businesses relies on access to comprehensive and reliable data. African tax administrations may face difficulties in obtaining accurate data from digital companies operating in their jurisdictions, particularly if these companies are not fully cooperative or transparent. UN Article 12B, with its alternative framework, places less reliance on the availability of data from multinational enterprises, potentially making it more feasible for African countries to implement. Furthermore, the influence and representation of African countries in shaping the Pillar One proposals have been limited. The formulation of these proposals has primarily been driven by the OECD and its member countries, raising concerns about the representation of African nations and their specific challenges. In contrast, UN Article 12B offers an alternative platform within the United Nations framework, providing African countries with a stronger voice and representation in shaping international tax rules. Given these challenges, exploring alternative approaches such as UN Article 12B becomes significant for African countries. These alternatives may better align with the realities, capacities, and priorities of African economies, fostering a more inclusive and equitable international tax framework for taxing digital businesses.

iv. High threshold

Further asymmetries are seen in the context of Pillar 1. Its application primarily affects large multinationals with a global turnover of more than EUR 20 billion and a profitability above 10%⁴⁰. This high threshold neglects a multitude of multinational companies operating within Africa, leaving an expansive portion of the continent's tax base untouched by the new proposals. The framework primarily targets large and highly profitable multinational corporations. However, many developing nations, including those in Africa, host a significant number of smaller multinational corporations that fall below the set threshold for the application of these rules⁴¹. Consequently, the framework fails to adequately address the economic realities of these countries, which is where the first asymmetry arises.

v. Residual profits

Additionally, the framework involves the reallocation of only a fragment of residual profits, rather than routine profits⁴². This arrangement is particularly disadvantageous for market jurisdictions, including many African nations, which are likely to see lower residual profit margins from multinational enterprises. The segmentation rules that exempt the extractive and regulated financial services industries from Pillar 1's scope is another point of contention, as many African economies heavily rely on these sectors. This exclusion poses a significant challenge for many African nations, given the economic relevance of these industries in the region. Thus, another asymmetry becomes apparent in the sectoral composition.

³⁹ See discussion in Picciotto et al., 2023, 'The BEPS proposals and alternatives', BEPS Monitoring Group, <https://www.bepsmonitoringgroup.org/news/2023/7/5/the-beps-proposals-and-alternatives>.

⁴⁰ OECD BEPS, Progress Report on Amount A of Pillar One (2022), <https://www.oecd.org/tax/beps/progress-report-on-amount-a-of-pillar-one-july-2022.pdf>

⁴¹ Dina, P. 'BEPS 2.0: a Middle East and Africa Perspective,' Bloomberg Tax, 2021

⁴² Grondona, V. 'The dangers of the residual profit split,' Tax Justice Network, 2019, <https://taxjustice.net/2019/10/03/the-dangers-of-the-residual-profit-split/>

vi. Administrative and implementation challenges

Further, the rules associated with Pillar 2 are decidedly complex, demanding substantial administrative capacity and resources for effective implementation. This might pose a significant challenge for many African tax administrations that may not possess the necessary resources to enforce these rules, thereby reducing their effectiveness. Pillar 2 also introduces potential conflicts with existing tax rules in many African countries, such as issues of interoperability with current tax treaty obligations and domestic laws. The need for extensive revisions to accommodate these new rules could prove burdensome for these countries. The subject to tax rule (STTR) introduced under Pillar 2 of international tax reform can potentially aid tax treaty negotiations by providing clarity and guidance on the treatment of income subject to the global minimum tax⁴³. The STTR sets a threshold for the taxation of certain income at a minimum rate, ensuring that profits are subject to a minimum level of taxation.

In the context of tax treaty negotiations, the STTR can help address issues related to the allocation of taxing rights and the prevention of double taxation. By establishing a minimum tax rate, it provides a standardised approach that countries can refer to during treaty negotiations. The rule can serve as a reference point for determining the treatment of income in cross-border transactions, helping to resolve conflicts and provide a more level playing field in tax treaty discussions. Additionally, the STTR may also encourage countries to revise their existing tax treaties or negotiate new ones to incorporate provisions related to the global minimum tax. This can facilitate the negotiation process by offering a common framework and objective for countries to work towards, thus aiding in reaching agreements that are aligned with the new international tax norms.

However, it is important to note that the STTR is just one component of the broader tax treaty negotiations and may not address all the complexities and challenges involved. Tax treaty negotiations involve various factors, including the specific interests and objectives of each country. The STTR can provide a basis for discussions, but ultimately, the negotiations will depend on the willingness of countries to reach mutually beneficial agreements that consider their individual circumstances and priorities. Herein lies the potential of asymmetries creeping in. For example, developed nations often have more resources and expertise, giving them a stronger position in shaping the outcomes of the negotiations, alongside political interference. This can result in asymmetrical agreements that may not fully consider the interests and concerns of developing countries.

While the STTR holds considerable promise for aiding developing nations by curbing base-eroding outflows, its practical execution poses intricate challenges. Unlike the Income Inclusion Rule (IIR) and the Under-Taxed Payments Rule (UTPR), which have been incorporated within modifications to the OECD Model Tax Convention, the implementation of STTR requires altering bilateral treaties between states. Importantly, destination jurisdictions that levy a nominal tax below 9% on related payments will be obligated to incorporate STTR provisions into their bilateral treaties with developing nations that are the sources of these payments, but only when asked to do so under the OECD BEPS⁴⁴. This mandate, as delineated by the OECD in 2021, however, only extends to parties that are part of the OECD agreement. This conditional arrangement potentially hampers the effectiveness of STTR. Some of the key intermediary tax havens—states known for their role as channels for capital flows towards low-tax destination havens—may opt not to participate in the OECD deal. Their lack of commitment to this accord could substantially undermine the ability of the STTR to achieve its primary objective. Consequently, the successful

⁴³ OECD, Tax challenges arising from digitalisation - Report on Pillar Two Blueprint, Chapter 9: Subject to tax rule (2020).

⁴⁴ OECD (2021) 'Developing Countries and the OECD/G20 Inclusive Framework on BEPS'. OECD. Available at: <https://www.oecd.org/tax/beps/developing-countries-and-the-oecd-g20-inclusive-framework-on-beps.pdf>.

implementation of STTR not only depends on policy redesign, but also hinges significantly on the collective commitment of all jurisdictions to equitably align global tax practices.

ANNEX 2

PROPOSALS FOR PROMOTING INCLUSIVE AND EFFECTIVE TAX COOPERATION AT THE UNITED NATIONS

We discuss a range of key inputs to the UN Secretary-General's call for submissions to his report on the new international tax framework here, and in a summary table below.

i. UNTC Members

The primary debate raised by Rasmi Das⁴⁵ revolves around the formation and implementation of an inclusive and effective tax system at a global level. He is advocating for a more representative and fair approach to international tax cooperation, pointing out that the current system is outdated and inequitable. The issues at stake concern the obsolescence of the current international tax rules, the imbalance in the allocation of taxing rights that favours countries where taxpayers reside, and the problematic practices of tax avoidance by multinational enterprises and high-net-worth individuals. Das suggests that the consensus-based decision-making approach that current tax reform initiatives have adopted may not serve the best interests of all countries, especially those with fewer resources or those who do not have the time to thoroughly analyse proposals. He points out that a consensus is often treated as a default 'yes' unless a country explicitly opts out. He suggests that this could lead to unsustainable consensus, where countries might end up agreeing to terms, they are not entirely convinced by.

Furthermore, Das emphasizes the necessity of a bottom-up process in setting the reform agenda, where every country, regardless of its size or level of development, has an equal say. This is in response to the prevalent top-down approach, wherein the agenda for tax reforms is predominantly set by advanced economies. He proposes the creation of a conference of parties (CoP) to be established by the United Nations that would allow for more inclusive and continuous discussions, and proposes a majority rule voting system, instead of the existing consensus-based approach. In response to these concerns, the Africa's position would need to navigate this debate by advocating for more inclusive, equitable, and effective global tax governance that reflects the unique economic circumstances of African countries, and by pushing for a more democratic and inclusive decision-making process in international tax reforms.

Muhammad Ashfaq Ahmed, ex-Chairman of the Federal Board of Revenue Pakistan and Member of the UN Tax Committee⁴⁶, has raised several significant debates regarding the international tax cooperation (ITC). According to him, the ITC, despite its positive appearance, has a coercive dimension. The system, in its current form, has enabled a monopoly of taxing rights, disproportionately favouring developed nations over developing ones. He references the establishment of over 3,200 double taxation conventions (DTCs), many of which involve at least one developing country. These DTCs, he says, lead to substantial tax-base losses for these nations, while creating legal loopholes for multinationals, high net worth individuals, and other non-state operators to engage in aggressive tax planning. Ahmed suggests that developing nations may have entered into these DTCs hoping to attract foreign investment, promote rapid industrialisation, and foster economic development. However, he also speculates about the role of self-interested political elites in such countries who may push for these agreements for short-term political or economic benefits. Ultimately, he asserts, these DTCs act as a hindrance to these countries' efforts towards sustainable development goals (SDGs).

Ahmed is proposing a reimagining and broadening of the ITC framework, which traditionally focuses on official development assistance (ODA), technical assistance (TA), and capacity building. His vision

⁴⁵ Das, Rasmi, UNTC Member Input Tax Report, <https://financing.desa.un.org/inputs>

⁴⁶ Ahmed, Muhammad, UNTC Member, Input Tax Report, <https://financing.desa.un.org/inputs>

includes the establishment of a universal International Tax Convention and the formation of an Intergovernmental World Tax Organization staffed by professionals from all UN member states. He envisages this body to ensure the uniform application of the Tax Convention. In terms of the process, Ahmed underscores the need for a platform where developing countries, or the Global South, can define their strategies for engaging with developed countries, or the Global North, in matters of international taxation. He believes that this process should be led by tax justice champions from both developed and developing countries and suggests organisations such as the G77 or South Centre as suitable platforms for this dialogue.

ii. UNCTAD

The views expressed by UNCTAD⁴⁷ highlight the urgent necessity for inclusive and efficient global tax cooperation to curtail IFFs, a concern that is particularly critical for developing nations. This position sparks a comprehensive discussion encompassing numerous interconnected themes. One contentious point is the systemic nature of IFFs and financial secrecy. UNCTAD underscores that systemic issues demand systemic solutions, suggesting the requirement for a globally inclusive forum to tackle these matters. This notion triggers debates about the apt platforms for such dialogues and whether all countries, especially those in the developing world, are adequately represented in these talks. Next, the role of the United Nations in this issue becomes a focal point. According to UNCTAD, the United Nations system is a natural conduit for the inclusive debate needed to address IFFs. However, questions about this system's effectiveness and inclusivity in matters of international tax cooperation arise. The crux of the argument lies in whether all member states are equally heard and whether the rules and standards developed genuinely benefit all.

A significant point of contention also arises around the impact of IFFs, corporate arbitrage, and phantom-FDI on tax revenues in developing countries. These flows can have severe repercussions on these nations' ability to achieve developmental goals and provide vital services. Debates focus on the most effective methods to mitigate these impacts and ensure fair international tax cooperation benefiting developing nations. The UN's High-Level FACTI Panel's call for a UN Tax Convention, which UNCTAD supports, adds another layer of complexity. The feasibility, timeline, and potential effectiveness of such a convention are all up for debate. The difficulty of measuring IFFs, as highlighted by UNCTAD, due to their covert and purposefully concealed nature, is another area of dispute. The accuracy and efficacy of the proposed measurement methods, like the Partner Country Method and Price Filter Method, are constantly questioned. Finally, UNCTAD emphasizes the hindrance IFFs pose to progress towards the Sustainable Development Goals (SDGs) by reducing the available revenue for essential public services. The extent to which these flows impact individual SDGs and the most effective ways to mitigate these effects are integral parts of this ongoing debate. In essence, the perspectives offered by UNCTAD form the groundwork for a broader debate around IFFs. This discussion encompasses the systemic nature of financial secrecy, the roles and effectiveness of international organisations, the unique impacts on developing nations, and the strategies needed to solve these complex problems.

iii. Africa Group

The African Group's statement⁴⁸ emphasises the disproportionate impact of global crises like the Covid-19 pandemic, climate change, economic slowdown, and rising inflation on developing countries, notably

⁴⁷ UNCTAD, Input Tax Report, <https://financing.desa.un.org/inputs>

⁴⁸ Africa Group, Input Tax Report, <https://financing.desa.un.org/inputs>

Africa. They assert that these crises hamper these countries' ability to recover and attain the Sustainable Development Goals. The Group underscores the urgent need for financing to bolster sustainable development agendas, with a specific focus on domestic resource mobilisation and good governance. The importance of public finance is highlighted as a critical solution to the challenges of poverty, inequality, and climate change. The Group argues that despite the private sector's role, it cannot substitute for public action, especially given the spectre of a looming sovereign debt crisis. They stress the need for international public finance and revenue mobilisation at home in the short to medium term. Over the past one and a half decades, the African countries have been proactively strengthening tax cooperation both at the national and international level. These efforts, they note, aim to create a more equitable revenue mobilization system. The support they have received from international institutions and donors has markedly strengthened African participation in international tax cooperation.

Reforming international tax cooperation is seen as a critical but not all-encompassing solution to the fiscal challenges that developing countries face. The Group views such reform, especially if carried out through the United Nations, as part of broader initiatives to enhance revenue systems over the medium to long term. The Group also emphasises the need to combat IFFs, which they view as detrimental to development financing. They call for cooperation at the national, regional, and international level to address this issue. Furthermore, they insist that international tax cooperation efforts should account for the unique needs and capacities of all countries. They express the belief that multinational companies should pay taxes in the locations where their economic activities occur and value is created. In the context of the United Nations, the African Group is pushing for negotiations to begin on an International Tax Convention. They see such a convention as an essential instrument to enhance international tax cooperation and fill gaps in addressing tax-related illicit financial flows.

Criticizing the current OECD 'Inclusive Framework', the Group points out that it excludes many countries, particularly the least developed ones. They argue that a truly international tax system can only be achieved through a negotiation process at the UN, rather than regional or OECD-led efforts. The Group emphasises tax as a core issue of national sovereignty and insist that all countries should have equal say in international tax decisions. They suggest that a UN Tax Convention could provide the platform for this equal representation. Finally, they assert that the UN has a long history of addressing international tax issues and they call for a return to this work in a more balanced forum, indicating that a UN tax convention is long overdue. This is essentially the African Group advocating for a more equitable global tax framework and a comprehensive approach to international tax cooperation under the United Nations' auspices.

iv. South Centre

The South Centre⁴⁹, in its extensive analysis of the current international tax governance, has identified several key limitations that obstruct the effectiveness of tax cooperation, particularly concerning developing nations. Among these limitations are the duplication of efforts across numerous international tax fora, the absence of a genuinely universal and intergovernmental tax forum, the lack of inclusivity in agenda-setting, the limited accountability of the Inclusive Framework (IF), the undemocratic nature of IF decision-making, and its opaque functioning. These issues collectively restrict the capacity of developing nations to contribute to, and benefit from, the international tax system. The South Centre asserts that these limitations can be overcome by implementing a series of necessary reforms, leading to the establishment of a new international tax cooperation instrument, proposed to be called the UN Tax Cooperation Instrument (UNTCI).

The UNTCI, according to the South Centre, should aim to create a truly universal, intergovernmental tax body, which ensures inclusive agenda setting, de-duplication of efforts, clear accountability mechanisms,

⁴⁹ South Centre, Input Tax Report, <https://financing.desa.un.org/inputs>

democratic decision-making, and transparent functioning. Importantly, it also advocates for capacity building for developing countries to enable them to take full advantage of the UNTCI. By establishing a Conference of Parties (COP) that includes all UN member states, the South Centre believes that the UNTCI can provide a forum for all countries to participate equally in setting international tax norms. The South Centre's vision for the UNTCI also includes the coordination of existing international tax institutions to one universal body, ensuring the effective and accountable implementation of international tax agreements. The South Centre also emphasises the need for democratic decision-making processes and transparency in the functioning of all existing fora. Capacity building for developing countries is suggested as a critical aspect of the UNTCI's mandate to ensure these nations can articulate their interests and benefit from the new system.

The AU could learn several lessons from the South Centre's analysis and recommendations. Firstly, the establishment of a universal, intergovernmental tax body could serve as a useful model for the AU's approach to tax cooperation among its member states, ensuring inclusivity and equal representation in decision-making. Secondly, the AU could emulate the South Centre's focus on capacity building, by equipping its member states with the necessary knowledge and skills to navigate the complexities of international taxation. Lastly, the South Centre's emphasis on transparency and accountability in the governance of tax institutions could guide the AU in strengthening its own tax frameworks, helping to build trust and cooperation among its member states.

v. Africa Union Commission

In its commentary on the United Nations Secretary General's report on the Promotion of Inclusive and Effective Tax Cooperation at the United Nations, the African Union Commission⁵⁰ recognises the essential role of cooperation and coordination in key areas of taxation for Africa's economic recovery and future growth. Among the key issues highlighted by the AU Commission are the allocation of taxing rights to source jurisdictions and the curbing of illicit financial flows out of Africa. The commission points out that current allocation rules largely favour residence jurisdictions, which disproportionately impacts African countries that primarily serve as source jurisdictions. Artificial profit shifting by some Multinational Enterprises (MNEs) operating in Africa contributes to IFFs, hindering the realisation of Agenda 2063 targets. The Commission also notes that the ongoing global tax discussion has missed the opportunity to fully address the issues of allocation of taxing rights, an aspect of crucial importance to African nations due to the developmental nature of their economies.

To enhance global tax cooperation, the Commission proposes several measures. Firstly, it emphasises that the process should incorporate the perspectives of existing African structures and should be a Member State-led intergovernmental body. The Commission proposes adopting a UN tax convention with universal participation and updating the UN Convention against Corruption to improve comprehensiveness, inclusiveness, and transparency. Other proposed structures include a monitoring mechanism for taxing rights to collect and disseminate national aggregate and detailed data about taxation and tax cooperation on a global basis. A multilateral mediation mechanism is also suggested to assist countries in resolving difficulties on international asset recovery and return, and to strengthen compensation. The AU Commission emphasises the importance of non-duplication of efforts and addressing unresolved challenges in other forums. It also underscores the need for reform in international tax cooperation, suggesting a re-evaluation of agenda setting, transparency, governance, and inclusivity on the basis of equal contribution.

Analysing both the South Centre and African Union Commission's commentaries, it appears that both entities are emphasising inclusivity, transparency, and balanced representation in the international tax

⁵⁰ African Union Commission Submission to The United Nations Secretary-General Report on Promotion of Inclusive and Effective Tax Cooperation at The United Nations, <https://financing.desa.un.org/inputs>

system. They both call for an international body that can address tax issues in a universally participative and democratic manner. For the AU, lessons can be drawn from the South Centre's proposals, especially in the creation of a UN Tax Cooperation Instrument, the reduction of duplicated efforts, and the emphasis on capacity building for developing countries. The principles of democratic decision-making, accountability, and transparency proposed by the South Centre also resonate with AU's commentary and can guide the AU in strengthening its position in the international tax system.

vi. ATAF

ATAF⁵¹ representing 42 African tax administrations, has shared their perspective on the global tax debate, emphasising the need for reforms to better accommodate the specific circumstances of African nations. These include tax rules that disproportionately disadvantage source jurisdictions where economic activity happens, such as most African countries, and ineffective rules to address illicit financial flows. ATAF has suggested a fundamental reform in the standard-setting agenda. They believe the current global tax rules are not fair for source jurisdictions like most African countries, as they don't effectively address the risks of illicit financial flows due to tax avoidance in developing nations. Hence, they propose that an intergovernmental committee be established, led by Member States, to recommend actions to strengthen international tax cooperation. The current procedures for setting standards are very complex and rapidly evolving, making it difficult for many African nations to contribute meaningfully.

To solve this problem, ATAF has proposed that the UN should be the right technical platform that is fully resourced with the necessary funding and has the best technical personnel from tax policy and administration representing UN member countries. This platform should take charge of identifying the necessary tax policy and legislative changes for an equitable and effective global tax system and develop comprehensive reports and recommendations to rally the necessary global political support. ATAF also recognises the progress made through the Inclusive Framework to reform global tax rules, particularly the Pillar One and Pillar Two rules. However, they maintain that these changes are not enough. The implementation of the Pillar One rules will result in only a limited reallocation of tax rights to source countries, and the impact of the Pillar Two rules on addressing corporate tax avoidance will be inadequate due to the minimum effective rate of 15% being too low to deter artificial profit shifting out of Africa. As a result, ATAF believes that additional work is required to secure global agreement on a higher minimum effective tax rate.

vii. G24

G24⁵² presents an array of discussions, issues, and suggestions that could greatly enlighten the strategies and actions of Africa on IFFs. Here's what they highlight: Firstly, they underscore the need for an inclusive and effective governance framework. They propose strengthening the UN Committee of Experts on International Cooperation in Tax Matters by transforming it into an intergovernmental subsidiary body under the Economic and Social Council (ECOSOC). This change could boost participation and representation of developing economies in international tax matters, a lesson African countries could draw upon given the importance of robust regional bodies in global tax policies.

Secondly, the G-24 brings up the importance of capacity building. Their experience shows that disparities in resources, particularly in developing nations, often restrict effective participation in policy decision-making. Their solution is to organise regional briefings and debriefings to ensure comprehensive understanding and effective stakeholder contribution. This is a lesson that the African continent could learn from, given the similar challenges faced in many African nations. Thirdly, the G-24 emphasizes

⁵¹ ATAF, Input Tax Report, <https://financing.desa.un.org/inputs>

⁵² G24, Input Tax Report, <https://financing.desa.un.org/inputs>

transparency and a bottom-up approach in decision-making processes. They suggest that diverse stakeholders such as academics, civil society, and the business community be brought into discussions early on, rather than just being informed of the final outcome. This approach can foster transparency and inclusivity, which could be valuable for Africa in ensuring comprehensive representation in shaping tax policies.

Fourthly, resourcing is another area the G-24 focuses on. They insist that adequate funding is necessary not just to produce and manage new workstreams but also to support governments in implementing proposed solutions. This could be an important lesson to bear in mind when seeking to effectively implement tax reforms across the continent. Fifthly, the G-24 champions the importance of simplicity and administrability in proposed solutions. They point out that developing countries and emerging markets need solutions that are both straightforward and cost-effective, considering the limitations they face in terms of capacity. . Next, the G-24 calls for coordination with existing bodies to avoid duplication of efforts. This underlines the importance for African countries to remain fully aware of other ongoing efforts and strive to complement them, rather than repeating the same work.

viii. ICRICT

ICRICT (Independent Commission for the Reform of International Corporate Taxation)⁵³ raises several key issues regarding the current international tax system and puts forth proposals for reform. The issues highlighted by ICRICT include the unfairness and obsolescence of the existing system, which was designed a century ago and fails to address the challenges posed by today's globalised economy. They argue that this system primarily benefits rich countries, exacerbates inequalities, and denies developing nations the necessary fiscal resources to achieve their developmental goals. ICRICT points out the limitations of the OECD/G20 "Two-Pillar Solution," a multilateral agreement aimed at addressing the tax challenges arising from the digitalisation of the economy. They argue that while it represents a step in the right direction, its design is inadequate, and its scope is insufficient. The 15% effective minimum tax rate falls below the global average, perpetuating tax competition and profit shifting. Additionally, the agreement fails to generate substantial fiscal revenues for low- and middle-income countries, disproportionately benefiting high-income countries.

To address these issues, ICRICT proposes a comprehensive reform of the international tax system through intergovernmental negotiations facilitated by the United Nations. They advocate for the negotiation of a UN tax convention that would rectify the failures and limitations of the current process conducted under the OECD/G20 Inclusive Framework. ICRICT emphasises the need for enhanced transparency and exchange of information to enable effective taxation of multinational corporations' profits based on a sound understanding of economics. Furthermore, ICRICT suggests expanding the scope of discussions to include a broader agenda for effective and progressive taxation within the context of globalisation. This entails exploring the possibility of wealth taxation and developing asset registries to ensure the taxation of income and assets of wealthy individuals. ICRICT urges the UN process to move towards a UN tax convention, as demanded by many member countries, to bring about much-needed reform and create a fairer and more equitable global tax system.

ix. Tax Justice Network Africa

⁵³ ICRICT, Input Tax Report, <https://financing.desa.un.org/inputs>

The Tax Justice Network Africa (TJNA)⁵⁴ puts forward several important proposals and raises key issues for consideration in the report on the promotion of inclusive and effective tax cooperation at the United Nations. Firstly, TJNA highlights the significance of establishing a universal global tax architecture that includes African countries. They emphasise the historical ineffectiveness of African countries' engagement in international tax cooperation processes and the need to prioritise the specific needs of African nations. TJNA proposes the creation of a multilateral convention to address tax-related illicit financial flows, focusing on tax evasion and aggressive tax avoidance. They recommend upgrading the UN Tax Committee to an intergovernmental forum that sets standards for tax cooperation and ensures equal negotiation opportunities for all countries. The organisation also raises concerns about the dominance of the OECD in international taxation matters. They advocate for the UN-led forum to assert normative and political legitimacy over existing institutions, taking into account the political economy of the global tax architecture. TJNA emphasises the importance of collaboration with other UN institutions, such as UNCTAD and UNODC, to develop statistical information on illicit financial flows and strengthen efforts to combat them.

x. Tax Justice Network (TJN)

TJN⁵⁵ highlight that the current structures and processes for cooperation and setting tax rules and standards are exclusionary and ineffective. They argue that these arrangements prioritise the interests of developed nations, resulting in unfavourable outcomes for African countries and hindering the realization of human rights and sustainable development goals. To address these issues, TJN proposes several recommendations. They call for the initiation of negotiations under the United Nations for an international convention on tax matters, involving all member states and relevant stakeholders. They emphasise the establishment of a new intergovernmental tax body within the United Nations, equipped with sufficient resources, to develop a global tax convention. TJN suggests focusing on key objectives such as automatic exchange of information on financial accounts, beneficial ownership transparency, comprehensive country-by-country reporting for multinational companies, and the creation of a minimum effective corporate tax rate based on formulary apportionment. They emphasise the importance of moving beyond existing arrangements and creating inclusive processes that ensure equal participation and transparency, including engagement with civil society.

PROPOSALS FOR PROMOTING INCLUSIVE AND EFFECTIVE TAX COOPERATION AT THE UNITED NATIONS

Person/Entity	View on International Tax Cooperation	Leading Body	Proposals
Rasmi Das, UNTC Member	Strengthen global tax governance	UN	<ul style="list-style-type: none"> Establish an intergovernmental UN tax body with universal participation and equitable representation.
			<ul style="list-style-type: none"> Provide capacity building and technical assistance to developing countries to enhance their tax administration and policy-making capabilities.
			<ul style="list-style-type: none"> Promote inclusiveness and fairness in international tax cooperation by ensuring the voices of developing countries are heard and their interests are taken into account.

⁵⁴ TJNA, Input Tax Report, <https://financing.desa.un.org/inputs>

⁵⁵ TJN, Input Tax Report, <https://financing.desa.un.org/inputs>

UNCTAD	Enhance inclusivity and fairness	UN	<ul style="list-style-type: none"> Transform the UN Committee of Experts on International Cooperation in Tax Matters into an intergovernmental subsidiary body of ECOSOC, ensuring universal participation and improved representation of developing countries.
			<ul style="list-style-type: none"> Engage with stakeholders, including academics, civil society, and business communities, to gather diverse perspectives and ensure transparency and inclusiveness in the decision-making process.
			<ul style="list-style-type: none"> Focus on capacity building and technical assistance to support developing countries in implementing international tax standards and effectively participating in the global tax dialogue.
Africa Group	Strengthen inclusiveness and effectiveness	UN	<ul style="list-style-type: none"> Establish an intergovernmental body on tax cooperation under the United Nations to address global tax issues and ensure inclusive participation of all member states, including those from developing countries.
			<ul style="list-style-type: none"> Consider the work of the UN Committee of Experts on International Tax Cooperation and build on its achievements to enhance international tax norms and standards.
			<ul style="list-style-type: none"> Address tax issues specific to the Global South, coordinate regional meetings, and involve regional organizations and development banks in finding solutions to the tax challenges faced by developing countries in financing development.
Muhammad Ashfaq Ahmed, UNTC Member	Establish a new global tax body	UN	<ul style="list-style-type: none"> Create a Universal Tax Governance Architecture with a binding and universal International Tax Convention that sets tax rates and mechanisms for cross-border incomes and ensures fairness to all stakeholders.
			<ul style="list-style-type: none"> Establish an Intergovernmental World Tax Organization, staffed by professionals from all UN member states, to operationalize and enforce the International Tax Convention globally.
			<ul style="list-style-type: none"> Ensure inclusivity and provide the Global South with an opportunity to convene and set their agenda for engagement with the Global North and OECD in international tax affairs.
South Centre	Reform and enhance governance	UN	<ul style="list-style-type: none"> Establish a Universal, Intergovernmental Tax Body under the UN to ensure a systematic, orderly, and just tax world, with equitable taxation of cross-border incomes and fair treatment of all international economic agents, source states, and residence states.
			<ul style="list-style-type: none"> Promote inclusiveness by allowing the Global South to set its agenda and lead the engagement with the Global North and OECD on tax issues.

			<ul style="list-style-type: none"> • Address comprehensive issues in international tax governance, including renegotiation of taxing rights, taxation of cross-border incomes, illicit financial flows, tax havens, beneficial ownership legislations, and banking secrecy.
AU	Strengthen governance and capacity	UN	<ul style="list-style-type: none"> • Establish a UN Tax Cooperation Instrument (UNTCI) with a universal, intergovernmental tax body that addresses limitations in the current international tax system.
			<ul style="list-style-type: none"> • Enhance inclusivity and ensure the participation of all countries, particularly developing nations, in decision-making processes related to international tax standards and regulations.
			<ul style="list-style-type: none"> • Address tax issues specific to Africa, including the allocation of taxing rights, illicit financial flows, outdated tax treaties, and the simplification of rules based on the capacities of tax administrations in the developing world.
ATAF	Improve African tax systems	UN	<ul style="list-style-type: none"> • Support the United Nations in promoting inclusive and effective tax cooperation and recognizing the specific challenges faced by African tax systems.
			<ul style="list-style-type: none"> • Advocate for the establishment of an intergovernmental body within the UN to address tax issues, coordinate with existing bodies, and provide capacity building and technical assistance to African tax administrations.
			<ul style="list-style-type: none"> • Focus on addressing tax issues that affect Africa, including the allocation of taxing rights, Illicit Financial Flows (IFFs), and the coordination of efforts to mobilize domestic resources for development.
G24	Strengthen inclusiveness and effectiveness	UN	<ul style="list-style-type: none"> • Transform the UN Committee of Experts on International Cooperation in Tax Matters into an intergovernmental subsidiary body of ECOSOC, ensuring universal participation and improved representation of developing countries.
			<ul style="list-style-type: none"> • Enhance capacity building to support developing countries' effective participation in the global tax dialogue and implementation of international tax standards.
			<ul style="list-style-type: none"> • Promote transparency and provide adequate resources to ensure the production, management, and implementation of workstreams related to international tax cooperation.
ICRICT	Reform and enhance governance	UN	<ul style="list-style-type: none"> • Establish a UN-led forum for international tax cooperation through a multilateral convention.
			<ul style="list-style-type: none"> • Upgrade the UN Tax Committee to an intergovernmental forum setting standards for tax cooperation.

			<ul style="list-style-type: none"> • Consider a broader agenda for effective and progressive taxation, including wealth taxation and asset registries.
TJNA	Strengthen inclusiveness	UN	<ul style="list-style-type: none"> • Create a multilateral convention for tax-related illicit financial flows, focusing on tax evasion and aggressive tax avoidance.
			<ul style="list-style-type: none"> • Upgrade the UN Tax Committee to an intergovernmental forum and broaden its mandate.
			<ul style="list-style-type: none"> • Assert normative and political legitimacy of the UN-led forum over existing institutions.
			<ul style="list-style-type: none"> • Collaborate with other UN institutions, such as UNCTAD and UNODC, to strengthen efforts in combating illicit financial flows, and include civil society and stakeholders in the establishment of international taxation and cooperation rules.