For the kind attention of:

Mr. Ramy M. Youssef, Chair of the Intergovernmental Negotiating Committee to draft a United Nations Framework Convention on International Tax Cooperation and two early protocols (INC), Ms. Marlene Nembhard Parker and Mr. Michael Braun, Co-Leads of Workstream III.

2 September 2026

**Subject: Joint civil society and trade unions submission regarding the Co-Leads' Draft Protocol on the Prevention and Resolution of Tax Disputes (A/AC.298/CRP.34), published 20 July 2026**

We welcome the opportunity to provide written input to the process. Please find below a joint submission on behalf of **the Global Alliance for Tax Justice (GATJ) and over 130 civil society organizations and trade unions**. GATJ is a Southern-led global coalition in the tax justice movement, and facilitates civil society engagement in the UN Tax Convention negotiations and the coordination of joint submissions with the support of its members Tax Justice Network Africa (TJNA) and the European Network on Debt and Development (Eurodad). GATJ also facilitates the Civil Society Financing for Development Mechanism's Workstream on Domestic Resource Mobilization.

GLOBAL ALLIANCE FOR TAX JUSTICE

CIVIL SOCIETY FINANCING FOR DEVELOPMENT Mechanism


# Abstract

We hereby provide comments on specific elements in the draft Protocol 2 text. However, we continue to have fundamental concerns with the approach taken. It remains unclear how Protocol 2 will match the objective of the Framework Convention, and rather than promoting reform and addressing the systemic problems that lead to disputes, the draft Protocol seems focused on enforcing the old system.

Specific points:

- The Protocol should have a preamble and objective, including to clarify the link to the Convention;
- Keeping in mind draft Article 21 of the convention, the Protocol should fully integrate the obligation of Parties to ensure alignment between existing tax instruments and the provisions and principles of the Convention;
- A definition of "double taxation" should be introduced which explicitly guards the ability of Parties to introduce effective rules to combat harmful tax practices and unfair allocation of taxing rights;
- Furthermore, the Protocol should:
    - Include "anti-lock-in" clauses in this Protocol to curb obsolete norms and work toward inclusive, equitable, efficient, and effective rules that truly transform the international tax system within the framework of the Convention.
    - Avoid introducing rights for multinational enterprises (MNEs);
    - Reflect principle 9(a) of the ToR by introducing differentiated responsibilities for developing countries;
    - Include a mandate to address the problems related to advance rulings for MNEs;
    - Have Mutual Agreement Procedure as a core mechanism, but government-to-government focused;
    - Not include the option of arbitration.

# Submission

## Overall

Below, we provide comments on specific elements of the current draft. However, these inputs should be seen in the context of our fundamental concerns with the approach taken.

It remains unclear how Protocol 2 matches the Convention's objective of establishing an "*inclusive, fair, transparent, efficient, equitable and effective international tax system for sustainable development*".

Rather than promoting structural reforms and addressing systemic problems, the draft Protocol seems focused on enforcing the old system. It thus ignores the need to urgently replace the transfer pricing system with a unitary system based on formulary apportionment and the transition away from relying on bilateral tax treaties. The draft also includes some very concerning specific components, including advance pricing agreements and arbitration.

Furthermore, an approach of "optionality" risks creating incoherence, fragmentation and inconsistency.

At a minimum, we call a reduced number of "options", including through deletion of arbitration. Furthermore, Protocol 2 must not undermine the systemic reform by locking Parties into an outdated system.

## Preamble and objectives

Protocols should promote the implementation of the objectives, principles and commitments of their Framework Conventions. However, in the current draft Protocol, the link to the Convention is unclear.

Suggestion: Add a preamble and objectives to the Protocol, including to recapture the most relevant sections of the Convention, and describe how the Protocol aims to promote them. This should include the Convention's draft Article 21 and the obligation of Parties to align their existing international tax agreements with the Convention.

## Chapter 1 – General Provisions

### Definitions

**"Applicable tax instrument":**

Subject to draft Article 21 of the Convention, the Protocol should not be used to enforce tax instruments that are not in line with the Convention.

Suggestion: Add to the definition: A tax instrument will not be applicable under this Protocol unless it is fully in line with the objectives, principles and provisions of the Convention.

**"Double taxation":** Draft Protocol 2 has a strong focus on eliminating double taxation. While this is the classic focus on double tax treaties, the term is not mentioned in the ToR, and in the current draft Convention, the term is only mentioned once – in Article 5, which includes the aim of "*reducing the risks of double taxation and non-taxation*".

In the context of the UN Tax Convention, the term "double taxation" is not yet defined. However, the use of anti-abuse mechanisms (including, for example, withholding taxes) can give rise to cases which might, according to some existing tax instruments, qualify as "double taxation" and cause disputes.

Protocol 2 must align with the ToR and the Convention, including as regards ensuring a fair allocation of taxing rights, equitable taxation of multinational enterprises (MNEs) and addressing harmful tax practices. Consequently, in its approach to disputes, the Protocol must not facilitate enforcement of outdated tax instruments which are not in line with the Convention.

Suggestion: <u>Add a definition of "double taxation" which explicitly guards the ability of countries to introduce effective rules, including anti-abuse mechanisms, to combat harmful tax practices and unfair allocation of taxing rights</u>.

## <u>Additional general provisions to be added:</u>

### Relation with the UN Tax Convention

Draft Article 21 of the UN Tax Convention recognizes that there may be cases where existing tax agreements go against the Convention. This is only natural, not least since one central purpose of the Convention is to introduce changes to the global tax system that will increase fairness, equity and transparency. In doing so, the Convention might create changes that lead to mismatches with existing tax agreements, which shall consequently be renegotiated or terminated. Over time, this discrepancy is likely to increase, not least when the commitment to ensuring a fair allocation of taxing rights is further developed and implemented.

The Protocol must promote implementation of the Convention. For Protocol 2, this means resolving such disputes in a way that promotes enforcement of, and gives preference to, the Convention.

To this effect, the following general provisions should be introduced:

- <u>This protocol shall promote the implementation of the Convention, including the obligation of Parties to align their existing international tax agreements and related instruments with the provisions and principles of the Convention.</u>

- <u>In prevention and resolution of disputes, the Parties shall fully adhere to, and promote the implementation of, the objectives, principles and provisions of the Convention.</u>

**Avoiding "lock-in"**

With its strong focus on enforcement of existing tax instruments, the Protocol can de facto end up "locking" countries into outdated rules and norms developed through non-inclusive processes outside of the Convention, and going against its principles. This could complicate the further development and implementation of the Convention, including in relation to ensuring a fair allocation of taxing rights, equitable taxation of MNEs, addressing harmful tax practices and increasing transparency.

Suggestion: The Protocol should have general "anti-lock-in" clauses, such as:

- <u>Nothing in this Protocol shall be invoked for the purpose of making Parties endorse or comply with specific tax rules, standards, definitions or other norms developed outside the framework of the UN Framework Convention on International Tax Cooperation.</u>

And:

- <u>No obligations, provisions or mechanisms under this Protocol shall prevent the Parties from developing, adopting and implementing any new rules and provisions to promote the achievement of the objectives, principles and commitments of the Convention. This includes instances where such rules or provisions would depart from the approach taken in existing international tax instruments.</u>

## <u>Chapters II-IV</u>

### <u>Cross-cutting</u>

**The Protocol should not award rights to multinational enterprises (MNEs)**

UN treaties are negotiated and agreed between states, and the provisions entail commitments that the states make towards each other. It is not common practice to award rights to MNEs – even in the case where the treaty regulates such corporations. Within UN treaties the states can take on obligations to provide certain processes related to MNEs, without the creation of a corresponding right for corporations to demand such processes.

Suggestions:

- <u>All text that suggests the creation of a right for MNEs should be deleted from Protocol 2, including the wording "*that taxpayer or those taxpayers may request…*"</u>.

- <u>The Protocol should not contain any "taxpayer-initiated mechanisms" –it should always be for the Parties to decide whether to initiate a mechanism.</u>

**Integrating principle 9(a)** of the ToR, namely to *"fully consider the different needs, priorities, and capacities of all countries, including developing countries, in particular* *countries in special situations"*. This is largely missing from the draft Protocol, which in its current form could entail a large administrative burden on countries.

Suggestion: Integrate principle 9(a) systematically throughout Chapter II-IV, including through differentiated responsibilities for developing countries.

**Avoiding overly prescriptive text**

Chapter II and III contain large amounts of text which is overly prescriptive, including specific timelines, and procedural and administrative details.

The Protocol should only include components that require ratification, meaning core decisions such as definitions, commitments, mandates for mechanisms, etc. Keeping the text free of unnecessary detail promotes clarity, efficiency and flexibility.

After the Protocol has entered into force, the Meeting of the Parties (MOP) can adopt the specific rules to operationalize and implement the provisions of the Protocol. Unlike the text of the Protocol, MOP-decisions can be reviewed and updated without necessitating re-ratification of the entire Protocol, which is important for ensuring flexibility.

Suggestion: The parts of the draft that are very detailed and prescriptive and related to administration and implementation should be removed from the Protocol and instead tabled for adoption by the future MOP1.

**Specific Articles**

**Article II.1-3 Advance pricing agreements (APAs) and advance rulings**

Advance rulings for MNEs, including APAs, can entail substantial risks for countries, not least since it binds authorities into specific tax approaches before tax returns are filed and the exact consequences can be estimated. Furthermore, the current practice is to keep them highly secret and issue them to individual corporations, which introduces clear risks of special treatment, unfairness and inconsistency.

Lastly, unilateral APAs are a purely domestic matter which should not be included as an option.

Suggestions:

- Every tax administration should, at any time, hold the right to reject applications for APAs without being required to provide specific reasons. This should be made clear in the Protocol and the text "including the main reasons for any decision not to accept the request" should be deleted.

- The right of multinational corporations to request advance rulings should be deleted.

- The Protocol should recognize the risks and concerns associated with advance rulings for MNEs, and include a mandate for the Meeting of the Parties to consider and address these problems.

- Delete Article II.3 on unilateral APAs.

**Article III.1 Mutual Agreement Procedure (MAP)**

MAP should be the core dispute resolution mechanism. However, the Article must be redrafted to make it a purely government-to-government mechanism.

Suggestion: Redraft Article III.1 to make the mechanism government-initiated, rather than taxpayer-initiated (Article III.1 paragraph 1). Remove administrative requirements and timelines, and widen the scope from matters related to one specific tax payer to inter-governmental disputes in general.

**Article III.3 Arbitration**

Arbitration is a highly concerning practice that leaves major decisions on tax matters in the hands of a small group of "experts". This should not be an option.

Suggestion: Delete Article III.3.

**Article III.6 UN Support**

Article III.6 assumes work by the UN without including any provisions of financial resources. A Financial Mechanism should be set up under the Convention, but the distribution of funds should be free for Parties to decide – including the provision of financing for each of the Protocols.

Suggestion: It is important to maintain the wording "within the mandates and resources made available". Furthermore, it is vital to ensure that the Convention includes a Financial Mechanism and sources of financing. The allocation of financial resources should be a decision for the Conference of the Parties to the Convention.

## Chapter V

**Article V.1 Reservations to Specific Mechanisms**

It is bad legal practice to use the Reservations Article to install "opt-out" functions. If Member States agree to include options in the Protocol, they should be integrated into the Articles which relate to the relevant mechanisms. The Member States making use of this function are not, in fact, making reservations on the agreement, but rather making use of an agreed function.

Furthermore, rather than an "opt-out" function, any optional mechanisms under the Protocol should be formulated as "opt-in" functions.

Suggestion: Optionality should be included as "opt-in" functions in the relevant Articles related to specific mechanisms, rather than the section on Reservations, which should simply read "No reservations may be made to this Protocol".

**Article V.2 Application in Relation to Other Instruments and V.3 Agreement to Replace a Mechanism**

Mechanisms under the UN FCITC would operate as a part of the Framework Convention and in line with its objectives and principles. That makes these mechanisms unique, and therefore, it is unclear how any existing mechanisms could be "substantially similar".

While it is not common practice for the UN treaties to endorse "mechanisms" of other instruments, they usually allow Parties to decide how best to implement their commitments. Therefore, rather than endorsing "mechanisms" under other instruments, the Protocol should emphasize that Parties can decide their own means of implementation – including, where relevant, existing procedures.

Suggestion: The term "substantially similar" should be deleted. Instead of endorsing mechanisms under other agreements, the Protocol should specify the rights of Parties to choose their means of implementation including, where relevant, existing procedures.

Furthermore, all agreements under the UN Tax Convention, including its Protocols, should be applied to the widest extent possible.

Suggestion: Mechanisms under the Protocol shall apply unless the Parties otherwise agree. Support options B in Articles V.2 and V.3.

## Other issues

Concerns about the impact of Investor-State Dispute Settlement (ISDS) processes on taxation have been raised in the negotiations. This issue should be taken up in the protocol with the aim of ensuring that ISDS is not applicable to tax disputes and related resolutions.

We have concerns regarding the establishment of a task force on transfer pricing databases. Task forces should be established with the clear mandate agreed by the negotiating parties, not ad hoc and with an unclear purpose.

# Signatories

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|---|---|---|
| 1 | ActionAid Zambia | Zambia |
| 2 | Active Citizenship Foundation (ACF) Inc. | Philippines |
| 3 | Africa Network for Environment and Economic Justice(ANEEJ) | Nigeria |
| 4 | African Youth Employment Initiatives, AYEI | Burundi |
| 5 | ALL INDIA WOMENS HAWKER FEDERATION | India |
| 6 | All Nepal Peasants federation | Nepal |
| 7 | Alliance Sud | Switzerland |
| 8 | Alternative Information and Development Center (AIDC) | South Africa |
| 9 | AMA (Veeduría Ciudadana Ambiental del Cesar - Amigos del Medio Ambiente) | Colombia |
| 10 | Amnesty International | International |
| 11 | Arab Campaign for Education for All - ACEA | MENA (Arab Region) |
| 12 | Arab Network Popular Education - Lebanese Coalition for Education | Lebanon |
| 13 | Ars Socialis, A.C. | Mexico |
| 14 | Asia Development Alliance | Asia |
| 15 | Asian Peoples' Movement on Debt and Development (APMDD) | Asia |
| 16 | Asociación civil JAPIQAY, Memoria y Ciudadanía | Perú |
| 17 | Asociación de Empleados Fiscales de Ingresos Públicos | Argentina |
| 18 | Asociación Migración y Cooperación Internacional Araguaney | España |
| 19 | ASSOCIATION DE DEVELOPPEMENT AGRICOLE EDUCATIF ET SANITAIRE DE MANONO | République démocratique du Congo |
| 20 | Attac Austria | Austria |
| 21 | Awaz Centre for Development Services | Pakistan |
| 22 | Bangladesh Krishok Federation | Bangladesh |
| 23 | Barwaqa Relief Organization | Kenya |
| 24 | Brazilian Campaign for the Right to Education | Brazil |
| 25 | Bridge Agenda | United States of America and Ghana |
| 26 | CADE - Fundacion SES | Argentina/ América Latina y El Caribe |
| 27 | Campaña Latinoamericana por el Derecho a la Educación-CLADE | América Latina y El Caribe |
| 28 | CCFD-Terre Solidaire | France |

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| 29 | CEFILAT | Argentina |
| 30 | Center for Economic and Social Rights (CESR) | International |
| 31 | Centre for Economic Governance (CEG) | Kenya |
| 32 | Centre for Environment, Human Rights & Development Forum - CEHRDF | Bangladesh |
| 33 | Centre Régional Africain pour le Développement Endogène et Communautaire (CRADEC) | Cameroun |
| 34 | Centro de Derechos Económicos y Sociales CDES | Ecuador |
| 35 | Centro de Estudios de Derecho, Justicia y Sociedad - Dejusticia | Colombia |
| 36 | Centro Internacional de Investigación Otras Voces en Educación | Venezuela |
| 37 | Coalición Colombiana por el Derecho a la Educacion | Colombia |
| 38 | Coalition éducative Tunisien | Tunisie |
| 39 | Colectivo de Educacion para todas y todos de Guatemala | Guatemala |
| 40 | Comissão de Justiça e Paz e Integridade da criação | Angola |
| 41 | Community Focus Group (CFG) | Kenya/ Africa |
| 42 | Conseil pour l'Education et le Développement, COPED | Burundi |
| 43 | Consejo de Jóvenes de Oaxaca - México | México |
| 44 | CONSOTONORTE | Colombia |
| 45 | CRASH - Coalition for Research and Action for Social Justice and Human Dignity | Finland |
| 46 | Development Alternatives with Women for a New Era (DAWN) | Global South |
| 47 | DISABILITY PEOLES FORUM UGANDA | Uganda |
| 48 | Economic Justice Network of FOCCISA | South Africa |
| 49 | Education For All Somalia (EFASOM) | Somalia |
| 50 | European Network on Debt and Development (Eurodad) | Europe |
| 51 | Evangelical Association of Malawi | Malawi |
| 52 | Financial Justice Ireland | Ireland |
| 53 | Finnish Development NGOs Fingo | Finland |
| 54 | Finnwatch ry | Finland |
| 55 | Focus on the Global South | Asia |
| 56 | Food Sovereignty and Climate Justice | Nepal/ South Asia |
| 57 | Foro Internacional de Inversión en Juventud | México |
| 58 | Fundación Luis Felipe Velez | Colombia |

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| 59 | Fundación Quilombo Masai Colombia | Colombia |
| 60 | Fundar, Centro de Análisis e Investigación A.C. | México |
| 61 | Funfación Organización Argentina para Sociedades Inclusivas (OASI) | Argentina |
| 62 | Futuros Mejores | Argentina |
| 63 | Ghana National Education Campaign Coalition - GNECC | Ghana |
| 64 | Global Alliance for Tax Justice | International |
| 65 | Global Call to Action Against Poverty (GCAP) | International |
| 66 | Global Campaign for Education (GCE) | International |
| 67 | Global Peace and Development Organization (GPDO) | Liberia |
| 68 | Global Policy Forum Europe | Germany |
| 69 | Global Redistribution Advocates | International |
| 70 | Global Student Forum | International |
| 71 | Global Witness | International |
| 72 | GMAF Grupo de Mujeres de la Argentina Foro de VIH Mujeres y Familia | Argentina |
| 73 | Government Accountability Project | United States of America |
| 74 | Green Tax Youth Africa | Ghana |
| 75 | Grupo de Cambio Climático para América Latina y el Caribe (GFLAC) | México |
| 76 | HIMALAYA NITI ABHIAYAN | India |
| 77 | Inesc - Instituto de Estudos Socioeconômicos | Brazil |
| 78 | Initiative for Social and Economic Rights (ISER - Uganda) | Uganda |
| 79 | Initiatives for Safe Migration and Social Justice | Nigeria |
| 80 | INRAV | Venezuela |
| 81 | Institute of the Blessed Virgin Mary - Loreto Generalate | International |
| 82 | Instituto Popular de Capacitación IPC | Colombia |
| 83 | Intercontinental Network for the Promotion of Social Solidairy Economy (RIPESS) | International |
| 84 | I-Watch Organization | Tunisia |
| 85 | Jordan Network for Education for all | Jordan |
| 86 | JUBILEO 2000, RED ECUADOR | Ecuador/ América Latina y El Caribe |
| 87 | KMT | Tanzania/ East Africa |
| 88 | Latindadd | América Latina y El Caribe |

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| 89 | LDC Watch | Nepal |
| 90 | Malawi Economic Justice Network MEJN | Malawi/ SADC |
| 91 | McGill Youth Advisory Delegation | Montreal, Canada |
| 92 | MenaFem Movement for Economic Development and Ecological Justice | SWANA |
| 93 | Migrant Forum in Asia | Philippines/ Asia Region |
| 94 | NATIONAL HAWKER FEDERATION | India |
| 95 | National Society of Conservationists - Friends of the Earth Hungary | Hungary |
| 96 | Network for Women's Rights in Ghana (NETRIGHT) | Ghana |
| 97 | Netzwerk Steuergerechtigkeit (German Alliance for Tax Justice) | Germany |
| 98 | Norwegian Church Aid | Norway |
| 99 | Norwegian Church Aid | Kenya |
| 100 | Norwegian Church Aid - DanChurch Aid | Malawi |
| 101 | ORG Bahamas Foundation | Bahamas |
| 102 | Organisation Paysanne pour le Développement Durable | République démocratique du Congo |
| 103 | OSC por el Desarrollo Sostenible en México | Mexico |
| 104 | Oxfam | International |
| 105 | Pakistan FishersFolk Forum | Pakistan |
| 106 | Partners In Health | United States of America/ International |
| 107 | People's Alternative Studies Center for Research and Education in Social Development (PASCRES) | Philippines |
| 108 | Plateforme DPEG | Guinée |
| 109 | Polifa | Kenya/ Finland |
| 110 | Positive Money | United Kingdom |
| 111 | Red de Justicia Fiscal de América Latina y El Caribe | América Latina y El Caribe |
| 112 | Red Nacional del Agua de Colombia | Colombia |
| 113 | REDO Kenya | Kenya |
| 114 | ROTAB | Niger |
| 115 | Rural Reconstruction Nepal | Nepal |
| 116 | SAAPE | Nepal |
| 117 | SENTRO Confederation of Progressive and United Workers | Philippines |
| 118 | Sigaw ng Kabataan Coalition | Philippines |

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| 119 | Society for International Development | International |
| 120 | Somali Journalists Syndicate | Somalia |
| 121 | Sudanese coalition for education for all | Sudan |
| 122 | Sukaar Welfare Organization | Pakistan |
| 123 | SYNDICAT CHRETIEN DES TRAVAILLEURS DU CONGO | République démocratique du Congo |
| 124 | Tax and Fiscal Justice Alliance Nepal | Nepal |
| 125 | Tax and Fiscal Justice Asia | Asia |
| 126 | Tax Justice Network | International |
| 127 | Tax Justice Norway | Norway |
| 128 | The Kenya Human Rights Commission | Kenya |
| 129 | Third World Network | International (Asia, Africa, Europe, America) |
| 130 | TI-Taiwan | Taiwan |
| 131 | TJNA | Africa |
| 132 | Trade Justice Pilipinas | Philippines |
| 133 | War on Want | United Kingdom |
| 134 | WomanHealth Philippines | Philippines |
| 135 | Women In Democracy And Governance (WIDAG) | Kenya/ Africa |